Volume I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 867

UNITED STATES, APPELLANT,

vs.

CONTINENTAL CAN COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED AUGUST 12, 1963

JURISDICTION NOTED OCTOBER 28, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 367

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CONTINENTAL CAN COMPANY, ET AL.

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Volume I

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123—Committee on Market Research and Promotion, Semi-Annual Report of Activities for the period May 1958 to November 1958 to the Board of Trustees of Glass Container Manufacturers Institute	532	2187
124—Committee on Market Research and Promotion, Subcommittee on Beer Bottles, Semi-Annual Report of Activities for the period May 1955 to November 1955 to the Board of Trustees of Glass Container Manufacturers Institute	539	2196
125—Committee on Market Research and Promotion, Subcommittee on Beer Bottles, Semi-Annual Report of Activities for the period October 1957 to May 1958 to the Board of Trustees of Glass Container Manufacturers Institute	540	2197
126—Committee on Market Research and Promotion, Subcommittee on Beer Bottles, Semi-Annual Report of Activities for the period May 1958 to November 1958 to the Board of Trustees of Glass Container Manufacturers Institute	544	2203
127—Committee on Market Research and Promotion, Subcommittee on Milk Bottle Promotion, Semi-Annual Report of Activities for the period May 1957 to September 1957 Semi-Annual Report of Activities for the period of May 1957 to September 1957 of the Committee on Market Research and Promotion, Subcommittee on Beer Bottles to the Board of Trustees of Glass Container Manufacturers Institute	545	2204

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GOVERNMENT'S EXHIBITS—Continued		
128—Traffic Committee, Semi-Annual Report of Activities for the period November 1954 to May 1955 to the Board of Trustees of Glass Container Manufacturers Institute	548	2208
129—Committee on Government-Industry Relations Semi-Annual Report of Activities for the period May to Noveniber 1956 to the Board of Trustees of Glass Container Manufacturers Institute	555	2217
130—Committee on Market Research and Promotion, Subcommittee on Beer Bottles, Semi-Annual Report of Activities for the period May 1956 to November 1956 to the Board of Trustees of Glass Container Manufacturers Institute	558	2221
131—Committee on Container Design and Specifications Semi-Annual Report of Activities for the period November 1955 to May 1956 to the Board of Trustees of Glass Container Manufacturers Institute	560	2223
138—"Fifth Annual Consumer Survey on Containers" prepared by Benton & Bowles, Inc., December, 1947 (excerpts)	564	2229
145—Minutes of a Special Meeting of the Administrative Committee for the Research Division of Can Manufacturers Institute, Inc., November 17, 1941 (excerpt)	688	2245
147 & 148—Digest of Recommendations presented to the Administrative Committee of the Research Division of Can Manufacturers Institute on November 17, 1941 by Dr. Miller McClintock, Director	689	2246
156—Minutes of a Special Meeting of the Administrative Committee for the Research Division of Can Manufacturers Institute, Inc., May 11, 1942 (excerpts)	691	2248
158—Minutes of a Special Meeting of the Administrative Committee for the Research Division of Can Manufacturers Institute, Inc., June 1, 1942 (excerpt)	692	2249
160—Financial statement, Research Division, Can Manufacturers Institute, Inc., May 1, 1942-April 30, 1943	693	2251
166—Minutes of a Special Meeting of the Administrative Committee for the Research Division of Can Manufacturers Institute, Inc., December 14, 1942	694	2251

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
GOVERNMENT'S EXHIBITS—Continued		
170B-178—Proofs of advertisements on "Soft Drinks in Cans" prepared for publication	696	2255
185—"The HE I.S. Glass-Forming Machines", informational booklet	710	2268
235A—Memorandum dated 1/18/54 from CGB to MAH re Narrow Mouth Prices	725	2285
235B—Memorandum dated 3/15/54 from CGB to SLR re Glass Container Price Increases	726	2285
235C—Report of R. M. Koehrman re Sales Policy Meeting July 29 and 30, 1954	727	2286
235D—Report of R. M. Koehrman re Sales Policy Meeting February 23 and 24, 1954	734	2296
304—Pamphlet entitled "Articles of Incorporation and Code of Regulations" of Glass Container Manufacturers Institute, Inc., June 5, 1945, as amended	739	2305
317—Bulletin 30-L, 2d Ed., entitled "Processes for Low-Acid Canned Foods in Glass Containers", by National Canners Association, Research Laboratory, September, 1955	776	2337
318—Bulletin 26-L, 8th Ed., entitled "Processes for Low-Acid Canned Foods in Metal Containers", by National Canners Association, Research Laboratory, December, 1955	821	2382
348—Study of Can Costs versus 1-way Bottle Cost to Brewer, Owens-Illinois Glass Company, dated May 4, 1956, prepared by Glass Container Comptroller's Department	879	2441
348A—Study of Can vs. Glass Prices—Florida Fruit Packs, dated April 1, 1955, prepared by Comptroller's Department, Glass Container Division	884	2443
348B—Study of Quart 1-way Beer Containers, Glass vs. Tin, Owens-Illinois Glass Company, dated June 4, 1956, prepared by Glass Container Comptroller's Department	886	2446
348C—"Sources of Information, Cans vs. Glass Prices—1942 = 1946 vs. 1-1-57", prepared by Comptroller's Department, Glass Container Division, 2/27/57	892	2449
348D—"1-Way Beer Prices", a comparative study prepared by Comptroller's Department, Glass Container Division, April 23, 1958	894	2453
348E—"Cans vs. Jars Price Per Thousand—Ground Coffee," report dated October 21, 1958 by Instant Products Division	896	2454

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
GOVERNMENT'S EXHIBITS—Continued		
348F—"Baby Foods—Tin vs. Glass", report dated April 16, 1959 by Comptroller's Department	897	2455
348G—Memorandum dated April 27, 1959 from Comptroller's Department, Glass Container Division, re Beer Containers—One-Way Glass vs. Tin	898	2456
348H—Memorandum dated May 6, 1959, with charts attached, from Comptroller's Department, Glass Container Division, re Can vs. Glass Prices	899	2457
349—Report dated April 2, 1958 re prices of containers for detergents and liquid waxes and polishes	902	2459
349A—Memorandum dated March 19, 1959, with tables attached, from Comptroller's Department, Closure & Plastics Division, re detergent containers	905	2461
349B—Report dated October 30, 1957, re prices of containers for detergents and liquid waxes and polishes	910	2466
357—List of Revlon products, March 1958 to October 1959	913	2469
363—List, dated June 21, 1960, of glass container machines shipped by Emhart Manufacturing Company to Hazel-Atlas Glass Company and Hazel-Atlas Division of Continental Can Company	914	2470
364—Letter dated October 21, 1958, from Emhart Manufacturing Company to U. S. Dept. of Justice re inquiry concerning glassware forming machines and related subjects, with attachments	918	2473
400—Memorandum dated January 10, 1954, from Dana Hill to R. G. Fisher transmitting report "Tin vs. Glass—United States and Canada"	967	2519
400A—Memorandum dated November 24, 1947, from R. S. Hatfield to G. H. Muth, transmitting data sheets	979	253
401—"The Packaged Syrups Market"—An appraisal of the Metal Container's Competitive Position—Commercial Research Department, April 1949 (excerpt)	988	2541
402—"The Market for Peanut Butter in Cans"—a report by the Commercial Research Department, November 25, 1952	993	2544

Record from the United States District Court for the Southern District of New York—Continued

	Original	Print
Government's Exhibits—Continued		
404—"Continental's New Savorlock Can", Continental Can Company Products Bulletin from R. D. Cleaves, August, 1956	1000	2553
405—Excerpt of report entitled "Continental's New Savorlock Can" with memorandum dated June 1956 from R. D. Cleaves to Division Managers of Sales and District Sales Managers	1012	2563
405A—Packaging Engineering Report, Progress Report No. 1, dated November 21, 1956, entitled "Test Pack of American Home Foods' Soluble Coffee in Savorlock Cans", with Tables I and II	1018	2567
406—Excerpts from pamphlets issued by Continental Can Company entitled "Continental's Coffee Container—Sales Information"	1023	2575
407—Pamphlet of Continental Can Company entitled "Instant Coffee by Chase & Sanborn"	1028	2581
408—Memorandum dated July 21, 1955, from R. D. Cleaves to P. L. Brachle, Central Division, Continental Can	1045	2591
409—Memorandum dated August 18, 1955, from R. D. Cleaves, to Sales Department List A-2	1049	2595
411—Report entitled "Container Requirements for Coffee, Soluble" by H. P. Lankelma, Jr., Special Products Section, prepared June 15, 1955, revised May 1, 1956	1054	2602
412—Excerpt from report entitled "Instant Coffee Container Study", dated February 15, 1955, conducted for Continental Can Company by National Family Opinion, Inc.	1059	2609
413—Excerpt of report entitled "Folger Soluble Coffee Can Investigation in Kansas City, November 1955", issued by Commercial Research Dept., December 1955	1063	2612
415B—Report entitled "Promotion of Baby Food in Cans—Structural Changes in Cans and Advertising Programs", dated July 13, 1953	1065	2614
415C—Memorandum dated February 10, 1947, from G. H. Muth to Messrs. Pearson, Fogarty and Brachle	1072	2623
416—Excerpt of report entitled "Report of Consumer Survey made in Philadelphia on Baby Food for Continental Can Company, Inc."	1077	2628

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Record from the United States District Court for the Southern District of New York—Continued		
GOVERNMENT'S EXHIBITS—Continued		
417—Report entitled "Reclosure Baby Food Can—Relationship between Market Acceptability Information and Contemplated Can Developments", dated July 15, 1958	1084	2632
419A, 419B, 419C—Memorandum dated July 5, 1945, from S. T. Frame, Manager of Market Analysis, to Messrs. Fogarty, Perin and Falk re Baby Food Survey	1089	2636
420—Excerpt of report entitled "Use, Attitudes and Opinions of Cans vs. Glass Jars for Prepared Baby Food Among Young Mothers and Doctors" by S-D Surveys, Inc., February, 1954	1100	2649
421A—Memorandum dated August 13, 1953, from S. B. Smart to W. K. Neuman	1101	2650
423-427—Reports on packaging guides for pressure dispensed foods: barbecue sauce, chocolate syrup, salad dressings, dressings for salad, whipped toppings	1132	2654
429—Report entitled "Liquid Detergents, Analysis of the Potential Market for Metal Cans" with transmittal letter dated January 19, 1954, from D. H. Walker to L. C. Mackelden	1145	2671
434—Report entitled "Comparative Costs, Single Trip versus Returnable Beer Containers, Year 1943, reprinted from 'American Brewer'", dated June 4, 1947	1171	2693
435—Memorandum dated June 10, 1947, from G. H. Muth to T. C. Fogarty	1177	2700
436—Report entitled "Comparative Delivered Costs, 12 oz. Non-Returnable Beer Bottle vs. 12-oz. Flat Top and Cap Sealed Beer Cans", dated August 7, 1947	1181	2704
438—Letter dated June 30, 1949, from Commercial Research Department to All District Sales Managers re One-Way Single Trip Beer Bottle Prices (attachments omitted in printing)	1183	2705
439—Letter dated July 11, 1949, from M. M. Dukehart, Jr., to All District Sales Managers, with data sheets attached	1184	2706
440—Memorandum dated October 31, 1952, from D. H. Walker to M. M. Dukehart, with report attached entitled "Current and Prospective Markets for Beer Packages Smaller than 12 Ounces"	1188	2709

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	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
440A—Memorandum dated January 29, 1952, from D. H. Walker to M. M. Dukehart, Jr.	1197	2723
441—Memorandum dated December 31, 1952, from D. H. Walker to M. M. Dukehart	1200	2727
442—Excerpt from report entitled "A Comprehensive National Study of Consumer Preferences for Different Types of Beer Containers", dated January 1954	1206	2734
445—Report entitled "Retail Level Study of New Quart Beer Can Acceptance in Chicago" with transmittal memorandum dated February 21, 1956, from Dana Hill to C. H. Buckley	1210	2738
446—Report entitled "Carbonyl Compounds in Schlitz Beer (Test Pack C659)", dated December 5, 1957	1217	2743
448—Report on packaged beer trends entitled "June Packaged Sales Soar", dated August 25, 1958	1222	2748
543—Report entitled "Beer Can Shipments", dated March 25, 1952, with table attached	1224	2751
588—Report entitled "Beer Trends", dated July 9, 1948	1226	2754
589—Memorandum dated June 9, 1948, from L. E. Dake re beer sales and production, with tables attached	1229	2758
600—Pamphlet entitled "ABC's—Canning" of Continental Can Company	1232	2761
600B—Memorandum dated May 26, 1953, from D. H. Walker to M. M. Dukehart, Jr.	1251	2781
601—Memorandum dated August 7, 1953, from D. H. Walker to C. H. Buckley	1254	2785
612—Excerpt of report entitled "Attitude of Grocery Chains toward Canned Soft Drinks" by Continental Can Company, dated December 13, 1954	1257	2789
613—Report entitled "A New Look at Soft Drinks in Cans", by C. H. Buckley, dated March 4, 1955	1258	2790
617—Memorandum dated March 1956, from C. H. Buckley to L. A. Carey, with tables attached	1264	2797
641—Excerpt from "Canned Foods, Merchandiser Digest", issue of May 1957	1269	2803
642—"Canned Foods, Merchandiser Digest", issue of August 1957	1270	2804

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	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
649—Excerpt of newsletter entitled "Foods-in-glass News" Vol. II, No. 4, dated June 1957	1274	2808
656—Excerpt of "Canned Foods Newsletter for Brokers" dated May 1958	1277	2812
669, 671—Advertisements of Hazel-Atlas Glass appearing in various trade journals	1279	2814
675—Proof of advertisement of Continental Can Company to appear in 1955-56 Directory of Breweries	1281	2817
684—Release #1113, dated August 31, 1955 to Sales List A-2, entitled "Publicity that makes Continental stand out", enclosing various newspaper clippings (excerpt)	1282	2818
Volume IV		
773—Letter dated June 2, 1953, from E. P. Williams to J. C. Neuhart	1284	2821
775—Letter dated April 5, 1954, from F. C. Menair to J. S. Algeo	1286	2822
776—Letter dated May 5, 1954, from Robert B. Reinhart to J. S. Algeo	1288	2824
781—Memorandum dated January 29, 1954, from J. S. Algeo to all agents transmitting remarks made at Canners Convention—January 25, 1954	1289	2825
785—Statement entitled "Question 10—Acquisitions by Continental Can Company, Inc., 1942-1956"	1292	2829
786—Letter dated February 20, 1946, from H. Bartow Farr to William H. England and letter dated April 22, 1946, from Sherlock McKewen to William H. England (attachments to letter omitted in printing)	1298	2835
788—Certified copy of a portion of minutes of a meeting of the Board of Directors of Continental Can Company, Inc., held May 16, 1956	1334	2864
800—Plaintiff's Charts (excerpts)	1334a	2865
I Glass Container Shipments in the United States	1335	2866
II Metal Container Shipments in the United States	1354	2885

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GOVERNMENT'S EXHIBITS—Continued		
III U. S. Metal Container Shipments and Continental Can Participation by Regions and U. S. Glass Container Shipments and Hazel-Atlas Participation by Regions	1370	2902
IV Historical Growth of Metal and Glass Container Shipments Expressed as Index Numbers and Shown as a Trend	1399	2931
V Metal and Glass Container Shipments	1405	2937
VII Tin Can and Other Tinware Industry	1416	2948
IX Shipments of Commercial Closures, Vacuum and Non-Vacuum Types, Screw Thread, Lug and Crown Caps in the U. S.	1419	2951
801—Plaintiff's Statistical Tables—Folder A	1422	2955
Nos. 1a-1f—Continental United States Shipments for 1955, 1956 and 1957 of all types of glass containers	1423	2956
Nos. 2a-2f—Continental United States Shipments for 1955, 1956 and 1957 of all types of metal containers	1430	2962
Nos. 3a-3f—Continental United States Shipments for 1955, 1956 and 1957 of glass and metal containers	1436	2967
802—Plaintiff's Statistical Tables—Folder B	1443	2973
Nos. 1a-1f—Continental U. S. Shipments, East of the Rockies in 1955 for glass and metal containers, all types	1449	2979
Nos. 2a-2f—Continental U. S. Shipments, West of the Rockies in 1955 for glass and and metal containers, all types	1456	2986
Nos. 3a-3e—Continental U. S. Shipments, East of the Rockies in 1955 for all types of metal containers	1463	2993
Nos. 4a-4e—Continental U. S. Shipments, West of the Rockies in 1955 for all types of metal containers	1469	2999
Nos. 5a-5f—Continental U. S. Shipments, East of the Rockies in 1955 for all types of glass containers	1475	3005
Nos. 6a-6f—Continental U. S. Shipments, West of the Rockies in 1955 for all types of glass containers	1482	3012
Nos. 7a-7f—Continental U. S. Shipments for 1955 of all types glass and metal containers	1489	3019

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Record from the United States District Court for the Southern District of New York—Continued		
GOVERNMENT'S EXHIBITS—Continued		
803—Plaintiff's Statistical Tables—Folder C (excerpts)	1496	3027
No. 1c—Continental United States Shipments of metal containers for sale by the three leading manufacturers (excludes metal containers shipments by captive plants)	1497	3028
No. 2c—Production and shipments of crown caps by Continental Can Company compared to United States total for the years 1955, 1956 and 1957	1498	3029
No. 3c—1956 and 1957 production and shipments of vacuum, screw thread, and lug commercial closures made from tin mill products by White Cap Company and Hazel-Atlas Glass Co. in 1956	1499	3030
No. 4c—Production and shipments of vacuum type commercial closures (tin mill product) in 1958 by White Cap Company and screw thread and lug type (non-vacuum) commercial closures by Hazel-Atlas Glass Co.	1500	3031
805—Letter dated June 9, 1960, from Helmer R. Johnson to Robert A. Bicks	1501	3032
806—Article entitled "Aerosol Containers—1947, Present and Future", by John M. Heinen, Jr., Joint Session, Aerosol Division and Insecticide Division, Mid-year meeting, May 21 and 22, 1957	1506	3036
900—Letter dated July 18, 1956, from Willkie Owen Farr Gallagher & Walton to Victor R. Hansen	1508	3043
949—FBI's lists of household products packaged in cans or glass containers purchased in Washington area stores on 8/23/60, 8/30/60, 9/1/60, 9/7/60	1543	3069
1158—Schedule of products observed at Decatur, Georgia, store	1559	3081
1160-1177—Lists of products packaged in glass, can, and plastic containers observed in Georgia stores on 9/1/60, 9/8/60, 9/6/60, 8/30/60, 9/2/60, 9/7/60	1568	3091
1178A-1178B—FBI's lists of items packaged in cans, glass, and plastic containers identified in the Los Angeles area stores	1607	3109

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GOVERNMENT'S EXHIBITS—Continued		
1179-1201—FBI's lists of food products, household products, and toilet articles packaged in can, glass, and plastic containers handled by Chicago area stores during August-September, 1960	1651	3150
1202—Annual Report of Steel and Tin Consumed in Metal Cans for the years 1948-1957, inclusive	1690	3181
1205—Explanation for filling out GCMI Reporting Form 1-54, dated 12/16/57, with schedules attached	1713	3205
1209—Excerpts from booklet of Continental Can Company, Inc., entitled "Notice and Proxy Statement for Special Meeting of Common and Preferred Stockholders to be held October 26, 1956"	1718	3212
1210—Pamphlet of Hazel-Atlas Glass Company containing "Notice of Special Meeting of Stockholders" and Proxy Statement, July 6, 1956	1734	3219
1211—Continental Can Company, Inc.—Annual Report 1955	1766	3263
1212—Continental Can Company, Inc.—Annual Report 1956	1793	3290
1213—Continental Can Company, Inc.—Annual Report 1957	1832	3329

Record from the United States District Court for the Southern District of New York—Continued

	Original	Print
Defendants' Exhibits:		
J—Petition of Disinterested Trustee, etc., in the matter of Neville Island Glass Company, Inc., No. 21680, in USDC, WD Pa., with Report and Statement of Trustee attached	1864	3361
K—Letter dated October 21, 1958, from Emhart Manufacturing Company to U. S. Dept. of Justice re inquiry concerning glassware forming machines and related subjects, with attachments (copy—omitted in printing)	1903	3389
N—List of household products and food products, designated S-14, entitled "Estimates"	1904	3389
O—List of household products and food products	1908	3392
P—Article entitled "The Billion Dollar Glass Container Business"—source: GCMI, M R & P DIV., #354—8/11/58	1911	3396
V—Sample form M34D (1-15-57) for reporting metal can shipments to Bureau of the Census	1912	3399
X—Interrogatory 6 and Answer to Interrogatory 6(b)	1914	3401

[fol. a] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 112-387

UNITED STATES OF AMERICA, Plaintiff,

v.

CONTINENTAL CAN COMPANY, INC. AND HAZEL-ATLAS GLASS COMPANY, Defendants.

COMPLAINT—Filed September 10, 1956

The United States of America by its attorneys, acting under the direction of the Attorney General of the United States, brings this Civil Action to obtain equitable relief against the above-named defendants, and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and this action is instituted against the defendants under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 stat. 736, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of said Act, 38 Stat. 731, as amended by the Act of Congress of December 29, 1950, c. 1184, 64 Stat. 1125.

2. Defendant Continental Can Company, Inc., maintains offices, transacts business and is found within the Southern District of New York.

3. Defendant Hazel-Atlas Glass Company transacts business within the Southern District of New York.

[fol. b]

II

The Defendants

4. Continental Can Company, Inc., hereinafter referred to as "Continental," is named a defendant herein. Continental is a corporation organized and existing under the laws of the State of New York, with its principal office located in New York, New York.

5. Hazel-Atlas Glass Company, hereinafter referred to as "Hazel-Atlas," is named a defendant herein. Hazel-Atlas is a corporation organized and existing under the laws of the State of West Virginia, with its principal office located in Wheeling, West Virginia.

III

Trade and Commerce

6. Defendant Continental is engaged in the manufacture and sale of a variety of containers and related items including cans and other metal containers; plastic, fibre and paper containers; and other packaging materials. Continental's total net sales for the year 1955 were $666,266,408 and its total assets on December 31, 1955 were $381,917,101. Since 1942 Continental has acquired more than 25 independent business enterprises engaged in the production and sale of products in the container field.

7. Defendant Hazel-Atlas is engaged in the manufacture and sale of a variety of glass containers and related items including wide mouth and narrow neck bottles, metal closures, tableware, tumblers and industrial glassware. Total net sales of Hazel-Atlas for the year 1955 were $79,919,795 and total assets on December 31, 1955 were $37,884,424.

8. Defendant Continental is engaged in the manufacture and sale of metal cans which are sold for use in the canning and packaging of foods, beer, beverages, drugs, cosmetics, chemicals, paints and oils, detergents, and other products. Continental operates can manufacturing plants in several states including Alabama, California, Colorado, Florida, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachu-
[fol. c] setts, Minnesota, Missouri, Nebraska, New Jersey,

New York, Ohio, Oregon, Pennsylvania, Texas, Washington and Wisconsin. It sells and ships the cans from plants in these states to customers located in other states throughout the United States. Continental is the second largest manufacturer of metal cans in the United States and manufactures and sells in excess of 30 per cent of the metal cans sold in this country. Continental's gross sales of such cans amounted to $401,000,000 in 1954 and to $433,100,000 in 1955.

9. Defendant Continental manufactures and sells plastic bottles which are used mainly for the packaging and dispensing of toiletries, cosmetics, nasal sprays, food and other products. Continental is the fourth largest domestic company in the sale of plastic "squeeze" bottles alone, having sales of $700,000 in 1954 and $1,300,000 in 1955 representing about 9% of total industry sales in this field.

10. Defendant Hazel-Atlas is engaged in the manufacture and sale of glass bottles which are sold for use in the canning and packaging of foods, beer, beverages, drugs, cosmetics, chemicals, oils and preservatives, detergents and other products. Hazel-Atlas operates bottle manufacturing plants in Alabama, California, New York, Ohio, Oklahoma, Pennsylvania and West Virginia. It sells and ships these bottles from plants in these states to customers located in other states throughout the United States. Hazel-Atlas is the largest manufacturer of wide mouth glass bottles and the second largest manufacturer of all glass bottles in the United States.

11. Foods, beer, beverages, drugs, cosmetics, chemicals, paints, oils and preservatives, detergents and a variety of other products are packaged in metal cans, plastic bottles and glass bottles. Manufacturers anrd processors of these products in many cases have a choice of the type of container they will use. In fact, many manufacturers and processors of the above products package the same product in both plastic and glass bottles or in both metal cans and glass bottles, thus permitting the purchaser and consumer [fol. d] to select the container of his choice. Metal cans and plastic bottles manufactured by Continental are sold by that company in competition with glass bottles manufactured and sold by Hazel-Atlas.

12. Defendant Continental is engaged in the manufacture and sale of crown caps for use on beverage bottles by

brewers and soft drink bottlers. It is the second largest domestic producer in this field. Continental ships these closures from crown cap plants in the states of California, Delaware, and Louisiana, and also from can manufacturing plants in Pennsylvania and Wisconsin to customers located in other states throughout the United States. In addition, on January 4, 1956, Continental acquired White Cap Company the leading manufacturer of vacuum type metal closures used for sealing a variety of food and other products in glass bottles. Defendant Continental's gross sales of metal closures in 1955 combined with those of White Cap Company amounted to approximately $36,700,000. Continental is the second largest domestic manufacturer of these types of metal closures and sells about 18 per cent of such types of closures sold in the United States. Defendant Hazel-Atlas is engaged in the manufacture and sale of screw type metal closures used for sealing a variety of food and other products in glass bottles. Manufacturers and processors of certain food and other products in many cases have a choice of the type of closure they will use. Some manufacturers use closures of the types produced by both Continental and Hazel-Atlas in merchandising the same product. Closures manufactured by Continental are sold by that company in competition with the closures manufactured and sold by Hazel-Atlas.

13. Defendant Continental is engaged in the manufacture and sale of various types of fibre drums having capacities ranging from less than a gallon to seventy-five gallons each. These drums are used for the shipment of dry, solid and liquid products such as certain chemicals, plastics, foods, [illegible] film and metal parts. In the year 1956 Continental manufactured and sold more than 25% of all fibre drums produced and sold in the United States.

IV

Offense Charged

14. On June 29, 1956, Continental entered into an agreement with Hazel-Atlas under which Continental will acquire all the assets, properties, business and good will of Hazel-Atlas in exchange for an aggregate of 999,941 shares of

common stock of Continental and the assumption by Continental of all of the liabilities of Hazel-Atlas. This acquisition was approved by the holders of 60% of the outstanding stock of Hazel-Atlas at a special meeting of its stockholders on August 7, 1956, and unless postponed by public authority or by further agreement of the parties is scheduled to become effective on/or about September 11, 1956. The effect of this acquisition, if consummated, with respect to trade and commerce in metal cans, glass bottles, plastic bottles, metal closures, fibre drums, or any of them, or in the container field, may be substantially to lessen competition, or to tend to create a monopoly, in violation of Section 7 of the Clayton Act, among other ways, as follows:

a. Actual and potential competition between Continental and Hazel-Atlas in the production and sale of metal cans and glass bottles will be eliminated;

b. Actual and potential competition in the production and sale of metal cans and glass bottles, generally, may be substantially lessened;

c. Actual and potential competition between Continental and Hazel-Atlas in the production and sale of plastic and glass bottles will be eliminated;

d. Actual and potential competition in the production and sale of plastic and glass bottles, generally, may be substantially lessened;

[fol. f] e. Actual and potential competition between Continental and Hazel-Atlas in the production and sale of metal closures will be eliminated;

f. Actual and potential competition in the production and sale of metal closures, generally, may be substantially lessened;

g. The combination of the second largest domestic metal can manufacturer with the second largest domestic glass bottle manufacturer may give the resulting combination a decisive advantage over its less diversified competitors and may result in a substantial lessening of competition or a tendency to monopoly, or both, in the container field;

h. Industry-wide concentration in the manufacture and sale of products in the container field will be increased.

Prayer

Wherefore, plaintiff prays:

1. That a temporary restraining order and/or a preliminary injunction issue enjoining the defendants, their officers, directors, agents, employees and all other persons acting on their behalf from taking any further action to consummate the acquisition, and from making any changes directly or indirectly in the corporate structure of Hazel-Atlas or in the operations and policies of Hazel-Atlas with regard to the manufacture and sale of any of its products pending final adjudication of the merits of this complaint.

2. That the threatened acquisition of Hazel-Atlas described herein be adjudged a violation of Section 7 of the Clayton Act.

3. That the defendant Continental, its officers, directors, agents and all other persons acting on its behalf be enjoined from acquiring the stock or assets of Hazel-Atlas, and for such a period as the court may direct, from acquiring the [fol. g] stock or assets of any other corporation engaged in the manufacture or sale of products in the container field.

4. That, pursuant to Section 15 of the Clayton Act, an order be made and entered herein requiring defendant Hazel-Atlas to be brought before the Court in this proceeding and directing the Marshal of the Northern District of West Virginia to serve summons on it.

5. That plaintiff have such other and further relief as the Court may deem just and proper.

6. That plaintiff recover the costs of this suit.

/s/ William H. McManus. /s/ John M. O'Donnell.
/s/ Edward G. Gruis. /s/ Donald F. Melchior.
Attorneys, Department of Justice.

/s/ J. Lee Rankin, Acting Attorney General. /s/ Victor R. Hansen, Assistant Attorney General. /s/ Richard B. O'Donnell, Attorney, Department of Justice. /s/ John T. Duffner, Attorney, Department of Justice. /s/ Ephraim Jacobs, Attorney, Department of Justice.

[fol. h] *Duly sworn to by William H. McManus. Jurat omitted in printing.*

[fol. i] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ANSWER OF HAZEL-ATLAS GLASS COMPANY—Filed October 1, 1956

Defendant, Hazel-Atlas Glass Company, a dissolved corporation, answers the correspondingly numbered paragraphs of the Complaint as follows:

I

Jurisdiction and Venue

1. Admits the averments contained in paragraph 1, but denies that it has violated, or is about to violate, Section 7 of the Clayton Act, referred to in the Complaint, or any other provision of the antitrust laws.

2. Admits, upon information and belief, the averments contained in paragraph 2.

3. Admits, with respect to Paragraph 3, that at the time of the commencement of this action (but not since September 13, 1956) it transacted business within this district and alleges that on September 21, 1956 it was dissolved.

II

The Defendants

4. Admits the averments contained in the first sentence of paragraph 4. Admits, upon information and belief, the [fol. j] averments contained in the second sentence of paragraph 4.

5. Admits, with respect to Paragraph 5, that at the time of the commencement of this action it was a corporation organized and existing under the laws of the State of West Virginia, with its principal office located in Wheeling, West Virginia, but alleges that on September 21, 1956, it was dissolved.

III

Trade and Commerce

6. Admits, upon information and belief, the averments contained in the first sentence of paragraph 6. Admits, upon information and belief, that Continental is engaged in the manufacture and sale of cans, plastic, fibre and paper containers. Is without knowledge or information sufficient to form a belief as to the truth of any of the remaining averments of this paragraph.

7. Admits, with respect to Paragraph 7, that at the time of the commencement of this action (but not since September 13, 1956) Hazel-Atlas was engaged in the manufacture and sale of a variety of glass containers and related items including wide mouth and narrow mouth bottles, metal closures, tableware, tumblers and industrial glasswafe, but avers that the designation "wide mouth" refers to jars rather than bottles and that the terms "tableware, tumblers and industrial glassware" are "related" to glass containers only in the sense that they are made of glass. Admits that its total net sales for the year 1955 were $79,919,795.00 and that its total assets on December 31, 1955 were $37,884,424.00.

[fol. k] 8. Admits, upon information and belief, the averments of paragraph 8 that defendant Continental is engaged in the manufacture and sale of metal cans which are sold for use in the canning and packaging of one or more of the products specified in the first sentence of paragraph 8. Is without knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in paragraph 8.

9. Admits, upon information and belief, that Continental manufactures and sells plastic bottles. Is without knowledge or information sufficient to form a belief as to the truth of any of the remaining averments of paragraph 9.

10. Admits that at the time of the commencement of this action (but not since September 13, 1956) it was engaged in the manufacture and sale of glass bottles and jars which were sold for use in the canning and packaging of certain foods, beer, certain beverages, certain drugs, certain cosmetics, certain chemicals, certain oils and preservatives,

certain detergents and certain other products; that it operated glass bottle and jar manufacturing plants in Alabama, California, New York, Ohio, Oklahoma, Pennsylvania and West Virginia, and that it sold and shipped the bottles and jars so manufactured to customers located in other States. Denies all other allegations of paragraph 10, and specifically denies the allegations that it is the largest manufacturer of wide mouth glass bottles, and second largest glass manufacturer of all glass bottles in the United States.

11. Denies the averments contained in paragraph 11.

12. Is without knowledge or information sufficient to form [fol. 1] a belief as to the truth of the allegations of the first and second sentences in paragraph 12. Admits, upon information and belief, that Continental acquired the Capital Stock of White Cap Company, a manufacturer of vacuum type metal closures. Is without knowledge or information sufficient to form a belief as to the truth of any of the other averments of the third sentence of paragraph 12. Is without knowledge or information sufficient to form a belief as to the truth of any of the averments contained in the fourth, fifth and sixth sentences of paragraph 12. Admits with respect to the averments of the seventh sentence of said paragraph that Hazel-Atlas, at the time of the commencement of this action (but not since September 13, 1956) was engaged in the manufacture and sale of screw type metal closures used for sealing a variety of food and other products in glass bottles. On information and belief, denies the allegations contained in the remainder of paragraph 12.

13. Is without knowledge or information sufficient to form a belief as to the truth of any of the averments contained in paragraph 13.

IV

Offense Charged

14. Admits the averments contained in the first sentence of paragraph 14. Admits that the alleged acquisition was approved by the holders of approximately 90% of the outstanding stock of Hazel-Atlas at a special meeting of the stockholders on August 7, 1956; and that the acquisition was, for a time, scheduled to become effective on or about September 11, 1956; and alleges that on September 13, 1956

Continental and Hazel-Atlas consummated the acquisition [fol. m] pursuant to said agreement—Continental delivering 999,140 shares of its common stock to Hazel-Atlas and assuming the liabilities of Hazel-Atlas in exchange for the latter's assets and that since September 13, 1956 Continental has been, and now is, the owner of all of said assets and has them in its possession. Denies each remaining averment in this paragraph.

For a First Complete and Affirmative Defense the Defendant Hazel-Atlas Glass Company, in Dissolution, Alleges

15. That on September 21, 1956 this defendant was dissolved and its business and affairs wound up and terminated and that by reason thereof the alleged cause of action against it has become moot.

Wherefore, Hazel-Atlas prays that the Complaint be dismissed.

William J. Barnes, 20 Exchange Place, New York 5, N. Y., Attorney for Hazel-Atlas Glass Company.

Charles F. Paul, Of Counsel.

[fol. n] *Duly sworn to by H. G. Lewis. Jurat omitted in printing.*

[fol. o] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ANSWER OF DEFENDANT CONTINENTAL CAN COMPANY, INC.—Filed October 1, 1956

The defendant Continental Can Company, Inc., answering the complaint:

1. Admits the allegations of Paragraph 1, but denies that it has violated, or is about to violate, Section 7 of the Clayton Act.

2. Admits, with respect to Paragraph 3, that at the time

of the commencement of this action (but not since September 13, 1956) the defendant Hazel-Atlas Glass Company transacted business within this district and alleges that on September 21, 1956 said defendant was dissolved.

3. Admits, with respect to Paragraph 5, that at the time of the commencement of this action Hazel-Atlas was a corporation organized and existing under the laws of the State of Virginia with its principal office located in Wheeling, West Virginia, but alleges that on September 21, 1956 Hazel-Atlas was dissolved.

4. Admits the allegations of the first two sentences of Paragraph 6 and that since 1942 it has acquired the stock [fol. p] or assets of certain other corporations, but except as so admitted denies the allegations of said Paragraph 6.

5. Admits, with respect to Paragraph 7, that at the time of the commencement of this action (but not since September 13, 1956) Hazel-Atlas was engaged in the manufacture and sale of glass containers and related items, including wide mouth and narrow neck bottles, metal closures, tableware, tumblers and industrial glassware and alleges, upon information and belief, that the term "wide mouth jars" more properly describes the containers referred to as "wide mouth bottles" in said paragraph and that the terms "tableware, tumblers and industrial glassware" are "related" to glass containers only in the sense that they are made of glass and further admits, upon information and belief, that the total net sales of Hazel-Atlas for the year 1955 were $79,919,795. and the total assets on December 31, 1955 were $37,884,424.

6. Admits the allegations of the first, second and third sentences of Paragraph 8, except that it denies that it operates can manufacturing plants in Alabama and Kansas and, upon information and belief, admits the allegations of the fourth sentence of said paragraph, and admits the allegations of the fifth sentence thereof.

7. Admits that it manufactures and sells plastic bottles which are used for the packaging and dispensing of toiletries, cosmetics, nasal sprays and food, but otherwise denies the allegations of the first sentence of Paragraph 9 and, upon information and belief, admits the allegations of the [fol. q] second sentence of said paragraph and alleges that $580,000. of the gross sales in 1954 and $776,000. of the gross

sales in 1955 were from the sale of non-commercial packages and that when these sales figures are deducted from the total commercial plastic bottle sales for the respective years, Continental's percentage share of the market was approximately 5% of the total industry's sales in this field.

8. Admits that at the time of the commencement of this action (but not since September 13, 1956) Hazel-Atlas was engaged in the manufacture and sale of glass bottles and jars which were sold for use in the canning and packaging of certain foods, beer, certain beverages, certain drugs, certain cosmetics, certain chemicals, certain oils and preservatives, certain detergents and other products; that Hazel-Atlas operated glass bottle and jar manufacturing plants in Alabama, California, New York, Ohio, Oklahoma, Pennsylvania and West Virginia and that it sold and shipped the bottles and jars so manufactured to customers in other states; but except as so admitted denies, upon information and belief, the allegations of Paragraph 10 of the complaint.

9. Upon information and belief, denies the allegations of Paragraph 11.

10. Admits the allegations of the first sentence of Paragraph 12 and, upon information and belief, admits the allegations of the second sentence of said paragraph. Admits that it ships closures from plants in the states of California, Delaware and Louisiana and also from plants in Pennsyl- [fol. 11] vania and Wisconsin to customers located in other states of the United States, but otherwise denies the allegations of the third sentence of said paragraph. Admits that in January, 1956, it acquired the capital stock of White Cap Company, a manufacturer of vacuum type metal closures used for sealing a variety of food products in glass bottles, but otherwise denies knowledge or information sufficient to form a belief as to the allegations of the fourth sentence of said paragraph. Admits the allegations of the fifth sentence of said paragraph and, upon information and belief, admits the allegations of the sixth sentence thereof. Upon information and belief, admits, with respect to the averments of the seventh sentence thereof, that Hazel-Atlas, at the time of the commencement of this action (but not since September 13, 1956) was engaged in the manufacture and sale of screw type metal closures used for sealing a variety of foods and other products in glass bottles. Upon

information and belief, denies the allegations of the eighth, ninth and tenth sentences of said paragraph.

11. Admits the allegations of the first and second sentences of Paragraph 13 and, upon information and belief, admits the allegations of the third sentence thereof.

12. Admits the allegations of the first and second sentences of Paragraph 14, except that it alleges that the acquisition was approved by the holders of approximately 90% of the outstanding stock of Hazel-Atlas and that on September 13, 1956 Continental and Hazel-Atlas consum- [fol. s] mated the acquisition pursuant to said agreement—Continental delivering 999,140 shares of its common stock to Hazel-Atlas and assuming the liabilities of Hazel-Atlas in exchange for the latter's assets, and that since September 13, 1956 Continental has been, and now is, the owner of all of said assets and has them in its possession. Denies the allegations of the third sentence of said paragraph.

Wherefore, the defendant Continental Can Company, Inc. prays for judgment dismissing this action and for its costs and disbursements.

Willkie, Owen, Farr, Gallagher & Walton, By Helmer R. Johnson, A Member of the Firm, Attorneys for Defendant, Continental Can Company, Inc., Office and P. O. Address, 15 Broad Street, New York 5, N. Y.

[fol. t] *Duly sworn to by L. Wilkinson. Jurat omitted in printing.*

[fol. 1] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civ. 112-387

UNITED STATES OF AMERICA, Plaintiff,

vs.

CONTINENTAL CAN COMPANY, INC., AND HAZEL-ATLAS GLASS COMPANY, Defendants.

Transcript of Proceedings—June 13-17, inc., 20-24, inc., 27-30, inc., July 1, 1960

Before: Hon. Federick vP. Bryan, District Judge.

New York, June 13, 1960; 10:30 o'clock a.m.

APPEARANCES:

Richard B. O'Donnell, Esq., Attorney, Department of Justice, for the Plaintiff; By William H. McManus, Esq., Samuel V. Greenberg, Esq., John W. Pettit, Esq., Attorneys, Department of Justice.

Willkie, Farr, Gallagher, Walton & Fitz Gibbon, Esqs., Attorneys for Defendant Continental Can Company, Inc.; Mark F. Hughes, Esq., Helmer R. Johnson, Esq., Bowie K. Kuhn, Esq., Milton Handler, Esq., and Stanley Robinson, Esq., of Counsel.

[fol. 2] The Cierk: Trial of the United States of America vs. Continental Can Company, Inc., and Hazel-Atlas Glass Company.

Both sides ready?

Mr. McManus: Ready.

Mr. Hughes: Defendants ready.

Mr. McManus: Government is ready, your Honor.

The Court: All right, gentlemen.

Now, it seems to me appropriate, if you are prepared to do so, that I would hear a brief opening from each of you.

Mr. McManus: Your Honor, as we had explained to you our position heretofore, I didn't come prepared to make an

opening statement. We had explained the documents and generally what was going to be testified to.

The Court: Yes, I understand that. I want just a brief opening statement of your overall position.

Mr. McManus: All right, sir.

OPENING STATEMENT BY MR. MCMANUS, COUNSEL FOR PLAINTIFF

The position of the Government is this, your Honor: There is no question but that Continental Can Company acquired the Hazel-Atlas Glass Company, and the Government intends to prove that Continental Can is the second [fol. 3] largest manufacturer of metal cans in the United States, and that Hazel-Atlas is a principal manufacturer of glass containers.

We also intend to prove, your Honor, that Continental Can manufactures plastic containers; they also manufacture crowns; they also manufacture——

The Court: by "crowns" you mean crown caps?

Mr. McManus: Yes, sir, what goes on top of a beer bottle—we will put it that way—or soft drink bottle.

The Court: Mr. McManus, we have got to remember, that while I am, on the basis of this pretrial record, quite familiar with these technical terms, it just could be that some day the Court of Appeals would have to look at this record, and I think in the earlier stages we try and define our terms that record becomes a good deal more comprehensible to an Appellate Court if it ever has to review it.

Mr. McManus: Your Honor, actually one of our earlier witnesses, we expect, will define these terms in regard to caps, crowns, vacuum closures, non-vacuum and things of that nature, because it gets confusing to me; I am sure it gets confusing to the Court and gets confusing to people who [fol. 4] are not familiar with the terms in the industry, and I assume that the Appellate Court will not be familiar with the terms.

It is our position that Continental is a principal supplier of crowns, of vacuum caps, and Hazel-Atlas was a supplier of non-vacuum type of caps.

I am not sure I said before, but Continental was also an important supplier of plastic containers.

Now, basically, it is the Government's position that the metals cans made by Continental are in competition with the glass containers of the Hazel-Atlas Glass Company for the purpose of sale to food processors, the beer industry, the soft drink industry, and certain non-food lines.

Now, in the non-food fields, which include household and chemical, toiletries and cosmetics, the Government's position is that the plastic containers of Continental Can are in competition with the glass containers of Hazel-Atlas, and also the glass containers for toiletries and cosmetics, for example, are or were in competition with certain of the cans made by Continental Can Company.

As I said, I believe, before, in the food field we believe that the glass and cans are competing for the same cus- [fol. 4a] tomers, and we intend to prove that by this acquisition Continental has eliminated a substantial factor in these markets.

[fol. 5] We also intend to prove through testimony and documents that there has been an undue reduction in the number of these companies which are competing for the business of the food processors or the beer processors or soft drink industry.

We also intend to prove that there has been in certain instances an advantage gained which makes it more difficult for the competitors of Continental Can to compete.

Now that enters into the acquisition that Continental has made of the White Cap Company. The White Cap Company, we intend to prove, is the principal supplier in this country of vacuum caps and also vacuum-cap machinery. That is the machinery for placing the caps on the glass containers.

We contend that, and intend to offer evidence that, having acquired this very substantial White Cap Company and having acquired the glass company, that the combination of these two gives Continental an advantage over their less diversified competitors who do not have these facilities.

We intend to offer testimony that certain of these people feel that Continental Can Company has an advantage [fol. 6] over them.

We also make the argument that through the series of acquisitions of Continental into the diverse fields that they now have a full line advantage. It is hard to divorce, in

our opinion, this one acquisition of Hazel-Atlas from all the acquisitions of Continental, and although we are not attempting here to try the Obear case, we do believe that that case is part of the plan of carrying out the full line.

For example, we intend to offer proof that Continental is in a position to offer to a food packer, to a food processor, they are in a position to offer the White Cap machine, the White Caps, vacuum caps, glass containers and the corrugated shipping containers.

And it is our position because of these series of acquisitions we maintain that other companies to be competitive with Continental Can will have to do the same, and certain of our witnesses will testify to that effect.

So it is our position that concentration will increase because of the series of acquisitions in the packaging industry generally, and that this full line advantage of Continental [fol. 7] makes it more difficult for the other single line or maybe two-line companies to compete.

As I have said before, your Honor, and I would like to say again, we are not attempting to try a Sherman Act case, for, in effect, what you would prove in a Sherman Act case has already taken place. If you were trying such a case you would have these two companies and that they had agreed to fix prices between them. I think there is no question in anybody's mind but that now these two companies are merged as one company that the fixing of prices have taken place. So we are not attempting to prove that type of a case. We are attempting to prove just what I have outlined here in a very general way and which, in pretrial, I believe, I outlined in considerably more detail.

Now I believe that is a very brief and sketchy outline of the Government's position.

The Court: I will hear from you, Mr. Hughes.

Mr. Hughes: If your Honor please, to the extent that your Honor may wish an opening statement, I am going to leave that responsibility to Mr. Johnson.

[fol. 8] The Court: Very good.

Opening Statement By Mr. Johnson, Counsel for Defendant

Mr. Johnson: Your Honor, Continental Can acquired Hazel-Atlas Glass Company on September 13, 1956. Prior to that time Continental Can was a substantial can company. It manufactured cans made of metal. It manufactured vacuum-type closures. It manufactured plastic containers. It manufactured crown caps. It did not manufacture glass containers. It did not manufacture screw-type closures.

Hazel-Atlas at that date was a manufacturer of glass containers and a very small amount of screw-type closures. It did not manufacture plastic of any kind.

It is our position in this litigation that each of these several end products with which this case is concerned are separate lines of commerce.

Within the meaning of Section 7 of the Clayton Act and the judicial interpretations of that section, we say that it is not a horizontal case, it is a conglomorate case.

We say that while in certain instances it is true that some of these various types of containers may be used for the same end products, and I am sure we will hear a great deal [fol. 9] from the Government about some things like beer and applesauce, but unquestionably some of these things can be packaged in the same end product, but that we say does not put them in the same line of commerce.

There are reasons why each of the various end products which are packaged in quantities in the United States tend to move in the type of container in which it moves. There are separate markets for the various containers.

With respect to things like beer, for example, there are separate markets for the end product. A brewer has no free choice as to the amount of glass containers or cans to the extent that he must use both.

Under Section 7 of the Clayton Act as amended in 1950 the test for violation of that section is whether the acquisition of a company either may substantially lessen competition or there is a reasonable probability that it will lessen competition, or that it will tend to create a monopoly.

We say that neither of those things, neither of those tests of violation, can be shown to have occurred. There is no

reasonable probability of lessening competition. There is [fol. 10] no tendency to create a monopoly in any sense.

This case is different from many of the antitrust cases, Section 7 cases, that have heretofore appeared before the Courts and the Federal Trade Commission in that this is an inter-industry acquisition. No competitor disappears from the scene. All that happened when Continental acquired Hazel-Atlas was a substitution of one management for another. The facilities of Hazel-Atlas are still used to manufacture glass containers as they were before. The facilities of Hazel-Atlas are still used to manufacture screw-type closures in the same relatively small amount that it manufactured before. The facilities of Continental are still used to manufacture cans and plastic containers and crowns and screw-type closures. There has been no change in the use of facilities or in the nature of the trade.

The Court: When was the Gair acquisition in relation to the Hazel-Atlas acquisition?

Mr. Johnson: It was in November of 1956 as against September.

At that date Continental, and I don't think it enters into this case, Continental prior to the acquisition was also a [fol. 11] manufacturer of fibre drums and flexible packaging and paper plates and paper cups, so that Continental has certain commitments in the paper box and in the flexible packaging business. As I say, I have not understood that those were in this case, but it may be.

One other point that we shall bring out is this, your Honor: Hazel-Atlas Glass Company was an old and had been a very fine company. It, however, had grown old and weak and was becoming more and more ineffective in the markets in which it operated.

[fol. 12] Hazel-Atlas had gone from a high of 16 or 17 per cent of the total glass container industry in the 30's and 40's down to about 8 per cent at the time of the acquisition, and was on its way down and going down since, in spite of Continental's best efforts to revive it.

Its management was old, its equipment was old, its plants were badly located. That, of course, is the reason why it was on the market. It is the reason why Continental found it possible to buy it.

It bought it with a view to reviving it, redeveloping com-

petition, and we think that while the job is difficult, it does not go very fast, but it is making progress towards revival of competition in the glass container industry.

In that connection, your Honor, we will show that there are, in the United States, separate well-defined industries concerned with the products with which we are here concerned.

There is a can manufacturing industry. There is a glass container manufacturing industry. There is a crown industry, plastic bottle or plastic industry, screw-type closure, and vacuum type closure.

The market structure is such that each of these are sepa- [fols. 13-28] rate industries, move in separate lines of commerce, and any attempt to squeeze them into either one common line of commerce or various fragmented lines of commerce does violence to the reality of the market structure as it exists today.

That, in brief, your Honor, is the case which we propose to present.

* * * * * * *

[fol. 29] GEORGE S. BABCOCK, called as a witness on behalf of Plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Babcock, by whom are you employed?

A. Owens-Illinois Glass Company.

Q. And what is your present position with that company? [fol. 30] A. I am the vice-president of the company and general manager of the closure and plastics division.

The Court: Now, gentlemen, can you hear Mr. Babcock?

Mr. Handler: Not very well.

The Court: Not very well.

Mr. Babcock, will you please try to project your voice out there?

The Witness: Yes, sir.

Q. For how long a period have you been employed by the Owens-Illinois Glass Company?

A. Since November 1934.

Q. And what positions have you held with that company starting in 1934?

A. I started as a student in the Alton plant at Alton, Illinois. I came to Toledo in March of 1935 and was in what is known as the—was known as the statistical and inventory control department.

In 1939 I became an assistant to the general manager of the glass container division.

In May of 1949 I became sales manager of the closure and plastics division, and in 1952 I became general manager of that company, of that division, I should say, and in the fall of 1952 I became an officer of the company.

[fol. 31] Q. What products come under your division, Mr. Babcock?

A. We manufacture metal and plastic closures, plastic parts, that is fitments for glass containers, pill boxes, powder boxes, a miscellaneous line of containers such as vials, and we manufacture blown plastic containers out of polyethylene.

Q. Now, for the blown plastic containers out of polyethylene where are your plants located?

A. Currently we have operations at our Glassboro, New Jersey plant, St. Charles, Illinois, Los Angeles, California, Kansas City, Missouri, and we have announced plans and are in the process of equipping plants at Cincinnati, Ohio, and South Chicago, Illinois.

Q. As of this date, the Cincinnati and South Chicago plants are not making polyethylene containers?

A. No, sir.

Q. Now, what type of polyethylene containers do you make? Do you make a specific type, high density, low density?

A. We only use at the moment high density polyethylene.

[fol. 32] Q. I would like a description of the high density polyethylene container. That is not a squeeze bottle container, is it?

A. Not as generally known.

The Court: Supposing, Mr. Babcock, you tell us so that

we all know what you are talking about here, when you talk about high density polyethylene containers, give us a general description of what they are and what the end product is.

The Witness: The polyethylene container, your Honor, varies in densities from .92 to .96, and as densities vary upwards, the rigidity becomes greater, and therefore the high density polyethylene bottle is generally known as a semi-rigid container, whereas the low density polyethylene bottles have been known as squeeze containers because they are soft and can be flexed.

Although they have been used in such containers as rigid containers, generally speaking, the high density material therefore lends itself to thinner-walled containers for a given amount of rigidity.

Q. What are some of the products that you are selling the high density containers for?

[fol. 33] A. Light duty liquid detergents, cleaners, shampoos, drugs, rubbing alcohol.

Q. Now you indicated that you also make the polyethylene containers on the West Coast of Los Angeles, is that right?

A. That is right.

Q. Does that plant supply all of those containers for the West Coast area?

A. Yes, sir.

Q. Do you ship any of your polyethylene containers from other plants into the West Coast?

A. Currently we are not.

Q. Have you in the past?

A. I cannot say with certainty but I believe so.

The Court: When you say the West Coast, what do you mean by that?

The Witness: West of the Rocky Mountains.

The Court: West of the Rocky Mountains?

The Witness: Yes, sir.

The Court: The Rocky Mountains, as I recall my map, is a pretty broad set of mountains. I would like that territory reasonably defined so that we know what we are talking about in terms of geography.

The Witness: We will say that the West Coast area then

[fol. 34] would include the States of California, Oregon, Washington, Arizona, Nevada, Utah, Idaho.

The Court: In other words, the next tier——

The Witness: Yes, sir, and possibly the western section of Montana, Wyoming, and possibly the western part of New Mexico.

The Court: All right.

Q. Now you indicated that under your group or division come the various types of metal caps made by your company, is that correct?

A. Yes, sir.

Q. What type of caps, metal caps, does Owens-Illinois make?

A. We make what was referred to in the opening argument as the screw cap, which probably more technically is designated as the CT or continuous thread type of closure. I am specifically referring to the type of closure on that ink bottle (indicating).

Q. You say that is a CT closure?

A. Yes.

Q. What is another type of closure?

A. We then manufacture what is known as a lug type of closure where the lug engages the glass finish rather than the thread. We also make——

[fol. 35] Q. Before you go on, could you tell me what is a normal product on which you put a lug-type of closure?

A. Well, Arrid Underarm Deodorant.

Q. That has a lug-type closure?

A. Yes.

Q. Now what other type of metal closures do you make?

A. We also manufacture those closures—the lug and CT which I described, are top seal closures lined with a paper lining. We also manufacture a type of closure known as a side seal closure which has a rubber gasket affixed to the metal and forms a seal on the side as against the top.

Q. Does your company make other types of metal closures?

A. No other types of closure.

Q. Is that an explanation of the general type of closures that your company makes?

A. Yes, sir.

Q. Are any of these closures what quite often are called steam-type vacuum closures?

A. Yes, sir. The side seal closure which I described is applied with steam to create the vacuum.

[fol. 36] The Court: The others are not vacuum closures?

The Witness: No, sir.

Q. Now, in what plant do you manufacture your metal closures?

The Court: Before we leave this—and, Mr. McManus, if I ask questions that are going to anticipate something that you are about to go into, tell me, but I do not want to leave this subject with some obscurities in my mind.

I take it that the two metal types, the screw type and the lug type, those are for glass, are they?

The Witness: Yes, sir.

The Court: And only for glass?

The Witness: And/or cans.

The Court: And/or cans?

The Witness: Yes.

The Court: Give me an example of the screw cap that would be used on a can.

The Witness: We supply what is termed as a one-inch can cap meaning that the neck opening on the can is one inch in diameter for what is known generally as the F-style can and probably more familiar to you as the type of can in which wax is packaged. It is an oblong-type of litho-[fol. 37] graphed can.

The Court: That would be liquid wax?

The Witness: Yes, sir.

The Court: An oblong can with a screw cap?

The Witness: Yes, sir.

Q. Which plants are you manufacturing the metal closures in?

A. We manufacture metal closures at Glassboro, New Jersey, and San Jose, California.

Q. Do you manufacture all types at your San Jose plant, your full line of metal closures?

A. What do you mean by full line?

Q. Would you describe the general types of closures that

you make at San Jose. For example, do you make all the types of closures that you have described?

A. To my knowledge they do not manufacture the lug type and they do not make as many sizes in the CT or side seal type as we do at Glassboro.

Q. That is Glassboro, New Jersey?

A. Yes, sir.

Mr. Hughes: Your Honor, I am a bit confused on this——

The Court: All right, maybe we are both confused along [fol. 38] the same line.

I understood you to say that there were three types of closures, the screw cap, the lug type and the side seal?

The Witness: Yes, sir.

The Court: Is the side seal closure all vacuum or is there a separate category which uses the vacuum system?

The Witness: All of the side seal closures that Owens-Illinois is applying are used for vacuum types of closure.

The Court: They are all vacuum?

The Witness: Yes, sir.

The Court: So that there would be only three types of closures that we are dealing with with individual variations within those types?

The Witness: As far as Owens-Illinois is concerned.

The Court: Yes, that is what I meant.

The Witness: Yes, sir.

The Court: All right. Is that clear, Mr. Hughes?

Mr. Hughes: No, sir, I am a little unclear as to whether the witness was talking about San Jose or Glassboro, when the witness was asked about where these lug-type closures [fol. 39] were made.

The Court: I understood that he was talking about San Jose. Is that correct?

The Witness: We make the lug type at Glassboro. We do not make it in San Jose.

Q. And do you have customers on the West Coast who use your lug-type caps?

A. Not the lug types that we are currently making, no, sir.

Q. Does your New Jersey plant ship metal closures to the West Coast?

A. Yes, sir.

Q. And the West Coast would be the area that you have heretofore defined, the States that you have outlined?

A. Yes, sir.

Q. Now I believe you explained that the side seal is a vacuum-type of closure, is that correct?

A. Yes, sir.

Q. Do you manufacture and sell equipment for putting the side seal closures on the glass container?

A. We manufacture and lease.

Q. And lease?

A. Yes, sir.

[fol. 40] The Court: Can you give me an example of something that would be enclosed in a side seal vacuum-type contajner.

The Witness: Baby food.

The Court: Baby food in a side seal?

The Witness: Yes, sir. Your Honor, it would possibly help you to refer to that type of cap as a press-on type of cap. It takes an instrument to remove it.

The Court: I had been under the misapprehension apparently that when you talked about side seal closures you meant that they went on the side of the container.

The Witness: No, they fit over the top, but they engage both mechanically and by vacuum, and it takes a key or a knife, the back of a knife, to open it.

The Court: Why do you call them side seals?

The Witness: Because they seal on the side of the glass finish as against sealing on the top of a glass finish, which is true of the paper lined or even other types of closures.

The Court: All right.

Q. Could you explain the procedure, in a general way, of putting a side seal closure on a glass container? Just [fol. 41] how does that operate?

A. The jar is first filled, and the filler, the filling machine that fills the jar, is usually hooked up with the capping machine so that they work together; and after the jar is filled it is passed into the capping machine. It is a worm drive or some such type of machine generally. The closure is then brought down on top of the jar. It does not engage, but just before it engages to the glass jar, steam is inserted

into the head space, which is the remaining area between the food and the top of the jar, exhausting the oxygen or air with steam, and then the closure is engaged creating the vacuum.

Q. When the steam cools or the product cools it causes the vacuum?

A. Yes, sir.

Q. To your knowledge——

The Court: Now let me ask you this: Am I correct, Mr. Babcock, in saying that when the vacuum is created the cap is pressed on? It is the vacuum that causes the cap to stick on or is there friction also which causes the cap to stick on?

The Witness: In some types I would say—and I am not [fol. 42] a technician—the strictly vacuum-type of closure, you hold it on both by vacuum and a mechanical engaging ring.

Q. Do you know if there are metal vacuum caps other than the side seal used?

A. Yes.

Q. And what other types are used?

A. There is a closure known as a flowed-in compound. It is a rubber-type compound. It is deposited on a channel in the dome of the closure, and that closure may be a lug-type or it may be a screw-type or CT-type closure.

It is generally used for non-processed foods, and by that I mean such foods as jams or jellies or pickles or relishes or that sort of thing, where I believe I am correct in saying that all processed foods are packaged by a side seal, or you can have a lug or CT-type vacuum closure.

Q. Would that be the type that would be quite often seen on the shelves and marked twist-off? Is that a twist-off cap?

A. The twist-off closure is a top seal type of lug closure. The difference between the types that I have described [fol. 43] and the twist-off is that, as I mentioned, we use a flowed-in rubber type of compound. This compound is a polyvinyl chloride plastic.

Q. Now, is it your business to know and do you know the principal manufacturers of vacuum closures and principal manufacturers of vacuum-closing machinery?

A. Yes, I think I do.

Q. Could you tell me the names of the companies who manufacture vacuum closures?

A. Well, I mentioned——

The Court: What was that, manufacturers of what?

Mr. McManus: Vacuum closures.

The Court: All right.

The Witness: I mentioned Owens-Illinois Glass Company. The White Cap Company, as a subsidiary company of Continental Can Company, the Anchor Hocking Glass Corporation, and Crown Cork & Seal Company——

The Court: As you list them, will you do that a little more slowly so that I can follow you?

The Witness: Do you want me to repeat them?

[fol. 44] The Court: You have Owens-Illinois, White Cap, Anchor Hocking and Crown Cork & Seal, is that right?

The Witness: Yes, sir. And including the other types of closures, that is the top seal, we would have Ball Brothers, Bernardin Metal Cap Company and the Hazel-Atlas Glass Company.

Q. These companies that you have listed, could you tell me the ones who are also manufacturing machinery to place the vacuum closures onto the glass container? I will read the names off and you can check them. Owens-Illinois——

A. Could I explain that?

Q. Yes.

A. Of that group that I named, Owens-Illinois, White Cap Company and Anchor Hocking make the side seal type of closure, and they produce machinery for applying that specific type of closure.

Crown Cork & Seal Company makes what is known as a cut rubber ring type of vacuum closure and they make a machine for that particular type of closure. I believe that Ball Brothers makes a machine, and that is the extent of my knowledge.

[fol. 45] Q. What type of closures do they make, side seal or a press closure?

A. It is a rubber top seal.

Q. And these are all vacuum closures, is that correct?

A. Yes, sir.

Q. So that the Bernardin Metal Cap Company and Hazel-Atlas Glass Company, to your knowledge, do not

make equipment for putting a vacuum closure on a glass container, is that right?

A. Not to my knowledge.

Q. Now, does the White Cap Company make equipment for putting on the twist-off closure?

A. Yes, sir.

Q. I believe you have testified that your company does not, is that correct?

A. We are currently not on the market with a twist-off closure.

Q. To your knowledge, does Anchor Hocking make equipment for putting a twist-off closure on a glass container?

A. Yes, sir.

Q. Can the side seal closure that your company manu [fol. 46] factures be used on an Anchor machine?

Mr. Hughes: I am sorry, I do not quite understand that question.

Mr. McManus: I will rephrase the question.

Q. You make only side seal vacuum closures, is that correct?

A. Yes, sir.

Q. And you indicated that Anchor Hocking also makes side seal vacuum closures?

A. Yes, sir.

Q. And both of you make the machinery for putting these closures on the glass containers, is that correct?

A. Yes, sir.

Q. Can your cap be placed on the glass container, the side seal cap, by Anchor's machinery for putting their side seal on glass containers?

A. I would have to express an opinion, but I believe that they could with certain modifications, but I am not sure.

The Court: In other words, if one has one of your machines you could not put the Anchor Hocking caps on without some modification, at least, is that correct?

The Witness: That is right.

[fol. 47] The Court: You could not just set it up and just start feeding Anchor Hocking caps?

The Witness: It would take a different feed measurement.

Q. Do you make this machinery at the New Jersey plant, the vacuum machinery?

A. We don't make it at either plant.

Q. Where do you make this machinery?

A. We make the machinery at our Godfrey, Illinois, machine shop.

Q. And that is the only plant that you have for making this type of machinery?

A. Yes, I believe so.

Q. Do you have customers west of the Rocky Mountains that use your machinery for this cap?

A. Yes.

Q. And you have customers in the East that use this machinery to put on the side seal caps?

A. Yes, sir.

The Court: When you come to a convenient point, Mr. McManus, we will take a brief morning recess.

Mr. McManus? This would be a good point right now, your Honor.

[fol. 48] The Court: All right, we will take a brief recess.

(Short recess.)

The Court: You may proceed, Mr. McManus.

By Mr. McManus:

Q. Going back to the vacuum closures, in what general category are vacuum closures usually used for?

A. To enclose a container where you wish to preserve food.

Q. Are they used primarily or almost exclusively for food containers?

A. There may be some exceptions, but I would say that the greater majority are used on food containers.

Q. If you know the number of vacuum caps which are sold in the United States, would you then be able to estimate the number of glass containers which contain food?

Mr. Hughes: Your Honor, I object to that.

The Court: All we are doing is asking if he can. Let us see what he says to that. Overruled.

Mr. Hughes: That calls for an answer yes or no, I take it?

[fol. 49] The Court: That is right; can he or can he not?

The Witness: I would have to amplify that beyond a yes or no answer.

The Court: Well, tell me what you think you could do with respect to this question if it were put to you.

The Witness: I would assume that there is a glass container used with each vacuum closure that is sold and that those glass containers were used for food, but there would be many other jars used for food in addition which would use other types of closures.

Q. The non-vacuum type of container, I take it from your answer, could be used for foods or non-foods?

A. Yes, sir.

Q. What is a metal cap normally made from, what type of metal?

A. Thinplated steel.

Q. Is it coated normally or uncoated?

A. I beg your pardon?

Q. Is it normally coated or uncoated?

A. I don't understand your question, sir.

Q. You say thin-plated steel——

[fol. 50] The Court: Mr. McManus, I think it would be better with this witness if you simply ask him to describe it. In other words, you have got a thing made of metal. Tell us what it is made of and what goes into it and what it is like.

Q. Well, you explained that it was made of steel with a thin coating, is that right?

A. Yes.

Q. Does a closure have different types of lines?

A. Yes, sir.

Q. And these lines vary for what purpose?

A. The protective qualities that it gives to the plate and the product that may be in contact with the closure.

Q. So that you have different lines for different products because of a number of factor?

A. Yes, sir.

The Court: I take it, for example, the acid-resistant quality would be one of the factors?

The Witness: Yes, sir.

The Court: What would be some of the others?

The Witness: Well, for example, on aspirin you wouldn't necessarily use any coating, or dry products of that type. For vinegar you might use one type of protective coating [fol. 51] and for mayonnaise you would use another. For baby foods you would probably still use another.

The Court: Each depending on the particular, let us say, corrosive characteristics of the product?

The Witness: Yes, sir.

The Court: Or non-corrosive characteristics?

The Witness: Yes, sir, and the coatings are also used as a rust-preventative.

Q. In your capacity as a vice-president in charge of caps and plastic containers, are you required or do you attend various association meetings or conventions?

A. Yes, sir.

Q. And what are some of those?

A. I don't quite understand.

Q. What are some of these conventions that you attend?

A. The Glass Container Manufacturers Institute and the National Canners Association meetings would be typical.

The Court: You attend both of those, do you?

[fol. 52] The Witness: Yes, sir.

Q. What is the purpose of attending the National Canners Association meetings?

A. To help our sales people——

Mr. Hughes: Your Honor, I object to this.

The Court: I will allow it.

The Witness: I have two purposes: to help our sales people further our relationship with our customers, and, in view of the fact that the steel people all attend those meetings and we are buyers of steel, I would like to visit with the steel people to find out the new things that are going on in that industry as a buyer.

Q. You have a two-fold purpose for attending the meetings of the National Canners Association, to buy and sell?

A. Yes, sir.

Q. Does your company display its equipment at these meetings?

A. No, sir.

Q. Do you have booths or anything of that nature?

A. Yes, we have booths.

Q. Have you observed any other manufacturers of clo-
[fol. 53] sures present at these meetings?

A. Yes, sir.

Q. Limiting ourselves to vacuum-type closures, who are some of the companies that would be represented at these meetings?

A. All that I have named previously, namely, the White Cap Company——

The Court: All right, we have a list of those.

Q. Are there other container manufacturers who attend these meetings?

A. Yes, sir.

Q. And who would some of those be?

The Court: Well, presumably, American Can would be there, and Continental Can, and the whole canning industry, wouldn't it?

The Witness: Yes, sir.

Mr. Hughes: At which one of these associations is he referring to?

Mr. McManus: National Canners Association.

The Court: There is no doubt, is there, that they would go to those meetings?

Mr. Hughes: But he was talking about two associations.
[fol. 54] Mr. McManus: I have limited my question to the National Canners Association. I haven't talked about any others.

The Court: You go there and you find at the National Canners Association meetings representatives of all of the leading can manufacturers, don't you?

The Witness: That is correct.

Q. Now I would like to refer to the plastic side of your job. You have heretofore testified that you made high density polyethylene plastic containers, is that right?

A. Yes, sir.

[fol. 55] Q. Would you know the principal companies in the United States who make high density polyethylene plastic containers?

A. Yes, sir.

Q. And who would those companies be?

A. Plax Corporation——

Mr. Hughes: Your Honor, may we have some definition of "principal"? I understand this is an area where—this isn't a frivolous objection—I understand this is a considerable area when he is talking about companies in this field.

The Court: All right, now, you are talking about high density plastic containers.

Mr. McManus: I asked him does he know; who does he consider to be the principal producers and sellers of high density polyethylene plastic containers, and he started out and answered with Plax, and I would like for him to continue now.

A. (Continuing) The Continental Can Company, their plastic division, Injection Molding Company, Kansas City, which is now owned by the Rexall Drug Company, the Royal Manufacturing Company, which is now owned by the Celanese Corporation. There are many smaller companies, but those are the principal ones with whom we compete.

[fol. 56] Q. Now, I think you have testified heretofore that you are presently making high density polyethylene containers which are sold for people who are packing liquid detergents, is that correct?

A. That's correct, sir.

Q. To your knowledge has your company made any other type of container for packaging liquid detergents?

A. Yes, sir.

Q. And what type is that?

A. We made a glass container.

Q. To your knowledge what was the first type of container that liquid detergents came out to the public in?

A. To my knowledge a glass container.

Q. Does your company still sell glass containers for this purpose?

A. The containers to which I have been referring are used for the packaging of light duty liquid detergents, and to my knowledge we are no longer selling glass containers for that purpose.

Mr. McManus: Your Honor, at this point, if I could, I had asked Mr. Babcock to bring with him containers, de-

[fol. 57] tergent containers in glass, metal and plastic, and

I would like, if I could, to exhibit them here so that he can show them to you.

The Court: All right, proceed.

Mr. McManus: Your Honor, I'd rather these not be marked, but just use them for demonstration purposes, because I am informed that the company no longer has this product or this sample—that Owens-Illinois no longer has this sample, and they would like to retain it if they could.

The Court: That is the one——

Mr. McManus: In glass.

The Court: That is the one called Joy, is it?

Mr. McManus: Yes.

The Court: They no longer have Joy, Owens-Illinois?

Mr. McManus: Well, not in a glass container, your Honor.

The Court: Well, now, let the record show that there are six containers lined up on the clerk's desk.

Going down the line, I take it the one on the right, which says Joy on it, is the glass container.

[fol. 58] Mr. Hughes: That is your Honor's right, to your Honor's right?

The Court: Yes, to my right. And then put the other Joy one next to it. And the next one proceeding from my right to my left, the next one is what, metal?

The Witness: Yes, sir.

The Court: Who makes that?

The Witness: I don't know who makes the can. Lever Bros. pack the product.

The Court: Yes, but you don't make the metal?

The Witness: No, sir.

The Court: Then the next one, two over, Joy, is the plastic one, is that right?

The Witness: Yes, sir.

The Court: Now, the bluish Lux can is plainly a metal can.

The Witness: Yes, sir.

The Court: And the thing entitled Ivory, is that plastic?

The Witness: Yes, sir.

The Court: And the Lux?

The Witness: Plastic.

[fol. 59] The Court: And those are all detergents?

The Witness: Those are light duty liquid detergents.

The Court: Liquid detergents.

And you make all the plastic bottles that are shown?

The Witness: I don't know whether those are specifically ours. They were taken from a store shelf, but we make that type of container, yes, sir.

The Court: All right.

By Mr. McManus:

Q. Could you tell me what company manufactures or produces Joy in the glass container?

A. The Procter & Gamble Company.

Q. And they have produced the Joy both in the glass and in the metal can and also that is their product in the plastic container also, is that correct?

A. Would you rephrase the question?

Q. They produce Joy, whether it was in the glass, can or plastic container, is that correct?

A. That is their brand name, yes, sir.

Q. Now, Ivory, whose brand name is that?

The Court: Before you leave that, is Joy, as far as you [fol. 60] know, sir, presently sold and marketed in glass and metal and plastic?

The Witness: To my knowledge, sir, it is no longer packaged in glass. They may be doing some packaging in tin, but I am not sure of that. But I positively know that they are packaging in plastic.

Mr. Hughes: Your Honor, could we have it clarified as to what kind of a detergent Joy is?

The Court: A light duty detergent. Do you want to go farther than that?

Mr. Hughes: A light duty detergent, right?

The Witness: Yes, sir.

The Court: How do you distinguish between light duty detergents and heavy duty detergents?

The Witness: Well, the light duty detergent is generally used in the kitchen for washing dishes, where the heavy duty detergent is used——

The Court: Industrial use?

The Witness: It is used in the laundry for washing clothes. It might be your own laundry or an industrial laundry.

The Court: All right.

By Mr. McManus:

Q. What company packages the Ivory brand?

[fol. 61] A. Procter & Gamble.

Q. And the Lux brand?

A. Lever Bros.

Q. Now, I think you testified that Joy first came out in the glass container?

A. That's correct, sir.

Q. And you say, to your knowledge, they are not packaging it in a glass container any more, is that correct?

A. That's right.

Q. And what type of container replaced the glass container for Joy?

A. The metal container.

Q. You have indicated that you are not sure whether Joy is still packaged in a metal container or not, is that what you say?

A. That's right.

Q. At one time, to your knowledge, was that the principal way that Joy was packaged?

A. Prior to the plastic container, yes, sir.

Q. How long, to your knowledge, has Joy been packaged in a plastic container?

A. I think we made our first shipments in the spring of 1958.

[fol. 62] Q. Has the packaging of Joy in plastic containers increased?

A. I can't answer that, sir.

Q. Are you selling more plastic containers for Joy to Procter & Gamble than you were in 1958?

A. Yes, sir.

Q. Considerably more?

A. Yes, sir.

The Court: Let me see the three Joy containers.

(Handed to the Court.)

(A pause.)

The Court: All right, Mr. Clerk.

By Mr. McMahon:

Q. Now, going next to Ivory, prior to the packaging of Ivory in a plastic container was it packaged in any other type of container, to your knowledge?

A. Cans.

Q. Metal cans?

A. Yes, sir.

Q. And was it packaged in any other type of container before it was packaged in metal cans, to your knowledge?

[fol. 63] A. Not to my knowledge.

Q. Now, going to Lux, prior to its being packaged in plastic containers, was Lux light duty detergent packaged in any other type of container?

A. Metal cans.

Q. And prior to its being packaged in metal cans was it packaged in any other type of container, to your knowledge?

A. Not to my knowledge. I am speaking of liquids only.

Q. Yes. And we are talking about light duty detergents.

A. Yes, sir.

Q. Now, what is a heavy duty detergent, Mr. Babcock?

A. I cannot give you a technical explanation other than to say that it is marketed for the purpose of cleaning clothes in the laundry.

Q. Is your company selling any plastic containers for heavy duty detergents?

A. We are selling limited quantities for market test purposes.

The Court: What heavy duty detergents presently are those, as far as you know?

[fol. 64] The Witness: Well, there is one that has been market-tested by Procter & Gamble known as Gain.

The Court: What is it contained in?

The Witness: It is contained in a plastic bottle.

The Court: In a plastic bottle?

The Witness: Yes, sir.

Q. Was it marketed in some other type of container before it was put in a plastic container?

A. I can't answer that. I don't know.

Q. What other type of containers are heavy duty detergents marketed in, to your knowledge?

A. The product Wisk is packaged in a can similar to the Lux can in the exhibit.

Mr. Handler: Wiz?

The Witness: Wisk, W-i-s-k.

Mr. Handler: Could the witness speak up a little louder, please?

The Court: Yes, try to keep your voice up.

The Witness: Sorry.

Q. To your knowledge, were the heavy duty detergents ever packaged in glass containers?

A. I would answer the question no, but that might get into a classification that I am not familiar with.

[fol. 65] Mr. McManus: Now, your Honor, if the defendants, for any reason—I would like to move these down off there if I could—if the defendants want to look at them, they can take their time about it. Of course, what we would like to do is return these to the Owens-Illinois Company because they would like to have them back, if they could.

The Court: Show them to the defendant. Move them down to the defendants' table. Let the defendants have a look at them.

(Handed to defendants.)

The Court: You may proceed while that is going on.

By Mr. McManus:

Q. Now, you make high density polyethylene containers for other products?

A. Yes, sir.

Q. And would alcohol compound be one?

A. Yes, sir.

Q. Would this be an example of a high density polyethylene container that you manufacture for McKesson & Robbins?

A. Yes, sir.

Mr. McManus: Would you like to look at it?

[fol. 66] The Court: Yes, please.

(Handed to Court.)

The Court: Well, this formerly was made in glass, too, wasn't it?

The Witness: Yes, sir.

The Court: Do you know to what extent, at least in your company, as far as your company is concerned, plastic has replaced glass for rubbing alcohol and similar alcohol compounds.

The Witness: This is the only product and container, your Honor, that is currently on the market. There are others that are not on the market as yet, but are in process.

The Court: In work?

The Witness: In work, yes, sir.

The Court: So that you still, I take it, then, sell some or a substantial number, let's put it that way, of glass containers for alcohol or similar compounds.

The Witness: Yes, sir.

By Mr. McManus:

Q. You did testify, however, that you are in the process of other companies adopting——

[fol. 67] The Court: No, he covered that. Now we don't have to go into that again.

Mr. McManus: All right, I will withdraw it.

Q. You make high density polyethylene containers for certain drug products?

A. Yes, sir.

Q. Would this be an example of that (indicating)?

A. That is an example.

(Handed to Court.)

The Court: Do you know what this is, Comprin?

The Witness: No, sir, I don't. I believe it is a vitamin.

Mr. Hughes: I am sorry?

The Court: This is a phosphorous-free dietary supplement for deficiencies associated with pregnancy.

Q. Would this be another example of the type of high density polyethylene container that your company makes?

A. Yes, sir.

Mr. McManus: Would you like to take a look at it?

The Court: Yes.

(Handed to Court.)

[fol. 68] The Court: Both of these are made for Lilly, I take it?

The Witness: Yes, sir.

By Mr. McManus:

Q. Now, of these two containers, these two latter containers, could you tell me what type of container was used for this product prior to the use of high density polyethylene?

A. Glass containers were used for that type of product. I am not familiar with the labels to say that specific product was packaged in glass.

Q. Now, do you make other types of high density polyethylene containers, plastic containers?

A. I don't understand the question.

Q. In other words, we have here about five high-density polyethylene containers made by your company. Are there other types that you make?

A. All of those were not specifically made by our company.

Q. They were not specifically made by your company?

A. No, sir.

Q. Well, you are not sure which ones were and ones were not?

[fol. 69] A. That's right.

Q. To your knowledge are there other products, other than the ones we have here, packaged in high density polyethylene plastic containers?

A. Would you rephrase that question, please?

Q. Are there other products, other than the ones that you have here, packaged in high density polyethylene containers, to your knowledge?

A. Yes.

Q. Are there a number of them?

A. I would say the end uses at the moment are rather limited.

The Court: Could you give us an approximation of the number of end uses?

The Witness: No, sir, I could not.

The Court: Is it 50, is it 20, is it 5?

The Witness: Let's say a dozen.
The Court: A dozen? All right.

Q. And I think you testified before—I would like to get it straight—these high density polyethylene plastic containers are used for non-food products, other than food products?

A. Yes, sir.

Q. I wanted to ask you one other question, and that is in [fol. 70] regard to vacuum caps.

Now, you indicated, I believe, that most of the vacuum caps are made out of tin plate—I mean of steel coated with tin plate. Are there vacuum caps made out of any other type of metal?

Mr. Hughes: Any other type of metal, did you say?
Mr. McManus: Yes.

A. Yes, sir.

Q. And what type would that be?

A. Aluminum.

Q. Who is making that type of cap?

A. The Aluminum Company of America.

Q. Did they also make machinery for putting that cap on the glass container?

A. I understand they do.

Q. Do you know as a vacuum cap what type that is? Is it a CT, lug or side seal or what type?

A. It is known as the roll-on.

Q. Roll on.

A. Roll on.

Q. And is that a form of CT?

A. It is after the thread has been rolled in the closure, after the closure has been put on to the glass container.

[fol. 71] Q. Now, if you could explain for us how that thread is put on the cap?

A. Well, in the CT cap, which I previously described, the thread is rolled into the cap as part of the manufacture of the cap. In the case of the roll-on, the skirt of the cap is perfectly straight and plain. It is then put on to the glass container and a series of rollers matching the glass threads compress the skirt around the thread, forming the thread in the cap.

Q. I see. So one style of CT would be where the thread in the cap would be put in there when you are manufacturing the cap, is that correct?

A. Yes, it is pre-formed.

Q. And in the roll-on, the skirt is indented so that the finish on the glass container actually forms the thread in the cap?

A. Yes, sir.

Q. And the roll-on is the type that Alcoa is putting out?

A. Yes, sir.

Q. And do you know what product they are using this type of cap for?

[fol. 72] A. Well——

Q. Or products? Is there a number of them?

A. Yes, they use it for whiskey, for baby food, for drugs, many end uses.

Q. Now, I was talking about the Alcoa cap. Do you know what type of products they are enclosing with their aluminum cap?

A. I named them. Now, if you are talking specifically a vacuum type of aluminum roll on, I would probably have to confine myself to that answer, baby food.

Mr. McManus: I have no further questions, your Honor.

Mr. Hughes: May I have just a moment, your Honor?

The Court: You may.

(Pause.)

Cross-examination.

By Mr. Hughes:

Q. Mr. Babcock, you have told us that you are the vice-president in charge of the closure and plastic division of Owens-Illinois, is that right?

A. Yes, sir.

Q. Now, on your direct examination you have used the term "plastic container," and I wonder if you would tell [fol. 73] us to what kinds of container you are referring when you use that term. What does the term embrace as you understand the term?

A. Well, I would say there are two general classifica-

tions, the pressed type of container which I mentioned as an example, a pill box, a powder box, a vial, in contrast to the blown type of container.

Q. And do you, in using the term, include or exclude a plastic flexible packaging?

A. We do not manufacture flexible packaging.

Q. Well, I realize that, but in your terminology do you exclude flexible packaging from the definition of a plastic container as you use the term?

A. Well, I would have to say that if you made a bag out of film that it is a container.

Q. But in your direct examination you were confining yourself to what I might describe as bottles or containers, small containers for holding capsules and things of that sort, is that correct?

A. As I recall the questions were asked what did Owens-Illinois make, so I believe that I did confine myself to that type of container which is the only types that we make.

Q. What kind of plastic packaging materials are there [fol. 74] that you know of?

A. Well, in addition to the pressed type of plastics and the blown type of plastics there are containers made from films; there are containers made from plastic laminates of plastic and film.

Q. Now, what are the raw materials from which plastic containers are made?

A. Well, they can be made from a number of materials. The polystyrene groups, of which there is what is known as the general purpose material, the impact materials, the heat-resistant materials. There is the low density and high density polyethylenes. Some containers are being experimentally made from delrin. There is the nylon group. There is the acetate group, the acrylic group.

Q. Now, I think the first grouping you gave me was the polystyrene group, and then the polyethylene group, is that correct?

A. Yes, sir.

Q. Now, do the raw materials for those two groups vary? Do you start with a different raw material?

A. I don't understand your question, Mr. Hughes.

The Court: Well, Mr. Babcock, you have to start some-

where. You are going to make plastic. What do you make [fol. 75] it out of?

The Witness: In the case of Owens-Illinois we make pressed plastic containers out of general purpose polystyrene and what is known as the impact grades of polystyrene.

The Court: What is polystyrene? Where do you get it? What does it look like? This sort of thing does not mean anything to me. Polystyrene might be a gas for all I know. Is it a solid, liquid? What is it?

The Witness: It is a solid, hard plastic.

The Court: Where do you get it from?

The Witness: Whom do we buy it from?

The Court: Yes.

The Witness: The Dow Chemical Company, Monsanto.

The Court: And they make it at the factory, do they?

The Witness: Yes, sir.

The Court: What does it come in, sheets?

The Witness: No, it comes in pellets, very small pellets which you then pour into your machine. The machine plasticizes or mixes this up into a jelly-like hot substance which is forced by pressure into a mold, and the result—— [fol. 76] The Court: What do they come in, big drums or something like that?

The Witness: Drums and bags.

The Court: So you pour the pellets into the mixer and they are mixed together?

The Witness: The process is that you inject a hot jelly-like material into a mold, and through a cooling process set up the part to make a hard, rigid container.

By Mr. Hughes:

Q. And what you have now described is the polystyrene container and the material from which it is made, is that correct?

A. That's correct.

Q. What about the material from which a polyethylene container is made? Do you start with a different raw material, a different source of supply for polyethylene?

A. Yes.

Q. That is, it is a different plastic to begin with.

A. It is a different plastic made by a different method. [fol. 77] Q. Is the manufacturing process for a polyethylene container any different from the process for a polystyrene container?

A. In the pressed plastics field we use the same machines for pressing polystyrene and polyethylene. In the blown ware field we use a different process for making a blown type of container than a pressed type of container.

Q. Now, do you make any polystyrene containers at all at Owens-Illinois?

A. Yes.

Q. For what purposes do you make polystyrene containers?

A. Well, I mentioned that we make a line of vials which we sell through the wholesale druggist. We make powder boxes, pill boxes and that sort of thing.

Q. Will you describe to his Honor just how these are made? Is this the so-called thermo-setting type of container?

A. No. The materials that you are asking about are known as thermoplastic type of materials.

Q. They are?

A. Yes, sir.

Q. That is true both of polystyrene and polyethylene? [fol. 78] A. Yes, sir.

Q. I see. But the process by which you form them into a container is different; you have a different process, is that correct?

A. Yes, sir.

Q. And in the polystyrene what is the process?

A. We shouldn't differentiate between the process by the material. We should differentiate whether you are pressing an article or whether you are blowing an article.

Q. Now, do you press polystyrene in your manufacturing activities?

A. Yes, sir.

Q. And will you describe to his Honor just what you mean when you say you press the polystyrene to form it into the container?

A. Well, I will repeat the description that I gave to him before. You buy this material in bags or drums in pellet form. It is poured into the machine, the injection molding

machine, by which it is known, and the material is then passed through a heating cylinder which heats it to a jelly-like substance, and with pressure it is forced into a mold [fol. 79] with a cavity and a force plug or pressing plug, and the article is pressed in that mold and is set up or made rigid through cooling.

Q. And what is the other method of making containers that you employ?

A. Blown.

Q. Blown. Now will you describe to his Honor how you make a container that is made by the blown method?

A. Well, the Owens-Illinois process is to feed this raw material into an extruder which is a machine with a large screw which homogenizes, heats up and puts the material into a jelly-like substance. It is then forced into what we call an injection head and forced into the neck ring in which the finish of the bottle is formed—that is the threaded portion, the neck opening.

The Court: It is like blowing up a balloon within a mold, isn't it?

The Witness: I am not there yet. The first thing you make is the finish of the bottle. That is the threaded portion. The head of the mechanism then rises and extrudes a tube, so that you have an injection molded finish and a tube [fol. 80] You then close the so-called blow mold around the tube and inject air and blow up the tube into the form of a container.

Now, other processes are what are known as the free extrusion process where they merely extrude a piece of tubing and a mold closes around that piece of tubing and it is blown forming the finish and the body of the container.

Q. And if I may repeat just to be sure that I understand this, the polystyrene containers that you make are by the first method and the polyethylene by the second method, is that a fair summary of it?

A. Mr. Hughes, I stated that you can press or blow polyethylene, and we have made containers on the injection method, the pressing method, out of polyethylene. And we have actually experimentally made blown containers out of polystyrene. So you should not differentiate in the material, but in the end, that is whether it is pressed or blown.

Q. Is a polystyrene container, when it is finished, a more rigid container than a polyethylene container?

A. Generally speaking, yes, sir.

Q. Now, you have referred to both high density and low [fol. 81] density polyethylene containers. Do you make both types of containers, both the high and the low density polyethylene containers?

A. In the injection field we have made low density containers. In the blown field we have only made and marketed the high density polyethylene.

Q. Does that mean that you do not make the so-called squeeze bottle, squeeze-type bottle?

A. No, we do not.

Q. Are the methods which you have described, known as injection molding on the one hand and blow molding on the other, are those terms of art to describe those two methods?

A. Yes, sir.

Q. Now, are molds required in each of these processes?

A. Yes, sir.

Q. And do you make molds yourself for——

A. We make them and we buy them.

[fol. 82] Q. Can you tell me when or approximately when your company first became interested in plastic as a field for the making of containers or packaging material?

A. I think the first container that we made from plastic was during World War II.

Q. Had you done anything in plastic before World War II?

A. Not in containers but in closures.

Q. So that your first experience with plastic was in the closure field, is that correct?

A. Yes.

Q. When did you start making plastic closures?

A. I would say approximately 1934.

Q. Was that on an experimental basis or on a commercial basis?

A. A commercial basis.

Q. Will you tell us what materials are used to make plastic closures?

A. The type we started with were known as the thermo-

setting material. As I mentionel, in thermoplastic, you inject hot and you cool. In the case of thermosetting plastic you fill your mold with cold or warm material and you set [fol. 83] up a rigid closure.

In addition, to make the screw type, or Bakelite type of closure, as you probably would call it, we also make some closures from thermoplastic material.

Q. Are you still making the thermosetting type of closure?

A. Yes, sir.

Q. And having made these plastic closures, what was your next step in the plastic closure?

A. Well, as I mentioned, we did some experimental blow molding, I believe, for the Government during World War II.

Q. And then what?

A. I believe that following that experimental work, our first commercial venture in closures was approximately 1947 or 1948, and we started to make thermoplastic closures for vials.

Q. In all that time were you still making the thermosetting type of closure?

A. Yes, sir.

Q. And have you continued to make the thermosetting plastic type of closure since then?

A. We are currently making both.

[fol. 84] Q. Did there come a time when you acquired the ownership of a company that was in the plastic business?

Mr. McManus: Your Honor, I would like to object to the form of the question. Would Mr. Hughes define what he means by ownership? Do you mean 10 per cent or 1 per cent or 100 per cent?

The Court: We will leave that question until after lunch and let Mr. Hughes reframe the question at that time. We will now take a luncheon recess until five minutes of two.

(Recess to 1.55 o'clock p.m.)

[fol. 85] AFTERNOON SESSION

(2.05 p.m.)

GEORGE S. BABCOCK, resumed.

Cross-examination continued.

By Mr. Hughes:

Q. Mr. Babcock, before the luncheon recess I think I asked you if there came a time when you acquired the Closure Service Company.

A. Yes. You didn't refer specifically to the Closure Service Company.

Q. I think that is correct. I was groping for the name when the recess came, but that is the company, isn't that correct?

A. Yes, sir.

Q. And with the acquisition of that company you established this Closure & Plastics Division, is that right?

A. Yes, sir.

Q. And then——

The Court: When was that?

Mr. Hughes: That was in 1934.

Q. Is that correct?

A. That's correct.

Q. And then you, in 1938, went into the blow molding——

Mr. Hughes: I withdraw that.

[fol. 86] Q. In 1938 you acquired certain patents, Lauterbach patents, is that correct?

A. Yes, sir.

Q. What did you do with reference to compression molding after the acquisition of the Lauterbach patents?

A. As I recall we acquired, with the Closure Service Company, what was known as flat-bed presses. Either in '37 or '38 or thereabouts, when we acquired the rights to the Lauterbach machine, we gave up the flat-bed presses, and then proceeded to manufacture compression molded caps of the thermosetting materials on the so-called Lauterbach machines.

Q. It was the same type of cap?

A. Yes.

Q. And the same type of material, but you had a different type of injection molding machine, is that correct?

A. Different type of compression molding machine.

Q. Compression molding machine. Now, from there in 1958 you went into the high density polyethylene, is that correct?

A. That's correct.

[fol. 87] Q. And made these polyethylene bottles that you have described to us, is that correct?

A. Went into the blow-molding.

Q. And that is the blow-molding?

A. Yes.

Q. Now you have told us of these uses for the bottles, and I am not going to repeat that again, but in connection with plastics do you find that there are certain disadvantages in plastics in certain end use areas?

A. Yes. As a comparison or——

Q. Well, my question was, are there some disadvantages in the use of plastics in certain end use areas?

A. Compared with other materials?

Q. Well, whether compared with other materials or not in comparison with other materials.

A. Well, let us say that we know that polyethylene, for example, is not a good barrier to essential oils; therefore——

Q. Would you describe to his Honor why that is?

A. Because it is permeable to gases.

[fol. 88] Q. Will you explain why that is?

A. Because it is permeable to gases.

Q. So that permeability in certain uses is a disadvantage, that is, permeability of the plastic, is that correct?

A. That is correct.

Q. Is there an element of so-called static electricity?

A. Yes.

Q. And would you describe that to his Honor, what the effect of the static electricity is?

A. Apparently after a period of time containers made from plastic do acquire or take on—I don't know the proper

phrase—but anyway they have a static electrical charge to them and they attract dust.

Q. And I take it that that is a characteristic that occurs regardless of any use to which it is being put, is that correct?

A. That is correct.

Q. And I take it that permeability, where it occurs, is never an advantageous characteristic, is that correct?

A. No, sir.

Q. No, it is not correct, or yes, it is correct?

[fol. 89] A. It is a disadvantage.

Mr. McManus: Your Honor, I would like to object. I think we are going beyond the scope of the direct on this line, and also I am not sure that he is so technically qualified in his background to testify to this other than in a very general way.

The Court: Well, he is the general manager of the plastics division and he ought to know enough about it to testify on these general subjects. I will overrule your objection.

Q. Now there are certain instances where the factor of taste and odor becomes a disadvantage in the use of plastics, is that correct?

A. Polyethylene has a taste and odor.

Q. Yes. And, for example, in the food field, is that a disadvantage factor, the taste and odor of the polyethylene container?

A. I would say it would be a disadvantage in those types of products where the transmission of odor or taste would be either harmful or objectionable.

Q. And actually you don't make any polyethylene plastic containers for the food field, do you, presently?

[fol. 90] A. Presently, no.

Q. Do you do anything in carbonated beverages——

A. No, sir.

Q. Are you making polyethylene containers for carbonated beverages?

A. No, sir.

Q. And is there any reason for that, or reasons?

A. Well, the trade has no interest in them.

Q. And can you think of any other reason why polyethylene containers are not used for carbonated beverages?

A. I would think that if you put carbonation in a plastic bottle, why, you would bulge the bottoms and you would bulge the sides and it would not be a satisfactory container for that type of special product.

Q. And any product that requires vacuum packing, are any of them presently packed in polyethylene containers?

A. Not to my knowledge.

Q. What is the drawback there?

A. You are talking about vacuum-packed food?

Q. Well, let us talk about that, yes.

A. Such as processed foods?

[fol. 91] Q. Yes, let us talk about that.

A. Well, there is a temperature limit to polyethylene. I don't think it would be satisfactory in the range of 240 to 250 degrees, which is the temperature at which many of these foods are processed and I don't think the container would stand up with that temperature.

Q. There is a type of filling known as a vacuum filling, is there not?

A. That is correct.

Q. Can you use that type of filling with plastic containers?

A. Yes, but inefficiently.

Q. But inefficiently?

A. Yes.

Q. What happens when you use that?

A. You would have to reduce the vacuum and slow down the filling.

Q. Otherwise you would distort the shape of the polyethylene container, is that correct?

A. That is correct.

Q. And would you say that transparency is an advantage where eye appeal is an important factor in the marketing of the product?

[fol. 92] A. That is a matter of opinion.

Q. Well, polyethylene tends to cloud that transparency, does it not?

A. Yes.

Q. It is translucent in some respects but certainly not transparent, is that right?

A. Now you are getting into a very fine area——

Q. But I think you follow me when I say "translucent"

and you also follow me when I say "transparent," do you not?

A. Yes.

Q. And you agree?

A. Yes.

Q. You told us that you made plastic closures, and at the risk of repetition, you said that you made the so-called press type of closure?

A. No, I said we compression molded thermosetting materials and we inject molded thermoplastic material into closures.

Q. Can you tell us what the end uses are for the plastic closures that you make?

A. The compression-molded closures we are selling for foods, cosmetics, household and chemical products—practically any use. We do not use them for processed foods. [fol. 93] The compression molded cap and the injection thermoplastic cap would be interchangeable for any one of those uses that I mentioned.

Q. Now are the metal screw type closures used also for these purposes that you have enumerated?

A. Yes.

Q. As a matter of fact, in these exhibits that you brought here today you do have some caps with the plastic cap and some caps with the metal, isn't that so?

A. That is correct.

Q. Now on your direct examination you discussed the so-called vacuum-type closure; do you recall that?

A. Yes, sir.

Q. And also the screw-type closure; do you recall that?

A. Yes, sir.

Q. And is it a fact that with the screw-type closure you do not put the closure through one of these vacuum machines that you have described; isn't that a fact?

A. We do not but we could.

Q. Well, whether you could or could not, you do not?

[fol. 94] A. At the moment, no.

Q. With the so-called vacuum-type closures, you do put them through one of these machines and have steam in the space between the product and the top of the container?

A. Yes.

Q. And at the present time all of your vacuum-type closures are the so-called side seal closures, is that correct?

A. Yes, but we have certain test packs that we have that are not commercially on the market, a top sealed vacuum type closure.

Q. Again going to the vacuum-type closures, they are machine-applied, are they not?

A. Yes, sir.

Q. The so-called screw-type closures can be and frequently are hand-applied; isn't that correct?

A. Well, they could be but they are not frequently; no, sir.

Q. They are hand-applied, are they?

A. They can be.

Q. And have been?

[fol. 95] A. I could say the same thing about the side seal closures too, that it could be applied by hand.

Q. But the vacuum-type closure has to be machine-applied, doesn't it?

A. For efficient operation, yes, sir.

The Court: If it is applied by hand, would you have a vacuum in it?

The Witness: We have a hand machine.

The Court: A hand machine?

The Witness: Yes, sir.

Q. Has it ever been used commercially?

A. For test packs, yes, sir.

Q. For test packs?

A. Yes.

Q. The test packs you do not regard as commercial packs but they are just experimental packs?

A. Yes, sir.

Q. Was it ever used commercially?

A. It may have been but I cannot specifically say.

Q. You wouldn't say that they have been?

A. No, sir.

Q. Would the speed of a vacuum-type closure machine be greater than the speed of a screw-type closure machine?

[fol. 96] A. Yes, sir.

Q. Would I be correct in saying that you can get 600 units a minute on a vacuum-type machine?

A. In the baby food sizes, yes, sir.

Q. And would you say that a speed of 300 a minute is very good for the screw-type closures?

A. In those sizes, yes, sir.

Q. And would you say that in any size the speed of the vacuum is substantially greater than the speed of the screw-type closure?

A. Yes, sir.

[fol. 97] Q. Now, you are aware of the fact that the White Cap Company makes a so-called twist-off closure?

A. Yes, sir.

Q. And that is a vacuum type closure as we have been defining that term?

A. Yes, sir.

Q. And are you aware of the fact that Owens-Illinois machines are presently being used by packers to apply White Cap twist-off caps?

A. Yes, sir.

Q. And are you aware that Anchor twist-off caps are presently being applied by packers with White Cap machines?

A. I have never seen it done, but I have heard so.

Q. You wouldn't dispute that it occurs?

A. No, sir.

Q. And the Crown Cork & Seal twist-off cap runs through a White Cap machine, does it not?

A. I don't know that.

Q. Again you wouldn't dispute it?

A. No, I would not.

Q. With your knowledge of the field there would be no impediment to doing it that you know of, is that correct?

[fol. 98] A. With minor modifications, as I mentioned before in the machines, I would believe that it could be done.

Q. And it could be done so that it would be commercially feasible to do it?

A. Yes, sir.

Q. It wouldn't surprise you to hear that it is being done?

A. No, sir.

Q. Are you aware of the fact that Owens' side-seal caps are being run commercially by processors through White Cap machines?

A. I believe they have been or are being. I can't specifically say where that is being done.

Q. Again it wouldn't surprise you if it were being done?

A. It could be done.

Q. There is no real commercial impediment to its being done?

A. No, sir.

Q. And in the baby food field aren't you aware of the fact that there are Owens-Illinois side-seal caps being run through White Cap machines?

[fol. 99] A. As I say, I don't know specifically where, but it could be done.

Q. It is being done in the millions, isn't it?

A. No, I would not say that.

Q. Would it surprise you if that were the fact, if that turned out to be the fact?

A No, it would not.

Q. Now, in the marketing of your containers do you sell f.o.b. factory?

A. Which containers?

Q. Polyethylene containers.

A. The high density polyethylene containers, yes.

Q. And you sell f.o.b. factory, 30 days net, is that right?

A. Yes, sir.

Q. And does the industry generally sell that way?

A. To my knowledge they are meeting our competition.

Q. And, incidentally, is the competition in this field keen and vigorous?

A. Yes, sir.

Q. And how many companies would you say are in the business of making the kind of containers that you make?

[fol. 100] A. I testified earlier that there were five or six, as I recall. How many small ones I said I did not know, but there were several.

Q. Would there be many?

A. Yes.

Q. Would there be as many as a couple of hundred?

A. I wouldn't know that.

Q. Now, how many companies are there in the business of manufacturing plastic closures?

A. Two or three dozen, I would guess.

Q. And how many companies are there in the business of manufacturing metal type closures?

A. About the same number. Maybe not quite as many. Say a dozen and a half to two dozen.

Q. Maybe more than two dozen?

A. Maybe.

Q. In asking you about manufacturers of metal containers I meant to confine myself for the moment to screw type closures. How many manufacturers are there of screw type closures that you know of?

A. I would say a dozen and a half.

Q. Aren't there many more than that?

A. There could be.

[fol. 101] Q. Now, you told us that you sold f.o.b. factory for these polyethylene bottles. Is that the way you buy your raw material for those bottles?

A. No, sir, our raw material is delivered.

Q. That is a delivered price?

A. Yes, sir.

Q. For that type of container?

A. Yes, sir.

Q. Do you equalize freight with any glass container plants in pricing your polyethylene bottles?

A. No, sir.

Q. Or with any plants where tin cans are manufactured?

A. No, sir.

Q. Do you make any sales to jobbers?

A. No, sir.

Q. And would you say that your market for your plastic containers was a national market?

A. Yes, sir.

Mr. Hughes: Your Honor, may I just have a moment to confer with my associates?

The Court: Yes.

(Pause.)

Q. Mr. Babcock, I don't want any specific figures, but [fol. 102] could you give us approximately the percentage of your detergent sales to your total sales of polyethylene containers?

A. I don't know the figure, but they are substantial.

Q. Can you give us a range, a possible range? I don't want to press you if you don't think you can.

A. I don't know.

Q. Now, is the competition in the sale of closures that you have testified that you make keen and vigorous?

A. Yes, sir.

Mr. Hughes: I think that is all, your Honor.

The Court: All right. Redirect.

Redirect examination.

By Mr. McManus:

Q. Mr. Babcock, how did you acquire the Lauterbach patents?

A. I can't answer that question. I don't know.

Q. Now, you answered that plastic containers were translucent. Are glass containers also translucent, some glass containers?

A. Some glass containers are, yes, sir, as my understanding of translucency goes.

[fol. 103] Q. What is your understanding of translucent?

A. Well, those that are not made of crystal clear material, I would say, such as amber glass, green glass or opal glass. I wouldn't call those transparent. I would call them translucent.

The Court: In making glass bottles, Mr. Witness, do you, on occasion, produce colored glass of one kind or another because of the reaction of the substance contained in the container to light rays?

The Witness: Yes, sir.

The Court: What sort of substances? Can you give me an example of the substances?

The Witness: The best example would be household bleaches or sodium hydrochloride solutions.

The Court: You put those in brown or greenish bottles?

The Witness: Yes, sir.

The Court: All right.

Q. Now, are your plastic closures used in food processing where you want to insert a vacuum?

A. No, sir.

Q. Are the plastic closures used in food processing where you have high heat, two, three hundred degrees?

A. I can't specifically answer that, but I would say no.

[fol. 104] The Court: Try to speak up now. Every once in a while you have a tendency to drop your voice.

The Witness: I'm sorry. I will try to lean forward.

Q. You have indicated that with modifications it is possible to run your vacuum closures through a White machine?

A. Yes, sir.

Q. And when pressed, you answered that there may or may not be a million of your closures that go through a White machine?

Mr. Hughes: I said millions, millions.

Q. Let me ask you. I thought you said million. You don't know if there are a million or millions that go through White machines, do you or don't you?

A. I don't know.

The Court: How extensive, Mr. Witness, is the modification of the White machine to take your closures or of your machine to take White Cap closures?

The Witness: In the case of the White machine they are fed from a hopper into a feeding device which is pretty much a slot or a channel, and in our case the caps are stack-fed; [fol. 105] they are put into a stack from a paper stack, and there is a device that goes around the circle and drops each cap, and you have to change the feeding device.

The Court: Well, now, the way you put it doesn't mean very much to me. I don't know if that is a major change in the machine or a minor change or how important it is. What part of the machine, percentagewise—what part of the mechanism is comprised in the feeding device?

The Witness: Well, I believe that we can feed the Owens-Illinois caps through the White machine with very, very minor modifications.

The Court: I see.

The Witness: But to feed the White Cap through the Owens-Illinois machine would require the removal of the stack-feed, the addition of a hopper and the addition of a feeding device.

The Court: If you changed those elements what, roughly,

would be the proportion that the modification bore to the machine as a whole, in terms of cost?

The Witness: Well, I would estimate that our machines cost, depending on the size, from, say, 12 to 25,000 dollars. [fol. 106] I would estimate that the cost of the hopper and the other changed parts would probably be in the range of a thousand to fifteen hundred dollars. These are pure estimates.

Q. Now, as you said, you did not know if a million or millions of White Caps were running through your machines, is that what you said?

A. That's correct.

Q. In fact, do you have an opinion of whether it is normal for a company to use both the cap and the closing equipment from the same company?

Mr. Hughes: Well, I object to the form of the question.

The Court: Sustained.

Q. Now, you have also testified that a number of companies are making caps. Approximately how many companies are making the steam type vacuum cap, to your knowledge?

A. I previously testified that there are three making——

The Court: Mr. McManus, haven't we gone all over this ground?

Mr. McManus: If he could just answer this one question I am finished, your Honor.

[fol. 107] The Court: All right.

A. I previously testified there were three companies making the side-seal type of vacuum closure, and I think I mentioned two or three others that were making the top seal type of vacuum closure which may or may not be applied with steam.

Mr. McManus: That is all I have.

The Court: All right, Mr. Witness, you may step down. Thank you.

(Witness excused.)

[fol. 108] CHARLES OLIN BALL, called as witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Dr. Ball, where do you reside at the present time.
A. Beg pardon?
Q. Where do you reside at the present time?
A. New Brunswick, New Jersey.
[fol. 109] Q. What is your current position?
A. Head of the department of food science at Rutgers University.
Q. And how long have you held that position, sir?
A. I have been a professor at Rutgers for 11 years. I haven't been the head of the department all that time.
Q. How long have you been head of the department, sir?
A. Less than a year.
Q. Now, what is your educational background, sir?
A. I have the AB, BS and Ph.D degrees all from George Washington University.
Q. And did you have a specialization, sir?
A. I beg pardon?
Q. Did you have a specialization, sir?
A. In education, you mean?
Q. Yes, sir.
A. I specialized in chemistry, mathematics and electrical engineering.
Q. Sir, just for the moment turning your thoughts back to 1919, were you employed by the National Canners Association at that time?
[fol. 110] A. I was.
Q. And did your employment continue through 1922 with that association?
A. It did.
Q. Could you describe for us your work, duties and responsibilities during that period of time at the Association?
A. It was research work consisting of studies, experimental and theoretical studies of principles of sterilization of canned foods.

Mr. Hughes: I am sorry, I didn't catch that.

The Court: Dr. Ball, we have to make those gentlemen way over the other side of the courtroom hear. Will you try and project your voice?

The Witness: I will try, sir.

Mr. Hughes: May I have that last answer?

The Court: Yes.

(Answer read.)

[fol. 111] Q. Have you completed your answer?

A. Yes.

Q. Now, you used the term "canned foods" in your testimony. Would you define that term for us?

A. The canned foods, as I used the term, means foods that have been sterilized and packaged in airtight containers for storage and distribution, the airtight container being required to prevent any contamination of the foods after they have been sterilized.

Q. You referred to the term "airtight container." What is the definition of that term, sir?

A. It is a container which is proof against the passage of air or any gas through the wall of the container, either inwardly or outwardly.

Q. And what type of containers were you referring to, sir?

A. The containers used for canned foods are metal cans and glass containers.

Q. Sir, have you been associated in any other capacity with the National Canners Association since 1922?

A. Yes. I have been a member of various committees, [fol. 112] and since 1945 I have been chairman of the committee on the processing of foods in glass containers.

Q. Sir, could you give us a thumbnail description, if you will, of the type of organization that the National Canners Association has been during your experiences with them?

A. Well, it is a trade association having as its members the packers of canned foods. Their principal function is to assist their members in any way possible, and one of the principal functions is to carry on research work for the members.

Q. Sir, directing your attention now to the period which occurred just a few years later, were you employed by the American Can Company from 1922 to 1941?

A. I was.

Q. And in that long period of time, sir, would you describe your work, duties and responsibilities during that period?

A. During the first part of the period I was engaged in work very similar to that that I had with the National Canners Association. As time went on my sphere of work broadened, and in the early thirties I was made associate director [fol. 113] of research and was then interested in not only the processing of foods but the manufacture of cans also.

Q. And with American Can did you work at any time in glass containers?

A. We did occasionally have glass containers in the laboratory, yes, to study them in comparison with food in metal cans.

Q. Could you describe for us the type of work you did with those two types of containers, in a general way?

A. Well, there would be a study of the containers, as we studied cans, for their hermetic properties, that is, airtight properties, and also for the condition of the food as to quality and as to sterilization.

During this same period, I think between 1926 and 1928, I was on—I don't mean during all that time but during a period within that range of time—I was on a mission to California at the request of the California Board of Health to work with technical men of what was then the Glass Container Association in studying the processing of glass con- [fol. 114] tainers and the establishment of processes for foods in glass containers. And then during 1929, for about almost two months, I was on another mission for the California Board of Health to establish sterilizing processes for both metal and glass containers for the State of California.

Q. Could you tell us the foods and beverages which were contained in the glass containers which you worked with at American Can?

A. They were essentially fruits and vegetables, and also it included coffee and beer.

Q. Have you exhausted your recollection, sir?

A. Well, I couldn't say for sure; I think there would have been or there were also some animal products such as marine products and meat.

Q. Sir, were there syrups in the glass containers in your laboratory then?

A. Well, I don't recall that. I don't think if there were that I would have had directly to do with them.

Q. Sir, I believe you stated that at the present time you are chairman of the National Canners Association Committee on Processing Foods in Glass Containers. Have you been [fol. 115] employed in that position or have you been in that position from 1945 to the present?

A. I have.

Q. Could you describe for us the duties, work and responsibilities which are entailed and have been entailed by this position from 1945 to the present?

A. This committee meets periodically. When I say periodically I mean whenever the necessity arises, in order to keep up to date the information that has been assembled on the processing specifications of foods in glass containers, and my function has been to preside over those meetings.

Mr. Greenberg: Your Honor, I would like to direct your attention now to Government's Exhibits 317 and 318 which I think will be referred to in the next series of questions.

Mr. Hughes: I object to referring to any documents which are not in evidence.

The Court: Let me see the documents.

Mr. Greenberg: I am merely trying to direct your Honor's attention to the book involved in order to lay a foundation for it, if I may, for its admission.

Mr. Hughes: I am sorry, I did not hear that.

[fol. 116] Mr. Greenberg: I intend to show the witness the document in order to lay a foundation for its admission.

The Court: All right. Wait until the clerk gets my copy of it.

Q. Dr. Ball, I show you——

Mr. Hughes: Will you wait just a moment while we get our copy?

The Court: We will take a brief recess while Mr. Hughes is doing that.

(Short recess.)

The Court: Gentlemen, hereafter I am going to require each of you, five or ten minutes before the opening of each session, to advise the other side as to what documents you expect to use during the course of the session. I do not want in the course of this trial anybody to have to take a recess to look at a document among the mass of documents that we have here. It is a very simple matter to give the other side a list of the documents that he expects to refer to so that they can have them available and in front of them when the questioning begins.

Mr. Hughes: Your Honor, in cross-examination a situation may arise——.

[fol. 117] The Court: Well, I don't think that this is an absolute rule. There may be occasions, Mr. Hughes, where an occasional document is not there. I am talking about it as a general matter.

Mr. Hughes: Yes, your Honor.

Mr. Greenberg: Now, your Honor, the Government will certainly follow the procedure that you have outlined.

The Court: Fine.

Q. Dr. Ball, I show you Government's Exhibit 317, which has been marked for identification, and ask you if you recognize it?

A. I do.

Q. Do you know how this document was compiled?

Mr. Hughes: I object, your Honor, to any questions with reference to these exhibits. May I say that the attorneys have seen this for the first time on May 25th. These were the last documents that the Government submitted to us in their order of proof. We are totally unprepared to deal with any examination or cross-examination of this witness which may relate to these documents. It is violative of the order of proof and of our pretrial discussions. I submit [fol. 118] that it is improper at this point and under these circumstances to go into these documents.

Mr. Greenberg: May I be heard, your Honor, for a moment?

The Court: Yes.

Mr. Greenberg: Your Honor, the Government only intends at this juncture to lay a foundation for the introduction of these documents. We do not intend to argue with

respect to these documents. The witness is here, your Honor, and we propose to show that he knows how these documents were compiled and we merely wish, as I stated before, to lay the necessary foundation for the introduction of these documents.

The Court: Suppose Mr. Hughes wants to examine on the voir dire with respect to the introduction of the documents——

Mr. Hughes: Absolutely, your Honor.

The Court: He tells me that he has seen—when did you see these for the first time?

Mr. Hughes: May 25, your Honor, and I might say quite candidly that we have been concentrating on those things which the order of proof indicates we should be concentrating on. This is replete with figures and it has maps and all [fol. 119] sorts of things in here as to which we are totally unprepared.

For all I know, there may be very valid reasons why they are inadmissible on any conceivable ground.

The Court: All right. In any event, I will permit you, Mr. Greenberg, to go ahead with your direct examination laying the basis for these documents. At the conclusion of that I will hear Mr. Hughes and then see what he wishes to do in the way of objecting at that time.

Mr. Greenberg: Thank you, sir.

Q. Dr. Ball, do you know how Government's Exhibit 317 was compiled?

A. Yes, sir.

Q. Would you describe for us how this document was compiled?

The Court: Did you have anything to do with it yourself, Dr. Ball?

The Witness: Yes, sir.

The Court: What was your function in connection with this document?

The Witness: This document was compiled by the committee for the study of processing of foods in glass containers of which I am the chairman, your Honor.

[fol. 120] The Court: Very good. Now you many answer Mr. Greenberg's last question.

(Question read.)

A. The document was compiled by the committee as a result of the deliberations and study that the committee conducts in its meetings, and at other times as the members of the committee conduct them in the laboratories of the canning industry.

Mr. Hughes: I am sorry, I did not hear that.

A. In the experimental work of the members of the committee as they are conducted in laboratories of the canning industry. And when the bulletin is compiled it is submitted to the National Canners Association's publication department for publication, for printing.

The Court: Who are the other members of the committee besides you, Dr. Ball?

The Witness: There is Mr. Scott of Owens-Illinois Glass Company; Mr. Feluciofi—I don't know whether I can spell the name—of Anchor Hocking, and Mr. Bee of the National Canners Association; Mr. Reed of the National Canners Association. At the moment, your Honor, I can't think of the other members.

Q. Were there others, sir?

[fol. 121] A. There were, I think, about two others.

Q. Can you generally describe them for us—what type of organizations were they affiliated with?

A. Well, each glass container company has a representative, I think, and they would be from the other glass container manufacturers.

The Court: Representatives from the various glass container manufacturers?

The Witness: Yes, sir.

The Court: Can you describe what their functions are with their respective companies?

The Witness: They are all in scientific research.

The Court: They were from their research departments?

The Witness: In the research departments, yes, sir.

Q. Sir, after this document was compiled, did you become familiar with the uses to which it was put and has been put since its publication?

A. In the earlier editions of the bulletin I have been in

the field observing the use of the bulletin, yes, but not in recent years.

Q. During the period when you had direct knowledge of [fol. 122] what occurred, can you in a nutshell, so to speak, tell us what uses were made of this publication?

A. It is used as a guide by packers of food in glass containers in the operation of their sterilizing retorts.

Mr. Greenberg: The Government offers G-317 into evidence.

Mr. Hughes: I object to it on the ground that it has not been properly proved; on the further preliminary grounds that I urged upon your Honor that we have adequate opportunity to examine it or to examine this witness.

The Court: I will tell you what I will do: I will take it at this point subject to a motion to strike by you and with the right to reserve to you to examine on the voir dire with respect to it. If I find that on such an examination you develop that a proper foundation has not been established for the admission of the exhibit, I will then consider your motion to strike.

(Marked Government's Exhibit 317 in evidence.)

The Court: I take it that this is, in effect, a handbook for [fol. 123] food processors or canners, is that right, a technical handbook?

The Witness: You can call it a processing manual, I think. It is a technical handbook, giving specifications and time and temperature; also directions for the operation of the processing equipment.

By Mr. Greenberg:

Q. Dr. Ball, I show you Government's Exhibit 318, which is before you, and which has been marked for identification, and ask if you can identify it for us?

A. I can.

Q. Would you identify that document, sir?

A. That is a bulletin of the National Canners Association which is analogous to the one we have been discussing, but this pertains to metal containers.

Q. When you say analogous, you mean the bulletins are analogous, is that right?

A. It is a processing manual for processing food in metal containers—for sterilization of food in metal containers.

Q. By virtue of your experience——

Mr. Hughes: Your Honor, I don't want to interrupt the examination, but may it be understood that I am maintain-
[fol. 124] ing the same objection to this?

The Court: Oh, yes.

Q. Sir, by virtue of your experience with the National Canners Association and in other positions which you described have you become familiar with the method of compilation of Government's Exhibit 318?

A. I have.

Q. And would you describe for us, sir, how this document was compiled?

A. Well, from my personal experience that was before I became a member of the committee pertaining to glass containers. I was a member of the committee on processing of food in metal containers, and this bulletin is compiled by that committee in the same manner as I described for the other bulletin being compiled by the former committee.

Q. And are you familiar with the uses to which this bulletin is put?

A. I am.

Q. And would you describe for us, sir, the uses to which this bulletin has been put?

A. The operators of the sterilizing equipment in canning plants use the bulletin as a guide in method of operation
[fol. 125] of the equipment and in establishing the temperature and time specifications for sterilizing processes.

Mr. Greenberg: The Government offers G-318 into evidence, your Honor.

The Court: Before you do this—Dr. Ball, tell me, if you know, what is the distribution of these bulletins?

The Witness: Well, the distribution, your Honor, in the first place, is to all members of the National Canners Association.

The Court: They are sent out by the Association to its members, is that right?

The Witness: Upon the issuance of each bulletin a copy is sent to every member, but the distribution is really

broader than that. They send it also to other canners besides the members, and to institutions that are interested in the processing of food.

The Court: Would they send this sort of thing to something like the United States Army who is interested in purchasing food and so forth?

The Witness: If the agency of the Army is directly inter- [fol. 126] ested in the operations of sterilization, yes, sir.

By Mr. Greenberg:

Q. Does your description of the uses and distribution of this bulletin, which is marked G-318, equally apply to the prior bulletin on glass containers?

A. To the prior bulletin?

Q. Yes. Is that distributed in the same way?

A. Same way, yes.

The Court: You have an objection, Mr. Hughes?

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit 318 received in evidence.)

Q. Now, sir, just changing the subject for a moment, through your experiences in the food processing industry which you have described have you found any common physical characteristics which are shared by cans and glass containers?

A. Well, the characteristics——

Q. Yes or no, sir? Have you found——

A. Yes, I have.

Q. You have. And would you tell the Court, sir, what [fol. 127] these common characteristics are and have been?

A. The two principal characteristics, physical characteristics, and the most important are that each type of container is a rigid container; that is, it maintains its shape in resistance to forces that might tend to distort it, and each is a hermetic container; that is, airtight.

Q. Can you recall any others, sir?

A. Well, when they are filled and subjected to processing, each of them has the property of resisting the penetration of heat into the can. In other words, there is a time lag in penetration of heat into the product in both of them.

Q. Why is that important?

Mr. Handler: Just one moment.

The Court: Have you got something to say, Mr. Handler?

Mr. Handler: A half-dozen words of the witness cannot be heard back here, your Honor.

The Court: All right. Try to project your voice.

The Witness: I am very sorry, your Honor. I seem to have some laryngitis today.

[fol. 128] The Court: You do the best you can.

The Witness: I will do the best I can.

Mr. Handler: May we have that last answer?

The Court: The reporter will read the last answer.

(Last answer and question read.)

A. Well, that is one of the determining factors in establishing the length of a process.

Q. Sir, can you recall any other common characteristics between these two types of containers, referring now, for example, to the metal parts of both types of containers?

A. Well, many of the metal parts of both types of containers carry protective coatings of various kinds inside and outside, sometimes.

Q. What type of protective coatings are you referring to, sir, just generally?

A. Well, to describe it as briefly as possible, I would say the types that Mr. Babcock testified about this morning. They are coatings which are made to suit the characteristics of the product in the can or in the container and are for the purpose of resisting action of the product on the metal.

[fol. 129] Q. Can you recall any others, sir? Are there others?

Mr. Greenberg: Withdrawn.

Q. Can you recall any others, sir, referring now to the gaskets?

The Court: To the what?

Mr. Greenberg: Gaskets, g-a-s-k-e-t-s, your Honor.

A. Well, each of them has a gasket in the seal between the cover and the body of the container. Those gaskets differ quite a lot. There is a different type of gasket in glass

containers than there is in cans, as a rule. The seal of the can, the one that fastens the cover to the body of the can, is a crimp seal or a hook seal which is called a double seam. That gasket is very thin and changes its shape greatly when the seam is being made.

As a rule the gaskets in caps of glass containers are heavier and not subject to similar changes in shape, that is, as great changes in shape as they are in cans.

Q. Now, sir, you referred to one common characteristic during your testimony, the hermetic qualities of these containers. Do you recall that, sir?

[fol. 130] A. Yes.

Q. Now, would you define for us, sir, what that term means? What does hermetic mean?

The Court: Didn't Dr. Ball at the outset of his testimony define hermetic for us?

Mr. Greenberg: I believe he did, sir, but it is the foundation or the orientation for another question. I will withdraw it if you would like me to.

The Court: Go ahead.

A. Hermetic is another name for airtight which means that there is absolute prevention of any passage or air or other gas through the wall of the container or any part of the wall of the container, either inwardly or outwardly.

Q. Now, sir, what value does this characteristic have in food processing and marketing?

The Court: Well, now, let's not confuse processing and marketing.

Mr. Greenberg: I will divide the question, sir.

The Court: Start off with processing. If we are going to talk about marketing, that is something else again.

[fol. 131] Mr. Greenberg: I beg the Court's pardon. I will reframe the question.

Q. What value does this characteristic have in food processing, sir?

A. Do you refer to the process of sterilization?

Q. Yes, sir.

A. Well, the hermetic property of the can has no particular reference to the process of sterilization. There are processes of sterilization in which the food is sterilized

before it is ever put into the container. Where the container is hermetically sealed during the process it is a matter of convenience and simply because it is desirable and necessary to have the hermetic properties after the process is completed, and—well, that covers the processing part.

Q. Now, sir, why is it necessary to have hermetic properties after the container encloses the food product?

A. It is necessary in order to prevent recontamination of the food with any agent that is capable of spoiling the food, such as microorganisms of the air or even oxygen of the air which has the ability to spoil the food in certain respects.

[fol. 131a] Q. What types of contamination are you referring to specifically, sir?

A. Primarily the contamination with microorganisms which cause fermentation or spoilage of the food, although, as I say, also oxygen which may promote chemical deterioration of the food.

[fol. 132] Q. Sir, what value does this hermetic characteristic which is shared by cans and glass containers have in the marketing phase?

A. Well, it continues the protection of the food against contamination. Other than that, it is merely the advantage or the function of a container which is tightly sealed and will hold its contents properly.

Q. Sir, does a food which is hermetically sealed in a hermetic container and sent out to the grocery stores and the institutions' shelves, does that require some refrigeration or some temperature consideration for long storage?

A. It does not require it, but the preservation of its quality is improved if it does have refrigeration.

Q. I understand that, sir, but it does not require it, is that correct?

A. It does not require it, no.

Q. Sir, referring now to paper containers, for example, does that type of container have the hermetic characteristics of cans and glass containers?

A. You say paper?

Q. Paper, sir.

A. No. I think there is no paper container that is ab-
[fol. 133] solutely impervious to gas.

Q. In other words, when you say absolutely, you are talk-

ing in terms of absolute, the term used in the examination?

A. To the degree that you find in metal and glass.

Q. Sir, have there been any containers, any containers that you know of from 1919, the time of your initial position in the industry, from that period of time to the present time which have this hermetic characteristic of a can and a glass container?

A. Not to an equal degree.

Mr. Greenberg: Thank you, sir. You may cross-examine.

Mr. Hughes: Your Honor, we have reached this point again where we just feel that we are unprepared to cross-examine. This is a very important area.

The Court: Yes, I will not compel you to go ahead with cross-examination this afternoon under the circumstances. I think you have been surprised by the presence of this witness here today, since you only heard of his presence here on Saturday, as I understand it. Is that so?

[fols. 134-313] Mr. Hughes: Yes, sir, that's right.

* * * * * * *

[fol. 314] JOHN PRESTON LEVIS, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Levis, by whom are you employed?

A. Owens-Illinois Glass Company.

Q. And what is your position with that company?

A. Chairman of the board of directors.

Q. Does Owens-Illinois Glass Company have operations outside of the United States as well as domestic operations?

A. Yes, sir.

Q. I would like it understood, then, that any questions that I would ask you today would refer to your domestic operations only.

A. Yes, sir.

The Court: Mr. Levis, how long have you been chairman of the board?

The Witness: Nine years.

Q. Could you tell me, sir, your background with the [fol. 315] Owens-Illinois Glass Company?

A. I started with the Illinois Glass Company in 1924 as an engineer in the Alton plant. I went from there as the manager of our plant in Gas City, Indiana. Following a merger between Owens Bottle Company and Illinois Glass Company I was transferred back as plant manager at the Alton plant. 1932 I was transferred to the Pacific Coast as president of our Pacific Coast subsidiary, back to Toledo in 1938 as the general manager of the parent company operations. I became president in '41, chairman of the board in '50.

The Witness: I beg your pardon, sir, it is ten years, not nine.

The Court: All right.

Q. In what major product groups does the Owens-Illinois Glass Company sell its products?

A. I beg your pardon?

Q. What products does Owens-Illinois sell, major products?

A. Glass containers is our largest product. The next largest product is in the fibreboard container, both paper and boxes. The third largest division is in scientific glassware, including television tubes. We also sell closures and tableware, tumblers and tableware.

[fol. 316] Q. The Owens-Illinois Glass Company is not engaged, then, in what is commonly known as flat glass?

A. No.

Q. You are a container company as differentiated from a——

A. We have a building material in a glass block, but that is a small segment of our business.

The Court: Are you in the plastic field at all?

The Witness: Oh, I beg your pardon, I left that out. We are in the plastic field both in closures and plastic bottles.

Q. Now, referring to the glass container plants of your company, how many plants are you presently operating?

A. I would have to name them.

Q. Could you do that, sir?

A. I would have to name them. I can't remember exactly. Bridgeton, New Jersey, Clarion, Pennsylvania, Atlanta, Georgia, Alton, Illinois, Gas City, Indiana, Streator, Illinois, Waco, Texas, Los Angeles, Seattle, Portland. I don't think I left out—oh, Columbus—no, no, that is not a glass container.

[fol. 317] Q. Now, in the organization of your company is the glass container a separate division from paper containers?

A. The glass container operation is a separate division, yes, sir.

Q. Could you explain to us generally the organization of your company?

A. We have an administrative division which handles those matters which pertain to all divisions; general accounting, general purchasing, legal, and others of lesser importance; and all other divisions have their own separate general managers who operate like a president of the division. If it is a subsidiary we usually give him the title of president. If it is not a subsidiary and merely a division, he acts in that capacity.

Q. But you say there is a glass container division?

A. There is a glass container division, yes, sir.

Q. Do products such as caps and vacuum cleaners come under that division?

A. They report—the general manager of the closure and plastic division reports to the division vice-president who is [fol. 318] in charge of our glass container operation generally.

Q. Now, is the glass container division broken down geographically at all?

A. We have a Coast Division and we have an Eastern Division, yes, sir.

Q. What is the Coast Division, is that the Western Division?

A. I did not get that.

Q. When you say the Coast Division, would that be the West Coast Division?

A. That is the West Coast Division, yes, sir.

Q. And generally what area does that encompass?

A. Well, the bulk of the sales are in the three Coast States, California, Oregon and Washington. I cannot define the

exact territories but I am sure they go as far as Salt Lake City and that would cover Nevada and possibly the western end of Montana. I am not sure exactly how that is laid out.

The Court: You take in, in other words, a segment of the Western Rockies, is that right?

The Witness: That is right.

Q. And you said also that you have an Eastern Division? [fol. 319] A. That is the way we define them for management purposes, yes, sir.

Q. The Eastern Division would include the rest of the United States?

A. Yes, sir.

Q. And that would be exclusive of Hawaii and Alaska?

A. Alaska and Hawaii would be from the sales group on the Pacific Coast because it is easier, and, as a matter of fact, we operate in Hawaii through an agent.

Q. Does your company for all of its domestic operations publish a report of its dollar volume of sales?

A. We publish an annual report every year.

Q. The last annual report, would that be for the calendar year 1959?

A. The calendar year 1959, yes.

Q. And approximately what was your dollar sale volume for that year?

A. $552,000,000 approximately.

Q. That would include all of your products, is that correct?

A. That would include all of our products. Some of our [fol. 320] foreign sales are not included, or profits are not included in that consolidated statement.

The Court: Is that because of blocked currency?

The Witness: I beg your pardon?

The Court: Is that because of blocked currency?

The Witness: Matters of that nature, and also some of them operate through foreign corporations, like a Panamanian corporation, and we are not required to consolidate those earnings.

The Court: I see.

The Witness: It is a little complicated and I cannot explain it intelligently.

Q. You have stated that your largest gross sales are glass containers, is that correct?

A. Yes, sir.

Q. Are you able to judge in relation to the rest of the industry your position, that is, your company's position in the industry insofar as whether you are No. 1, 2, 3, 4 or 5?

The Court: You mean in terms of volume of sales?

Q. In terms of volume of business in the sale of glass containers.

[fol. 321] A. I am sure we are the largest producers of glass containers.

Q. Now, are you generally familiar with the various categories for glass containers?

A. Yes, generally, but I couldn't begin repeating them accurate. I might make an error as to the present classifications, but as the Department of Commerce classifies them, I think I know them.

Q. Now the Department of Commerce classifies glass containers as—in one case it has wide mouth and in another it has narrow neck, is that correct?

A. Yes, both wide mouth and narrow neck, but in a series of other classifications.

Q. Throughout the United States, in the 48 States, do you ship and sell both wide mouth and narrow neck containers?

A. Yes, sir.

Q. Now, in the Bureau's classifications they have a grouping, as I understand it, that is called wide mouth foods; would that be your understanding?

A. Yes, sir.

Q. Does your company sell wide mouth food containers?

A. Yes, sir.

[fol. 322] Q. Do you also sell narrow neck food containers?

A. Yes, sir.

Q. You sell beer containers?

A. Yes, sir.

Q. Both of the returnable and non-returnable type?

A. Yes, sir.

Q. Soft drink glass containers?

A. Yes, sir.

Q. Both of the returnable and non-returnable type?

A. Yes, sir.

Q. Do you sell containers listed in the grouping under toiletries and cosmetics?

A. Yes, sir.

Q. And also under the group of household and industrial?

A. Yes, sir.

Q. Medicine and health?

A. Yes.

Q. Liquor and wine?

A. Yes.

[fol. 323] Q. How about dairy products?

A. Yes.

Q. Milk bottles?

A. What?

Q. Milk bottles?

A. You said dairy products.

Q. They fall under dairy products.

A. Yes, milk falls under dairy products.

Q. You also sell the same classifications in narrow neck sizes for the groups that we have referred to?

Mr. McManus: I will withdraw that.

Q. So the Owens-Illinois Glass Company sells a full line or what is known as a full line of glass containers?

A. Well, there are some things that we do not make. We do not make any opal, for example. That is the opaque, like a cold cream jar. We don't make that line, and we don't make any blue glass.

Q. Does Owens-Illinois Glass Company have a subsidiary named Kimble Glass Company?

A. Yes, sir.

Q. Is that a wholly-owned subsidiary?

A. Yes, sir.

Q. Do they make opal ware?

[fol. 324] A. No, sir.

Q. Do you have——

A. I would like to qualify that; I am not sure.

Q. Do you know if they make blue glass?

A. No.

Q. What product does Kimble make, do you know?

A. Tubing and things from tubing for a great deal of the scientific glassware like what you give injections with in

syringes, and many of the others like beakers, test tubes, graduates, in the scientific line, and they also sell tubing to other manufacturers of scientific glassware.

Q. To your knowledge——

A. And television tubes.

Q. Your recollection is then that your company or any of your wholly-owned subsidiaries or divisions does not make opal glass, is that correct?

A. I said I couldn't answer you about opal.

Q. You don't recall that?

A. I don't recall whether we are making it or not. If we do it is in very small quantities.

Q. Now, for the glass container division do you engage in research and development work?

A. Yes, sir.

[fol. 325] Q. Do you have at the present time one or two plants or one or two locations in which you engage in this type of activity?

A. Well, we have a large research center in Toledo carrying on the technical—both the technical research in glass and other products, both from the applied research end of it and from the pure research end of it. We also carry on some research in the engineering departments of the various divisions, and sometimes at the plants. We have also in Toledo a packaging research division which I call a usage research, which involves customers' problems rather than research in the technical end of the other businesses; strictly usage research.

Q. Is my understanding correct that the packaging research would involve itself mostly with problems of customers?

A. Aiding the customers to use our—I will put it the other way—aiding the customer to use glass as a packaging material.

Q. Is that a service organization?

A. It can be both a service organization and an aid to the promotion of any business—it is functioning in a dual capacity.

[fol. 326] Q. Now, your technical research, as differentiated from your packaging research, could you tell me in a little more detail what that group does?

A. Well the technical research is working in all phases

of research, even to the blue sky use of silica or the products that we manufacture, or we manufacture paper. It is working on all of those things in connection with the products that we manufacture, the materials that we use, and also the applied research of the machinery and equipment, hoping to design new and better equipment, hoping to make the present equipment work better and more efficiently. But that, broadly, covers all of our business, not necessarily our glass container end of our business.

Q. I see. Would your technical research apply to the improvement of glassware, such as making it lighter or stronger, or things of that nature?

A. You say do they do——

Q. Would that be the type of research?

A. That is one assignment that they have.

Q. Has your company been carrying that type of research on for a number of years?

A. Yes, as long as I have been connected with the business. [fol. 327] Q. Over the last 20 years have you been kept informed of the research work that has been done in the company in regard to the production of glassware?

A. I follow it generally, yes, sir.

Q. Over the last 20 years has the glass container generally been becoming heavier or lighter?

A. No, over the last 20 years—I would start back a little bit before that and say that over the last 30 years there have been significant changes in the weight of the container, and it has become considerably lighter.

Q. As the container has become lighter, has it become weaker or stronger?

A. For all practical purposes it has become stronger.

Q. So over the last 30 years you say that the glass container has become stronger and lighter, is that correct?

A. Yes.

Q. I believe you testified that you conduct technical research in regard to your machinery.

A. Yes.

Q. And that would be both machinery for producing glass [fol. 328] containers and also capping machinery.

A. Yes.

Q. And you make and sell certain capping machinery for your glass containers?

A. I think Mr. Babcock reported the other day that we make and lease.

Q. Excuse me, make and lease. And over the past 20 to 30 years have you been kept informed or have you kept yourself informed of the progress that has been made in the capping of glass containers?

A. Generally so, yes, sir.

Q. Do you know if the speed at which glass containers can be capped has increased or decreased?

A. It has increased.

Q. Has it increased considerably over the past 20 or 30 years?

A. Yes, sir.

Q. Without being specific, would it as much as double, could you say that?

A. Well, it would be different in different lines, sir. I would hesitate to answer that. I could be quite wrong in any answer that I gave you on that. The increases have been substantial.

Q. It would depend; you would have to know what par-
[fol. 329] ticular line you were talking about?

A. You would have to ask me specifically has the baby food been increased, and then I would have to inquire as to whether it had been increased from 400 to 800 or 400 to 600. I couldn't answer you that without further inquiry.

Q. I understand. But you say it has substantially increased in most lines?

A. Yes, sir.

Q. You stated you also conducted study and research in the manufacture of the glass container itself, is that correct, in the actual making of the glass container you do research in that type of field?

A. Yes, sir.

Q. Have you done research also in the forming machine that forms the glass container?

A. We have done both research and development.

Q. Research and development. And have you kept yourself advised of this research and development over the past 20 or 30 years?

A. Generally.

Q. Has the speed at which you could manufacture a glass container over the past 20 or 30 years increased?

A. Yes, sir.

[fol. 330] Q. Are you able to make at the present time a more uniform and better glass container today that you could 20 or 30 years ago?

A. Yes, sir. That has enabled us to make them lighter and stronger because we have improved the distribution of glass. That has been one of the main accomplishments.

Q. And does your company have machinery which can be converted from making wide-mouth glass containers to narrow-neck glass containers?

A. Yes, sir.

Q. And is it readily convertible?

Mr. Hughes: Your Honor——

Mr. McManus: I will withdraw that question.

Q. Do you purchase all of your glass container forming machinery that you use?

A. No, sir.

Q. You manufacture some of your own?

A. Yes, sir.

Q. Now, with the improvements in the glass container industry and the capping industry that you have testified to has that allowed your company to move into new areas where glass containers were not formerly used?

[fol. 331] A. We have been able to move into areas where glass containers were not used in large quantities. I think it has been of assistance to us in expanding our markets, yes, sir.

Q. Directing your attention to processed foods, you make glass containers for processed foods?

A. Yes, sir.

Q. And do you make glass containers for fruits and vegetables, processed fruits and vegetables?

A. We make containers for the packing of fruits and vegetables, yes, sir.

Q. Now, does your research department make tests of which fruits and vegetables you can use your glass containers for?

A. I don't believe I quite follow you. I think I understand, but I don't understand it specifically enough to answer the question.

Q. Is your research department endeavoring to find out

new areas in the fruit and vegetable field that you can use your glass containers for?

A. Well, I would say that in connection with hunting for new markets your marketing people are those most likely to determine where a market was feasible or practical for us to try to interest the packer into packing his product into [fol. 332] glass containers. Our research really assists the packer in using our jars in his plant.

Q. I see.

A. Now, there is some overlapping in that. Which is the hen and which is the egg? Some time the research department comes up with an idea of what can be done before the marketing people have thought about it. It isn't a defined rule. We are glad to have a knowledge of that, whoever turns it up.

Q. Now directing ourselves to fruits and vegetables, over the past 10 or 15 years are there any fruits and vegetables that you have not used your glass containers for?

The Court: Are there any fruits and vegetables?

Mr. McManus: Yes. I am asking are there any.

The Court: Now, Mr. McManus, there are hundreds of thousands of fruits and vegetables in the world. How could anybody answer a question like that?

Mr. McManus: Well, let me go back.

The Court: Let's get down to something more specific. These vast generalities don't aid us very much.

[fol. 333] Mr. McManus: Let me go back, your Honor.

Q. Does your company manufacture certain stock sizes of glass containers which are comparable to metal can sizes?

A. We have some stock sizes that correspond to the same liquid capacity of cans that we sell to packers of fruits and vegetables, yes, sir. That isn't limited to that.

Q. I understand, but you do have some stock sizes.

A. Yes, sir.

The Court: In other words, for most standard can capacities there would be a glass container of approximately the same capacity, is that right?

The Witness: Well, we wouldn't have over the same line of cans, sir, but those which are used more regularly or in the larger quantities we have glass jars that are of the same same capacity as comparable to tin.

The Court: Yes.

Q. Now, these standard size jars that we are talking about, would they be used for, for example, beets?

A. Beets?

Q. Beets.

[fol. 334] A. Yes, sir.

Q. Would they be used for peaches?

A. Yes, sir.

Q. What changes would you have to make in the jar that you were using for beets to use that jar for peaches? I am just talking about the glass container.

Mr. Hughes: Your Honor, I object to it. I am not sure that I understand the question.

The Court: I will overrule the objection.

Do you understand the question?

The Witness: Yes, I think I do.

A. You mean that the same jar that I would manufacture to put beets in, somebody else could take that jar and put peaches in?

Q. Yes. Is that correct?

A. Yes, sir.

Q. I am just talking about the glass container only now. Would you have to make any changes in the glass container, in the lining or the coating or anything of that nature in that beet jar for it to be used for peaches?

A. No, it would be the same composition.

Q. It would, in fact, be the same jar, is that correct, when the purchaser would buy it?

[fol. 335] A. Well, it might not be the same jar if the customer did not like that type of jar, but we could sell him the same jar and he could pack both products in that same jar.

The Court: You could have a beet-packing process going on on one side of his plant and a peach-packing process going on on the other side, and a single feed of jars, one going to one side and one going to the other, if he wanted to; is that right?

The Witness: Well, that wouldn't be a practical way for handling the operation.

The Court: I grant you that. Assuming that that was practical.

The Witness: He could scoop peaches in one and beets in the other, yes, sir.

The Court: All right.

Q. And could you tell me why it is not necessary to make any change in that glass container, to change it from beets to peaches?

A. Well, the material in the glass container does not react any different to a peach than it does to a pear or a pea or a beet.

Q. Well, now, to your knowledge would that be true, that it does not react with any fruit or any vegetable, to your [fol. 336] knowledge?

A. I am not an expert, sir, but I have always assumed, and I think I am correct, that there are only a few very unusual materials that react to any degree on a glass surface.

Q. Is your company presently selling containers for baby food?

A. Yes, sir.

Q. Are you familiar with the type of container in which baby food was first packed?

A. Baby food what?

Q. Are you familiar with the type of container in which baby food was first packed? Was it glass, cans or what?

A. To my memory—and I can only state from what I think; I am not sure of this—but I think it was first packed in glass by the Clapp Baby Food Company. I think the first commercial packed baby food, I believe, came out in glass. I am under that impression.

Q. Would you know approximately when that took place?

A. No, sir, I wouldn't.

Q. Would it be in the middle 30's?

[fol. 337] A. Oh, no, glass packed baby food—I have a daughter 30 years old, and I was buying glass packed baby food for her when she was a baby. That's 30 years ago.

Q. From the time you first recall seeing baby food in glass, was it then, to your knowledge, packed in another type of container?

A. As I recall, most of the baby food, when it began to be

produced and sold in fairly large quantities, packaged baby food, I believe, was in tins.

Q. And today do you sell a number of baby food glass containers?

The Court: You mean do you sell glass containers for baby food.

Mr. McManus: Excuse me.

Q. Do you sell glass containers for baby food?

A. Yes, sir.

The Court: Is that a substantial item in your glass line, glass baby food containers?

The Witness: It is a substantial volume of business, yes, sir.

Q. Does your company sell glass containers for coffee?

A. Yes, sir.

[fol. 338] Q. Do you sell it for ground coffee or soluble coffee?

A. More soluble coffee considerably than ground coffee.

Q. Do you sell some glass containers for ground coffee?

A. Not in significant amounts, but some.

Q. But you do sell it for soluble coffee in significant amounts?

A. Yes, sir.

Q. To your knowledge do you recall when soluble coffee was first packaged in any type of container?

A. Well, I can—and this is purely a guess, sir—I remember, oh, considerably years ago that G. Washington coffee, that brand comes to my mind, was packed in a small vacuum-type tin can. I can't tell you when that was.

Q. But you recall that it was packed in a tin container?

A. Yes.

Q. To your knowledge is soluble coffee packaged in tin today?

A. I can't answer you that for sure, sir. I think it probably is, but you would have to ask somebody else that [fol. 339] question.

Q. Mr. Levis, did you company ever manufacture and sell metal containers?

A. Yes, sir.

Q. And when was that? When did you first go into that business, approximately?

A. We started into that business in 1936.

Q. Could you tell me how you went about going into that business? Did you purchase equipment?

A. No.

The Court: What did you do to go into the business?

Q. What did you do to go into the business?

A. We acquired a small can company in Pittsburgh, Pennsylvania, known as the Enterprise Stamping Company. We acquired the can manufacturing division of the American Tobacco Company, which was called their Tin Deco Division in Baltimore. We bought a small can company in St. Louis, the details of which I don't recall.

The Court: All of those were going businesses?

The Witness: They were going businesses when we acquired them, yes, sir.

Q. Could you tell me what packers cans are generally considered to be? What are they used for, packers cans?

[fol. 340] The Court: Mr. McManus, we have got to worry about voices. You have got a tendency to drop your voice at the end of a sentence and I think both the witness and I missed it.

Mr. McManus: Would you read the question?

(Question read.)

Mr. Hughes: Your Honor, I object. Two questions there. It seems to me we should first have one.

The Court: Withdraw the question and reframe it.

Mr. McManus: I will withdraw it.

Q. When your company was in the can business were you directly associated with the operating of the can plants?

A. I was president of the can company of Owens-Illinois Can Company for three or four years, yes, sir.

[fol. 341] Q. At that time did the term "packers cans" have a meaning, have a general meaning throughout the trade?

A. We used to use the word "sanitary" cans.

Q. And that refers to cans for what uses?

A. That is the ordinary can that I think of with beans, peas, corn.

Q. That would be for food products, is that correct?

A. Food products and they were used also for other products than food.

Q. Was there a term such as "general line cans" used at the time?

A. Yes, sir.

Q. And would that be normally for the non-food products?

A. I think some food products might have been packaged in cans like vegetable oils and edible oils of that kind, but I think of them as the non-food cans, the F-style cans with a little offset to it. They were used for things such as sprays, insecticides and some oil, but not limited. There were some food products and I am sure there were some syrups packed in it.

[fol. 342] The Court: You are now referring generally to the oblong type of can?

The Witness: The oblong style—he asked me, sir, about the general line, and we include the oblong can, as classified, as the general line. At least we used to do it. Then there were a number of medicinal, medical items packed in general line cans, and we classified the little aspirin tin as a general line can.

Q. Using those two broad classifications, did the Enterprise Can Company that you acquired make packers cans?

A. They made no packers cans. At the time we acquired them they were making mostly larger cans of the gallon size and up for paint and oil; five-gallon and two and a half, and five-gallon oil and grease drums. I don't remember whether we called those general line cans or not. That is quite a few years ago.

Q. You acquired a plant from the American Tobacco Company in Baltimore?

A. Yes, sir.

Q. Using those two broad classifications, what type of cans were they making?

A. They were making mostly general line cans and a [fol. 343] great many tobacco cans. Whether that was

classified as general line I don't know, sir. They also made housewares. They did not make packers cans.

Q. Now, would you tell me again—I have forgotten—when did you first go into the can business?

The Court: He said 1936.

A. 1936, early.

Q. After entering the can business did you build any additional plants or add any additional substantial equipment?

A. Yes, sir. We added a sanitary can line, a packers can line, in Baltimore, and we built a can plant in the Clearing District of Chicago where we manufactured packers cans and drums and larger containers of that type.

Q. Is your company presently in the can business?

A. No, sir.

Q. When did your company go out of the can business?

A. 1944—October, to be exact.

Q. For the years prior to 1944 had your can business been an unprofitable operation? Had it made profits?

A. Our can business had never made any profits. The first profit we made in the can business was in 1941.

Q. And from 1941 to 1944, when you sold your can busi-
[fol. 344] ness, had you made a profit?

A. We were making some profit.

Q. And in 1944 what did you do with the can business?

A. We sold our can business.

Q. Who did you sell your can business to?

A. Continental Can Company.

Q. And do you recall if you approached them to sell your company or did they approach you?

Mr. Hughes: Your Honor, we have been going into this at considerable length. What is the relevance of this?

Mr. McManus: I want to show the organization and the size of this company. I have not asked him yet why they went into it and what the size was when Continental acquired it.

The Court: What does the question that you have just asked to do with the subject matter that you have just talked about?

Mr. McManus: Well, I think it is important to show——

The Court: If you want to go into that question, the size

of the can business that they sold to Continental and the development of that can business, go ahead, but I do not [fol. 345] see what that has to do with the question that you are now propounding, or vice versa.

Q. Do you know what your position was in the industry at that time, No. 1, 2, 3, 4 or 5?

A. Only——

The Court: You mean in the can industry?

Q. In the can industry.

A. You mean in the can manufacturing industry?

Q. Yes.

A. I would have to guess at that. We were either third or fourth.

Q. Do you know who was first and second?

A. Well, I know that American and Continental Can were larger than we were. Whether National Can was larger—a little larger or a little smaller, I couldn't answer that. I can't tell you that.

Q. Now why did you decide or why did your company decide to go into the can business in 1936?

Mr. Hughes: I object to that as incompetent, irrelevant and immaterial.

The Court: I will sustain the objection. If you want to ask what factors did he take into account in reaching a decision as to whether or not to go into the can business, I [fol. 346] will permit that question.

Mr. Hughes: Your Honor, just so I do not interrupt each time, may I have a continuing objection to any of this line?

The Court: The whole line?

Mr. Hughes: Yes.

The Court: On this can company acquisition?

Mr. Hughes: Yes.

The Court: Well, just so we understand the objection, Mr. Hughes, what are your grounds?

Mr. Hughes: I do not see what relevancy it has as to what actuated this company in 1934 to any issue in this case.

The Court: All right, I will take it.

Q. What factor did you take into account in deciding to go into the can business?

A. Well, that takes more than a yes or no answer.

The Court: Oh, it certainly does.

A. I think we were quite conscious at the time that the consumer packaging demands for consumer packages or the development of the use of packaging of various products was probably on a rapid increase. Certainly, cans did, in our opinion, at that time play a part in the growth of that package demand. And, certainly, that was one very definite [fol. 347] reason.

I can think of two other reasons that we went into the can business: that for the first time the can companies had made inroads on what we considered our traditional business, beer.

Another shock that came to us was this: when tomato juice first came on the market it was in glass, and we woke up to the fact suddenly one day that it was all in tin.

I would say that those three factors were the major factors as to why we went into the can business.

Q. Now are you selling containers today, glass containers, for the packaging of tomato juice?

A. I think so, sir. I see glass containers on the market with tomato juice in them. Whether they are ours or not I couldn't tell you for sure.

The Court: You hope so.

The Witness: If I get close enough to look at the bottom I can tell.

Q. Now, Mr. Levis, you stated that your company is also producing plastic containers, is that correct?

A. Yes, sir.

Q. Do you know the type of basic material that your company uses in the plastic container that you make?

[fol. 348] A. Well, we make plastic containers out of several different materials. Would you please define what you mean by plastic containers a little more accurately and then I can answer it?

The Court: Mr. McManus, didn't Mr. Babcock give us a very thorough description of how Owens-Illinois makes plastic containers.

Mr. McManus: That is correct.

The Court: Why do we have to repeat that?

Mr. McManus: What I want to find out, your Honor, is this:

Q. I understand now that you make high density polyethylene containers, is that correct?

A. Yes, sir.

Q. And for approximately how long a period of time have you been making those containers?

A. I think Mr. Babcock reported in 1958. I could not answer that as to the day or week or month or year.

Q. Now, what factors did you take into account when you decided to go into the manufacture of high density polyethylene containers?

Mr. Hughes: The same objection as to relevancy and [fol. 349] competency and materiality.

The Court: Relevancy is one and materiality is another. What is this about competency? There was no previous objection about competence, as I recall.

Mr. Hughes: I withdraw the objection as to competence.

The Court: Very good.

A. I would like to have you ask me your question again. I am at a loss——

Mr. McManus: Could you read that question back?

Mr. Hughes: I take it the objection is overruled?

The Court: Yes, the objection is overruled.

(Question read.)

A. We believed that there was going to be a number of or a substantial quantity of containers of that kind sold and there was an opportunity to sell, I hope, at a profit, containers in the field that we believed that those were going to be used in increasing quantities, and we thought we ought to go into the business.

Q. Were there any other factors?

[fol. 350] A. Well, possibly we had some defensive feeling in mind, that perhaps they might make inroads on some glass fields.

The Court: What, for example?

The Witness: Well, they might make—they might enter the bleach field. They haven't up to date to any degree. In

the case of where we sell our largest volume, and I believe Mr. Babcock testified, that was in the light detergent field, which was not in glass, had been in glass once, was not in glass to any great extent at present, and that was an opportunity to take a substantial amount of container business which did not take it out of glass, it took it out of tin.

The Court: In other words, Mr. Levis, I gather that you had two things in mind or two factors that you took into account: one, to prevent inroads on your glass or to protect the market in glass against possible substitution of plastics, and the other was to expand into other fields, is that right?

The Witness: I think, sir, I would like to qualify that. We did not go into it to keep our glass market because we didn't think by going into it that we would keep the bleaches, [fol. 351] for example, from going into plastics.

The Court: You want to keep your market——

The Witness: We wanted to retain the volume of business in that field. That was only one reason. The other reason was that we believed we could further expand our sales in this field.

The Court: Has that been a profitable operation to date?

The Witness: There has been so much development work on it, r, developing machinery and equipment, that it would be—it wouldn't be profitable to us to date. We hope that it will be and look forward to it being profitable, but if we charge back the development work against it——

The Court: It wouldn't be profitable in the profit and loss statement?

The Witness: No, sir.

By Mr. McManus:

Q. And, Mr. Levis, that would be as of the present time, isn't that right? It would not be profitable as of the present moment?

A. If you are asking me if it is currently profitable as of this month from a bookkeeping standpoint, I would say yes. We are a long way from absorbing the amount of invest- [fol. 352] ment in the development work that we put into the development of the machines and the processing.

Q. Do you happen to know or do you know or could you

tell me how many plastic container plants you have that manufacture high density polyethylene containers?

A. That we have? I thought Mr. Babcock reported on that. He is more qualified to do that than I am. I could tell you approximately.

The Court: I think Mr. Babcock covered that.

Mr. McManus: All right.

Q. Directing your attention to the glass containers that you make for food products, in arriving at the price at which you sell your glass containers for food products, is the price of other types of containers a factor in the price that you arrive at for your glass containers?

A. The price of other types of containers?

Q. Yes.

A. Yes, they are taken into account.

Q. You take into account the raw material used by other types of containers, that is, the price of raw materials for other types of containers?

[fol. 353] A. That is a factor.

Q. What type of raw materials used in other containers do you keep yourself advised on?

A. Well, we keep ourselves advised as to all packaging material prices. Any material that is used in the packaging field, we are quite conscious of the cost of that material. Many of them we buy ourselves. We buy tinplate.

Q. In the food field you would take into consideration the price of tinplate in arriving at the price?

A. We would take that into account.

Q. Would you take into account the price of metal cans in arriving at the price of plastic containers in the food field?

Mr. Hughes: Your Honor, it seems to me that he is using the word "food"——

Mr. McManus: In glass containers—I will withdraw the question.

The Court: Yes, I think you better withdraw it and reframe it.

Q. In arriving at the price that you sell your glass containers for in the packaging process field, in arriving at

that price, do you take into consideration the price of metal [fol. 354] containers? Is that a factor?

A. Yes, sir.

The Court: What other factors do you take into account besides the can prices, the raw materials for other containers and the prices of other types of containers generally?

The Witness: Our own costs, sir.

The Court: You take into account your own costs of manufacturing and sales. What else do you take into account? Do you take into account the factors concerning reactions of your customers, and how do you act on those?

The Witness: Well, I will answer you by saying, sir, that our costs and the raw material costs are only factors but they are not a final determining factor. Perhaps we can get a premium for our containers. We take into account, will the customer pay a cent more because he sees features in the jar or will he not. Sometimes we find that he will and other times we find that he will not. Those are other factors in determining the price.

The Court: That is what I was getting at. You can multiply that type of factor, I presume, quite a bit in dealing with your customer relations and what prices you consider [fol. 355] to be fair prices to give you a fair profit?

The Witness: Now, I don't know what you mean by multiplying——

The Court: Let me put it this way. You gave one example of the ultimate customer being able to see features to glass that he could not see to a can, which is a factor that might influence the packer in buying a glass.

The Witness: That is right.

The Court: And there were other factors of that nature that you take into account when you consider individual customers and their individual needs, is that right?

The Witness: Yes, sir.

The Court: All right.

Mr. McManus: Your Honor, at this point could we take about a ten-minute mid-morning recess?

The Court: We will take a short mid-morning recess.

Mr. McManus: I did not mean to set the time.

The Court: All right.

(Short recess.)

[fol. 356] The Court: All right, Mr. McManus.

By Mr. McManus:

Q. Mr. Levis, could I go back to your answer in regard to the number of glass container plants that your company has in which you gave their location. Could you tell me if you overlooked any of your plants?

A. Yes, sir, I overlooked three plants in West Virginia; Charleston, Fairmont and Huntington.

Q. Thank you, sir.

A. When you originally asked me the question I had forgotten. That was glass container plants only that you asked me about.

Q. That's correct, sir.

Now, you have testified that one of the factors that you took into account in the pricing of your glass container was the price of metal cans. Do you take into account the price of metal cans in pricing your glass containers for the beer industry?

A. Yes, sir.

Q. For the soft drink industry?

A. Yes, sir.

Q. For the toiletries and cosmetics industry?

A. Not to the same degree.

Q. Household and industrial?

[fol. 357] A. Probably more so than pharmaceuticals.

Q. Mr. Levis, are you familiar with the National Canners Association?

A. Generally, yes, sir.

Q. You know that there is such an association?

A. Yes, sir.

Q. Do you know if they have conventions yearly?

A. Yes, sir. I have attended them.

Q. You have? Do members of your glass container division attend those conventions?

A. We have representatives from the glass container division of our business at those conventions, yes, sir.

Q. And what is the purpose of their attending those conventions?

Mr. Hughes: Well, your Honor, it seems to me that that is irrelevant and immaterial.

The Court: Overruled.

Q. Would you answer, please?

A. Well, a great number of our customers attend those conventions.

Q. Would these customers that you are talking about be members of the Association?

Mr. Hughes: Well, your Honor, I don't know, how can Mr. [fol. 358] Levis possibly say whether they are or not?

The Court: This is so obvious; plainly a number of customers of Owens-Illinois and Continental Can and American Can are all members of the National Canners Association.

Q. Is that correct, Mr. Levis?

The Court: There is no doubt about that, is there?

Mr. Hughes: No, your Honor, but—well never mind.

A. I would presume they were members.

The Court: I presume a lot of non-members come to conventions, too, don't they, Mr. Levis?

The Witness: I would presume so, sir. I wouldn't know for sure.

Mr. McManus: That is all I have, your Honor.

The Court: All right, Mr. Hughes.

Mr. Hughes: Your Honor, before I proceed with the cross-examination I would like to move to strike from the record the testimony concerning the can operations and the sale of the can company to the Continental Can Company, and I would ask your Honor to reserve decision on that until such time as we go into this whole question of prior acquisitions [fol. 359] which your Honor has indicated you will explore.

The Court: You made your motion to strike. I will reserve decision on the motion to strike pending arguments on it.

Cross-examination.

By Mr. Hughes:

Q. Mr. Levis, during the time that you owned that can company—what was the name of it, the can company that you had? What was the name of the can company?

A. The can company as we owned it?

Q. Yes.

A. Owens-Illinois Can Company.

Q. During the time that you owned it did that company ever make a beer can?

A. No, sir.

Q. Do I understand that you lost money on the operations of that can company overall?

A. Yes, sir.

Q. And during the war you made some money in its operations, is that right?

A. During the years we were in war production work we made some money out of the business, yes, sir.

Q. And during that time you were mainly making prod-
[fol. 360] ucts other than metal cans, is that correct, in the war years?

A. No, sir. During the war years—I can't answer you that in percentage of the business, but during the war years the general line of the can business was the one that was most limited in the tin-plate they could get. The business that we had in the packaged can business is probably—was not interfered with very much.

Q. In any event, it was during that period that you operated in the black, is that correct?

A. We operated one year in the black before the war. The last year that we were permitted a full supply of tinplate we operated in the black.

Q. And you sold the company in what year?

A. 1944.

Q. To Continental Can Company?

A. Yes, sir.

Q. With the blessing of the Department of Justice?

A. That I can't answer you, sir. I don't recall.

The Court: You don't recall the blessing?

The Witness: No.

[fol. 361] A. You would know that better than I do.

Q. Well, I think that is right, we would.

Mr. McManus: Well, your Honor, I object to Mr. Hughes testifying.

The Court: The point is he doesn't remember anyway.

Mr. McManus: That's right, and neither does Mr. Hughes.

Q. Now, Mr. Levis, would you say that competition among the companies engaged in the manufacture of glass containers was keen and vigorous?

A. Yes, sir.

Q. You make beer bottles, do you not?

A. Yes, sir.

Q. Would you say that you were the largest producer of beer bottles?

A. I would say we were one of the largest producers of beer bottles. Whether we are the largest or not I can't answer that definitely.

Q. You do not, however, make the crowns for those beer bottles, do you?

A. We do not.

Q. You have never made crowns for beer bottles, have you?

[fol. 362] A. We have not.

Q. Do you make soft drink bottles?

A. Yes, sir.

Q. Do you make any crowns for those soft drink bottles?

A. We make no crowns at all.

Q. And never have?

A. And never have.

Q. You make plastic containers and you make glass containers, is that correct?

A. Yes, sir.

Q. And you do not make any metal containers; you don't make any cans?

A. No, sir.

Q. Mr. Levis, would you say that Owens-Illinois Glass Company, by reason of the fact that it manufactures and sells both glass containers and closures for glass containers has a decisive advantage over other manufacturers of glass containers who do not have a closure line?

Mr. McManus: Your Honor, I would like to object to that in that I think that is the conclusion that the Court has to come to, and it is a legal conclusion, whether there is a decisive advantage.

[fol. 363] The Court: Yes, I will sustain the objection to the form of the question, not the subject matter of the question, the general subject matter.

Mr. Hughes: Your Honor, just so that I can round out the record on this:

Q. Would you say that Owens-Illinois Glass Company, by reason of the fact that it manufactures both glass containers and closures has a decisive advantage over other manufacturers of closures who do not have a glass container line?

Mr. McManus: Your Honor, I object to that, the same objection.

The Court: Sustained.

Q. Do most of your customers for glass containers have more than one source of supply?

A. For glass containers?

Q. Yes.

A. Yes.

Q. Do most of your customers for closures for glass containers have more than one source of supply?

A. Yes.

Q. Do most of your customers for plastic containers have more than one source of supply?

A. I would think so, but I am not as familiar with our [fol. 364] plastic container customers' requirements as I am glass and closures.

Q. Do most of your customers for closures for plastic containers have more than one source of supply?

A. For closures for plastic containers?

Q. Yes.

A. I will have to answer you the same as I did. I am not as familiar with the requirements of our plastic container customers as I am glass and closures.

Q. Mr. Levis, does your company sell at less than your published list prices to meet a specific price quotation to a specific customer by a can manufacturer?

Mr. Hughes: Would you like that question again?

The Witness: Yes, I am lost.

Mr. Hughes: I am thinking of the Robinson-Patman Act sense. I am using this in the Robinson-Patman Act sense.

Would you read the question now?

(Question read.)

A. For cans?

Q. Not for cans. Do you sell off your list price for glass to a specific customer to meet a quotation by a can manu-
[fol. 365] facturer to that customer?

A. In other words——

Q. In the Robinson-Patman Act sense.

The Court: Now, don't get it further complicated.

Mr. Hughes: I withdraw that.

A. You have got it pretty complicated, Mr. Hughes. I don't know how to answer that.

Q. Well, you have——

A. If a glass company cuts a price to a customer do we meet it?

Q. Well, I would like to put that question to you and have you answer as to that.

If a glass company cuts a price to a customer do you meet it?

A. Well, that is not my—it does not come under my direct jurisdiction, sir. I mean, the pricing of our product and the quotation of prices is the responsibility of the glass container division. That is not mine, other than generally so.

Q. And would your answer be the same with reference to cutting your prices to meet a quotation of a can company to a customer?

A. You mean their quoting on cans and we then meeting
[fol. 366] it with glass?

Q. Yes.

A. I would have to say that I have no direct responsibility for that, sir, and I really could not answer that question.

Q. Mr. Levis, can you use the same bottle for vinegar as you use for liquid starch?

A. I would see no reason why we couldn't.

Q. Can you use the same bottle for peanut butter, or the same jar for peanut butter that you use for silver polish?

A. The same jars?

Q. Yes, same kind of jars?

A. Yes, there is no reason why we couldn't that I can see.

Q. Now you have made reference to your closing equipment, and I take it that you are referring to the equipment which is used to put the closure on the glass container, is that correct?

A. Yes, sir.

Q. And do you manufacture that equipment yourself?

Q. And then you lease it to the packers or other persons [fol. 367] who pack products in glass containers?

A. Yes, sir.

Q. And would you describe to his Honor the efficiency of that equipment in the actual packaging operation? Would you say it is good, efficient equipment?

A. You are a little out of my field, Mr. Hughes. I am not a closure expert, nor am I a packaging engineer. I think the equipment is very efficient—my people tell me it is. That is as far as I know. I have seen it operate and it looks efficient.

Q. And it is usable and satisfactory on the glass containers which you manufacture?

A. I assume that it is satisfactory for glass containers that we manufacture and also glass containers that others manufacture.

Q. In your direct examination you alluded to the fact that glass containers correspond to the size of can containers in certain sizes. Do you recall that testimony?

A. Certain sizes, I said the liquid capacity, as I understand it. We have a two and half jar, for example, which I understand is equivalent in liquid capacity to the designation of a two and a half tin.

[fol. 368] Q. Is there more variation from comparable sizes between cans and glass containers in the larger sizes?

A. I don't understand this, Mr. Hughes.

Q. Well, in the larger sizes, are the cans made to hold the same content of product or is the range of variation there greater than in the smaller sizes?

A. I don't know whether we have a complete line that corresponds to a complete line of cans or not.

Q. You just are unable to say?

A. I am unable to say that.

Q. Do you happen to know whether the George Washing-

ton coffee to which you referred was the same type of instant coffee that is presently on the market?

A. Same type of coffee?

Q. Yes.

A. I don't know. It was a powder that you put into a cup and stirred up with hot water. That is as far as I know about it.

Q. Do you know whether it was an entirely different formulation?

A. I haven't the faintest idea, sir.

[fol. 369] Q. Mr. Levis, do you sell glass containers without closures?

A. Do we sell glass containers without closures?

Q. Yes.

A. Well, to my knowledge we don't sell any glass containers with closures with the exception of our prescription ware line which we sell already capped.

Q. And do you sell closures without glass containers?

A. Yes, sir.

Q. Mr. Levis, I will just show you three annual reports for the years 1953, 1954 and 1959, and ask you to look at them and tell me whether you can identify them as copies of your annual reports for those years.

A. Yes, I am sure they are.

Mr. Hughes: I offer them in evidence.

The Court: Any objection?

Mr. McManus: The only objection I have—I guess I don't have an objection to obviously what they are, but I thought that before any offer was to be made of any document in this court it was to be given to the other side prior thereto and given a chance to examine it, and I am sure these are the reports, but I haven't had any chance to examine them.

[fol. 370] Mr. Hughes: Well, your Honor, if Mr. McManus feels he wants some opportunity——

The Court: You will have a chance to look at them. We will reserve on the offer, that is all.

Mr. Hughes: Could I have them marked for identification?

The Court: We will mark them for identification now.

(Marked Defendants' Exhibits B-1, 2 and 3 for identification.)

Mr. Hughes: I have no further questions.
The Court: Anything further?
Mr. McManus: Just a few.

Redirect examination.

By Mr. McManus:

Q. Now, you testified, Mr. Levis, on cross-examination that competition among the glass container companies was keen and vigorous, is that correct? You so testified?

A. Yes, sir.

Q. Would that be in all of the various lines of glass containers that you manufacture?

A. You mean between companies manufacturing glass containers?

[fol. 371] Q. Yes.

A. Yes, I would say that all the lines were vigorously competed for.

Q. When you say that are you referring to all of the companies in the glass container industry? Competition is vigorous among them all?

A. Yes.

Q. Prior to 1956 would you have included Hazel-Atlas Glass Company in that group?

A. They were competing vigorously for business.

The Court: Is the entity that was formerly Hazel-Atlas Glass still competing?

The Witness: Yes, sir, they are very competitive.

Q. You testified that the glass container that was used for silver polish could also be used for peanut butter, is that correct?

A. Yes, I am sure that you could do that. Now, you could have a liquid silver polish in a narrow-necked bottle and you would hardly put peanut butter in a narrow-necked bottle. You couldn't get it out.

The Court: You are thinking of the paste, aren't you?

[fol. 372] The Witness: Yes. If you put paste in one jar, you could certainly put peanut butter in the same jar.

Mr. McManus: That is all I have, your Honor.

The Court: You may step down, then, Mr. Levis. Thank you.

(Witness excused.)

Mr. Greenberg: Your Honor, the Government's next witness is Mr. William T. Egan.

WILLIAM T. EGAN, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Mr. Egan, where do you reside?

A. In Scotch Plains, New Jersey.

Q. And by whom are you employed?

A. Colgate Palmolive Company.

Q. What has been the period of your employment with this company?

A. Over 40 years.

Q. Will you describe the principal positions you have held with this company?

A. I was assistant director in research and development, [fol. 373] director of packaging for the domestic company, and now manager of packaging for the household products division.

Q. Would you describe for us, sir, your work, duties and responsibilities in each of these various positions?

A. Well, as assistant research director I was responsible for the packaging laboratory where all of our research work was done on packaging, quality control, patent liaison work, and standards and analytical work for the research and development department.

Q. In your present position what are your duties and responsibilities?

A. I am responsible for all of the packaging of the household products division.

Q. Sir, you have been connected with the technical aspects of packaging throughout your experience, have you not?

A. That's right.

Q. Would you describe for us, sir, your educational background?

A. I have a BS in chemical engineering from Cooper Union.

[fol. 374] Q. Does your company market household liquid detergents?

A. Yes, sir.

Q. Do you know how long Colgate has been marketing this product?

A. Within the last five years.

Q. What types of household liquid detergents does Colgate manufacture and sell?

A. There are three types; the light duty that is used for dishes and light fabric; the heavy duty for washing machines; and the all-purpose type for kitchens and bathrooms and so forth.

Q. Do you know, sir, what types of containers your company has used in marketing each of these liquid detergents?

A. Yes.

Q. Would you tell us, sir, what types of containers, through your experience, have been used for each of these products by your company?

A. For the light duty detergents we started out with metal.

Q. Would you raise your voice, sir?

A. For the light duty detergents we used metal cans and now plastic. For the heavy duty detergents we are in cans [fol. 375] and are going towards plastic. On the all-purpose detergents, on the 16 and 32-ounce, we had bottles, and for the 64-ounce, half-gallon, we had cans or have cans.

Q. Sir, would you describe each of these containers for us, what types of containers are they?

A. Well, for light duty we have a three-piece manufactured can with an internal plastic coating and a plastic neck and a plastic cap. Our new container for light duty will be a linear polyethylene container under our special design.

With regard to heavy duty we have had a three-piece metal can with a plastic neck and plastic cap with an internal coating, and in the heavy duty we have had a conventional grip type glass bottle with a plastic cap and a sort of

a rectantgular can for the half-gallon size with a plastic neck and a metal cap.

Q. Thank you, sir. What types of containers, through your experience, have been experimented with by your company for each of these detergents?

A. Well, we always experiment with the conventional glass containers, the metal containers and plastic containers.

[fol. 376] Q. And they are the types that you just described, sir?

A. Yes.

Q. Sir, would you describe for us the types of experiments you conducted with each of these containers?

A. In our experimental work we have to determine whether the container will hold the product, whether we will get contamination which might cause discoloration of the product due to rusting or might affect the odor, and therefore these are aged under accelerated conditions as well as normal conditions and examined from time to time.

Q. During this experimentation program has your company cooperated with any of the container suppliers who supply the types of containers you described?

A. Yes, sir, we rely on the research departments of our suppliers a great deal and share with them our experiments by sending them exactly the same material that we are testing so they can put it up on test.

Q. You do that with the can, glass container and plastic container suppliers?

A. Yes, that's right.

[fol. 377] Q. Would the same be true for your experiments with other products where they involve cans, glass and plastic containers?

A. Yes, sir.

Q. You cooperate with your suppliers?

A. Yes, sir.

Q. And would you say, sir, for the rest of your products that in your company's research laboratories you carry on generally the same type of experiments with various containers that you might use?

A. Yes.

Q. Sir, do you know what types of containers your competitors have used for each of these various liquid detergents?

A. Yes, sir.

Q. Now, how have you gained such knowledge?

A. By visiting the local stores throughout the metropolitan area and sometimes when we are away on trips we also visit the stores.

Q. You do this while you are working for Colgate?

A. Yes, sir.

Q. And it is for a business purpose?

A. Yes, sir.

Q. Sir, would you tell us what types of containers your competitors have used for each of these various liquid detergents?

[fol. 378] A. Well, on light duty detergents, for example, the leading one came out in cans. Another one was out in glass bottles, and then changed to cans, and now are in plastic containers. The heavy duty have been in cans and the all-purpose have been in glass bottles, with some half-gallon cans.

Q. Sir, changing the direction of my questions for a moment and directing your attention to liquid shampoos, does your company market liquid shampoos?

A. Yes, sir.

Q. And how long has it been doing so?

A. Well, Halo shampoo has been out since around 1935, '36, the latter part of the 30's.

Q. Sir, what types of containers has your company used in marketing these liquid shampoos?

A. Halo has been principally in glass. We have sales-tested a polyethylene container.

Q. Is this linear high density or the low density?

A. At that time it was the high pressure, low density.

Q. Low density. When you say at that time, sir, can you give us an estimate of what time you are talking about?

A. I think it was around 1956 or '57.

Q. That is your best estimate?

[fol. 379] A. Yes.

Q. Sir, what types of containers, through your experience, have been experimented with by your company for these shampoos?

A. Well, we have been experimenting with glass as one of the containers, metals and plastics, all types of plastic material that have become available to us.

Q. Now you say "metal," sir. Do you mean a can?

A. Yes.

Q. Do you know what types of containers your competitors have used for these various liquid shampoos?

A. Yes.

Q. And you found out about that in the same way that you testified to before?

A. Yes.

Q. Now would you describe each of these containers for us, containers that your competitors have used?

The Court: Wait a minute, now, you don't really mean that. Do you want him to describe each container his competitors have used?

Mr. Greenberg: I don't mean that literally, your Honor.

[fol. 380] The Court: You want him to give us some general description of the types of containers that competitors are using, is that what you want?

Mr. Greenberg: Yes, that was the intent of the question.

The Court: All right, let's have it.

A. Our competitors have used glass and plastic, to my knowledge.

Q. Now, could you describe the type of glass containers and the type of plastic containers you referred to?

A. Well, each company has their own type of shaped glass container.

Q. Well, this is a conventional glass container and the plastic container that you are familiar with, right, and that you discussed before?

A. Yes.

[fol. 381] Q. Sir, changing the direction of the questions again, at this time to liquid cream shampoos——

A. Yes.

Q. Your company markets that product, is that right, sir?

A. Yes.

Q. How long has it been doing so?

A. Within the last ten years I believe we have been putting out cream shampoos in a liquid form.

Q. What types of containers has your company used in marketing these liquid shampoos?

A. Glass containers.

Q. Glass containers?

A. Yes.

Q. What types of containers through your experience have been experimented with by your company for these liquid shampoos?

A. Again we would put it up in glass cans and plastic.

Q. What type of plastic containers?

A. The regular polyethylene.

Q. Has your company experimented with high density polyethylene?

A. Yes, sir.

Q. What have been the results of those experiments?

[fol. 382] A. High density has only come out in the last few years and I have not been in charge of the work and research on that end in the last few years.

Q. Sir, do you know what types of containers your competitors have used for these various liquid shampoos?

A. Glass and plastic.

Q. When you say plastic, what type do you mean?

A. Polyethylene—that would be the regular polyethylene.

Q. Sir, changing the direction of the questions again, and this time to hairdressings, your company markets that product, is that right?

A. Yes.

Q. How long has it been doing so?

A. Well, within the last ten years. We have lustre cream hairdressing, and we have put that out in glass, and we have put out various brilliantines in a glass container.

Q. Sir, what types of containers through your experience have been experimented with by your company in these products?

A. Mostly glass and plastics in this particular case.

[fol. 383] Q. Do you know what types of containers your competitors have used for these liquid hairdressings?

The Court: Let us try a shortcut with this witness. When you give these substances let Mr. Egan give all the information about each one of them that he gave previously so that you won't have to repeat the questions.

Mr. Greenberg: All right, sir.

Q. We are now on liquid hairdressings, to refresh your recollection, and we are up to the question about what your competitors have been doing.

The Court: What do your competitors use?

The Witness: Glass and plastic.

Q. Directing your attention now to liquid insecticides?

A. Liquid insecticides, we are using metal cans with a pump and glass bottles with a pump.

Q. When you say a pump, what do you mean by that?

A. A plunger-type pump that is used on the various types of products that you have just mentioned.

Q. In other words, the pump pumps the glass contents resulting in a spray?

A. Yes.

[fol. 384] Q. And does this container have the same end use as the aerosol can?

A. To a certain degree, yes, sir.

Q. They both emit spray?

A. Yes, sir.

Q. They have both been designed for that end use?

A. Yes.

Q. And that is so for your company?

A. Yes.

Q. Would you continue now? What types of containers through your experience have been experimented with by your company for liquid insecticides?

A. Glass and metal, and we have experimented with plastic also.

Q. And what do your competitors use?

A. As far as I know, glass and metal.

Q. Sir, referring now to liquid deodorants, does your company put that out?

A. We put out a product called Veto in a regular polyethylene feed spray container.

Q. How long have you been doing so?

A. Within the last five years.

Q. And what types of containers has your company used?

[fol. 385] A. Just the polyethylene squeeze-bottle.

Q. And what type of containers have you experimented with?

A. Glass and plastic in those particular cases.

Q. And what have your competitors been doing?

A. Mostly plastic, as far as I know.

Q. Now when you say glass in this particular area, will you describe the container?

A. Well, you can have a conventional glass bottle with a spray pump on it to give the atomization. This is a squeeze bottle with a plug and a tube in it for atomization.

Q. Referring now to paste cream deodorants, how long has your company been marketing that?

A. Over five years.

Q. In what type of containers?

A. For our shampoos we use opal jars and collapsible metal tubes.

Q. What types of containers have you experimented with?

A. Plastic collapsible tubes and plastic jars.

The Court: The collapsible tubes that you are presently using, are they metal or plastic?

The Witness: Metal.

[fol. 386] Q. What are your competitors using for that?

A. The same type of packaging.

Q. Directing your attention now to paste cream shampoos, your company markets that, is that right?

A. That is what I was referring to, Mr. Greenberg.

Q. You were referring to both?

A. Yes.

Q. Paste cream deodorants and paste cream shampoos, and you were describing the experiments you have made?

A. I am sorry, were you talking about——

Q. I was on deodorants.

The Court: No, you were on paste creams last.

The Witness: I thought you said cream shampoos.

Q. Well, I thought I said cream deodorants. We are now talking about cream deodorants.

A. Cream deodorants have been in opal glass jars.

Q. And what containers have you experimented with?

A. Plastic—just plastic besides the opal glass.

[fol. 387] Q. When you say plastic, what do you mean by that?

A. Polyethylene double-wall jars.

Q. Mr. Egan, I would like to go back to the shampoos. First, the cream shampoos, what type of containers do you use?

A. An opal jar for our Lustre-Creme shampoo, and we have tested double-wall polyethylene jars.

Q. And what are your competitors using?

A. Similar opal jars. I am not sure whether they have experimented with plastic jars.

Mr. Greenberg: You may cross-examine, Mr. Hughes.

The Court: Mr. Hughes, rather than commencing your cross-examination and going on after lunch, unless you do not have much to ask this witness and you can be finished with him before lunch——

Mr. Hughes: I would like to take a recess now, your Honor.

The Court: All right, we will take a recess now and we will return here at five minutes after two.

Mr. Hughes: This witness was called out of order and we have made no objection to that but I did not even have the file here.

[fol. 388] The Court: All right.

(Recess to 2,05 p.m.)

AFTERNOON SESSION

The Court: Mr. Egan will resume the stand. I understood you wanted to ask a few additional questions, Mr. Greenberg?

Mr. Greenberg: Just four short questions, your Honor.

The Court: Very good.

Mr. Greenberg: Thank you.

WILLIAM T. EGAN, resumed.

Direct examination.

By Mr. Greenberg:

Q. Mr. Egan, would you tell us the names of the aerosol can manufacturers you have worked with in your joint research activities?

A. With the drawn can we worked with Crown Can Company, who are the only manufacturers of the drawn can.

The Court: What is a drawn can?

The Witness: It is a piece of metal that they press a die

through and then the metal draws down so there is no seam on the side of the can.

[fol. 389] The Court: I see.

A. (Continuing) With the three-piece conventional manufactured can we have worked with Crown, Continental and American Can Company.

Q. Sir, are these two type of cans interchangeable?

Mr. Hughes: I object to that.

Q. Do they serve the same end use, sir?

A. They do serve the same end use, yes, sir.

Q. Would you tell us the names of the conventional can manufacturers you have worked with in your joint research activities?

A. On aerosols?

Q. No, the conventional cans.

A. Oh, conventional. Crown, American, and Continental Can Company.

Q. Sir, would you tell us the names of the plastic bottle and jar manufacturerers you have worked with in your joint research programs?

A. On plastic containers we work with Plax, Owens-Illinois, Imco and Continental Can.

Q. Sir, would you tell us the names of the conventional glass container manufacturers you have worked with in your joint research activities?

[fol. 390] A. Well, Owens-Illinois. There is some company over in Jersey. I can't think of their name. And as far as jars are concerned, we worked with Hazel-Atlas and I can't think of the other names of suppliers of jars. Probably Wheaton on glass containers, too.

Mr. Greenberg: You may cross-examine, Mr. Hughes.

Cross-examination.

By Mr. Hughes:

Q. Mr. Egan, with what division of the company are you now connected?

A. The Household Products Division.

Q. And how long have you been with that division?

A. Since May, 1957.

Q. And it was prior to that that you were with the Toiletry and Cosmetics Division, is that right?

A. That's right.

Q. Is it fair to say that since the time of your transfer from one division to the other that substantially all your time and attention have been devoted to your duties in the Household Division?

A. Yes, sir.

Q. And would it be in that division of your company that [fol. 391] you have more closely followed the various developments that you have testified to on your direct examination?

A. Yes, sir.

Q. Now in your direct examination you referred to the fact that your competitors have used certain types of containers for their competitive products. Do you recall that?

A. Yes, sir.

Q. When you were asked about certain household and chemical items and certain cosmetic items, you were not attempting to testify, were you, to any of the quantities which any of your competitors used of any particular type of container?

A. No, sir.

Q. And you would not undertake to testify to any of their quantities of any particular container for any particular purpose, would you?

A. No, sir.

Q. In the detergent field there are so-called dry detergents as well as liquid detergents?

A. Yes, sir, there are powdered detergents.

Q. Is liquid detergents a relatively newcomer in the field?

A. Within the last ten years, yes, sir.

[fol. 392] Q. And prior to that it was all powdered?

A. Yes, sir.

Q. And even prior to that I guess it was all soap?

A. All soap.

Q. So first it was all soap, then the dry detergents and then the liquid detergents?

A. Yes, sir.

Q. And at the present time you have both the dry detergents and the liquid detergents?

A. That is correct.

Q. And would you say that the overwhelming volume of all detergents was in the dry detergent field?

Mr. Greenberg: I am going to object to that question, your Honor, on the ground that it is ambiguous. Are we talking about his company, and if we are, a foundation should be laid.

The Court: Sustained. Reframe the question.

Q. Do you have a generalized knowledge of the approximate quantities of dry detergents that are used in the industry as distinguished from the liquid detergents?

A. Well, I see reports and I have that knowledge.

[fol. 393] Q. To the extent of the knowledge that you have is there a greater volume of dry detergents than there is of liquid detergents marketed in the industry?

Mr. Greenberg: Objection, your Honor, until we know which reports the witness is referring to, where he gets them, and, in other words, a foundation for it.

The Court: Yes, I do not think there is any foundation for it.

Q. Coming down to your own company, does your own company make dry detergents as well as liquid detergents?

A. Yes, sir.

Q. In your own company would you say that the greater volume would be the dry detergents?

Mr. Greenberg: I object to the question, your Honor.

The Court: No, he is familiar with his own company. Overruled. I am not going to assume that an ordinary man in a responsible position of a business is not familiar with the activities of his own company. We are just wasting time on that.

Q. Would you like the question reread?

[fol. 394] A. Yes.

(Question read.)

A. Yes, sir.

Q. And would you say that it was substantially greater than the liquid detergents?

A. Yes, sir.

Mr. Greenberg: I object, your Honor.

The Court: Overruled.

Mr. Greenberg: May I have the same objection to this line of questions?

The Court: No, you are not going to have a continuing objection to questions of that nature. If you have an objection, state it everytime.

Q. Coming down to the liquid detergents, there are three types, are there not, the light duty, the heavy duty and the all-purpose detergent, is that correct?

A. Yes, sir.

Q. Let us take up the light duty detergents first. Did your company ever market a light duty detergent in a glass container?

A. Mr. Hughes, if you are asking me a question for household purposes——

Q. Yes.

[fol. 395] A. The only container we have had up until the present time has been cans and now we are in plastics.

Q. So that when you started to market a light duty detergent commercially for household purposes you commenced with a can, is that correct?

A. Yes, sir.

Q. And then in 1958 you used polyethylene?

A. Yes, sir.

Q. And was it at that point that you started or that you marketed it in the plastic container?

A. We started this year. We have been designing and doing research from 1958 and we just started this year.

Q. That is, with the advent of the new container, you had this experimentation which you described and you are now starting to market it commercially in these plastic containers?

A. Yes, sir.

Q. Will you tell us the factors which induced you to move from the metal container into the plastic container for this type of detergent?

Mr. Greenberg: Your Honor, may we have a definition of what "you" means. Does it mean the company or the [fol. 396] person on the witness stand or what? I object to the form of the question.

Mr. Hughes: I will try to clarify that.

The Court: All right.

Mr. Hughes: I am asking for this witness's personal opinions based on his experience as an employee of the company.

Q. You understood that, didn't you?

A. Yes.

Q. With that clarification, would you like the question reread?

A. Yes.

(Question read.)

A. Well, with the metal cans we have always had problems with internal liners because liquid detergents penetrate through the liners and cause corrosion, and therefore we were looking for some impermeable material. When linear polyethylene became available and we could get the containers for testing, we put it on tests and when we found out that it would contain it without loss of weight, we became interested in it as a commercial item, and we designed our bottles, and after many research tests decided on one [fol. 397] and went into production on that particular one.

Q. Did you make any consumer preference tests of any sort?

A. Yes, sir.

Q. And what did you conclude with reference to that aspect of the matter?

A. Well, the research showed that the consumer preferred a plastic container over the various types that we had exposed it to.

Q. Is it a fact that the metal container tended to leave rust marks on the sink and places like that in the household?

A. That is a factor, yes, sir.

Q. And you found that to be a factor in your study and analysis of the situation, is that right?

A. I am not so sure of that, Mr. Hughes, as far as that particular study is concerned.

Q. Do you know whether any of the companies ever marketed liquid detergents in glass containers?

A. Yes, sir.

Q. And they were doing this before you went into the liquid detergent field, is that right?

A. Yes, sir.

Q. And they moved from the glass into the metal con-
[fol. 398] tainer, is that right?

A. Yes, sir.

Q. Are you familiar with the factors that induced them to move from glass into metal? I am just asking you in a general way now.

A. I believe they had formulation problems.

Q. And can you be a little more specific on that? What do you mean by formulation problems?

A. The formula in glass would cause problems in metal containers.

Q. Was breakage a factor?

A. I am not sure of that.

Q. In any event, the progress was from glass containers to metal containers, is that right?

A. Yes, sir.

Q. And now that product has moved into the plastic container?

A. It is now in the plastic container, yes, sir.

Q. And are actively marketed in that type of container?

A. Yes, sir.

Q. And in your view will the plastic container in due course substantially occupy that whole area of the market?

[fol. 399] A. Yes, sir.

The Court: Plastics are increasingly taking over, are they not?

The Witness: Yes, sir.

Q. And would it be fair to say that this has been a process of the products finding the ideal containers in which to be marketed?

A. Yes, sir.

Q. Now, heavy duty detergents, is that both in dry form and in liquid form?

A. Yes, sir.

[fol. 400] Q. And in your company would you say that a much greater part of your volume is in the dry heavy duty than in the liquid heavy duty?

A. Yes, sir.

Q. The all-purpose detergent moves in glass in the household sizes, is that correct?

A. Yes, sir.

Q. And that does not move in plastic, so far as you know, is that right?

A. I am sorry?

Q. It does not move in plastic, so far as you know?

A. The all-purpose?

Q. Yes, the all-purpose.

A. No.

Q. And your all-purpose has a trade name Genie, is that right?

A. Yes.

Q. And you have no plans to pack your Genie in any other type of container except the glass container, do you?

A. Well, we do have the 64-ounce in a half-gallon can, Mr. Hughes.

Q. Well, but presently you are packaging that in the [fol. 401] half-gallon can and that is the largest size?

A. Yes.

Q. But do you have any plans for changing the container which you are using for your Genie?

A. Not with the present formulation.

Q. Now, of the items that you have testified to on direct examination, the detergents and the insecticides would be the two items that would be in the household division, is that correct?

A. Yes, sir.

Q. And are there literally hundreds of other products in the household division besides these two items concerning which you have testified?

A. I don't know about hundreds; there are others.

Q. Are there many others?

A. Well, you can classify them into toilet soaps and cleansers——

Q. Will you tell us some of these items?

A. Well, we have our toilet soaps, Cashmere Bouquet and Palmolive that are used for bath and hand, and we have the Ajax cleanser for scouring purposes, and we have the Florient deodorant, a household deodorant, and the insecti- [fol. 402] cides, the Kan-Kill insecticides.

Q. And in the household and chemical areas in these classifications there are many, many more products which your company does not even market; isn't that correct?

A. Yes, sir.

Q. Would you say that runs into the hundreds?

A. It could, yes, sir.

Q. Now, in the toiletries and cosmetic field, on your direct examination, you referred to liquid shampoos, is that correct?

A. Yes, sir.

Q. Liquid cream shampoos?

A. Yes, sir.

Q. Liquid hair dressing?

A. Yes, sir.

Q. Liquid deodorants?

A. Yes, sir.

Q. And paste cream deodorants?

A. Yes, sir.

Q. Now, does your toiletry and cosmetics division market other products than these five concerning which you were interrogated?

A. Well, dentifrices and shaving creams are two big [fol. 403] brands with our company, Ribbon Dental Cream and Palmolive Shaving Cream in tubes, jars and aerosols.

Q. As a matter of fact, dentifrice is one of your very big items, is it not?

A. Yes, sir.

Q. The famous Colgate tooth paste?

A. Yes, sir.

Q. A much greater item than any of these items concerning which you testified, is that correct?

A. Well——

Q. In quantity marketed?

A. Possibly.

Q. There is no doubt about it, is there?

A. I don't have those figures to say positively.

Q. And the Palmolive soap is also a very famous and well known product?

A. Yes, sir.

Q. And that is sold in very substantial quantities, is it not?

A. Yes, sir.

Q. In the toiletries and cosmetic field, generally, there are many products which your company does not even manufacture, isn't that so?

[fol. 404] A. Yes, sir.

Q. Can you give us some illustrations of that?

A. Perfumes, eye make-up products, fingernail products are a few of the types.

Q. Now, your toothpaste moves in what kind of a container?

A. We have an aluminum collapsible tube, various sizes.

The Court: Who do you buy that from?

The Witness: The collapsible tubes?

The Court: Yes.

The Witness: We buy those from several companies: White Metal, Sun Tube, which is part of American Can now, Wirz, and I think that's all right now.

Q. And would you say that the specific products that you were examined about on direct examination in your household products and the specific items you were examined about in the toiletries and cosmetics represents only a very small part of the total products that are marketed in the entire household and chemical field and in the entire toiletry and cosmetic field?

Mr. Greenberg: I am going to object to that question. We can ask the witness, I assume, what percentage it represents. [fol. 405] We have an ambiguous term in there, "very small," and I object.

The Court: Yes, I think that question is slightly obscure, Mr. Hughes. You had better reframe it.

Q. If you tried to state it in terms of percentage would you be able to do so?

A. No, sir.

Q. And not being able to do so are you able to give us any expression of the approximate amount that those products bear in relation to the entire household and chemical and toiletries and cosmetics field?

Mr. Greenberg: Your Honor, I will object to that question.

The Court: Overruled.

A. Well, Mr. Hughes, I am not very much up on statistics. My position is to find new packages and get packages.

not to go into the volume. That is up to other departments. I am sorry, I don't have all that information.

Q. And you wouldn't undertake to give his Honor any impressions on that subject one way or the other?

A. No, sir, I would not know, honestly.

[fol. 406] Q. Do you have more than one source of supply for the containers that you buy for your products?

Mr. Greenberg: Your Honor, I will object to that question on the ground that he does not buy the containers. No foundation has been laid for it.

The Court: Are you familiar with the buying of what containers are purchased?

The Witness: I am familiar with whom we work with, but not the actual buying and the prices and so forth. That is not my responsibility.

Q. And you are familiar with the buying policies of your company, is that correct?

A. Generally.

Q. And you are in close liaison with those who do the buying?

A. Yes, sir.

Q. Will you tell me whether your company has more than one source of supply for the containers which it uses for its products?

A. In most cases we have more than one supplier, yes, sir.

Q. And when you say "In most cases," are you thinking of any case where there is——

[fol. 407] A. Well, if the volume is small, Mr. Hughes, we wouldn't have many suppliers, but where it is a large volume it is our responsibility in the packaging department to check out a supplier's package and make sure it meets our specifications and then put it on the approved list, and our purchasing department prefers to have two or three suppliers so that in case of fires or strikes or something that might be unforeseen we still can get containers for production.

Q. It is only where small quantities are involved that you would have a single supplier?

A. Or if we are starting out with a new product, yes, sir.

Q. There are instances where there are small quantities involved?

A. Yes, sir.

Q. Do you have more than one source of supply for your closures?

A. For closures?

Q. Closures, yes.

A. Yes, sir.

Q. Would you say that you had several sources of supply for your closures, more than two?

A. It depends upon what package. As far as Vel, we [fol. 408] have two suppliers of closures for Vel containers.

Q. At least two?

A. Yes.

Q. And in some instances more than two?

A. Yes, sir.

Q. Now, you have spoken about the experimentation that you have done with these various products on your direct examination, and I suppose you are continuing to do that sort of experimentation?

A. Yes, sir.

Q. And so far as you know, everybody in the business does that sort of experimentation?

A. I presume so.

Q. What percentage of that experimentation ever leads to any change in the type of container that you use for a particular end use?

Mr. Greenberg: Your Honor, I will object to that question. It is highly conjectural, highly speculative. I object to the form of the question.

The Court: Can you answer the question?

The Witness: Not in changes of containers, your Honor, only in internal coatings of the container, a specific container.

[fol. 409] Mr. Greenberg: Could we have the last question read back?

The Court: Yes.

(Question read.)

The Court: He said he couldn't answer.

A. I couldn't give you a percentage, Mr. Hughes.

Q. You don't switch back and forth from one container to another from year to year for a particular end use, do you?

A. Will you specify what you mean by switching back from one container to another?

Q. Well, you wouldn't switch from glass to plastic and back from plastic to glass?

A. Oh, no.

Q. In a particular end use?

A. No.

Q. About how long do you experiment before you would make a change in the kind of container you would use for a particular product?

A. We usually ask for about three months for experimental work, and then, because our products are used on human beings, we are very careful and we might go into a sales test in a city to find out how the product is doing and what the results are, and that might take six months. Usu- [fol. 410] ally our company takes a year before we ever go nation-wide on a new product.

Q. And sometimes longer, isn't that right?

A. Yes, sir.

Q. Take Dynamo; how long have you been working on that?

A. We have been working on that for the last five years and just launched a sales test this year.

Q. Does your company make a complete line of insecticides?

A. Yes, sir.

Q. Is one of the insecticides which you make a roach and ant killer?

A. Yes, sir.

Q. Is that the product that you were referring to when you were being examined on your direct examination this morning?

A. That's in glass and cans with pumps, yes, sir.

Q. About how many other insecticides do you market?

A. I believe we have two others, one for mosquitoes and that type of insect, and then one for the plant insects.

Q. What type of containers do they move in?

A. They are in metal containers because they are aerosol [fol. 411] products.

Q. They are exclusively in metal?

A. Yes, sir.

Q. And this roach and ant killer is in, did you say, a glass bottle, is that right?

A. Glass bottle and a metal can, and also in an aerosol. Roach and ant is in all three.

Q. Is there a consumer demand for the product in those three types of containers?

A. Yes, sir.

Q. Will you tell us the reasons why you market it in these three varying forms?

A. Well, some women prefer a can and others a bottle, and with a pump for around the baseboards, to use it for roaches and ants that are just crawling along the floor.

Q. Let me see if I understand that. In other words, if you want to dispense that at a floor level, the pump is an undesirable kind of dispenser, is that correct?

A. No, the pump is desirable.

Q. Is a desirable dispenser?

A. Yes.

Q. Will you explain to his Honor why that is?

[fol. 412] A. Well, as you pump you leave a liquid spray that is residual and stays there, because the roaches and ants are not there at the time, and you might go around the baseboard, and then as the roaches and ants come in, why, they will come in contact with it and it will kill them.

The Court: It will kill them?

The Witness: I think so. By test it does.

Q. And would you say that the aerosol container is not as effective for that purpose?

A. Up until recently the type of aerosol valves, if you turn it upside down, the type we use, it would be ineffective.

Q. It is the same idea as when the shaving can starts to get low; if you tilt it nothing comes out?

A. That's right.

Q. If you keep it up straight it does come out?

A. That's right, in our type of valve.

Q. So you wanted a separate type of container to take care of that particular function, is that right.

A. Yes, sir.

Q. What was the third kind? Did you say there was a third kind of container in which that particular ant killer [fol. 413] or insecticide was marketed or was it just those two?

A. We have the type for mosquitoes, flying——

Q. No, I was confining myself still to the roach and ant killer. Were there just those two mediums through which that was marketed?

A. Yes, sir.

Q. Now, turning to Halo shampoo, that is a liquid shampoo, is it not?

A. Yes, sir.

Q. And it is packed exclusively in glass bottles by your company commercially?

A. Except for the time we made a sales test in regular polyethylene.

Q. Well, you made a test, but from the commercial standpoint you have been marketing it exclusively in glass bottles?

A. Exclusively in glass.

Q. And you are now?

A. Yes, sir.

Q. Another product that you mentioned is your Lustre Creme shampoo, is that right?

A. Yes, sir.

Q. And that is in two forms, both a cream and a liquid, is [fol. 414] that right?

A. A clear liquid and an emulsified liquid and a paste cream.

Q. And the cream is packed in opal jars, is that correct?

A. That's correct.

Q. And to a limited extent in collapsible lead tubes?

A. Yes.

Q. Now, the liquid is exclusively in glass bottles, is it not?

A. Yes, sir.

Q. Now, you referred to certain hair dressings as of the brilliantine variety, is that correct?

A. Yes. That is a sort of a mineral oil type, yes.

Q. How do you pack that?

A. In glass.

Q. Exclusively?

A. Yes.

Q. And do you have any present plans for packaging brilliantine in any other type of containers except the glass that you are presently using?

A. None at the present time.

[fol. 415] Mr. Hughes: May I have just a moment, your Honor?

(Pause.)

Q. Mr. Egan, I have been asked to clarify what Dynamo is. Will you tell us what that is?

A. Dynamo is a heavy duty liquid detergent.

Q. Do you make a deodorant product under the name Veto?

A. Yes, sir.

Q. And do you package that in a cream form?

A. Cream and liquid.

Q. Yes, but one of the forms is a cream form?

A. Cream.

Q. In that form what type of container do you use?

A. That is an opal jar.

Q. And it is exclusively an opal jar, is it not?

A. Yes, sir.

Q. Now, in 1951 or thereabouts did you reformulate it into a liquid and test market it in plastic bottles?

A. In a squeeze type of polyethylene container, yes, sir.

[fol. 416] Q. And it was commercially marketed in 1952 in the liquid form also, is that correct?

A. I believe the date is right, yes.

Q. So that you now have both the cream and the liquid, is that correct?

A. That's right.

Q. And the liquid moves exclusively in the squeeze bottle?

A. Yes, sir.

Q. And, of course, that is an entirely different formulation than the cream, isn't it?

A. Yes.

Q. Mr. Egan, is it a fact that in your laboratory testing that you have described or market research testing that you have described you test among other things for determining the physical characteristics of the products from the

point of view of suitability for the use which you intend to put it to?

A. Yes, sir.

Q. Following that you then conduct these market tests to determine whether there is a consumer acceptance of the product in that vehicle?

A. Yes.

Mr. Hughes: No further questions.

[fol. 417] Redirect examination.

By Mr. Greenberg:

Q. Sir, do you know the names of the only companies producing opal jars at the present time?

A. The only companies?

Q. Do you know the names of the companies producing opal jars at the present time?

A. I know of two, Mr. Greenberg; Hazel-Atlas and Wheaton.

Q. Can you recall any others, sir?

A. No.

Q. Isn't it a fact that there may be just one other, and that is all?

A. There could be. I wouldn't really know.

Q. But you can only recall these two?

A. Yes, sir.

Q. Sir, have you ever engaged in joint research activities with glass container manufacturers to lightweight glass containers that you use?

A. Yes, sir.

Q. Now, would you describe these joint activities for us? What did you do?

A. Well——

Mr. Hughes: I object to this as repetitious.

The Court: I will allow it.

A. We met with their technical people and decided on the [fol. 418] container that we wanted to have lightened in weight and they would make up a single cavity mold to size up that container which would have a proper volume and head space, and after they made the containers, we would fill

them and put them through the various tests in the laboratory, shipping tests and rough handling tests, to see if they would stand up to the rigors of transportation; also have them fried out by consumers to see if there was any objection to them.

Q. What types of glass containers have been subject to this research?

A. Halo Shampoo was the package there, and then I believe we worked with the opal jar from Hazel-Atlas and lightened the weight up of that.

Q. You worked with Hazel-Atlas?

A. Yes.

Q. Sir, have you engaged in any joint activities with can manufacturers to get around this corrosion problem?

A. Yes, sir.

Q. And can you describe the genuine efforts that were made along that line?

A. Yes. We would have their technical people in and tell [fol. 419] them about the chemical and physical characteristics of our product, and they would agree to make up certain types of cans with internal lacquers and then we would send them a 55-gallon drum of that same detergent that we were going to test; they would put them up in test packs under the same conditions as we did, and after aging for a specific length of time we would exchange information regarding our tests.

Q. Sir, do you know whether your company keeps track of costs of various kinds of containers that it uses?

A. Yes, we do.

Q. You do keep track of all the costs of plastic, glass and cans?

A. I personally don't, but the company does.

Q. I mean the company. The answer is yes, sir?

A. Yes, sir.

Q. Talking now about the valves for the aerosol cans, sir, has there been a valve perfected which will give you the same kind of spray as the plunger?

A. Yes, there has been a new valve that has been developed by Seaquist that you can turn upsidedown and get a spray.

Mr. Greenberg: I have no further questions.

[fol. 420] Recross-examination.

By Mr. Hughes:

Q. Do you buy opal jars from Hazel-Atlas and Wheaton?

A. Mr. Hughes, I am not in that end of the division any longer, and so I can't tell. Mr. Brown will be a witness, I understand, and he will be able to tell that more specifically.

Mr. Hughes: Your Honor, I have a few questions that are really not properly recross. They were questions that I had intended to cover on cross-examination.

The Court: All right, we will allow it.

Q. Now, returning to the field of liquid detergents, is the formulation for the all-purpose liquid detergent in glass a different formulation from what would be necessary if you were to attempt to market that all-purpose detergent in some other type of container such as a can?

Mr. Greenberg: I will object to that question, your Honor. It is unduly complex. It seems to be conjectural, but I cannot remember the first part.

The Court: Let's have the question read.

(Question read.)

[fol. 421] Mr. Greenberg: I object to the question.

The Court: Objection overruled.

A. I mentioned earlier, Mr. Hughes, that our Genie formulation in the 16 and 32-ounce containers are glass; in the 64-ounce container it is a half-gallon can.

Q. If you attempted to——

The Court: That is the same substance in each?

The Witness: Yes, sir.

The Court: Only in different quantities?

The Witness: Yes.

Q. Now, if you attempted to market an all-purpose detergent in a plastic container would the formulation have to be different?

A. Oh, yes. This formulation has been put in plastic, and the plastic does not contain it.

[fol. 422] Q. So that before you could even consider mov-

ing from glass into plastic you would have to devise a different formulation, is that correct?

A. Yes, sir.

Q. And, in effect, a new formulation is a new product, isn't it?

A. No, we might still put it out under the same brand name.

Q. And with that qualification it is a new product, isn't it?

A. Yes.

The Court: Well, let us say it is a different product.

Q. would that be true of the other types of detergents we have spoken of, the heavy duty detergents, if you tried to change from one container to the other, you would have to change the formulation; isn't that correct?

A. No, in the light duty the formulation is the same in cans as it is in plastic.

Q. I said heavy duty.

A. Oh, heavy duty?

Q. I said if you tried to change from one container to another wouldn't there have to be a change in formulation? [fol. 423] A. No, sir, not heavy duty.

Q. How about the light duty detergent, was there a change in formulation when you started to move from the metal container into the plastic container?

A. No, sir.

The Court: Is there anything further, Mr. Hughes?

Mr. Hughes: No, nothing further, your Honor.

The Court: All right, you may step down, Mr. Witness. Thank you.

(Witness excused.)

The Court: Before we go on with a new witness, we might as well take our afternoon recess now.

(Short recess.)

The Court: All right, you may call your next witness, Mr. McManus.

Mr. McManus: Mr. Warren.

ROBERT WARREN, JR., called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. By whom are you employed, Mr. Warren?

A. Brockway Glass Company, Brockway, Pennsylvania.

[fol. 424] Q. And where is your home?

A. Brockway.

Q. What is your position in Brockway Glass Company?

A. I am a vice-president and a director.

Q. How long have you been employed by Brockway Glass Company?

A. Full-time, 15 years.

Q. Were you employed prior to that?

A. I worked in the summers before that.

Q. Were you employed in any other endeavor than Brockway Glass Company?

A. How is that?

Q. Have you been employed by any other company other than Brockway Glass?

A. No.

Q. Does Brockway Glass Company publish sales figures?

A. Yes, sir.

Q. And do they do it on a fiscal basis?

A. Yes, sir.

Q. On a calendar year basis?

A. Our fiscal year closes September 30th.

Q. So the last one, sir, would be September 30, 1959?

[fol. 425] A. Yes, sir.

Q. What was your dollar volume on sales for all products approximately for that year?

A. Just over 50 million dollars.

Q. Where are the Brockway Glass plants located?

A. We have two plants in Brockway, Pennsylvania, and one in Muskogee, Oklahoma, one in Lapel, Indiana, one in Freehold, New Jersey, and one in Parkersburg, West Virginia; and our subsidiary, our wholly-owned subsidiary, Tygart Valley Glass Company, has a plant in Washington, Pennsylvania.

Q. Does your company make any products other than glass containers?

A. No, sir.

Q. Do you manufacture caps?

A. No, sir.

Q. At the present time are you manufacturing any other type of container other than glass?

A. We are beginning to manufacture plastic containers. We are not—we do not feel that we are in production on plastics as yet but we have a pilot plant operation.

Q. Where is that location?

[fol. 426] A. In Massachusetts.

Q. And could you tell me the type of plastic containers that you are manufacturing?

A. Polyethylene, both high density and low density.

Q. And could you tell me the factors that made you decide to go into the manufacture of plastic containers?

A. We felt that plastic containers would in some cases supplant glass. We found that some of our customers were asking us for plastic containers, and we felt that the sale of plastic containers tied in very closely to the sale of glass.

Q. Is it possible to generalize as to the type of customers that were asking for plastic containers?

A. Yes, sir. I would say they are mostly in the pharmaceutical or cosmetics and household chemical field.

Q. Are you familiar in a general way with the census classifications of glass containers?

A. Yes, sir.

Q. Does your company make wide-mouth glass containers?

A. Yes, sir.

Q. Does it make narrow neck glass containers?

[fol. 427] A. Yes, sir.

Q. Does it make, referring to the census classifications, food containers?

A. Yes, sir.

Q. Soft drinks?

A. Yes, sir.

Q. Beer?

A. Yes, sir.

Q. Household and industrial?

A. Yes.

Q. Toiletries and cosmetics?

A. Yes, sir.

Q. Have I missed one, by any chance, to your knowledge?

A. I think you have got all of them. The only one we don't make is milk, dairy products.

Q. Under the census classifications, you make all of them, whether it be wide mouth or narrow neck, is that correct?

A. Yes.

Q. Do you make any green glass?

A. No.

Q. Do you make any colored glass at all?

A. We make amber glass.

[fol. 428] Q. Do you make blue glass?

A. No.

Q. Now, when you sell your glass containers do you put them into another container?

A. Yes, it is placed usually in a corrugated paper container.

Q. And when you say "usually," could you give us an estimate of approximately what percentage of the glass containers are in corrugated containers?

A. I would judge between 90 and 95 per cent.

Q. Now, in the pricing of your glass containers is the cost of the corrugated shipping container significant?

A. Yes, sir.

Q. Could you estimate approximately what the cost of the corrugated shipping container is in relation to the final cost of the glass container?

A. I judge the paper container would be between 20 and 25 per cent of the selling price of the whole package.

The Court: I take it that you do not make your own corrugated containers, do you?

The Witness: No, sir.

The Court: You purchase those from someone else?

[fol. 429] The Witness: Yes, sir.

Q. Now, the plants that you have listed are located in the eastern half of the United States, are they?

A. Pardon me?

The Court: Mr. McManus, you are again dropping your voice.

Q. Are the plants of the Brockway Glass Company east of the Rocky Mountains?

A: Yes, sir.

Q. Does your company have any western plants?

A. No, sir.

Q. Does your company sell a full line of glass containers over on the West Coast?

A. No, sir.

The Court: Do you have any customers on the West Coast?

The Witness: We sell some prescription bottles on the West Coast and a few stock lines of pharmaceutical bottles.

The Court: But no food products?

The Witness: No, sir.

Q. Could you give us a rough estimate of what the percentage of your sales on the West Coast would be in relation to your total sales?

[fol. 430] A. Oh, only 1 or 2 per cent.

Q. You indicated that you only engage in manufacturing glass containers and you manufacture no caps for those containers?

A. That is right.

Q. Referring to the vacuum type of cap, are you familiar with that type of cap?

A. Yes, sir.

Q. To your knowledge is the vacuum type of cap used on glass containers other than in the food field?

A. Not to my knowledge.

Q. Is it important in the enclosing or in putting the cap on a glass container that there be a perfect seal?

A. Yes, sir.

Q. And what is the purpose, why is it necessary to have that perfect seal?

A. To preserve the product.

Q. Now is it necessary for the glass manufacturer to consult with the cap manufacturer to get that perfect seal?

A. Yes, sir.

Q. And are there standard specifications for caps to fit certain glass containers?

[fol. 431] A. There are standard specifications on glass

containers. We are not aware of standard specifications on caps.

Q. Has your company ever had an occasion when a customer would call you and tell you that a cap was not fitting the glass container or making a perfect seal?

A. Yes, sir.

Q. You have had such occasions?

A. Yes, sir.

Q. Does it happen frequently?

A. I don't know how to answer that.

Mr. Johnson: I object to that question, your Honor.

The Court: I sustain the objection. He says that he cannot answer it, anyway.

Q. It has happened, though, has it?

A. Yes, sir.

Q. Well, the people call your company, is that correct?

A. Yes, sir.

Q. What would you do then? Will you describe what takes place?

A. We would send a service man to the customer's plant to evaluate the problem.

[fol. 432] Q. And do you make a decision then or do you attempt to work it out with the customer, what the problem is?

A. Yes, sir.

Mr. Johnson: I am going to object to that. I do not understand the question.

The Court: Will you repeat it?

(Question read.)

Mr. Johnson: I do not know what he means by "work it out."

Q. Well, do you try to decide——

The Court: I think it is reasonably clear, Mr. Johnson.

Q. What is your answer?

A. We would, yes, sir.

Q. Is it necessary for you to consult with the cap manufacturer also?

A. Sometimes it is; sometimes it is not.

Q. When would be the time or when would you be required to consult with the cap manufacturer?

A. When we would have to?

Q. Yes.

A. Well, those would be cases where there was no obvious or clear fault with the glass but the cap was not sealing, [fol. 433] which may then be a fault of the cap or a fault of the machine which applies the cap.

Q. To your recollection has this situation ever arisen when you had consultations between your company and the cap manufacturer?

A. Yes, sir.

Q. Do you recall whether that happened before 1956?

A. Yes, sir.

Q. Has your company ever been required prior to 1956 to consult with White Cap Company, manufacturers of vacuum caps?

A. Yes, sir.

Q. Have there been occasions after 1956 where you had to consult with cap manufacturers?

A. Yes, sir.

Q. And were there occasions when you would have to consult with White Cap Company, a division of Continental Can?

A. Yes, sir.

Q. So when a problem arose on a vacuum packing line prior to 1956, the packer would be required to call both the cap manufacturer and the glass manufacturer?

A. Yes, he would, unless it was obviously the fault of [fol. 434] the glass or obviously the fault of the cap.

Q. Now, do certain glass companies make both glass containers and vacuum caps, to your knowledge?

A. Yes, sir.

Q. Do you consider this to be a sales advantage?

A. Yes, sir.

Q. And why do you say that, Mr. Warren? Why do you say it is a sales advantage?

A. Because our customer can then buy the complete package from one company, and particularly in the event of difficulties, he does not have two different companies in his plant arguing the merits of what is at fault.

Q. Mr. Warren, do you attend the National Canners Association Conve..tions?

A. I have.

Q. Do you attend it as a representative of the Brockway Glass Company?

A. Yes, sir.

Q. Does your company have displays at those meetings?

A. Yes, sir.

Q. What is the purpose of attending those meetings and having those displays?

[fol. 435] The Court: Presumably he is selling to canners and he goes to the Canners' Conventions to contact his customers and to help sales.

Mr. McManus: That is right, your Honor, but I would like to put it on the record. I do not think it will take up too much time.

The Court: Those are things, it seems to me, that are so obvious, but I will permit you to ask your question.

Is that what you go there for?

The Witness: Yes, sir.

Q. Do the can manufacturers also attend these meetings?

A. Yes, sir.

Q. Does your company have in its plant Hartford Empire I.S. equipment?

A. Yes, sir.

The Court: What does I.S. stand for?

The Witness: It stands for individual sections.

Q. Could you explain to us what "individual sections" means?

A. The machines are made up of four or five or six separate forming sections which operate semi-independently.

The Court: Does it have something to do with the manu-[fol. 436] facture of glass containers?

The Witness: They do manufacture glass containers.

The Court: They are the machines that manufacture the glass containers?

The Witness: That is right.

The Court: In other words, you put the raw material in the machines and it comes out in container form?

The Witness: That's right.

Q. Mr. Warren, could you very briefly explain that operation?

A. Well, you melt the batch, which is primarily sand and soda ash and limestone, in a large tank, at about 2500 degrees, and then the glass is fed out in what we call gobs into the forming machine——

Q. That would be the Hartford Empire machine?

A. Yes, although we have a few Lynch machines in our company. They are a different type of machine which does the same thing.

And from the machine the bottles go into an annealing oven, which we call a lehr, which tempers them so they do not break when they are cooled.

The Court: And then they are cooled?

The Witness: Yes, sir, then they are cooled. At the end [fol. 437] of the lehr, they are packed usually in corrugated paper containers.

Q. Now, with the Hartford Empire equipment that you have, can that make narrow-neck glass containers?

A. Yes, sir.

Q. Of all types other than colors?

A. Yes, sir.

Q. Can it make wide-mouth glass containers?

A. Yes, sir.

Q. Of all types?

A. Yes, sir.

Q. Is it possible to convert this equipment from the manufacture of wide mouth glass containers to the narrow-neck glass containers?

A. Yes, sir.

Q. Would you know the approximate time that would be taken to convert the equipment from the manufacture of wide-mouth glass containers to narrow-neck glass containers?

A. Well, if the machine is adapted in order to do this readily, once you have that as part of your machine, you can convert, oh, in from 12 to 18 hours. We consider it an overnight conversion.

Q. And does your company make these conversions?

[fol. 438] A. Yes, sir.

Q. They have done it in the past?
A. Yes, sir.

Mr. McManus: That is all I have, your Honor.
The Court: You may examine, Mr. Hughes or Mr. Johnson.

Cross-examination.

By Mr. Johnson:

Q. Mr. Warren, Brockway has several subsidiaries does it not?
A. We have two, the Tygart Valley Glass Company in Washington, Pennsylvania, and Demuth Glass Works in Parkersburg, West Virginia.
Q. What does Demuth make?
A. Demuth makes glass tubing.
Q. And it is a wholly-owned subsidiary?
A. Yes, sir.
Q. Do you have a plant in Crenshaw, Pennsylvania?
A. I mentioned two plants in Brockway. Crenshaw is really a part of Brockway.
Q. There was some discussion of corrugated containers used in packaging glass containers. Does your company buy all of the corrugated containers that is used to ship its glass containers?
[fol. 439] A. Yes, sir.
Q. None of them are furnished by customers?
A. Well, yes. I should say yes in the case of some beer containers—they are supplied by the customers.
Q. Can you undertake to estimate for us what proportion of them are supplied by customers?
A. 6 or 7 per cent.
Q. Are you familiar with the term "glass finish"?
A. Yes, sir.
Q. Will you tell us what a glass finish is?
A. The finish is the upper part of the bottle on which the closure fits.
Q. Is there any standardization of glass finish?
A. Yes, sir.
Q. How are standards arrived at?
A. Standards are worked out in a committee of the Glass Containers Manufacturers Institute.

Q. They are worked out in the committee and then what happens to them?

A. Then the Glass Containers Manufacturers Institute publishes a standard finished print which is distributed to the industry.

Q. And that publication is available to all glass container manufacturers, is that correct?

[fol. 440] A. Yes, sir.

Q. How many times since 1956 has your company had occasion to have joint consultation with cap manufacturers on a problem of the closure fitting the bottle?

A. I don't think I could answer that. We have several service men who are constantly visiting our customers, and they have minor problems and major problems. The minor problems probably we do not hear about. They may happen but I don't think I could identify them.

Q. Does Anchor Hocking make vacuum-type closures?

A. Yes, sir.

Q. Are Anchor Hocking closures used on any of the glass containers which you make?

A. Not to my knowledge. Anchor Hocking makes a limited line and in most cases they are used on their own glass.

[fol. 441] Q. Does Owens-Illinois make vacuum type closures?

A. Yes, sir.

Q. Are any of Owens-Illinois closures used on your glass?

A. Not to my knowledge. Their situation is about the same as Anchor's.

Q. One of your glass container lines is beer bottles, is it not?

A. Yes, sir.

Q. You manufacture both returnable and non-returnable bottles?

A. Yes, sir.

Q. Would you be able to give me an estimate as to how many times returnable bottles are used?

A. About twenty times.

Q. Your company is in the process of building a new glass container plant, is it not?

A. Yes.

Q. Where is that?

A. In St. Paul, Minnesota.

Q. Has your company been doing other expansion in the glass container field, recently?

A. No, sir.

[fol. 442] Q. Your only expansion currently is in the new plant in St. Paul?

A. Yes.

Q. How large a plant will that be?

A. We expect ultimately to have six or seven forming machines there.

The Court: How many forming machines have you presently got, overall, roughly?

The Witness: Let's see, about 50.

Q. On your direct examination you indicated that your company was in the process of going into the plastics business now.

A. Yes.

Q. Did I understand you to say that you were developing a blowing machine of your own?

A. Yes, sir.

Q. And that has been developed to a point where it is ready for commercial production, correct?

A. Yes, sir.

Q. Is there any reason why your company could not manufacture vacuum type closures?

A. Why we could not?

Q. Yes.

A. No, sir.

[fol. 443] Q. Are beverage bottles one of your larger glass container lines?

A. Beverage bottles are an important line with us, but we do not classify them one of our larger lines, no, sir.

Q. Is it as important as beer bottles?

A. Yes, sir, about the same.

Q. Now, with respect to soft drink bottles, was Hazel-Atlas in that field prior to its acquisition by Continental Can?

A. No, sir.

Q. Was it in the beer bottle field?

A. No, sir, unless it would be on the West Coast.

Q. With respect to that, you do not know, is that so?

A. No, I do not know that.

Q. Were you in the room, sir, when Mr. Egan testified a few minutes ago?

A. Yes, sir.

Q. Mr. Egan referred to a purchasing policy of having more than one source of supply. Have you observed whether that policy is followed by many of your customers?

A. Yes, sir, it usually is.

[fol. 444] Q. Could you tell me, sir, whether the price of your glass containers bears a direct relation to the labor costs used in manufacturing containers?

A. I wouldn't say there is a direct relationship. Labor is our biggest single cost, so there has to be a relationship, but I don't think you will find any direct relationship between our labor contract increases over the past several years and glass container prices.

Q. Does your company publish a glass container price list, sir?

A. Yes, we do.

Q. Do you ever sell glass containers at less than that list price to meet the price quoted by another glass container manufacturer?

A. Yes, sir.

Q. Do you ever sell your glass containers at less than that list price to meet the price quoted by can manufacturers?

A. No, sir, I don't think we do.

Mr. Johnson: May I take a moment, your Honor?

The Court: Yes.

(Pause.)

[fol. 445] Q. Are you familiar with the sales of your company for the last several years, the dollar amount, total sales?

A. Generally familiar.

Q. Going back to the year 1954, would the net sales be approximately $23 million?

A. That sounds right.

Q. 1955, $25 million?

A. Yes, sir.

Q. 1956, $28 million?

A. Yes, sir.

Q. 1957, $31 million?

A. Yes, sir.

Q. 1958, $34 million?

A. Yes, sir.

Q. 1959, $51 million?

A. Yes, sir. That is due to our merger with Tygart Valley.

Q. The fact that your sales went up in that year?

A. Yes, sir, they contributed.

Q. But that is not true of any year except the last year, is that so?

A. That's right.

Q. Are you familiar with your net profit figures in the [fol. 446] same way?

A. Yes, sir.

Q. For 1954, one million three?

A. Yes, sir.

Q. 1955, one million four?

A. Yes, sir.

Q. For 1956. one million four?

A. Yes, sir.

Q. 1957, one million six?

A. Yes, sir.

Q. 1958, two million?

A. Yes, sir.

Q. For 1959, three million four?

A. Yes, sir.

Q. These profit figures are after taxes?

Mr. McManus: Your Honor, do you think we could put these documents that he is reading from in evidence?

The Court: At least there isn't any reason why they should not be marked for identification. If you want to see them, you can put them in.

Mr. McManus: I would like to take a look at them.

The Court: Let's mark them for identification. I take it [fol. 447] these are the reports for Brockway for these respective years?

Mr. Johnson: That's right.

(Marked Defendants' Exhibits C-1 and C-2 for identification.)

Q. These earnings figures from your company, Mr. War-

ren, represent a return that indicates that your company has a very efficient operation, does it not?

A. Yes, sir.

Q. As a matter of fact, other than Owens-Illinois Glass Company, your rate of return on sales is the highest in the industry, is it not?

Mr. McManus: Your Honor, I would like to object. There is no showing here that anyone has any knowledge of what Owens-Illinois rate of return is.

The Court: If he knows he can answer. If he doesn't know he will say so.

A. I think the answer to that is yes.

Mr. Johnson: That is all.

Redirect examination.

By Mr. McManus:

Q. Mr. Warren, are you able to tell us your relative position in the glass container industry? Do you rank in the first five or do you know?

[fol. 448] Mr. Johnson: I object to that question.

The Court: Oh, no, objection overruled.

Now, gentlemen, look, you each ask questions without laying any real foundation for them with somebody who would be presumed to know in the industry. I am going to let questions like that be asked. There is no use objecting to it unless you have something specific. Overruled.

Go ahead.

Q. Will you answer that?

A. We consider ourselves fourth in the glass container field.

Q. Who would you consider the first three?

A. Owens-Illinois, Hazel-Atlas Division of Continental Can, and Anchor Hocking.

Q. They would be in the first three?

A. Yes.

Q. Now, you said that you had just built or are building a new plant?

A. In St. Paul.

Q. Yes.

A. It is to be built this coming year.

Q. Do you know, and do you have no objection to testifying to the cost of the construction of that plant?

[fol. 449] A. We estimate cost of construction of the plant at something over a million dollars per machine.

Q. And how many machines are you going to have?

A. Six or seven.

Q. Now, you were asked is there any reason why you could not go into the manufacture of vacuum containers, is that correct?

A. Yes, sir.

Q. Is there any reason why Continental Can Company could not have gone into the manufacture of vacuum caps in 1956?

A. No, sir.

Q. To your knowledge did Owens-Illinois Company acquire a company who was manufacturing vacuum type closures?

A. Owens-Illinois?

Q. Yes. Did they, to your knowledge?

A. Recently?

Q. No. I just want to know if you know.

A. I don't know that.

Q. To your knowledge did they develop their own machinery for the manufacture of vacuum caps?

[fol. 450] A. As far as I know they did, yes.

The Court: But you haven't any accurate knowledge on that subject either one way or the other, or have you?

The Witness: If they acquired anybody, it was several—many years ago. There was a lot of mergers and acquisitions going on that I am not familiar with.

Q. How long ago—when you say a number of years ago, would that be 20 or 30 years?

A. Well, say over ten years ago.

Q. Would your answer be the same in regard to Anchor Hocking Glass Company in so far as acquiring a manufacturer of vacuum closures?

The Court: Do you expect to have any Anchor Hocking witnesses?

Mr. McManus: Yes, sir, I will ask him.

The Court: Ask them.

Q. Now, you testified that to your knowledge Hazel-Atlas was not making soft drink bottles?

A. Yes, sir.

Q. And what period of time were you covering there?

A. Oh, I was covering all the time up to their acquisi-

[fol. 451] tion by Continental Can.

Q. Now, this is just from your own general information: Have you ever looked at the census records or GCMI reports specifically to see if they were making soft drink bottles?

The Court: If you are going to have census reports, the census reports speak for themselves. It makes no difference in the world whether this witness ever looked at them or never looked at them. I don't want any more asking of witnesses about whether they looked at documents that are going to go in evidence because that does not get us any farther at all.

Mr. McManus: That is all I have of this witness.

The Court: Anything further?

Mr. Johnson: Yes.

Recross-examination.

By Mr. Johnson:

Q. Mr. Warren, would you tell me what the total sales of Ball Bros. Glass Company was for 1959?

A. I don't know.

Q. Would you tell me, sir, what the total sales for Knox Glass Company were for 1959?

A. I don't know that either.

[fol. 452] Q. Would you tell me, sir, what the glass container sales for Armstrong Cork Company were for 1959?

A. No, sir, I don't know.

Q. Could you tell me what the sales for Wheaton Glass Company were for 1959?

A. No, sir.

Mr. Johnson: That is all.

The Court: All right, you may step down, Mr. Witness. Thank you.

(Witness excused.)

Mr. McManus: May we approach the bench, your Honor?

The Court: Yes. Are you finished for the day now?

Mr. McManus: That is what I wanted to tell you, if I could.

(Discussion at the bench off the record.)

(Adjourned to June 16, 1960, at 10.30 o'clock a.m.)

[fol. 453] New York, June 16, 1960; 10:30 o'clock a.m.

Trial resumed

The Court: All right, Mr. McManus.

Mr. McManus: Mr. Fisher, will you please take the stand.

WILLIAM V. FISHER, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Fisher, by whom are you employed?

A. The Anchor Hocking Glass Company.

Q. And what is your position with that corporation?

A. I am president of the corporation.

Q. Where are the headquarters of the corporation?

A. The general offices are in Lancaster, Ohio.

[fol. 454] Q. And is your home in Lancaster also?

A. Yes, sir.

Q. The Anchor Hocking Glass Company is engaged in the manufacture of glass containers, is that correct?

A. Yes, sir.

Q. And it has plants throughout the United States?

A. Yes, sir.

Q. Where are those plants located?

A. New Jersey, Maryland, Florida, Pennsylvania, Indiana, California.

Q. Do you make a full line of glass containers, both wide mouth and narrow neck?

A. We make both wide mouth and narrow neck, yes, sir.

Q. Do you have a general knowledge of the census classifications for glass containers?

A. Yes, sir.

Q. Do you make a full line of glass containers under all of those census classifications?

A. No, sir, we do not manufacture milk bottles.

Q. Do you manufacture——

The Court: Mr. Fisher, who does manufacture milk bottles? I ask that because everybody denied vigorously manu- [fol. 455] facturing milk bottles. Somebody does manufacture them.

The Witness: Your Honor, Thatcher Manufacturing, the Buck Glass Company, the Lamb Glass Company, and the Owens-Illinois Glass Company.

The Court: Thank you.

Q. Do you manufacture any colored glass containers?

A. We manufacture white glass, clear glass, that is, crystal and amber glass. The white is known, Mr. McManus, as opal.

Q. At what locations do you manufacture opal, at which plant locations?

A. Baltimore, Maryland.

Q. And at what plant location do you manufacture amber glass?

A. We manufacture amber in California, Winchester, Indiana, Connellsville, Pennsylvania, Salem, New Jersey, Jacksonville, Florida.

Q. Do you know who the other companies——

A. Mr. McManus, could I make an amendment to my former statement?

Q. Yes, sir.

A. You asked me what colors we manufacture. I left out Georgia green, which is Coca-Cola glass and emerald green [fol. 456] which is another form of soda water glass.

Q. In addition to yourself do you know the other principal

manufacturers of opal glass, that is, opal glass containers?

A. What do you mean by hotel?

Q. Opal—you said white glass was opal.

A. Oh, yes, I misunderstood you.

Q. Yes.

A. Yes, I think I do.

Q. Who would they be?

A. Continental Can Company, the Hazel Division, and the Wheaton Glass Company.

Q. And that would be all that you know of?

A. Those are the ones I am certain of. I am not certain of Owens-Illinois, whether they do or not.

Q. Now in addition to glass containers what other products do you manufacture?

A. We manufacture closures, both metal and plastic, and we manufacture glassware, commonly known as tableware, for household and table use.

Q. Now, in limiting ourselves to the glass container end of your business, are you able to estimate what position you are in the glass container industry, either 1, 2, 3, 4, or 5?

[fol. 457] A. I think we are rated in the No. 2 position.

The Court: No. 1 would be Owens-Illinois?

The Witness: That is right.

The Court: And No. 2 would be you?

The Witness: Yes, sir.

The Court: And No. 3 would be Hazel-Atlas?

The Witness: Yes, sir.

Q. Does the glass container industry negotiate on an industry basis with any of the labor unions?

A. Yes, sir.

Q. And which one would that be?

A. The glass container industry—the major portion of its employees are bargained for by the Glass Bottle Blowers of America—Glass Bottle Blowers Association of America.

Q. And have you participated in any of those negotiations?

A. Yes, sir.

[fol. 458] Q. Recently?

A. During 1959 and early '60.

Q. And during the course of those negotiations wage rates for labor are set?

A. Yes, sir.

Q. Now, is the wage rate the same all over the United States for members?

A. No, sir. I might say that the wage rates for machine operators, who are the key employees of glass, members of the Glass Bottle Blowers Association, is first set, set by industry-bargaining arrangement. The rest of the employees are bargained for by the individual companies. That is, the miscellaneous employees are bargained, their rates are bargained with the union by the individual companies, with the exception of California. There the miscellaneous are being bargained for by the majority of the manufacturers.

Q. I see. Now, are the machine operators, the rates paid to machine operators, do they vary in different sections of the country?

A. They vary between the East Coast and the West Coast. There also is some variation due to local conditions between companies.

Q. I see.

[fol. 459] A. (Continuing) But when a wage rate is set, it is the pattern of the wage that is set which is applied to the rate as being paid by any one company.

Q. Now, you said that the wage rate for the machine operators varied between the East Coast and the West Coast.

A. Yes, sir.

Q. Could you tell me in 1959 and '60, when you were negotiating, which area had the highest wage rate?

A. The West Coast, the West Coast had the higher rate.

Q. For the period of time that you have been negotiating with the Glass Bottle Blowers Association, has the wage rate on the West Coast always been higher than on the East Coast?

A. I believe it is safe to say it has been traditionally higher.

Q. In the areas that this wage rate is higher, the West Coast areas, in which states are glass container plants located?

A. Would you please restate that?

Q. Yes, sir. You said that on the West Coast the wage rates were generally higher than on the East. In which

[fol. 460] states on the West Coast are the rates higher, which states are represented?

A. California, Oregon, Washington. Those are where the plants are located.

Q. That is where the glass container plants are located?

A. That's right.

Q. Now, Mr. Fisher, how long have you been associated with the Anchor Hocking Glass Company or its predecessor company?

A. Do I have to tell that?

Q. Approximately.

A. About 40 years.

Q. And could you tell me generally, first, about the formation of the Anchor Hocking Glass Company, how it grew?

Mr. Hughes: May I inquire what the relevance is in going into the history of the formation?

The Court: You may inquire.

Why do you say it is relevant?

Mr. McManus: Your Honor, what I would like to do with Mr. Fisher, I would like him to go quickly through it to show what his background is with the two companies, and then also I would like for him to show the change in im-[fol. 461] provements in machinery over the years. I don't want to take a great deal of time with it, but I would like to do it if I could.

Mr. Hughes: Well, your Honor, it seems to me those are two separate lines of inquiry. I object to any questions on the history of the formation of the Anchor Hocking Company on the ground that it is irrelevant and immaterial.

The Court: Well, I take it that Mr. McManus is not trying to elicit the corporate history of this enterprise; he is rather interested in the mechanical development of the industry. Now, if that be so, it seems to me that this might have some bearing or might give the Court some greater knowledge of the industry and its background, and I will take it on that basis.

Mr. McManus: And that is the basis that I would like to give it on, your Honor.

Q. Could you tell us, Mr. Fisher, since you have been with

either Anchor or its predecessor company, how this company has grown, in a general way, sir?

A. Do you mean in terms of—I want to understand.

Q. Yes.

A. In terms of dollar development or——

[fol. 462] Q. No, sir.

A. —or in terms of mechanical or evolutionary development?

The Court: I think evolutionary is what he wants here.

Q. Evolutionary, yes, sir.

A. Well, I entered the glass business, your Honor, in 1919. It was a very few years before that that the automatic machine started to make its appearance on the scene. Probably the first machine of that sort was the Owens machine. That produced quantity production. It was followed with the advent of the Hartford Empire feeder and the Miller & Lynch machines. That evolved two separate processes. Owens' machine produced glass by the suction method, sucking it up out of the furnace into a mold cavity. The Hartford process formed a gob and cut it off and deposited it the opposite way into a mold cavity. The smaller members of the industry largely went to the gob-fed method of producing glass. Owens, of course, produced by the automatic, by the suction method.

Now, as we went out of World War I into the twenties, the evolution on both types of machine was extremely rapid, not only of machinery but the evolution of melting glass, the [fol. 463] improvement in furnaces, in the mixing and handling of batch; the control of temperatures. In the case of the gob-fed equipment, that is, the Hartford feeder, there were rapid strides made in the development of a single feeder against what was originally termed the panel needle when they started. The Owens machine also came forward along that same time with evolutionary changes. The type machine, I think, that—well, it expresses itself in two terms —suction and gob-fed. I know the gob end of the business. I have never operated an Owens machine.

In operating the gob machinery, this is done in initial instances through Lynch machinery and Miller machines. That is, through the late 1900s and early twenties. Later on, in the late twenties or probably early thirties, I could

be wrong a year or two, Hartford Empire developed what is known as the IS machine. In the case of our own company we moved from the Miller and JP types into the IS machinery.

The Court: Have you finished, sir?

What have been the developments since the thirties? Have there been any startling developments since then, or [fol. 464] is that evolutionary process continuing?

The Witness: Oh, that evolutionary process is continuing, your Honor.

The Court: Continuing all the time?

The Witness: Continuing all the time, yes, sir. Each year has brought some new change and advancement in these machines.

The Court: And I would suppose that during the evolutionary process both quality and diversification of the glass that you are able to produce and the purposes for which it is been able to be used have been improved and enlarged?

The Witness: Very decidedly so, sir.

By Mr. McManus:

Q. Now, Mr. Fisher, you mentioned the Lynch machine. Was that machine designed primarily to make narrow neck, or was it designed primarily to make wide-mouth ware?

A. No, sir; it has been designed originally to make narrow-neck ware.

Q. And the Lynch machine you said was first developed about what time?

A. Well, I would guess sometime from 1915 on. The exact [fol. 465] date I don't carry in my memory.

Q. And over the years the Lynch machine has put improvements on it and——

A. Yes, sir. The Lynch, original Lynch machine, carried characteristics like the Lynch LA, the LAS, the L. That drew—in the evolution they were discarded and the Lynch 10 took its place sometime in the thirties, which was a higher production machine, but still a narrow-neck machine.

Q. Could the Lynch 10 make all the ranges of narrow-neck bottles, from the smallest to the largest?

A. Yes, through the different machine types they made.

Q. Were there several machine types made?

A. Or they would make everything except carboys, I think. They would make from the smallest item through to a gallon container.

Q. You said before the Lynch did not make wide-mouth?

A. Mr. McManus, it was not designed as a wide-mouth machine. It has been used for wide-mouth. We have made some wide-mouth on it when we were forced to. It did not make the quality of wide-mouth that our customers de-
[fol. 466] manded. It made a more wavy piece of ware. The distribution wasn't as good and it wasn't as good a product such as was produced on the Miller machine or the Hartford IS.

Q. Now, the Miller machine was primarily what, a narrow-neck or a wide-mouth?

A. Wide-mouth.

Q. And could the Miller machine be changed from making small ware to large ware?

A. Miller produced for the different range wares, if my memory serves me right, four different size machines, starting with their JPS, JPM, JP and JPL, each one of those, the last letters signifying the type ware it made.

Q. From small to large?

A. That's right.

Q. The Hartford IS equipment, as we know it today, the modern equipment, is that limited to making either one type of ware, either wide-mouth or narrow-neck?

A. No, sir; it will make both types of ware.

Q. If you are manufacturing wide-mouth ware on a Hartford machine, small ware, can you make a range all the way up to the large ware on the Hartford machine?

[fol. 467] A. Yes.

Q. Of the wide-mouth type?

A. You can go up to gallons.

Q. If you are making narrow-neck, small narrow-neck bottles on the Hartford IS equipment, can you make up to gallons, narrow-neck gallons, on that equipment?

A. On the same machine?

Q. Yes, sir.

A. Yes, sir.

Q. Is it possible to go from making a gallon narrow-neck bottle on the Hartford IS machine to a gallon wide-mouth bottle on that machine?

A. Yes, sir.

Q. And have you ever had occasion, to your knowledge, to change one of your lines from making narrow-neck bottles on an IS equipment to wide-mouth bottles?

A. That is a standard procedure, Mr. McManus. As your type of orders change, one day you might be making narrow-neck ware, and the order which you have to fill the next day is a wide-mouth, and you change the equipment.

[fol. 468] Q. Now, could you tell me how long it takes your company to change from making wide mouth ware on an IS machine to narrow neck?

A. I think we are doing it now in three to four hours.

Now, as I understand it, there has been some testimony here that the IS equipment comes out in four sections?

A. Regularly, yes, sir. However, Mr. McManus, there are certain companies who use the machine in less than four sections, including our own company. At one time in the early 30's I had a one-section machine and it was used largely for experimental work.

Q. I see.

A. But the machine is designed so that you could build it up from one section, and originally they only went to four.

Q. How many sections are there now, Mr. Fisher?

A. Well, I think the evolution began in the last three or four years and it is going more and more to a six-section machine.

Q. And on a six-section machine does that mean you are making in effect six bottles at one time?

A. Yes, sir.

[fol. 469] Q. Would those six glass containers be all of the same type?

A. Normally, yes. It would be absolutely necessary as long as they are the same weight.

Q. But they would have to be the same weight?

A. They would have to be the same weight.

Q. And this is a gob-fed machine, would you call it?

A. Yes, sir.

Q. And this machine is fed from your furnace or tanks, is that correct?

A. This machine is fed from feeders which are built out from the front of your furnace.

Q. How does that feeder handle all six sections of the machine—is it rigid?

A. I don't know that I am good enough to describe it but I will try.

Q. Just describe it generally.

The Court: Mr. McManus, do you plan to have some sort of a diagram here?

Mr. McManus: Yes, I will. I believe this is about the last question that I have on the machine.

The Court: All right.

Mr. McManus: I do not want to go into too much detail [fol. 470] but I would like to get an answer to this question.

A. The six sections of the IS machine are stationary. The furnace is about 12 feet above the floor. Extending upwardly toward that furnace from each one of the sections are stationary troughs which come together in an arc right under the orifice where the glass is fed down. There is a scoop rotating on a backward and forward motion, timed with the machine, and a common scoop that delivers the gob to each one of the six troughs.

Q. You indicated that you have amber tanks for making brown glass at several of your plants?

A. Yes, sir.

Q. Do those tanks have to be separate from your flint glass? Are they separate tanks?

A. They are in the same building.

Q. Yes, but I meant——

A. But it is a tank in itself.

Q. The vat has to be separate?

A. Yes, sir, very decidedly.

Q. That would be true of any different colors that are made?

A. Yes, sir.

[fol. 471] Q. Mr. Fisher, you have indicated that you were engaged in the manufacture of closures for glass containers, is that correct?

A. That is right.

Q. And what type of closures do you make?

A. We make metal and plastic closures of a wide range for food processors and for other types of processors.

Q. Do you make the continuous thread type closure?

A. Yes, sir, we do.

Q. And the non-vacuum type?

A. The what?

Q. Non-vacuum type?

A. Yes, sir.

Q. Do you make vacuum closures?

A. Yes, sir, we do.

Q. Do you make the side-seal type?

A. We make the side-seal as well as the twist-off.

Q. Now do you make machinery for applying these vacuum closures to glass containers?

A. Yes, sir.

Q. Could you estimate your size in this industry; are you 1, 2, 3 or 4?

Mr. Hughes: Is this in the closure industry?

[fol. 472] Mr. McManus: In the vacuum closures.

A. I don't think I could estimate that today, sir, because I haven't seen any figures lately.

The Court: Would you say you were one of the first three or four?

The Witness: I would say, your Honor, yes.

Q. Now, how long has your company been engaged in the manufacture of steam type vacuum closures?

A. I would say since the Nineteen Hundreds—some time around 1920.

Q. And you have a plant where you manufacture your own closure machinery?

A. We have a plant where we design and build the pilot machines and later, after we know we are right, we place these in outside machine shops under contract.

Q. Now, do you sell or do you lease this equipment to your customers?

A. We lease most of them.

Q. And do you have a service organization?

A. Yes.

Q. That services your equipment.

A. Yes.

Q. Do you lease this equipment throughout the United

[fol. 473] States?

A. Yes, sir.

Q. Could you give me your opinion as to the difficulties that a company would encounter in attempting to enter into the manufacture of vacuum type closures?

Mr. Hughes: I object to the form of the question.

The Court: Sustained.

Q. What would be necessary for a company to enter into the manufacture of vacuum type closures and vacuum type closing machinery?

A. Well, that is a pretty complicated question.

Mr. Hughes: There are two questions in one, your Honor.

Mr. McManus: All right, let us first——

The Court: First of all, there are two questions in one, and second of all, I think you have got to define your terms a little better than that.

Nobody, I think, could answer that question, or, at least, I would be very much surprised if anybody could without having some idea as to what sort of business you were talking about.

Mr. McManus: What I am trying to elicit from this wit- [fol. 474] ness is if it is difficult or easy to enter into the business of manufacturing vacuum closing machinery.

The Court: Do you mean on a commercially profitable basis representing 10 per cent of the current manufacturing in the country, or something like that?

Mr. McManus: Let us take that question.

Mr. Hughes: Your Honor, I do not want to be in the position of appearing to object to your Honor's question——

The Court: You can object to my question, Mr. Hughes. There is no reason why you cannot.

Mr. Hughes: It seems to me that to ask a man what it would cost to equip himself to take over 10 per cent of an industry is——

The Court: What do you suggest?

Mr. Hughes: Your Honor, I don't suggest anything.

The Court: I know you don't, but I wondered whether you have any suggestions.

Q. Let me ask you this: To your knowledge, Mr. Fisher, are there any patents outstanding which would prevent a newcomer from entering into the manufacture of vacuum closure equipment, that is, basic patents?

[fol. 475] Mr. Hughes: Your Honor, I would object to that.

The Court: I will sustain the objection to that question. If you want to ask the witness whether he knows the extent to which machinery of this character is covered by patents, I will permit you to explore that to a limited degree and see where we go from there, because I don't know, in the first place, anything about this machinery at the moment.

Do you have patents on the machines that you produce?

The Witness: Yes, sir.

The Court: And you lease them?

The Witness: Yes, sir, we lease them.

The Court: What are they like? Just briefly tell us how they operate.

The Witness: Your Honor, that is a pretty hard question. There are about 15 different models ranging from a one-chamber machine where it takes an individual jar and it is probably hand-operated and where a person will fill the jar, put the cap on it, and the belt coming down over it and then draws his vacuum.

The Court: Is that for home canning?

[fol. 476] The Witness: It could be used for home canning, but many small packers use it.

The Court: Yes.

The Witness: You go from that small unit to our larger unit which takes 16 jars at a time. So the complications between those two are very great.

The Court: What is the general method? I take it that with your larger machines that there is some sort of a filling device whereby the food, or whatever it is, gets into the jar.

The Witness: Your Honor, the first step in the line is that you have a washing machine. These jars are dumped out of the cartons onto a continuous belt and are washed. They proceed from there to an automatic filler that fills—

The Court: The washing is for sterilization, is it?

The Witness: To take out any carton dust or any foreign matter.

The Court: Yes.

The Witness: The second step is the filler that fills these very accurately with products which have just been cooked. It moves from there to the packing machine—and I will use the description of this one 16-jar capping machine of

[fol. 477] ours—and it will cap them probably at a rate of as high as 700 a minute. It proceeds from there to the retort where this is cooked and it goes from there to the labeling machine, and from the labeling machine into the carton.

The Court: All right, that gives me a fairly good idea of it. This is all done on a sort of an assembly line basis, is it?

The Witness: That is right, yes, sir.

The Court: And you have your own patents on these machines that you manufacture, is that right?

The Witness: That is right, sir.

The Court: And you lease the machines to your customers?

The Witness: That is right.

The Court: In other words, can anyone come to you and lease the machines?

The Witness: Yes, sir.

The Court: Of course they would have to pay for it.

The Witness: Yes, sir.

The Court: Now, take similar machines made by, let us say, Hazel-Atlas Glass Company. Do you know whether those machines are different from yours?

[fol. 478] The Witness: Your Honor, I don't know whether Hazel-Atlas as such have any of those machines. There is a closure division.

The Court: In the closure division of Hazel-Atlas.

The Witness: Their machines are different than ours.

The Court: They are different?

The Witness: They are a straight line variety. Ours are the rotary variety.

The Court: Do you know whether they have patents on their machines?

The Witness: I am pretty sure they have, sir.

The Court: You are pretty sure?

The Witness: Yes, sir.

The Court: And they in turn lease their machines in competition, I presume, with your machines?

The Witness: Yes, sir.

By Mr. McManus:

Q. Would you mind, if this is not a trade secret, telling me what the cost to you is of your largest machine, what it costs to manufacture?

A. Why, Mr. McManus, I would say that the machines after they knocked down would cost about $25,000.

[fol. 479] Mr. Hughes: Your Honor, may I inquire what kind of closing machines the witness is referring to?

The Court: The 16-cycle machines.

Mr. McManus: Of the vacuum type.

The Court: The vacuum type 16-cycle machine; is that right?

The Witness: That's right.

The Court: You said that you lease these machines to your customers.

Mr. Fisher, I take it that your company manufactures those machines itself; does it?

The Witness: That is right. We have engineered and designed the machines but we may not necessary have built the machines. We may have contracted the building, but when it is finished, we bring it back into our shop, check it over, and make sure that it is right and then we ship it to our customers.

Q. Do you install these machines in your customers' plants?

A. Yes, I think largely so, especially if it is a new installation. If it is going in as a repair installation, let us say, they may install it themselves.

[fol. 480] Q. But on a new installation you install it?

A. We want to be sure that everything is set up so that everything we can do will show to our advantage and get a good start.

Q. And this equipment that you said you lease, there is no other labor cost—is there any other cost for putting the machinery into the customer's plant but just the machine?

A. Oh, Mr. McManus, I wouldn't say that. I think that there are other charges that go along with it; for instance, extending customers' conveyors and patching up things that are not properly part of the machine and which they ask us to perform that service.

The Court: Then, of course, there is a sales cost, too.

The Witness: That is right.

Mr. McManus: Excuse me, what was that, your Honor?

The Court: There is the sales cost.

Mr. McManus: That would be for the caps, is that right?

The Court: No.

I take it, Mr. Fisher, you make some effort to promote [fol. 481] the leasing of these machines, do you not?

The Witness: Well, sure, we try to promote those.

The Court: Do you have salesmen that go out?

The Witness: That's right, but the same container salesman or package salesman that sells the glass closure will advocate the use of our machines.

The Court: And if he does that I presume that you may then send out to a new customer some sort of sales engineer to set the situation up?

The Witness: That is right, sir, what we call a service man.

The Court: A service man?

The Witness: A service engineer.

Q. I think you testified before that the leasing of these machines is customary throughout the industry, that is, the leasing of the vacuum type of closing machine?

A. That is right.

Q. And you say that you have salesmen for these machines?

A. Not for the machines as such. The man who sells the package, the bottle, the package salesman, is also in charge [fol. 482] of the selling of the machinery.

The Court: In other words, he sells containers, enclosures and machines?

The Witness: That is right.

The Court: In other words, it is your line that he is selling?

The Witness: That's right.

Q. Does this salesman recommend that a purchaser should use the complete unit, the machines, closures and glass containers?

Mr. Hughes: Your Honor, I object to the form of the

question. The testimony has been that there is a leasing arrangement and now he is talking about selling.

The Court: I think we know what he means.

In other words, you are thinking about trying to sell a package, is that right?

Mr. McManus: That is right.

The Court: To sell the package which consists of containers sold, closures sold, and machinery leased, is that right?

Mr. McManus: That is right.

The Court: Now, what is the question?

Q. Do your salesmen attempt to lease your machinery [fol. 483] and sell your caps and your glass containers as one unit?

A. Well, we first try to sell the containers and the closures, and if they succeed in that we are pretty sure that the machinery will follow.

Q. Why do you say that, Mr. Fisher?

A. Because it has been designed for our closures.

Q. The machine has been designed for your closures?

A. Yes, but again, let me state to you, if we cannot sell the whole package, we will sell any part of it.

Q. I understand. Now, does your company sell corrugated containers?

A: Do we sell corrugated containers?

Q. Yes.

A. No, sir, we do not. We sell them as an integral part of the gross package, but we do not sell corrugated containers as such.

Q. Do you produce your own corrugated containers?

A. We have one pilot plant which we use for that that we produce containers in, but for all the rest of the plants, using what information we get out of this plant, we know that we purchase it at the right price. We purchase all of the outer containers; we manufacture the inner parts of the containers.

[fol. 484] Q. Can you estimate in figuring out the cost, what is the most important element of cost in producing your glass containers?

A: Well, labor is the highest cost, paper follows second, and freight probably third.

The Court: Then the raw materials and things of that nature follow third and fourth or in some order after that?

The Witness: Yes, sir.

Q. Can you tell me what your purchases of corrugated shipping containers were for the year 1959 in dollar figures, or do you object to that if it is a trade secret?

A. I think I would rather not, Mr. McManus, please. I will tell you what the cost is, that is, the per cent.

Q. Approximately what per cent is it?

A. I would say that our cost is about 17 per cent.

Q. 17 per cent of the sales price of the glass containers?

A. Of the sales dollar.

Q. That is, of course, averaged out over the whole range?

[fol. 485] A. Yes, that's right.

Q. Of course, if it is a more expensive container the percentage might be less and for a cheaper container the percentage might be more?

A. Usually the large items have a greater container cost than the smaller items do.

Q. Can you tell me to your knowledge what glass container manufacturers have their own facilities for manufacturing shipping containers?

A. Yes, sir. Continental——

Mr. Hughes: I object to that. What is the relevance of this?

The Court: I will take it, Mr. Hughes.

Q. Would you like that question read back?

A. Yes, I would like it.

The Court: All right, read it back.

(Question read.)

A. I would think that there are only two, Owens-Illinois Glass Company and Continental Can Company. I am speaking now of the ones that are in the glass business.

Mr. McManus: Your Honor, could we take a short mid-morning recess now?

The Court: All right, Mr. McManus.

(Short recess.)

[fol. 486] The Court: All right, Mr. McManus.

Mr. McManus: I am finished with the direct examination.

The Court: All right, Mr. Hughes.

Cross-examination.

By Mr. Hughes:

Q. Mr. Fisher, when you were mentioning your cost, you did not mention the item of fuel; is that a significant item of cost?

A. Sure. If you wanted to lump all your raw materials together, fuel is one of your materials. I gave the wrong—I gave the individual items about the way they ran, which you use.

Q. Mr. Fisher, is competition in the glass container industry keen and vigorous?

A. I didn't get that.

Q. Is competition in the glass container industry keen and vigorous?

A. I would say very keen and vigorous.

Q. Now, you make glass containers, and you also make closures; isn't that correct?

A. That is correct, sir.

Q. Do you sell glass containers without closures?

A. Yes, sir.

Q. And you sell closures without glass containers?

[fol. 487] A. Yes, sir.

Q. Would you say that many of your glass container customers have other sources of supply?

A. Yes, I think that is a fair statement.

Q. On what basis do you sell glass containers, that is, f.o.b. factory, as the delivery price, what is it?

A. Delivered.

Q. Delivered price?

A. Yes.

Q. Do you equalize freight with any can manufacturing plants?

A. None that I know of, sir. I don't think we do.

Q. The important raw materials in the manufacture of glass containers are sand, lime and soda ash, are they not?

A. That's right, sir.

Q. Are those materials in plentiful supply in the United States?

A. Yes.

By the Court:

Q. Where do they mostly come from, Mr. Fisher?

[fol. 488] A. Sand comes from Pennsylvania, Illinois, Southern Michigan and California. Soda ash comes from New York State, Ohio, Detroit, Wyoming, and the West Coast.

Q. Is soda ash, is that a manufactured product or is it a natural product?

A. No, most of it is manufactured.

Q. Most of it is manufactured?

A. Soda ash from Wyoming, your Honor, is a mined product.

Q. I see.

A. And pulverized.

Q. And the lime, where does the lime come from? Is that out of limestone?

A. Yes, sir, wherever there is limestone.

Q. And limestone is in very plentiful supply in various sections, is it not?

A. Yes, sir.

By Mr. Hughes:

Q. You testified that you made opal glass at one of your plants; is that correct?

A. That is correct, sir.

[fol. 489] Q. Could you, if you desired to do so, make opal glass at any of your other plants with your existing facilities?

A. You show me where to get the business; we will make it.

The Court: Somehow I doubt Mr. Hughes is going to do that for you.

Q. You have referred to certain of your closing machines that cost about $25,000; do you remember that?

A. The machine?

Q. Yes.

A. Yes, sir.

Q. Could you tell us about how many of those you have under lease?

Mr. McManus: Your Honor, I would like to object in the event that that is a trade secret.

The Court: Well, if——

Q. Do you regard it as a trade secret?

A. Yes.

Mr. Hughes: I won't press the question.

The Witness: I'd rather not answer.

By the Court:

Q. Let me ask you this: what is your total volume of [fol. 490] sales? I think the figure used in the industry is net sales, which apparently more or less corresponds to what I was thinking of as gross sales, but what is your overall volume?

A. Our net sales last year, your Honor, was $142,000,000.

Q. 142,000,000?

A. Of all products.

Q. Is there any breakdown of that that you feel you could conscientiously give us without disclosing any secrets of your company? I mean, how much was for, let's say, containers, how much was for caps, and how much was for machinery?

A. Well, we have never published those figures.

Q. You never published those figures?

A. No, sir.

The Court: I won't press it.

The Witness: All right, sir.

By Mr. Hughes:

Q. Well, Mr. Fisher, your business and your sales are really derived from two main sources, are they not? That is, your glass container business, in which I include the closures, and your housewares; isn't that correct?

[fol. 491] A. That is correct, sir.

Q. And would you be willing to say that the tableware

division accounts for roughly half of your total sales volume?

A. I would rather not state, Mr. Hughes.

Q. In any event, I think you have told his Honor that the glass container part of your business ranks second in the industry; is that correct?

A. I think that is the rating that is given. I didn't give it that rating.

Q. Well, is that your understanding?

A. I would think it is about right.

Q. And you have told us that you manufacture and sell these metal and plastic caps and closures; is that right?

A. That's correct, sir.

Q. And you lease the closing machines?

A. Correct, sir.

Q. Apart from crown caps you make a complete line of closures; is that correct?

A. I think we make a pretty complete line.

The Court: You don't make crown caps?

The Witness: We do not make crowns.

[fol. 492] Q. Do you manufacture beer bottles?

A. Do we manufacture? Yes, sir.

Q. Yes, but not the crowns for them?

A. Mr. Hughes, we have manufactured crowns in the past, but we are not doing so now.

Q. Yes. No crowns of any kind?

A. Not to my knowledge, no, sir.

Q. And your closures include both the vacuum and the non-vacuum types; is that correct?

A. That is correct, sir.

Q. And both metal and plastic?

A. Yes, sir.

Q. And in the vacuum do you have both the side seal and the twist-off type?

A. Yes, sir.

Q. Now, your sales have been growing steadily, haven't they, over the years, the volume of your sales, from year to year?

A. Well, I certainly would hope so.

Q. And you know so, don't you?

A. Well, with the growth of the country and the growth

of the industry I think we have been keeping pace with it.

[fol. 493] Q. In 1950 do you recall that your sales were about $83,700,000? Do you happen to recall that figure?

A. I don't recall, no.

Q. Do you recall that last year your sales were about $141,000,000?

A. That's right, sir.

Q. Do you recall whether your net income in 1950 was approximately $5,785,000?

A. I would rather not answer that without actually seeing it, Mr. Hughes.

Q. Yes.

A. You have the statement, haven't you?

Q. Yes. But in any event, in 1959 your earnings were about $8,260,000; is that right?

A. How much?

Q. About $8,260,000?

A. Well, what does the statement state?

The Court: Mr. Hughes, if you have got the statement——

A. (Continuing) I am not going to go on memory.

Q. No.

A. You have my published statement.

Q. Yes. Well, now, Mr. Fisher, I show you——

[fol. 494] Mr. McManus: Your Honor, we are willing to stipulate that those are, what, the 10K reports?

Mr. Hughes: Yes.

Mr. McManus: To the Securities and Exchange Commission of the Anchor Hocking Glass Company.

Mr. Hughes: For the years 1955 through 1959?

Mr. McManus: That is correct, your Honor.

The Court: All right

Mr. Hughes: Well, your Honor, I have no desire to offer the entire document, but I would like to offer in evidence the statement of income and earned surplus in each one of those 10Ks for each one of those years.

The Court: All right.

Mr. Hughes: And I will just tear them out of this.

The Court: That is 1955-1959, inclusive; is that right?

Mr. Hughes: That is correct, your Honor.

The Court: Any objection to those going in?

Mr. McManus: No, sir, your Honor. The only thing, if Mr. Hughes would keep the rest of the document available, [fol. 495] so that——

The Court: I am sure he will keep the rest of the document available.

Mr. McManus: —so we can take a look at them. I looked at it once, but not in detail.

The Court: We will mark them as a single exhibit, I should think.

Mr. Hughes: Yes, sir.

(Defendants' Exhibit D-1 through D-5, inclusive, received in evidence.)

Mr. Hughes: Your Honor, I won't take the time now, but at some break I would like to call your attention to some of these figures.

The Court: All right.

By Mr. Hughes:

Q. In recent years have you made capital expenditures for plant expansion and modernization?

A. We have a regular program of modernization, not just in recent years, but going back for 20 years.

Q. Yes. And how many glass container plants do you have in the United States?

A. Seven.

Q. In 1958 you completed a fully automatic batch plant at Salem, New Jersey?

A. What?

[fol. 496] Q. In Salem, New Jersey, you completed a new plant at Salem, New Jersey?

A. Not a plant, no, sir. We put in a batching department.

Q. A batching department in an existing plant?

A. Storage plant, storage plant for sand, soda and lime.

Q. And you constructed additional warehouse facilities in Connellsville in 1958?

A. Well, we did in '56 and '58.

Q. And in 1958 did you commence an extensive program of plant revision and modernization of production facilities——

A. In 1945, sir——

Q. No. Well, just let me finish my question. In 1958 did you commence an extensive program of plant revision and modernization of production facilities at the Baltimore, Maryland, plant of your Carr-Lowrey subsidiary?

A. I don't think so. I think we started that five years before that.

Q. Well, did you complete it, in any event, around——

A. We completed a warehouse in '58.

[fol. 497] Q. And did you complete the work that you were doing at the Baltimore, Maryland, plant?

A. It isn't—it still isn't completed.

Q. Still not completed?

A. It is a continuing thing.

Q. Yes. Can you tell us approximately what a one-cycle closing machine would cost?

A. You mean a one-jar unit?

Q. Yes.

A. I am going to have to guess, Mr. Hughes.

Q. Do you have any approximation of the figure in your mind?

A. I would say $500, and that is purely a guess.

The Court: Would that be a machine operated by hand?

The Witness: By hand, yes.

Q. You stated that the Lynch equipment was originally designed to make narrow-neck glass containers; do you recall that? Do you recall your testimony to that effect?

A. Yes.

Q. Would you say that that kind of machinery was as efficient in speed and cost of manufacture as the IS equipment?

[fol. 498] A. Would you restate your question, Mr. Hughes?

Q. Would you say that that Lynch equipment, which was designed originally to make narrow-neck glass containers, was as efficient in speed and in cost of manufacture as IS equipment?

A. No, sir.

Q. Was this true in the 1940s and in the 1930s?

A. Well, I think it's been true that the IS machine was a higher production unit than the Lynch machine.

Q. And you said that the Miller equipment was originally designed to make wide-mouth glass containers?

A. Correct, sir.

Q. Would you say that that was as efficient in speed and cost of manufacture as the IS equipment?

A. I don't know that one. I would guess the Miller machine would come nearer meeting a competitive cost with IS on wide-mouth than the Lynch did.

Q. You said you switched from Lynch & Miller to the IS equipment in the early 1930s; do you recall that?

A. That we did.

[fol. 499] Q. What prompted you to make the switch?

A. Because we thought the IS machine was a better machine.

Q. When you referred to the Hazel-Atlas vacuum closing machine, as I think you did——

A. I didn't refer to that, sir.

Q. Well, you were referring to the White Cap Division of Continental, were you not, when you made that reference?

A. That's right.

Q. Do you know whether Ball Brothers makes corrugated cartons for shipping?

A. I do not know, sir. I knew at one time that they owned a paper operation, and subsequently I thought they had disposed of it. I am not sure. They may.

Q. Mr. Fisher, can Anchor Hocking Company get more for its glass containers than Owens-Illinois can for its glass containers?

A. Wish we could.

Q. And Owens-Illinois can't get more money for its glass containers than Anchor Hocking, can it?

A. I can't answer for Owens.

Q. Not for very long, anyway.

A. What is that?

[fol. 500] Q. Not for very long, I say.

A. I couldn't answer that because I don't know it for a fact. I got my opinion.

Q. What is your opinion?

A. (No response.)

Q. Would you prefer not to go into it?

A. I prefer not to say.

Q. All right. Where the price of a plastic container for a particular end use, such as suntan lotion—let's take suntan lotion—is higher than the Owens-Illinois price of a glass

container for the same end use, would Anchor Hocking price its glass container at the higher plastic container price or at the lower glass container price?

A. I am not familiar, sir, with the plastic container prices. Therefore, I am unable to answer your question intelligently.

Q. Well, I want you to assume for purposes of the question that the plastic container price is higher, and on that assumption I ask you whether Anchor Hocking would price its glass container at the higher plastic container price or at the lower glass container price of Owens-Illnois?

[fol. 501] Mr. McManus: Your Honor, I am going to object. I think that question is so conjectural I am not sure that this witness could possible answer it.

The Court: Well, if the witness can answer it, he can answer it. If he can't answer it, he will tell us.

A. Mr. Hughes, I can't answer it because we are not in the plastic business. I suppose we have lost some business to plastic. There are other members of the industry who are in the plastic business.

Q. But the price that you watch, the price that you watch primarily, is the price of the other manufacturers of glass containers; is that correct?

A. Why, decidedly so.

Mr. Hughes: Excuse me just one moment.

No further questions.

The Court: All right, anything further, Mr. McManus?

Mr. McManus: Just one, your Honor.

Redirect examination.

By Mr. McManus:

Q. Mr. Fisher, to your knowledge, are vacuum closures used for enclosing glass containers for food?

[fol. 502] A. I would think that 90 per cent of the need would be in food.

Mr. McManus: Thank you, Mr. Fisher.

Mr. Hughes: No further questions.

The Court: All right, thank you, Mr. Fisher.

(Witness excused.)

Mr. Hughes: Your Honor, before the next witness is called, might I just briefly call your Honor's attention to these figures?

The Court: Yes.

Mr. Hughes: For the year ended December 31,——

Mr. Greenberg: Could you wait just a moment for Mr. McManus to come back?

The Court: You can deputize for Mr. McManus while these figures go in.

Mr. Greenberg: Very well.

Mr. Hughes: For the year ended December 31, 1955, Anchor Hocking sales—and I am just giving them in round figures—were $113,787,000. In 1956 they were $120,000,000. In 1957 they were $125,000,000. In 1958 they were $132,800,000 and in 1959 they were $141,000,000.

The net income for the year 1955 was $6,130,000; for the year 1956, $6,200,000; for the year 1957, $6,900,000; for the [fol. 503] year 1958, $7,700,000, and for the year 1959, $8,264,000—all after taxes.

Mr. Greenberg: Your Honor, may the Government make just one comment along that line?

The Court: Yes.

Mr. Greenberg: I would just like to point out that the gross national product of this country has risen in that period of time; that the debt has risen in that period of time and so has the per capita income of persons and corporations, and we believe that type of evidence is wholly irrelevant unless connected up with something more meaningful.

The Court: Well, it may be, it may be connected at some point.

Mr. Hughes: It seems to me that Mr. Greenburg has suddenly become both an economist as well as a lawyer.

Mr. Greenberg: I deny that.

The Government calls Mr. Green to the stand.

[fol. 504] WILLIAM J. GREEN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?
A. In Rye, New York.
Q. Pardon?
A. Rye, New York.
Q. Are you employed by the Thatcher Glass Company?
A. Right.

The Court: By what glass company?
Mr. Greenberg: Thatcher, sir, T-h-a-t-c-h-e-r.
The Court: Thatcher.
Mr. Greenberg: Yes.

Q. Have you been president of the company since 1957?
A. Correct.
Q. And have you been executive vice-president of the company since 1954?
A. To 1957, also.
Q. Would you describe your work, duties and responsibilities in each of these various positions?

By the Court: Well, I don't think we need a description [fol. 505] of the duties of the president of the company, nor of the executive vice-president. I think I can imagine pretty well what those gentlemen do.
Mr. Greenberg: Then I will certainly dispense with the question.

Q. And your company has offered since 1954, in your experience, wide-mouth and narrow-neck containers for food products?
A. Correct.
Q. Do you know, sir, whether these containers have been generally used for products stored on grocery and institution shelves for long periods of time?
A. They have.
Q. They have, sir; correct?
A. Yes.

Q. Has this, from your experience, been generally true for the industry's food glass containers?

A. Yes.

By the Court:

Q. You manufacture a full line of glass products, Mr. Green, I mean glass container products?

A. In your term of reference, we manufacture a full line of glass containers, with the exception of pharmaceuticals and toiletries.

[fol. 506] Q. And what is your gross volume?

A. $50,000,000 last year.

By Mr. Greenburg:

Q. Sir, would you give us some illustrations of the foods which have been used or which have used the hermetic properties of glass for long-shelf life?

A. Baby foods, fruits and vegetables.

Q. Is coffee another one?

A. Coffee.

Q. Both instant and ground?

A. Yes.

Q. And there are many, many others, sir; is that correct?

A. Yes.

Q. Sir, has there been only one, only one other type of hermetic container offered to food processors in these areas for long-shelf life?

A. If we define hermetically sealed as airtight, there would technically, I suppose, be only one other container.

Q. And what is that container, sir?

A. Metal cans.

Q. Would you characterize for us the can companies' activities in the food areas you just described and illus-

[fol. 507] trated?

The Court: Wait a minute.

Mr. Hughes: Can companies, did you say? You said "can"; do you mean "can"?

Mr. Greenberg: That is just what I meant, metal can companies.

The Court: Well, you want him to characterize? What do you mean by characterizing, Mr. Greenberg?

Mr. Greenberg: I will withdraw the question.

The Court: Try and reframe it. It doesn't mean anything to me the way it is now.

Mr. Greenberg: All right, I will withdraw the question.

Q. Changing the direction of our conversation, sir, for the moment, has Thatcher had a research laboratory since 1954?

A. Yes.

Q. And would you describe the activities they have engaged in since that time?

A. Well, broadly, we do——

Q. Could you raise your voice, sir?

A. Broadly speaking, we engage in our research laboratory in both applied and basic research, and in our laboratory, controls of raw materials and products.

[fol. 508] Q. Now, you used the terms "applied" and basis research." Are they different?

A. Yes.

Q. Would you explain the difference?

A. Well,——

The Court: Now, Mr. Greenberg, do I have to be told the difference between applied and basic research?

Mr. Greenberg: I would assume not.

The Court: I should hope not by this time. You know, if you give me credit for just a little intelligence it is very helpful and we can proceed from there and go on, so that I know a little something about something, and then we can go on from there.

Mr. Greenberg: Well, I say this especially to the Court, that it was merely foundation testimony for light weighting, testimony of that nature.

The Court: All right.

Q. Mr. Witness, would you tell us about your lightweighting experience work?

A. Well, over the years, as our machinery and equipment processors have become refined, we have been able to, as an industry and also as a company, to successfully reduce the [fol. 509] weight of glass containers without sacrificing any inherent strength.

Q. And what is the reason for reducing the weight, freight savings—savings in cost? What is it?

A. Well, the obvious ones would be reduction of amount of raw material and fuel and also freight.

Q. Does the research laboratory carry on experiments with coatings to prevent breakage and abrasions?

A. Yes.

Q. Can you give us a very brief description of what that is all about?

A. Well, generally speaking, coatings are applied in the glass container industry to protect the pristine condition of the bottle from the time it is manufactured until it is utilized by the processor.

Q. And is it also designed to prevent abrasions, the coatings I am talking about, abrasions on the processing line?

A. No, because in—again, generally speaking, the coatings are removed before the glass containers are filled.

Q. Aren't there also experiments in coatings, various [fol. 510] types of coatings, sulphur and otherwise, which are designed to be put on the glass container, remain there for the purpose of preventing abrasions on the processing line?

A. In some instances, that is correct.

By the Court:

Q. What is the nature of the coatings, some sort of film that is put on?

A. Well, sir, we have coated bottles for 35 years. There is nothing new about it. You can coat a bottle with a fume or, for example, a sulphur fume, which increases its inherent strength, and in the latter years we have used silicones and stearate-based materials to perform the same function, depending upon the requirements of the packer. If you are going to put nails in a glass jar, he doesn't need to wash it out. If you are going to put something else in it, then in order to conform to pure food and drug laws, among other things, conditions are somewhat different.

By Mr. Greenberg:

Q. Has Thatcher had an industrial engineering group since 1954?

A. Yes.

Q. What kind of work do they do?

A. Well, generally speaking, their function is to improve [fol. 511] the technology of machinery, equipment of our own processing.

Q. When you say "processing," you mean manufacturing glass containers?

A. Manufacturing.

Q. Right. Has Thatcher had a customer advice department since 1954?

A. Yes.

Q. Will you describe the work they have done?

A. Well, they are primarily service people who help our customers in any way possible to properly utilize our product, who make regular calls to keep abreast of the customers' equipment, machinery, or any changes that might affect our glass containers, and they handle complaints on the rare occasions that we have them.

Q. Would they also aid processors in setting up new glass lines if they wanted to?

A. If we were asked to do that.

Q. You would give technical advice?

A. Yes.

Q. Do you have a quality control department in the consumer service department, as well?

[fol. 512] A. Yes.

Q. What do they do?

A. Well, we have a quality control laboratory in each of our factories, whose basic function is to see that the glass that we produce is correct, made properly and to the specifications of the customer before it gets out of the plant.

The Court: In other words, that is in effect product testing.

The Witness: Yes.

Q. Sir, does your company have a packaging laboratory?

A. Yes.

Q. Describe the work they do.

A. Well, they are primarily concerned with development of better cartons, which will conform with the customer's requirements at minimum expense.

Q. Sir, from 1954 to the present, have there been any other companies which offer all these services to its customers?

A. Yes.

Q. And would you list all of those companies, sir?

A. Well, I think that is a broad question. I don't know that each of these companies has every facet of these things [fol. 513] you have been through, but I should think, broadly speaking, Owens-Illinois, Anchor Hocking, Hazel-Atlas, Ball Brothers, possibly Armstrong Glass Container would have similar and almost as complete or perhaps more complete service.

Q. And those are all the ones you can recall, sir?

A. Yes, I should think that would cover it.

Q. That is the list; is that correct, sir?

A. Yes.

The Court: Well, now, Mr. Greenberg, he can't be expected to go beyond the statement he just made. He has told us all he knew who had comparable facilities. Maybe there are others. He doesn't exclude the possibility that there may be others.

Do you, Mr. Witness?

The Witness: No.

[fol. 514] Q. Sir, from your experience in the industry, have you learned of any others or do you recall any others?

A. I have listed those that I can think of. I named the largest companies.

Q. Sir, does your company sell closures for glass containers?

A. Yes.

Q. What type of closures?

A. Our closure manufacturing is confined to plastics.

Q. Plastic?

A. Yes.

Q. What are they used for?

The Court: Are they screw top?

The Witness: Yes, sir. We make only polystyrene plastic.

Q. What are they used for?

A. Primarily liquorware.

Q. Liquorware, is that what you said?

A. Yes.

Q. Has your company been selling narrow neck bottles for catsup since 1954?

A. Yes, sir.

[fol. 515] Q. In your experience with Thatcher have aerosol cans been offered to your customers for this product?

A. Yes.

Q. How have you learned of this?

A. From trade journal advertisements and we have had reports from our sales force.

Mr. Greenberg: You may examine.

Cross-examination.

By Mr. Hughes:

Q. Mr. Green, do most of your customers for glass containers have more than one source of supply?

A. Yes.

Q. Do most of your customers for closures have more than one source of supply?

A. Yes.

Q. Would you say that competition in the glass container industry is keen and vigorous?

A. I certainly would.

Q. You do not quote prices to a specific customer for the purpose of meeting can prices, do you?

A. No.

Q. You do not equalize freight with any can plants, do you?

A. No, we do not.

[fol. 516] Q. The location of any can manufacturing plant or plants, does that have any relation to the location of your glass container plant?

A. If I understand you, are you asking me if we locate our plants or have that factor as a decision where our plant is located?

Q. Yes.

A. The answer is no.

The Court: By the way, how many plants do you have?

The Witness: We have five glass container plants.

The Court: Do you manufacture, besides glass containers, any other glass products such as tableware?

The Witness: Yes, we have one pressware plant.

Q. There is a McKee Division of your company?

A. Yes.

Q. What does that division make?

A. Pressware.

Q. Could you make glass containers with the facilities of your McKee Division if you chose to do so?

Mr. Greenberg: I am going to object to that question, your Honor, unless we have had a foundation and whether [fol. 517] they have tried to do so.

The Court: Overruled.

A. With certain modifications, we can and have made glass containers in that plant.

Q. Do you know, Mr. Green, if there is anything that would keep your company from going into the vacuum closure business if you chose to do so?

A. Presumably not, if we chose to do so.

The Court: Let me ask you this: Is there anything to stop you from going into the vacuum closing machinery business if you chose to do so?

The Witness: Depending on our ingenuity and amount of money, I think there is nothing to prevent us.

Q. Does the Hazel-Atlas Division of Continental offer their products to those glass container customers which you described in your direct examination?

A. I should think so, yes.

Q. I show you this document and ask if you can identify that as your annual report for the year 1959?

A. Yes, sir.

Mr. Hughes: I offer it in evidence.

The Court: There is no objection, I take it.

Mr. Greenberg: Are you offering the entire exhibit?

[fol. 518] Mr. Hughes: Yes.

Mr. Greenberg: No objection.

(Received and marked Defendants' Exhibit E.)

Q. Do you make beer bottles?

A. Yes.
Q. And soft drink bottles?
A. Yes.
Q. Do you make crowns for either of that type of bottle?
A. No.

The Court: Any further cross?
Mr. Hughes: No, nothing more, your Honor.
The Court: Anything further, Mr. Greenberg?
Mr. Greenberg: I just have two questions.
The Court: Very good.

Redirect examination.

By Mr. Greenberg:

Q. Sir, since 1954 to what extent have you made glass containers in the McKee Division for commercial use?
A. In our McKee Division in Jeannette, Pennsylvania, I think we produced green glass containers for beverages and beer and some fruit juices there from about 1955 to 1957, perhaps two and a half or three years, at which time [fol. 519] we discontinued that operation.
Q. You discontinued the operation?
A. Yes.
Q. Just one more question:
You stated that at the present time you have five glass container plants?
A. Yes, five glass container plants.
Q. Where are they located?
A. Elmira, New York, Streator, Illinois, Lawrenceburg, Indiana, Tampa, Florida, and Saugus, California.

Mr. Greenberg: Thank you.
Mr. Hughes: No further questions.

(Witness excused.)

Colloquy Between Court and Counsel

The Court: All right, gentlemen.
Mr. McManus: Your Honor, as I told you yesterday, the original witness that we had from this company was a Mr. Pollack, with whom we intended to cover a much broader area.

The Court: Mr. McManus, I think that all of the gentlemen in back of you cannot hear you. Will you talk a little louder?

Mr. McManus: Mr. Pollock covered a longer period of time in the glass container industry than Mr. Green and [fol. 520] we intended to have a much more extensive and lengthy examination. We find at this time that we do not have another witness scheduled, and what I wanted to know, your Honor, is——

The Court: You mean that you have no more for this morning or no more for the day?

Mr. McManus: We only had two scheduled for the day, your Honor. What I wanted to know was this, your Honor, in regard to documents. There have been certain documents which the defendants have indicated—not that they have indicated but they have stated that they will not object to them, and I was wondering if you could tell me how you would like for us to put those documents in the record.

The Court: Well, if there is no objection, I will direct the clerk to sit down with counsel and mark in evidence, with the appropriate numbers, any documents to which there is no objection. There is absolutely no reason for me to be present while that process is going on.

Mr. McManus: The other thing that I wanted to ask your Honor about was this:

Although, as we say, we had no one else scheduled, we believe that we will be able to have another witness after [fol. 521] lunch, and that will be Mr. Thomas of Bristol-Myers.

Mr. Greenberg: Your Honor, as we understand, Mr. Thomas desires to testify as soon as he can and will come down on a few hours' notice. Actually what happened here was that we had assumed——

The Court: Who is Mr. Thomas?

Mr. Greenberg: He is from Bristol-Myers. We had depended on the cross-examination of Dr. Ball, and we have had difficulty in shifting witnesses from next week back into this week.

Mr. McManus: That has been our problem, the fact that Dr. Ball was not cross-examined.

The Court: All right. Put Mr. Thomas on this afternoon.

We are going to have to accommodate this situation. The time of the Court is entirely too important to permit the wasting of any part of any day, if we can avoid wasting it.

What time do you think you can get Mr. Thomas here?

Mr. McManus: We will attempt to get him here by two o'clock.

The Court: All right.

Mr. McManus: It might be later——

[fol. 522] The Court: We will make it 2.15, and we will put on Mr. Thomas, and Mr. Hughes will do what cross-examining of him he can. If he requires further time, I will hear an application at that time.

Do you want to work on the documents between now and then?

Mr. McManus: Well, your Honor, I thought that we would have our luncheon recess and when we come back we would work on them.

The Court: I presume that you can work that out with the clerk and with your opponents, but the fact is that we now have an hour and three-quarters and I would think that some of that time could be put to good use.

If you want to do it after you complete the witness Thomas that is all right with me.

How long do you estimate that you will be on direct with Thomas?

Mr. McManus: It won't take over an hour.

The Court: Then we ought to be through with Mr. Thomas. I doubt if Mr. Hughes' cross-examination will run very much longer, but we will see.

Mr. Hughes: Your Honor, before you rise, we have that [fol. 523] exhibit in evidence and I don't know whether your Honor has had an opportunity to look through it.

The Court: All I wanted to do was thumb through it and get a general idea of the picture.

Mr. Hughes: There are a few things that I wanted to call your Honor's attention to.

The Court: All right, you may do that now. There is a page here showing a ten-year review. Is that what you wanted to call my attention to?

Mr. Hughes: Yes. I wanted to read these figures into the record: That in the year 1950 the sales were——

The Court: First read the sales and then the net income for each year.

Mr. Hughes: In 1950 the sales were $18,800,000 and the net income was $972,000.

In 1951 the sales were $23,000,000 and the net income was $1,097,000.

In 1952 the sales were $27,700,000 and the net income was $990,000.

In 1953 the sales were $32,597,000 and the net income was $1,246,000.

In 1954 the net sales were $30,891,000 and the net income was $1,391,000.

[fol. 524] In 1955 the net sales were $36,640,000 and the net income was $1,362,000.

In 1956 the net sales were $39,000,000 and the net income was $1,760,000.

In 1957 the net sales were $42,000,000 and the net income was $2,340,000.

In 1958 the net sales were $42,970,000 and the net income was $2,398,000.

In 1959 the net sales were $49,860,000 and the net income was $2,641,000.

There is one other item that I would like to call to your Honor's attention. This appears at page 3:

> The year 1959 was significant for Thatcher Glass Manufacturing Company in three aspects: Financially, it was the best in our seventy-six year history, with sales and earnings rising to new peaks in spite of a costly labor dispute that occurred in the last quarter of the year. Secondly, in completing the Lawrenceburg, Indiana plant expansion and starting construction of a new plant in Tampa, Florida, we substantially increased our bottle-making capacity and, in turn, our earnings potential. Thirdly, we took a decisive step in the direc-
> [fols. 525-533] tion of broader diversification by acquiring two plastics enterprises, the Celon Company and Plastic Tube & Bottle, Inc., both within the packaging industry and supplementing our glass container business."

The Court: Very good. We will now take a recess until 2.15.

(Recess to 2.15 p.m.)

* * * * * * *

[fol. 534] STIPULATIONS OF DEFENDANT WITH REGARD TO DOCUMENTS PROPOSED TO BE OFFERED IN EVIDENCE BY PLAINTIFF

Subject to the qualifications and limitations contained herein, the defendant stipulates as follows with respect to the proposed Government exhibits, which are referred to in each case by the number assigned to them by the Government.

Where applicable, the numbers assigned by the defendant to the documents at the time they were produced are given in parenthesis immediately following the assigned Government number.

G-400 (DP-2950)

This document was produced by the defendant from its files. It was prepared in 1954 by Dana Hill, then Manager of Commercial Research Department of defendant and was distributed to the persons named on the introductory sheet.

G-400A (DP-3282)

This document was produced by the defendant from its files. It was prepared on or about November 24, 1947 by R. S. Hatfield, then Assistant to the Vice President in charge of Sales of defendant. It was distributed to the addressee and to the persons indicated as recipi-
[fol. 535] ents of carbon copies.

G-401 (DP-3163)

This document was produced by the defendant from its files. It was prepared by the Commercial Research Department, a department of defendant, in or about April, 1949. The initials at the bottom of page iii are those of D. H. Walker, then Manager of Commercial Research of defendant. The data on numbered page 7

was provided by W. K. Neuman, then Products Sales Manager of defendant.

G-402 (DP-3164)

This document was produced by the defendant from its files. It was prepared on or about November 25, 1952 by the Commercial Research Department, a department of defendant.

G-403 (DP-2543)

This document was produced by the defendant from its files. It was prepared on or about May 18, 1956 by W. L. Tibbits, then a Research Engineer in the Special Products section of defendant. It was prepared in the course of Mr. Tibbitt's employment.

G-404 (DP-2544)

This document was produced by the defendant from [fol. 536] its files. It was prepared in or about August, 1956 by R. D. Cleaves, then Products Sales Manager of defendant. It was distributed to some persons within the defendant's organization.

G-405 (DP-2545)

This document was produced by the defendant from its files. This document, consisting of three separate letters or memoranda, was prepared in or about June, 1956, by R. D. Cleaves, then Products Sales Manager of defendant. The first two memoranda were distributed to some persons within defendant's organization. The letter comprising the last sheet of the exhibit was distributed to defendant's Division Managers of Sales and District Sales Managers.

G-405A (DP-2519)

This document was produced by the defendant from its files. It was prepared on or about November 21, 1956 by H. P. Lankelma, Jr., then Research Chemist "B", employed in the Special Products section of defendant.

It was prepared in the course of Mr. Lankelma's employment.

G-406 (DP-2970)

[fol. 537] This document was produced by the defendant from its files.

G-407 (DP-2969)

This document was produced by the defendant from its files. It was prepared by or for defendant.

G-408 (DP-2905)

This document was produced by the defendant from its files. It was prepared on or about July 21, 1955 by R. D. Cleaves, then Products Sales Manager of defendant. It was distributed to persons within defendant's organization and was received by P. L. Brachle of defendant's Central Metal Division.

G-409 (DP-2961)
G-410 (DP-2898)

This document was produced by the defendant from its files. It was prepared on or about August 18, 1955 by R. D. Cleaves, then Products Sales Manager of defendant. It was distributed to members of defendant's Sales Department, including members of the Pacific Metal Division and Central Metal Division.

G-411 (DP-2520)

This document was produced by the defendant from [fol. 538] its files. It was prepared on or about June 15, 1955 by H. P. Lankelma, Jr., then Research Chemist "B", in the Special Products section of defendant and was revised on or about May 1, 1956 by him or by other employees of the defendant.

G-412 (DP-2974)

This document was produced by the defendant from its files. It was prepared on or about February 15, 1955,

by National Family Opinion, Inc., Toledo, Ohio, for defendant.

G-413 (DP-2949)

This document was produced by the defendant from its files. It was prepared in or about November or December, 1955.

G-414 (DP-2968)

This document was produced by the defendant from its files.

G-415 (DP-3158)

This document was produced by the defendant from its files. It was prepared in or about March or April, 1946, by the Market Analysis Department or by the Commercial Research Department of defendant.

G-415A (DP-3250)

This document was produced by the defendant from [fol. 539] its files. It was prepared by R. J. Breen, who was at one time an employee in the Commercial Research Department of defendant.

G-415B (DP-3253)

This document was produced by the defendant from its files. It was prepared on or about July 13, 1953 by L. C. Dudley, then Products Sales Manager of defendant,

G-415C (DP-3261)

This document was produced by the defendant from its files. It was prepared on or about February 10, 1947 by G. H. Muth, then a special assignments employee of defendant. It was distributed to the addressees, each of whom was then an officer or employee of defendant.

G-416 (DP-2934)

This document was produced by the defendant from its files. It was prepared on or about May 3, 1946 by Batten, Barton, Durstine & Osborn, Inc. for defendant.

G-417 (DP-2469)

This document was produced by the defendant from its files. It was prepared on or about July 15, 1953 by R. A. Larson, then employed in connection with pack-
[fol. 540] age development for defendant.

G-418 (DP-2933)

This document was produced by the defendant from its files. It was prepared in or about October 1953 by Batten, Barton, Durstine & Osborn, Inc. for defendant.

G-419 (DP-2931)

This document was produced by the defendant from its files. It was prepared on or about June 7, 1954 by S-D Surveys Incorporated, New York, New York for defendant.

G-419A-B-C (DP-2935)

These documents were produced from the files of the defendant as one document. This document was prepared on or about July 5, 1945 by the Market Analysis Department of defendant and by S. T. Frame, then Manager of Market Analysis of defendant. It was distributed to the addressees, each of whom was then an officer or employee of defendant and to the persons indicated to receive carbon copies, each of whom was then an employee of defendant.

G-420 (DP-2932)

This document was produced by the defendant from its files. It was prepared in or about February, 1954
[fol. 541] by S-D Surveys Incorporated for defendant.

G-421 (DP-2960)

This document was produced by the defendant from its files. It was prepared on or about January 21, 1955 by S. B. Smart, then Assistant Products Sales Manager of defendant and was received by the addressee, an employee of defendant.

G-421A (DP-3284)

This document was produced by the defendant from its files. It was prepared on or about August 13, 1953 by S. B. Smart, then Assistant Products Sales Manager of defendant and was received by the addressee, an employee of defendant.

G-422 (DP-591)

This document was produced by the defendant from its files. It was prepared by the defendant.

G-423 (DP-3132)

This document was produced by the defendant from its files. It was prepared on or about December 26, 1957 by P. B. Gottschall, then a Section Chief in the Metal Research & Development Division of defendant. [fol. 542] It was prepared in the course of his employment.

G-424 (DP-3131)

This document was produced by the defendant from its files. It was prepared on or about December 26, 1957 by P. B. Gottschall, then a Section Chief in the Metal Research & Development Division of defendant. It was prepared in the course of his employment.

G-425 (DP-2497)

This document was produced by the defendant from its files. It was prepared on or about April 8, 1958 by P. B. Gottschall, then a Section Chief in the Metal Research & Development Division of defendant. It was prepared in the course of his employment.

G-426 (DP-2908)

This document was produced by the defendant from its files. It was prepared on or about May 9, 1958, by P. B. Gottschall, then a Section Chief in the Metal Research & Development Division of defendant. It was prepared in the course of his employment.

G-427 (DP-2909)

[fol. 543] This document was produced by the defendant from its files. It was prepared on or about July 9, 1958 by P. B. Gottschall, then a Section Chief in the Metal Research & Development Division of defendant. It was prepared in the course of his employment.

G-429 (DP-2951)

This document was produced by the defendant from its files. It was prepared on or about January 19, 1954 by the Commercial Research Department of defendant and D. H. Walker, then an employee in that department. It was received by the addressee and the persons for whom carbon copies were indicated, all of whom were then employees of defendant.

G-430 (DP-2926)

This document was produced by the defendant from its files. It was prepared by the Sales Development Department of defendant.

G-431 (DP-3159)

This document was produced by the defendant from its files.

G-432 (DP-3166)

This document was produced by the defendant from its files. It was prepared by the Advertising and Sales [fol. 544] Promotion Department of the defendant.

G-433 (DP-3160)

This document was produced by the defendant from its files.

G-434 (DP-2945)

This document was produced by the defendant from its files. It was prepared on or about June 4, 1947 by G. H. Muth, then a special assignments employee of defendant.

G-435 (DP-2944)

This document was produced by the defendant from its files. It was prepared on or about June 10, 1947 by G. H. Muth, then a special assignment employee of defendant. It was received by the addressee and the persons for whom carbon copies were indicated, each of whom was then an employee of defendant.

G-436 (DP-2943)

This document was produced by the defendant from its files. It was prepared on or about August 7, 1947 by G. H. Muth, then a special assignments employee of defendant.

G-437 (DP-3157)

This document was produced by the defendant from [fol. 545] its files. It was prepared on or about August 20, 1948 and revised on or about October 1, 1948 by the Commercial Research Department of defendant.

G-438 (DP-2942)

This document was produced by the defendant from its files. It was prepared on or about June 30, 1949 by A. L. Whittier, then Supervisor of Industrial Analysis of the Commercial Research Department of defendant. It was distributed to District Sales Managers of defendant and to the persons whose names appear at the bottom of page 1, each of whom was then an employee of defendant.

G-439 (DP-2941)

This document was produced by the defendant from its files. It was prepared on or about July 11, 1949 by M. M. Dukehart, Jr., then a special assignments employee of defendant. It was distributed to defendant's District Sales Managers and to the persons whose names appear at the bottom of page 1, each of whom was then an employee of defendant. The material included in the schedules following page 1 of the document was assembled by the Commercial Research Depart-
[fol. 546] ment of defendant on or about June 23, 1949.

G-439A (DP-3257)

This document was produced by the defendant from its files.

G-440 (DP-2940)

This document was produced by the defendant from its files. The first page of this document was prepared on or about October 31, 1952 by or for D. H. Walker, then Manager of Commercial Research of defendant. The material following the cover page was prepared on or about October 31, 1952 by the Commercial Research Department of defendant. The entire document was distributed to the addressee and to the persons whose names appear at the bottom of page 1, each of whom was then employees of defendant.

G-440A (DP-3278)

This document was produced by the defendant from its files. It was prepared on or about January 29, 1952 by D. H. Walker, then Manager of Commercial Research of defendant. It was distributed to the addressee and to the persons whose names appear on the bottom of page 3, each of whom was then employees of de-
[fol. 547] fendant.

G-441 (DP-2963)

This document was produced by the defendant from its files. It was prepared on or about December 31, 1952

by D. H. Walker, then Manager of Commercial Research of defendant. It was distributed to the addressee and to the persons whose names appear at the bottom of page 6, each of whom was then an employee of defendant.

G-442 (DP-2938)

This document was produced by the defendant from its files. It was prepared in or about January 1954 by A. J. Wood & Company for defendant. The foregoing stipulation does not apply to the two loose, *undoubd* sheets.

G-443 (DP-2962)

This document was produced by the defendant from its files. It was prepared on or about August 19, 1954 by S. B. Smart, then Assistant Products Sales Manager of defendant and by W. D. Way, Jr., then a Market Analyst for defendant. It was distributed to the addressee and to the persons whose names appear at the bottom of page 4, each of whom was then an employee of defendant.

[fol. 548] G-444 (DP-2937)

This document was produced by the defendant from its files. It was prepared in or about January, 1955 by Batten, Barton, Durstine & Osborn, Inc. for defendant.

G-445 (DP-2936)

This document was produced by the defendant from its files. It was prepared on or about February 21, 1956 by the Commercial Research Department of defendant under the general supervision of Dana Hill, then Manager of Commercial Research of defendant. It was distributed to the addressee and to the persons whose names appear at the bottom of page 1, each of whom was then an employee of defendant.

G-446 (DP-2499)

This document was produced by the defendant from its files. It was prepared on or about December 5, 1957 by S. W. Drigot, then a Research Chemist of defendant and was prepared by him in the course of his employment.

G-447 (DP-2971)

This document was produced by the defendant from its files. It was prepared in or about October, 1958 by [fol. 549] Elmo Roper & Associates for defendant.

G-448 (DP-2560)

This document was produced by the defendant from its files. It was prepared on or about August 25, 1958 by the Sales Control Department of defendant. It was distributed to some persons within the defendant's organization.

G-449 (DP-2561)

This document was produced by the defendant from its files. It was prepared on or about July 21, 1958 by the Sales Control Department of defendant. It was distributed to some persons within the defendant organization.

G-450 (DP-2562)

This document was produced by the defendant from its files. It was prepared on or about June 27, 1958 by the Sales Control Department of defendant. It was distributed to some persons within the defendant's organization.

G-451 (DP-2563)

This document was produced by the defendant from its files. It was prepared on or about May 26, 1958 by the Sales Control Department of defendant. It was distributed to some persons within the defendant's organization.

[fol. 550] Each of the following documents was produced from the files of the defendant. Each of them was prepared on or about the date indicated below by the Commercial Research Department and/or Sales Control Department of defendant, and each was distributed to some persons within the defendant's organization:

G-452 (DP-2564) April 25, 1958
G-453 (DP-2565) March 31, 1958
G-454 (DP-2566) February 28, 1958
G-455 (DP-2567) February 24, 1958
G-456 (DP-2568) January 22, 1958
G-457 (DP-2569) December 19, 1957
G-458 (DP-2570) December 10, 1957
G-459 (DP-2571) October 29, 1957
G-460 (DP-2572) September 18, 1957
G-461 (DP-2573) August 29, 1957
G-462 (DP-2574) July 19, 1957
G-463 (DP-2575) June 26, 1957
G-464 (DP-2576) May 23, 1957
G-465 (DP-2577) April 26, 1957
G-466 (DP-2578) March 25, 1957
G-467 (DP-2559) September 22, 1958
G-468 (DP-2558) October 23, 1958
[fol. 551] G-469 (DP-2557) November 26, 1958
G-470 (DP-2579) October 23, 1958
G-471 (DP-2580) February 21, 1957
G-472 (DP-2581) January 28, 1957
G-473 (DP-2582) December 20, 1956
G-474 (DP-2583) November 23, 1956
G-475 (DP-2584) October 17, 1956
G-476 (DP-2585) September 24, 1956
G-477 (DP-2586) August 20, 1956
G-478 (DP-2587) July 26, 1956
G-479 (DP-2588) June 25, 1956
G-480 (DP-2589) May 25, 1956
G-481 (DP-2590) April 19, 1956
G-482 (DP-2591) March 28, 1956
G-483 (DP-2592) February 24, 1956
G-484 (DP-2593) February 24, 1956
G-485 (DP-2594) January 24, 1956

G-486 (DP-2595) December 21, 1955
G-487 (DP-2596) November 22, 1955
G-488 (DP-2597) October 17, 1955
G-499 (DP-2598) September 21, 1955
G-500 (DP-2599) August 19, 1955
G-501 (DP-2600) July 26, 1955
G-502 (DP-2601) June 23, 1955
[fol. 552] G-503 (DP-2602) May 20, 1955
G-504 (DP-2603) April 25, 1955
G-505 (DP-2604) March 25, 1955
G-506 (DP-2605) March 1, 1955
G-507 (DP-2606) February 16, 1955
G-508 (DP-2607) January 13, 1955
G-509 (DP-2608) December 14, 1954
G-510 (DP-2609) November 18, 1954
G-511 (DP-2610) October 15, 1954
G-512 (DP-2611) September 16, 1954
G-513 (DP-2612) August 17, 1954
G-514 (DP-2613) July 15, 1954
G-515 (DP-2614) June 16, 1954
G-516 (DP-2615) May 17, 1954
G-517 (DP-2616) April 15, 1954
G-518 (DP-2617) March 18, 1954
G-519 (DP-2618) February 19, 1954
G-520 (DP-2619) February 17, 1954
G-521 (DP-2620) January 19, 1954
G-522 (DP-2621) December 14, 1953
G-523 (DP-2622) November 16, 1953
G-524 (DP-2623) October 13, 1953
G-525 (DP-2624) September 17, 1953
[fol. 553] G-526 (DP-2625) August 28, 1953
G-527 (DP-2626) July 15, 1953
G-528 (DP-2627) June 15, 1953
G-529 (DP-2628) May 15, 1953
G-530 (DP-2629) April 16, 1953
G-531 (DP-2630) March 18, 1953
G-532 (DP-2631) February 13, 1953
G-533 (DP-2632) January 20, 1953
G-534 (DP-2633) December 16, 1952
G-535 (DP-2634) November 17, 1952
G-536 (DP-2635) October 17, 1952
G-537 (DP-2636) September 16, 1952

G-538 (DP-2637) August 18, 1952
G-539 (DP-2638) July 17, 1952

Each of the following documents was produced from the files of the defendant. Each of them was prepared on or about the date indicated below by the Sales Analysis Department of defendant, and each was distributed to some persons within the defendant's organization:

G-540 (DP-2639) June 18, 1952
G-541 (DP-2640) May 28, 1952
G-542 (DP-2641) April 25, 1952
[fol. 554] G-543 (DP-2642) March 25, 1952
G-544 (DP-2643) February 26, 1952
G-545 (DP-2644) January 29, 1952
G-546 (DP-2645) December 20, 1951
G-547 (DP-2646) November 30, 1951
G-548 (DP-2647) October 23, 1951
G-549 (DP-2648) September 25, 1951
G-550 (DP-2649) August 27, 1951
G-551 (DP-2650) July 31, 1951
G-552 (DP-2651) June 29, 1951
G-553 (DP-2652) May 31, 1951
G-554 (DP-2653) May 1, 1951
G-555 (DP-2654) March 26, 1951

Each of the following documents was produced from the files of the defendant. Each of them was prepared on or about the date indicated below by the Commercial Research Department and/or Sales Analysis Department of defendant, and each was distributed to some persons within the defendant's organization:

G-556 (DP-2655) February 23, 1951
G-557 (DP-2656) January 25, 1951
G-558 (DP-2657) December 28, 1950
[fol. 555] G-559 (DP-2658) November 24, 1950
G-560 (DP-2659) October 25, 1950
G-561 (DP-2660) September 26, 1950
G-562 (DP-2661) August 21, 1950
G-563 (DP-2662) July 19, 1950
G-564 (DP-2663) June 16, 1950
G-565 (DP-2664) May 17, 1950
G-566 (DP-2665) April 21, 1950

G-567 (DP-2666) March 22, 1950
G-568 (DP-2667) February 17, 1950
G-569 (DP-2668) January 25, 1950
G-570 (DP-2669) December 23, 1949
G-571 (DP-2670) November 23, 1949
G-572 (DP-2671) October 26, 1949
G-573 (DP-2672) September 23, 1949
G-574 (DP-2673) August 24, 1949
G-575 (DP-2674) July 27, 1949
G-576 (DP-2675) June 21, 1949
G-577 (DP-2676) May 27, 1949
G-578 (DP-2677) April 28, 1949
G-579 (DP-2678) March 29, 1949
G-580 (DP-2679) Undated
G-581 (DP-2680) February 25, 1949
[fol. 556] G-582 (DP-2681) January 21, 1949
G-583 (DP-2682) December 17, 1948
G-584 (DP-2683) November 17, 1948
G-585 (DP-2684) October 21, 1948
G-586 (DP-2685) September 23, 1948
G-549 (DP-2686) August 11, 1948
G-588 (DP-2687) July 9, 1948
G-589 (DP-2688)

This document was produced by the defendant from its files. It was prepared on or about June 9, 1948 by A. L. Whittier, then a Market Research Analyst of defendant and distributed by L. E. Dake, then Manager of Commercial Research of defendant. It was distributed to persons named on page 1, each of whom was then an employee of defendant and to defendant's District Sales Managers, District Credit Managers and Product Sales Managers.

G-590 (DP-2689)

This document was produced by the defendant from its files. It was prepared on or about May 5, 1948 by A. L. Whittier, then a Market Research Analyst of defendant and distributed by L. E. Dake, then Manager of Commercial Research of defendant. It was dis-
[fol. 557] tributed to persons named on page 1, each of whom was then an employee of defendant and to de-

fendant's District Sales Managers, District Credit Managers and Product Sales Managers.

G-591 (DP-2690)

This document was produced by the defendant from its files. It was prepared on or about April 5, 1948 by A. L. Whittier, then a Market Research Analyst of defendant and distributed to the persons whose names appear on page 3, each of whom was then an employee of defendant, and to defendant's District Sales Managers, District Credit Managers and Product Managers.

G-592 (DP-2691)

This document was produced by the defendant from its files. It was prepared on or about January 8, 1948 by A. L. Whittier, then a Market Research Analyst of defendant and by G. H. Muth, then a special assignments employee of defendant. It was distributed to the persons whose names appear on page 3, each of whom was then an employee of defendant and to defendant's District Sales Managers and District Credit Managers.

[fol. 558] G-593 (DP-2692)

This document was produced by the defendant from its files. It was prepared on or about December 10, 1947 by A. L. Whittier, then a Market Research Analyst of defendant and by G. H. Muth, then a special assignments employee of defendant. It was distributed to the persons whose names appear on page 3, each of whom was then an employee of defendant and to defendant's District Sales Managers and District Credit Managers.

G-594 (DP-2693)

This document was produced by the defendant from its files. It was prepared on or about November 5, 1947, by A. L. Whittier, then a Market Research Analyst of defendant and by G. H. Muth, then a special assignments employee of defendant. It was distributed to the persons whose names appear on page 3, each of whom was then an employee of defendant and to de-

fendant's District Sales Managers and District Credit Managers.

G-595 (DP-2694)

This document was produced by the defendant from its files. It was prepared on or about October 7, 1947 by A. L. Whittier, then a Market Research Analyst of defendant and by G. H. Muth, then a special assign-
[fol. 559] ments employee of defendant. It was distributed to the persons whose names appear on page 3, each of whom was then an employee of defendant and to defendant's District Sales Managers and District Credit Managers.

G-596 (DP-2695)

This document was produced by the defendant from its files. It was prepared on or about September 5, 1947 by A. L. Whittier, then a Market Research Analyst of defendant and by G. H. Muth, then a special assignments employee of defendant. It was distributed to the persons whose names appear on page 3, each of whom was then an employee of defendant and to defendant's District Sales Managers and District Credit Managers.

G-597 (DP-2696)

This document was produced by the defendant from its files. It was prepared on or about August 6, 1947 by A. L. Whittier, then a Market Research Analyst of defendant and by G. H. Muth, then a special assignments employee of defendant. It was distributed to the persons whose names appear on page 3, each of whom was then an employee of defendant and to defendant's [fol. 560] District Sales Managers and District Credit Managers.

G-598 (DP-2697)

This document was produced by the defendant from its files. It was prepared on or about July 3, 1947 by A. L. Whittier, then a Market Research Analyst of defendant. It was distributed to the persons whose names

appear on page 3, each of whom was then an employee of defendant.

G-599 (DP-2698)

This document was produced by the defendant from its files. It was prepared on or about June 5, 1947 by A. L. Whittier, then a Market Research Analyst of defendant. It was distributed to the persons whose names appear on page 2, each of whom was then an employee of defendant.

G-600 (DP-572)

This document was produced by the defendant from its files. It was prepared by the defendant.

G-600A (DP-306)

This document was produced by the defendant from its files. It was prepared in or about June, 1955 by or for C. H. Buckley, then Products Sales Manager of defendant.

[fol. 561] G-600B (DP-2930)

This document was produced by the defendant from its files. It was prepared on or about May 26, 1956, by D. H. Walker, then Manager of Commercial Research of defendant. It was distributed to the addressee and to the persons whose names appear on page 3, each of whom was then an employee of defendant.

G-601 (DP-2929)

This document was produced by the defendant from its files. It was prepared on or about August 7, 1953 by D. H. Walker, then Manager of Commercial Research of defendant and was distributed to the addressee and to the persons whose names appear on page 3, each of whom was then an employee of defendant.

G-602 (DP-2928)

This document was produced by the defendant from its files. The first two pages of this document were prepared on or about December 11, 1953 by D. H. Walker, then Manager of Commercial Research of defendant and distributed to the addressee and to the persons whose names appear on page 2, each of whom was then an employee of the defendant.

[fol. 562] G-603 (DP-2927)

This document was produced by the defendant from its files. It was prepared on or about May 24, 1954 by the Commercial Research Department of defendant.

G-604 (DP-2958)

This document was produced by the defendant from its files. It was prepared on or about July 9, 1954 by D. H. Walker, then Manager of Commercial Research of defendant and was distributed to the addressee and to the persons whose names appear on page 1, each of whom was then an employee of defendant.

G-605 (DP-2903)

This document was produced by the defendant from its files. It was prepared on or about August 12, 1954 by D. H. Walker, then Manager of Commercial Research of defendant and was distributed to the addressee and to the other persons indicated on page 1, each of whom was then an employee of defendant.

G-606 (DP-3154)

This document was produced by the defendant from its files. It was prepared in or about September 1954 [fol. 563] by the Sales Analysis Department of defendant.

G-607 (DP-2902)

This document was produced by the defendant from its files. It was prepared on or about September 17,

1954 by or for Dana Hill, then Manager of Commercial Research of defendant and was distributed to the addressee and to the persons indicated on page 2, each of whom was then an employee of defendant.

G-608 (DP-2901)

This document was produced by the defendant from its files. It was prepared on or about October 21, 1954 by or for Dana Hill, then Manager of Commercial Research of defendant and was distributed to the addressee and to the persons indicated on page 3, each of whom was then an employee of defendant.

G-609 (DP-2504)

This document was produced by the defendant from its files. J. Heinen, whose name appears on page 9, was Manager of Packaging Engineering of defendant on October 27, 1954.

G-610 (DP-2924)

[fol. 564] This document was produced by the defendant from its files. It was prepared on or about November 24, 1954 by or for T. L. Sanders, then Supervisor, Marketing Analysis of defendant and was distributed to the addressee and to the persons indicated on page 2, each of whom was then an employee of defendant.

G-612 (DP-2973)

This document was produced by the defendant from its files. It was prepared on or about December 13, 1954 by S. B. Smart, then Assistant Products Sales Manager of defendant.

G-613 (DP-2904)

This document was produced by the defendant from its files. It was prepared on or about March 4, 1955 by S. B. Smart, then an employee of the defendant and signed by C. H. Buckley, then an employee of defendant.

G-614 (DP-2919)

This document was produced by the defendant from its files. It was prepared on or about July 26, 1955 by or for R. W. Everett, then a Market Analyst of defendant. It was distributed to the addressee and to the persons named on the bottom of page 2, each of whom [fol. 565] was then an employee of defendant.

G-615 (DP-2918)

This document was produced by the defendant from its files. It was prepared on or about August 31, 1955, by or for W. D. Way, Jr., then a Market Analyst of defendant. It was distributed to the addressee and to the persons named on page 2, each of whom was then an employee of defendant.

G-616 (DP-3155)

This document was produced by the defendant from its files. It was prepared in or about December, 1955 by the Commercial Research Department and/or the Sales Analysis Department of defendant.

G-617 (DP-2921)

This document was produced by the defendant from its files. It was prepared in or about March, 1956 by C. H. Buckley, then Products Sales Manager of defendant. It was received by L. A. Carey, then an employee of defendant.

G-619 (DP-3156)

This document was produced by the defendant from its files. It was prepared in or about December, 1957 by the Commercial Research Department of defendant.

[fol. 566] G-620 (DP-3153)

This document was produced by the defendant from its files. It was prepared in or about March, 1958 by the Sales Analysis Department of defendant.

G-621 (DP-2956)

This document was produced by the defendant from its files.

G-622 (DP-2923)

This document was produced by the defendant from its files. It was prepared in or about May, 1955 by Batten, Barton, Durstine & Osborn, Inc. for defendant.

G-623 (DP-2922)

This document was produced by the defendant from its files. It was prepared in or about September, 1955 by Batten, Barton, Durstine & Osborn, Inc. for defendant.

G-624 (DP-2704)

This document was produced by the defendant from its files. It was prepared in or about July or August, 1954 by C. E. Hooper, Inc. for defendant.

G-625 (DP-2702)

[fol. 567] This document was produced by the defendant from its files. It was prepared in or about July or August, 1954 by C. E. Hooper, Inc. for defendant.

G-626 (DP-2707)

This document was produced by the defendant from its files. It was prepared in or about August or September, 1954 by C. E. Hooper, Inc. for defendant.

G-627 (DP-2709)

This document was produced by the defendant from its files. It was prepared in or about August or September, 1954 by C. E. Hooper, Inc. for defendant.

G-628 (DP-2925)

This document was produced by the defendant from its files. It was prepared in or about September or October, 1954 by C. E. Hooper, Inc. for defendant.

G-629 (DP-2721)

This document was produced by the defendant from its files. It was prepared in or about July, 1955 by C. E. Hooper, Inc. for defendant.

[fol. 568] G-630 (DP-2723)

This document was produced by the defendant from its files. It was prepared in or about July, 1955 by C. E. Hooper, Inc. for defendant.

G-631 (DP-2727)

This document was produced by the defendant from its files. It was prepared in or about August, 1955 by C. E. Hooper, Inc. for defendant.

G-632 (DP-2920)

This document was produced by the defendant from its files. It was prepared in or about July or August, 1957 by C. E. Hooper, Inc. for defendant.

G-633 (DP-2749)

This document was produced by the defendant from its files. It was prepared in the latter part of 1955 or early in 1956 by Market Research Corporation of America for defendant.

G-634 (DP-2748)

This document was produced by the defendant from its files. It was prepared during 1955 by Market Research Corporation of American for defendant.

The following documents were produced from the files of the defendant. They were prepared in or about [fol. 569] the months indicated, by or for defendant for distribution to grocery stores and other persons interested in the merchandising of foods:

G-635 (DP-259) February, 1955
G-636 (DP-271) April, 1956
G-637 (DP-274) September, 1956

G-638 (DP-276) November, 1956
G-639 (DP-279) February, 1957
G-640 (DP-281) April, 1957
G-641 (DP-282) May, 1957
G-642 (DP-285) August, 1957
G-643 (DP-290) January, 1958
G-644 (DP-295) June, 1958
G-645 (DP-299) October, 1958
G-646 (DP-301) December, 1958

G-648 (DP-338)

This document was produced by the defendant from its files. It was prepared in or about July, 1956 by or for defendant for distribution to food brokers.

G-649 (DP-840)

This document was produced by the defendant from [fol. 570] its files. It was prepared in or about June, 1957 by or for White Cap Company, a subsidiary of defendant, for distribution to persons packing foods in glass.

G-650

This document is the fourth page of Exhibit G-649.

G-651 (DP-324)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated in the following magazines:

Supermarket News ..... May 2, 1955
Food Topics ..... May 2, 1955
Chain Store Age, Grocery Edition ..... May, 1955
Progressive Grocer ..... May, 1955
Super Market Merchandising ..... May, 1955

G-652 (DP-326)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by

defendant in the issues of the dates indicated of the following magazines:

Supermarket News ..... July 4, 1955
[fol. 571] Food Topics ..... July 4, 1955
Chain Store Age, Grocery Edition ..... July, 1955
Progressive Grocer ..... July, 1955
Super Market Merchandising ..... July, 1955

G-653 (DP-327)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Supermarket News ..... August 8, 1955
Food Topics ..... August 8, 1955
Chain Store Age, Grocery Edition ..... August, 1955
Progressive Grocer ..... August, 1955
Super Market Merchandising ..... August, 1955

G-654 (DP-330)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated at the following magazines:

Supermarket News ..... November 7, 1955
Food Topics ..... November 7, 1955
[fol. 572] Chain Store Age,
Grocery Edition ..... November, 1955
Progressive Grocer ..... November, 1955
Super Market Merchandising ..... November, 1955

G-655 (DP-331)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Supermarket News ..... December 5, 1955
Food Topics ..... December 5, 1955

Chain Store Age, Grocery Edition ..... December, 1955
Progressive Grocer ..... December, 1955
Super Market Merchandising ..... December, 1955

G-656 (DP-344)

This document was produced by the defendant from its files. It was prepared in or about May, 1958 by or for defendant for distribution to food brokers.

[fol. 573] G-657 (DP-378)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Topics ..... August 8, 1955
Coffee & Tea Industries ..... March, June, September, 1958
Tea & Coffee Trade Journal ..... April, July, November, 1958

G-658 (DP-395)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Coffee & Tea Industries ..... March, 1957
Food Packaging ..... February, 1957
Packaging Parade ..... April, 1957
Tea & Coffee Trade Journal ..... March, 1957
Food Engineering ..... March, 1957
Food Field Reporter ..... March 4, 1957
Food Processing ..... March, 1957
Food Technology ..... March, 1957

[fol. 574] G-659 (DP-424)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Business Week	February 19, 1955
Fortune	March, 1955
Time	February 14, 1955
The Canner	March 21, 1955
The Canning Trade	March 14, 1955
Food Packer	April, 1955
Food Technology	April, 1955
Western Canner & Packer	April, 1955

G-660 (DP-426)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time	March 30, 1953
Fortune	May, 1953
Business Week	April 4, 1953

G-661 (DP-496)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by [fol. 575] defendant in the issues of the dates indicated of the following magazines:

American Journal of Nursing	July, 1952
	January, 1953
	August, 1953
	January, 1954
Journal of the American Medical Association	August 23, 1952
	January 10, 1953
	June 27, 1953
	January 23, 1954
Journal of Pediatrics	July, 1952
	January, 1953
	July, 1953
	January, 1954

G-662 (DP-497)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by

defendant in Food Topics—West Coast Edition—March 23, 1959.

G-663 (DP-503)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the [fol. 576] following magazines:

American Journal of Nursing ..... May, 1954
September, 1954
January, 1955

Journal of the American Medical Association ..... March 20, 1954
July 2, 1954

Journal of Pediatrics ..... March, 1954
July, 1954

G-664 (DP-545)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Aerosol Age ..... June, 1958
August, 1958

Food Engineering ..... July, 1958
September, 1958

Food Processing ..... July, 1958

Food Field Reporter ..... June 23, 1958
October 13, 1958

Food Business ..... June, 1958

Modern Packaging ..... August, 1958

Packaging Parade ..... July, 1958

[fol. 577] Good Packaging ..... July, 1958
September, 1958

G-665 (DP-554)

This document was produced by the defendant from its files. It was prepared by or for defendant for distribution to food canners.

G-666 (DP-558)

This document was produced by the defendant from its files. It was prepared by or for defendant.

G-667 (DP-594)

This document was produced by the defendant from its files. It was prepared by or for defendant.

G-668 (DP-712)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Business	November, 1957
	December, 1957
Food Field Reporter	November 11, 1957
	December 9, 1957

[fol. 578] G-669 (DP-716)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Canner & Freezer	March 4, 1957
	July 8, 1957
Canning Trade	March 4, 1957
	July 15, 1957
Food Engineering	March, 1957
	August, 1957
Food Packer	April, 1957
	August, 1957
Food Processing	April, 1957
	September, 1957
Western Canner & Packer	April, 1957
	August, 1957

G-670 (DP-719)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by de-

fendant in the issues of the dates indicated of the following magazines:

Canner & Freezer	February 4, 1957
	September 2, 1957
[fol. 579]	November 11, 1957
Canning Trade	February 4, 1957
	September 2, 1957
	November 11, 1957
Food Business	February, 1957
Food Field Reporter	February 18, 1957
Food Packer	February, 1957
	October, 1957
Western Canner & Packer	February, 1957
	October, 1957
	December, 1957

G-671 (DP-723)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Glass Packers	February, 1957
	March, 1957
Good Packaging	March, 1957
Modern Packaging	February, 1957
Packaging Parade	March, 1957

G-672 (DP-730)

This document was produced by the defendant from [fol. 580] its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

American Soft Drink Journal	November, 1957
	December, 1957
Bottling Industry	October 22, 1957
	November 5, 1957
	December 3, 1957
	December 31, 1957
Mid-Continent Bottler	December, 1957
Malt Bottlers Gazette	November, 1957

December, 1957
Western Bottler ..... December, 1957

G-673 (DP-710)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Engineering ..... May, 1958
Food Processing ..... March, 1958
Food Field Reporter ..... May 12, 1958
Food Business ..... June, 1958
Canning Trade ..... March 3, 1958
Canner & Freezer ..... March 17, 1958
[fol. 581] Food Packer ..... March, 1958
Western Canner & Packer ..... March, 1958

G-674

This document is a copy of an advertisement placed by defendant in Western Canner & Packer, issue of May 1, 1958.

G-675 (DP-587)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in American Directory of Brewers—1955-56 edition.

G-676 (DP-479)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

American Brewer ..... April, 1954
September, 1954
Brewer & Dispenser ..... April, 1954
October, 1954
Brewers Digest ..... May, 1954
September, 1954

Brewers Journal ..... September, 1954
Modern Brewery Age ..... April, 1954
[fol. 582] Western Brewing & Distributing
May, 1954
November, 1954

G-677 (DP-375)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

American Brewer ..... May, 1958
October, 1958
Brewer & Dispenser ..... June, 1958
October, 1958
Brewers Journal ..... June, 1958
November, 1958
Brewers Digest ..... May, 1958
October, 1958
Modern Brewery Age ..... May, 1958
November, 1958
Western Brewing & Distributing ..... May, 1958
October, 1958

G-678 (DP-381)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

American Brewer ..... September, 1957
Brewer & Dispenser ..... August, 1957
[fol. 583] December, 1957
Brewers Digest ..... August, 1957
November, 1957
Brewers Journal ..... September, 1957
Modern Brewery Age ..... August, 1957
Western Brewing & Distributing ..... August, 1957

G-679 (DP-422)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by

defendant in the issues of the dates indicated of the following magazines:

Time	July 26, 1954
Business Week	July 24, 1954
Fortune	September, 1954

G-680 (DP-439)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Business Week	July 14, 1957
Fortune	August, 1957
Time	July 9, 1957

G-681 (DP-477)

This document was produced by the defendant from [fol. 584] its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

American Brewer	February, 1953
	March, 1955
	September, 1955
Brewer & Dispenser	February, 1955
	April, 1955
Brewers Digest	February, 1955
	March, 1955
	September, 1955
Brewers Journal	February, 1955
Modern Brewery Age	February, 1955
	March, 1955
	November, 1955
Western Brewing & Distributing	March, 1955
	September, 1955

G-682 (DP-569)

This document was produced by the defendant from its files. It was prepared on or about May 22, 1955 by or for defendant for distribution to unidentified newspapers.

G-683 (DP-413)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by [fol. 585] defendant in the issues of the dates indicated of the following magazines:

Business Week	March 6, 1954
Fortune	April, 1954
Time	March 1, 1954

G-684 (DP-643)

This document was produced by the defendant from its files. It was prepared on or about August 31, 1955 by or for the defendant for distribution to unidentified persons outside of defendant's organization.

G-685 (DP-626)

This document was produced by the defendant from its files. It was prepared on or about July 6, 1955 by or for the defendant for distribution to unidentified newspapers.

G-686 (DP-637)

This document was produced by the defendant from its files. It was prepared on or about June 29, 1955 by or for defendant for distribution to unidentified trade journals.

G-687 (DP-1424)

This document was produced by the defendant from its files. It was prepared on or about April 1, 1955 by [fol. 586] D. A. Johnson, then Manager of Advertising & Sales Promotion of defendant and distributed to unidentified persons.

G-688 (DP-1425)

This document was produced by the defendant from its files. It was prepared on or about April 8, 1955 by D. A. Johnson, then Manager of Advertising & Sales

Promotion of defendant and distributed to unidentified persons.

G-689 (DP-1426)

This document was produced by the defendant from its files. It was prepared on or about April 15, 1955 by D. A. Johnson, then Manager of Advertising & Sales Promotion of defendant and distributed to unidentified persons.

G-690 (DP-1428)

This document was produced by the defendant from its files. It was prepared on or about April 29, 1955 by D. A. Johnson, then Manager of Advertising & Sales Promotion of defendant and distributed to unidentified persons.

G-691 (DP-1429)

This document was produced by the defendant from its files. It was prepared on or about May 6, 1955 by [fol. 587] D. A. Johnson, then Manager of Advertising & Sales Promotion of defendant and distributed to unidentified persons.

G-692 (DP-1430)

This document was produced by the defendant from its files. It was prepared on or about May 13, 1955 by D. A. Johnson, then Manager of Advertising & Sales Promotion of defendant and distributed to unidentified persons.

G-693 (DP-1432)

This document was produced by the defendant from its files. It was prepared on or about May 27, 1955 by D. A. Johnson, then Manager of Advertising & Sales Promotion of defendant and distributed to unidentified persons.

G-694

This document is a copy of an advertisement placed by defendant in Modern Packaging, issue of June, 1957.

G-695

This document is a copy of an advertisement placed by defendant in Modern Packaging, issue of August, 1957.

[fol. 588] G-696 (DP-720)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in Modern Brewery Age, May, 1957 and September, 1957 issues.

G-697 (DP-765)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in Modern Brewery Age, March, 1957 and July, 1957 issues.

G-698 (DP-1366)

This document was produced by the defendant from its files.

G-699 (DP-714)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Drug & Cosmetic Industry	March, 1958
American Perfumer	July, 1958

G-700 (DP-1414)

This document was produced by the defendant from its files.

G-701 (DP-391)

This document was produced by the defendant from [fol. 589] its files. It is a copy of an advertisement placed by defendant in the issue of the dates indicated of the following magazines:

Modern Packaging	July, 1957
	November, 1957
	January, 1958
Packaging Parade	July, 1957
	December, 1957
	January, 1958
Drug & Cosmetic Industry	July, 1957
	November, 1957
Drug Trade News	July 15, 1957
	November 18, 1957

G-702 (DP-392)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Modern Packaging	December, 1957
Packaging Parade	December, 1957
Drug & Cosmetic Industry	September, 1957

G-703 (DP-546)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by [fol. 590] defendant in the issues of the dates indicated of the following magazines:

Aerosol Age	September, 1958
	November, 1958
Soap & Chemical Specialties	October, 1958
Modern Packaging	December, 1958
Packaging Parade	December, 1958

G-704 (DP-377)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by

defendant in the issues of the dates indicated of the following magazines:

Packaging Parade	May, 1958
Aerosol Age	April, 1958
	July, 1958
Soap & Chemical Specialties	April, 1958
Drug & Cosmetic Industry	April, 1958
	October, 1958
Drug Trade News	August 11, 1958
Modern Packaging	May, 1958

G-705 (DP-393)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

[fol. 591] Aerosol Age	May, 1958
	October, 1958
Drug & Cosmetic Industry	July, 1958
Drug Trade News	June 16, 1958
	November 3, 1958
Modern Packaging	September, 1958
Packaging Parade	September, 1958

G-706 (DP-604)

This document was produced by the defendant from its files. It was prepared on or about February 7, 1958 by or for the Publicity Department of defendant and distributed to trade journals.

G-707 (DP-612)

This document was produced by the defendant from its files. It was prepared on or about July 8, 1957 by or for the Publicity Department of defendant and distributed to trade journals.

G-708 (DP-615)

This document was produced by the defendant from its files. It was prepared on or about April 10, 1957 by or for the Publicity Department of defendant and distributed to trade journals.

G-709 (DP-325)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by [fol. 592] defendant in the issues of the dates indicated of the following magazines:

Supermarket News	June 6, 1955
Food Topics	June 6, 1955
Chain Store Age, Grocery Edition	June, 1955
Progressive Grocer	June, 1955
Super Market Merchandising	June, 1955

G-710 (DP-329)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Supermarket News	October 10, 1955
Food Topics	October 10, 1955
Chain Store Age, Grocery Edition	October, 1955
Progressive Grocer	October, 1955
Super Market Merchandising	October, 1955

G-711 (DP-362)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

[fol. 593] Institutions Magazine	November, 1958
Volume Feeding & Management	November, 1958

G-712 (DP-350)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by

defendant in the issues of the dates indicated of the following magazines:

Chain Store Age— (Grocers Edition)	October, 1956
Food Topics	October 8, 1956
Nargus Bulletin	October, 1956
Progressive Grocer	October, 1956
Super Market Merchandising	October, 1956
Super Market News	October 8, 1956

G-713 (DP-365)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

National Provisioner	January 26, 1957
Meat	January, 1957
	February, 1957

G-714 (DP-837)

This document was produced by the defendant from its files. It was prepared in or about May, 1958 by or [fol. 594] for White Cap Company, a subsidiary of defendant, for distribution to persons packing foods in glass.

G-715 (DP-874)

This document was produced by the defendant from its files. It was prepared on or about April 8, 1958 by Harshe-Rotman, Inc. for White Cap Company, a subsidiary of defendant.

G-716

This document is a copy of an advertisement placed by defendant in Time magazine, issue of March 16, 1959.

G-718

This document is a copy of an advertisement placed by defendant in Business Week magazine, issue of April 18, 1959.

G-719 (DP-433)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Business Week	January 8, 1955
Time	January 3, 1958
Fortune	January, 1959

[fol. 595] G-720 (DP-437)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Fortune	January, 1956
Business Week	November 12, 1955
Time	November 21, 1955

G-721 (DP-547)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time	January 20, 1958
Fortune	February, 1958
Business Week	January 18, 1958
Canner & Freezer	January 20, 1958
	February 3, 1958
Canning Trade	January 20, 1958
	February 3, 1958
Southern Food Processor	February, 1958
Western Canner & Packer	February, 1958
Food Packer	February, 1958

[fol. 596] G-722 (DP-562)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by

defendant in the issues of the dates indicated of the following magazines:

Time	October 27, 1958
Business Week	October 4, 1958

G-723 (DP-966)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time	July 8, 1957
Fortune	August, 1957
Business Week	July 13, 1957

G-724 (DP-954)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Business Week	November 22, 1958
Fortune	December, 1958

G-725 (DP-951)

This document was produced by the defendant from [fol. 597] its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time	December 30, 1957
Fortune	December, 1957
Business Week	December 28, 1957
Coffee & Tea Industries	January, 1958
Tea & Coffee Trade	January, 1958

G-726 (DP-947)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Fortune ..... January, 1959
Business Week ..... January 24, 1959
Time ..... February 16, 1959
Canner & Packer ..... January, 1956
Canning Trade ..... February 16, 1959
March 23, 1959
Southern Food Processor ..... January, 1959

G-727 (DP-940)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the [fol. 598] following magazines:

Time ..... June 16, 1958
Business Week ..... June 14, 1958
Fortune ..... July, 1958

G-728 (DP-563)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time ..... March 17, 1958
Business Week ..... March 22, 1958
Fortune ..... March, 1958

G-729 (DP-941)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time ..... July 7, 1958
Fortune ..... August, 1958
Business Week ..... July 12, 1958

G-730 (DP-945)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by

defendant in the issues of the dates indicated of the [fol. 599] following magazines:

Time	May 13, 1957
Business Week	May 18, 1957
Fortune	June, 1957
Canner & Freezer	June 10, 1957
Canning Trade	June 10, 1957
Food Technology	June, 1957
Food Packer	June, 1957
Southern Food Processor	June, 1957
Western Canner & Packer	June, 1957

G-731 (DP-948)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time	January 19, 1959
Fortune	February, 1959
Business Week	February 21, 1959
Canner & Packer	February, 1959
Canning Trade	February 2, 1959
	March 9, 1959
Southern Food Processor	February, 1959

G-732 (DP-953)

This document was produced by the defendant from [fol. 600] its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time	April 14, 1959
Business Week	April 19, 1958
Fortune	April, 1958

G-733 (DP-959)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in New York State Canner & Freezers Association Directory, issue of 1958.

G-734 (DP-944)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time	December 3, 1956
Fortune	December, 1956
Business Week	December 1, 1956

G-735 (DP-946)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

[fol. 601] Time	April 15, 1957
Fortune	May, 1957
Business Week	April 20, 1957

G-736

This document is a copy of an advertisement placed by defendant in Western Canner & Packer, issue of February, 1958.

G-737

This document is a copy of an advertisement placed by defendant in Glass Packer, issue of January, 1957.

G-739 (DP-887)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Bottling Industry	January 17, 1956
	February 28, 1956
American Soft Drink Journal	January, 1956
	February, 1956
Mid-Continent Bottler	January, 1956
	February, 1956

National Bottlers Gazette ..... January, 1956
February, 1956

[fol. 602] Western Bottler ..... January, 1956
February, 1956

G-740 (DP-889)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

American Soft Drink Journal ..... March, 1956
April, 1956

Bottling Industry ..... March 13, 1956
April 10, 1956

Mid-Continent Bottler ..... March, 1956
April, 1956

National Bottlers Gazette ..... March, 1956
April, 1956

Western Bottler ..... March, 1956
April, 1956

G-741 (DP-890)

This document was produced by the defendant from its files.

G-742 (DP-897)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the [fol. 603] following magazines:

American Brewer ..... June, 1958
Brewer & Dispenser ..... July, 1958
Brewers Digest ..... July, 1958
Brewers Journal ..... June, 1958
Modern Brewery Age ..... June, 1958
Western Brewing & Distributing ..... July, 1958

G-743 (DP-904)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by

defendant in the issues of the dates indicated of the following magazines:

Business Week	August 22, 1953
Fortune	September, 1953
Time	August 17, 1953

G-744 (DP-914)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in Coca-Cola Bottler, issue of June, 1956.

G-745 (DP-919)

This document was produced by the defendant from its files. It was prepared in or about November, 1956 by or for defendant and distributed to District Sales [fol. 604] Managers and Plant Managers.

G-746 (DP-926)

This document was produced by the defendant from its files. It was prepared on or about July 6, 1956 by or for the Publicity Department of defendant and distributed to trade journals.

G-747 (DP-927)

This document was produced by the defendant from its files. It was prepared on or about June 14, 1956 by or for the Publicity Department of defendant and distributed to trade journals.

G-748 (DP-925)

This document was produced by the defendant from its files. It was prepared by or for defendant or a subsidiary of defendant.

G-749 (DP-924)

This document was produced by the defendant from its files. It was prepared by or for defendant or a subsidiary of defendant.

G-750 (DP-877)

This document was produced by the defendant from its files. It was prepared by or for White Cap Company, a subsidiary of defendant.

[fol. 605] G-751 (DP-856)

This document was produced by the defendant from its files. It was prepared by Harshe-Rotman, Inc. for White Cap Company, a subsidiary of defendant.

G-752 (DP-856)

This document was produced by the defendant from its files. It was prepared on or about February 14, 1958 by Harshe-Rotman, Inc. for White Cap Company, a subsidiary of defendant.

G-753 (DP-1380)

This document was produced by the defendant from its files.

G-754 (DP-839)

This document was produced by the defendant from its files. It was prepared in or about November, 1957 by or for White Cap Company, a subsidiary of defendant, for distribution to persons packing foods in glass.

G-756 (DP-871)

This document was produced by the defendant from its files. It was prepared on or about January 9, 1958 by Harshe-Rotman, Inc. for White Cap Company, a subsidiary of defendant.

[fol. 606] G-757 (DP-867)

This document was produced by the defendant from its files. It was prepared on or about April 17, 1957 by Harshe-Rotman, Inc. for White Cap Company, a subsidiary of defendant.

G-758 (DP-870)

This document was produced by the defendant from its files. It was prepared by Harshe-Rotman, Inc. for White Cap Company, a subsidiary of defendant.

G-759 (DP-875)

This document was produced by the defendant from its files. It is a copy of a page of the Food Field Reporter, issue of November 11, 1957, containing amongst other things, a copy of an advertisement placed by White Cap Company, a subsidiary of defendant.

G-760 (DP-817)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Processing	September, 1958
Food Field Reporter	September, 1958
[fol. 607] Glass Packer	September, 1958
Packaging Parade	September, 1958
Western Canner & Packer	September, 1958

G-761 (DP-808)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Packer	September, 1957
Food Field Reporter	September, 1957
Glass Packer	September, 1957
Packaging Parade	September, 1957
Western Canner & Packer	September, 1957

G-762 (DP-8[illegible])

This document was produced by the defendant from its files. It is a copy of an advertisement placed by

defendant in the issues of the dates indicated of the following magazines:

Food Processing	June, 1958
Food Field Reporter	June, 1958
Glass Packer	June, 1958
Packaging Parade	June, 1958
Western Canner & Packer	June, 1958

[fol. 608] G-763 (DP-818)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Field Reporter	July, 1958
Glass Packer	July, 1958
Packaging Parade	July, 1958
Western Canner & Packer	July, 1958

G-764 (DP-783)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Packer	June, 1956
Food Field Reporter	June, 1956
Glass Packer	June, 1956
Packaging Parade	June, 1956
Western Canner & Packer	June, 1956

G-765 (DP-785)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

[fol. 609] Food Packer	April, 1956
Food Field Reporter	April, 1956
Glass Packer	April, 1956
Packaging Parade	April, 1956
Western Canner & Packer	April, 1956

G-766 (DP-780)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Packer	April, 1955
Food Field Reporter	April, 1955
Glass Packer	April, 1955
Western Canner & Packer	April, 1955

G-767 (DP-776)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Packer	May, 1956
Food Field Reporter	May, 1956
Glass Packer	May, 1956
Packaging Parade	May, 1956
Western Canner & Packer	May, 1956

[fol. 610] G-768 (DP-820)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Packer	November, 1956
Food Field Reporter	November, 1956
Glass Packer	November, 1956
Western Canner & Packer	November, 1956

G-769 (DP-778)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Packer	February, 1955
Food Field Reporter	February, 1955

Glass Packer ..... February, 1955
Western Canner & Packer ..... February, 1955

G-770 (DP-812)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

[fol. 611] Food Processing ..... January, 1958
Food Field Reporter ..... January, 1958
Glass Packer ..... January, 1958
Packaging Parade ..... January, 1958
Western Canner & Packer ..... January, 1958

G-771 (DP-826)

This document was produced by the defendant from its files. It was prepared for use as advertising material by or for White Cap Company, a subsidiary of defendant.

G-772 (DP-827)

This document was produced by the defendant from its files. It was prepared for use as advertising material by or for White Cap Company, a subsidiary of defendant.

G-784 (DP-3247)

This document was produced by the defendant from its files. It was prepared by or for defendant.

The foregoing stipulations are subject to the following:

1. The stipulations do not apply to handwritten notes or interlineations on the documents.

[fol. 612] 2. Defendant does not concede anything with respect to the accuracy or reliability of the material contained in any document, or the source of such material, or when or under what circumstances such material was prepared, except as specifically stated in the stipulations.

3. Except with respect to documents G-403, F-405A, G-423, G-424, G-425, G-426, G-427 and G-446, the word "prepared" as used in the stipulations does not connote that the individual or organization named as having prepared the document was the original source or had personal knowledge of the information contained in the document or that such individual or organization certifies as to the accuracy or reliability thereof.

4. Where some or all of the original documents was in color, defendant does not concede that those documents which are photostats are, in fact, true copies of the original.

5. All objections are reserved, except as otherwise specified.

[fol. 613] Willkie Farr Gallagher Walton
& Fitz Gibbon
15 Broad Street
New York 5, N. Y.

June 9, 1960.

Honorable Robert A. Bicks,
Assistant Attorney General,
Antitrust Division,
United States Department of Justice
Washington, D. C.

Re: United States of America v Continental Can Company, Inc. and Hazel-Atlas Glass Company

—Civil Action No. 112-387

Dear Mr. Bicks:

This is to advise that in the interest of expediting the trial of the above case, defendant does not propose to make any objections to the admissibility of the following numbered documents in the event they are offered in evidence, even though their relevance is unclear. With respect to those documents which were produced by defendant, the numbers assigned by the defendant at the time they were produced are given in parenthesis immediately following the number assigned by the Government.

[fol. 614] G-132
G-170B
G-171-184, inclusive
G-299
G-300
G-403 (DP-2543)
G-405A (DP-2519)
G-423 (DP-3132)
G-424 (DP-3131)
G-425 (DP-2497)
G-426 (DP-2908)
G-427 (DP-2909)
G-448 to G-466 inclusive (DP-2560 to DP-2578 inclusive)

G-467 (DP-2559)
G-468 (DP-2558)
G-469 (DP-2557)
G-470 to G-588, inclusive (DP-2579 to DP-2687, inclusive)
G-651 (DP-324)
G-652 (DP-326)
G-653 (DP-327)
G-654 (DP-330)
G-655 (DP-331)
[fol. 615] G-657 (DP-378)
G-658 (DP-395)
G-659 (DP-424)
G-660 (DP-426)
G-661 (DP-496)
G-662 (DP-497)
G-663 (DP-503)
G-664 (DP-545)
G-665 (DP-554)
G-666 (DP-558)
G-667 (DP-594)
G-668 (DP-712)
G-669 (DP-716)
G-670 (DP-719)
G-671 (DP-723)
G-672 (DP-730)
G-673 (DP-710)
G-674
G-675 (DP-587)
G-676 (DP-479)
G-677 (DP-375)
G-678 (DP-381)
G-679 (DP-422)
G-680 (DP-439)
[fol. 616] G-681 (DP-477)
G-682 (DP-569)
G-863 (DP-413)
G-694
G-695
G-696 (DP-720)
G-697 (DP-765)
G-699 (DP-714)

G-701 (DP-391)
G-702 (DP-392)
G-703 (DP-546)
G-704 (DP-377)
G-705 (DP-393)
G-706 (DP-604)
G-708 (DP-615)
G-709 (DP-325)
G-710 (DP-329)
G-711 (DP-362)
G-712 (DP-350)
G-713 (DP-365)
G-716
G-718
G-719 (DP-433)
G-720 (DP-437)
[fol. 617] G-721 (DP-547)
G-722 (DP-563)
G-723 (DP-966)
G-724 (DP-954)
G-725 (DP-951)
G-726 (DP-947)
G-727 (DP-940)
G-728 (DP-563)
G-729 (DP-941)
G-730 (DP-945)
G-731 (DP-948)
G-732 (DP-953)
G-733 (DP-959)
G-734 (DP-944)
G-735 (DP-946)
G-736
G-737
G-739 (DP-887)
G-740 (DP-889)
G-742 (DP-897)
G-743 (DP-904)
G-744 (DP-914)
G-746 (DP-926)
G-747 (DP-927)
[fols. 618-671] G-760 (DP-817)
G-761 (DP-808)

G-762 (DP-816)
G-763 (DP-818)
G-764 (DP-783)
G-765 (DP-785)
G-766 (DP-780)
G-767 (DP-776)
G-768 (DP-820)
G-769 (DP-778)
G-770 (DP-812)
G-788

Very truly yours (Signed) Helmer R. Johnson.

cc: Honorable Frederick van Pelt Bryan, United States Court House, Foley Square, New York 7, New York.

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[fol. 672] M. A. HELLRUNG, called as a witness on behalf of the Government, was duly sworn.

Mr. McManus: Your Honor, before starting to question Mr. Hellrung, I went over the documents that were furnished by Owens-Illinois, and document No. 348-I, which was marked for identification, Mr. Hellrung felt was of such a business secret type of document that he asked me if I would withdraw it. The Government would be glad to withdraw it and have the copies returned to the company, or in lieu thereof, that it be considered in the same category as statistical information.

The Court: As the information we discussed yesterday afternoon.

Mr. McManus: Yes, sir.

The Court: All right.

Now what do you say to that, Mr. Hughes?

Mr. Hughes: Whatever you want to do, it is up to you. [fol. 673] You can either offer it or withdraw it.

The Court: You have no objection to its withdrawal?

Mr. Hughes: No, sir; nor to its being offered—whatever he wants to do.

Mr. McManus: I would prefer to withdraw it, your Honor, and if they have no objections, because this actually was not covered by our subpoena, if they would return the copies to me, I will return them to the company.

The Court: Is that satisfactory to you?

Mr. Hughes: Yes.

The Court: The matter will be handled in that fashion.

Direct examination.

By Mr. McManus:

Q. Mr. Hellrung, by whom are you employed?

A. The Owens-Illinois Glass Company.

Q. And for what period of time have you been employed by that company?

A. The Owens-Illinois Glass and its predecessor, Illinois Glass, since 1918.

Q. And in what capacities have you been employed by that company or its predecessor company?

A. Primarily in accounting, clerical accounting, statisti-
[fol. 674] cal. Primary accounting.

Q. Now, what is your present position with Owens-Illinois Glass Company?

A. I am a vice-president in the Glass Container Division.

Q. And what are your duties as vice-president in the Glass Container Division?

A. I am responsible for the cost accounting, budgeting, profit forecasting and statistical work for the Glass Container Division.

Q. And who is your immediate superior?

A. Mr. C. G. Bensinger, who is executive vice-president of the company and president of the Glass Container Division.

Q. And do you have employees under you?

A. I do.

Q. And who would come directly under you?

A. The comptroller reports to me, and his entire staff.

Q. And approximately how many employees are in his staff?

A. About 65.

Q. I show you Government's Exhibit 348, which has been marked for identification; do you recognize that document?
[fol. 675] A. I do.

Q. Is that document from the files of the Owens-Illinois Glass Company?

A. It is.

Q. And by whom was it prepared?

A. By people in the comptroller's department.

Q. And for whom was it prepared?

A. For me.

Q. And are you familiar with the document?

A. I am.

Q. Did you request that the document be prepared for you?

A. I did.

Q. And to your knowledge, did a number of people work on this document?

A. That's right.

Q. And is it a regular type document that the comptroller's office would prepare for you?

A. It is.

Mr. McManus: Your Honor, the Government offers 348 in evidence.

Mr. Hughes: No objection.

The Court: It may be received.

[fol. 676] (Government's Exhibit 348 for identification received in evidence.)

Mr. McManus: 348-I was withdrawn. We have subcategories here.

The Court: Let me see the exhibit.

Mr. McManus: Your Honor, if I may ask a question of the defendant?

We have a number of these documents, 348-A through H.

The Court: All right.

Mr. McManus: Which have been marked for identification, and if the defendants have no objection I would like to offer them in evidence.

Mr. Hughes: No objection.

The Court: All right.

Mr. Hughes: Just one moment, your Honor.

May I go off the record with Mr. McManus to get some mechanical things straightened out?

The Court: Yes, sure.

(Discussion off the record between Mr. Hughes and Mr. McManus.)

(Government's Exhibits 348-A through 348-H for identification received in evidence.)

The Court: Are these similar studies, these documents?

[fol. 677] Mr. McManus: Yes, they are, your Honor.

The first one, the first subject deals with beer; the second with cans versus glass prices Florida fruit pack.

Mr. Hughes: Will you refer to them by exhibit number so that the record will be clear?

Mr. McManus: 348, study of can costs versus one-way bottle cost to brewer.

348-A, can versus glass prices Florida fruit pack, two pages.

348-B, study of quart one-way beer containers, glass versus tin.

348-C is cans versus glass prices 1942-1946 versus 1/1/57, two pages.

348-D is one-way beer prices, two pages.

The Court: 348 what?

Mr. McManus: D.

348-E is cans versus jar price per thousand ground coffee.

348-F is baby foods, tin versus glass.

And 348-G is beer containers one-way glass versus tin.

And 348-H is cans versus glass prices, and that consists [fol. 678] of three documents, the third of which is a chart and relates to beer, price comparison between cans and glass, and relates to beer, detergents, polish, aerosol.

The Court: Yes.

Now, what exhibit are you about to refer to now?

Mr. McManus: 235-A, sir.

Mr. Johnson: 235-A?

Mr. McManus: Yes.

The Court: Have you been giving the defendant information at the beginning of the session about these?

Mr. Hughes: Yes, they have, your Honor.

The Court: You have. All right.

Mr. McManus: Yes, sir.

By Mr. McManus:

Q. Mr. Hellrung, I show you Government's Exhibit 235-A, marked for identification.

A. Yes.

Q. Do you recognize that document?

A. I recognize it, yes.

Q. Have you seen that document before?

A. Yes, sir.

Q. There are initials at the bottom, G.C.B.

[fol. 679] A. C.G.B.

Q. C.G.B.?

A. Yes. That is Mr. Bensinger's initials.

Q. And there are certain initials at the top; whose are those?

A. One is the sales manager of the Glass Container Division, Mr. S. F. Davis. The other is Mr. R. E. Graham. This one is mine, M.A.H.

Q. Did you receive this document?

A. I did.

Mr. McManus: Your Honor, I would like to offer 235-A into evidence.

Mr. Hughes: No objection.

The Court: It may be received.

(Government's Exhibit 235-A received in evidence.)

Mr. McManus: Now, your Honor, there is referred to in 235-A a chart as an attachment, which we don't intend to offer, but we have it here if the defendants insist we put it in.

Mr. Hughes: It is a matter of whatever they want to do, your Honor.

Mr. McManus: All right, we won't put it in, your Honor. [fols. 680-682] Your Honor, I am informed by the defendant that they have no objection to offering in evidence Government's Exhibit 235-B, which is marked for identification.

The Court: All right, it will be received.

(Government's Exhibit 235-B received in evidence.)

Mr. McManus: That is all I have. You may cross-examine.

Mr. Hughes: No questions.

The Court: All right; thank you, Mr. Hellrung.

(Witness excused.)

[fol. 683] George A. Holloway, called as a witness by the Government, being first duly sworn, testified as follows:

Mr. Greenberg: Your Honor, before I proceed with the examination, I have a few documents which I wish to be marked, which again will aid the Court.

The Court: All right, mark them for identification at this point.

(Marked Government's Exhibits 352, 353, 354, 355 and 356 for identification.)

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. New Caanan, Connecticut.

Q. You are employed by Chesebrough-Pond's?

A. Yes.

Q. How long have you been employed by that company or its predecessor?

A. Since July 1937.

The Court: What is your position with that company?

The Witness: General Purchasing Manager.

Q. I show you these exhibits, sir, and ask if you can identify them for us.

A. Exhibit No. 352 is a Christmas brochure put out [fol. 684] in 1952, covering the Seaforth products, which is one of the lines that our company has.

The next one, No. 353, is a Pond's price list covering the various Vaseline brand products, Pond's creams and beauty preparations, Seaforth products and Pertussin products.

No. 354 is a flyer or a brochure—not a brochure, a flyer, with reference to Pertussin antibiotic throat lozenges. It is a price sheet.

No. 355 is another Pertussin price sheet devoted mainly to the medicated room vaporizer.

No. 356 is a price list of the Prince Matchabelli and Simonetta lines of cosmetics and perfumes.

Offers in Evidence

Mr. Greenberg: Your Honor, I offer Government's Exhibit 356.

The Court: Have these gentlemen seen these documents?

Mr. Greenberg: Yes, sir. Pursuant to your instructions, your Honor, I show them to counsel.

Mr. Hughes: Yes, we have seen them.

The Court: Do you have any objection to this batch of documents?

Mr. Hughes: Yes, your Honor. I object to this one, your [fol. 685] Honor. I don't know what the purpose of the—

offer of 356 is. It is all hearsay as far as we are concerned.

The Court: Apart from the hearsay, do you object to it on the ground of competence?

Mr. Hughes: I don't object on that ground.

The Court: This is just a price list.

Mr. Hughes: Yes.

The Court: What is the purpose of it, Mr. Greenberg?

Mr. Greenberg: Your Honor, the fact that these products were produced by this company and——

The Court: All right. I will take it.

Mr. Greenberg: I offer 356.

(Government's Exhibit 356 for identification received in evidence.)

The Court: What is the next one?

Mr. Greenberg: The next one is 352.

Mr. Hughes: I object to that, your Honor.

The Court: On the same ground, I take it.

Mr. Hughes: Yes, sir.

The Court: Overruled.

(Government's Exhibit 352 for identification received in evidence.)

[fol. 686] Mr. Greenberg: The next document is 353.

Mr. Hughes: The same objection.

The Court: Same ruling.

(Government's Exhibit 353 for identification received in evidence.)

Mr. Greenberg: I offer 355.

Mr. Hughes: I object to this one.

The Court: Let me see it.

I will take it. Objection overruled.

(Government's Exhibit 355 for identification received in evidence.)

The Court: Is there another one?

Mr. Greenberg: I am keeping this for a later time.

The Court: Are you going to put it in or not?

Mr. Greenberg: All right. I offer it at this time.

The Court: I take it that you have the same objection, Mr. Hughes.

Mr. Hughes: Yes, sir.
The Court: Same ruling.

(Government's Exhibit 354 for identification received in evidence.)

Q. Sir, do these various documents describe the products [fol. 687] that your company markets?

The Court: I want it understood that when I take matters of the nature of 355 which contain certain promotional material that I do not take any of this material for the proof of any statements in the nature of advertising or promotional material contained therein. It is taken solely for the purpose of identifying certain products as material put out by this company and for no other purpose.

Mr. Greenberg: Yes, your Honor, but the exhibit I think you are referring to indicates the various products——

The Court: What I am referring to is the usual sort of puffing language in here. This is a court and not an advertising agency.

Mr. Greenberg: I had no intention of offering it as an advertisement.

The Court: All right.

Q. What type of packages do you use for your products?
A. What type of packages?
Q. Yes.
A. We use everything from cartons, bottles, glass jars—do you mean for all of these things?
[fol. 688] Q. Let us approach it now on liquids.
A. On liquids?
Q. Yes.
A. On liquids we use either a glass bottle or we use our glass jar. We use a polyethylene or squeeze bottle.

In the case of aerosols, Pertussin vaporizers, that is a liquid and that is in an aerosol can.

Q. Pardon me. What was that?
A. That is an aerosol can, the Pertussin vaporizer.

Mr. Hughes: Your Honor, it seems to me that this lumping together becomes meaningless.

The Court: I presume that Mr. Greenberg is proceeding from the general to the specific.

Mr. Greenberg: Yes, your Honor. I just want to ask one or two more questions on that.

Q. Now the paste creams come under the same category?

A. The face creams?

Q. The paste creams.

A. We use collapsible tubes.

Q. Now the cold cream variety?

A. The viscous type. We use oval jars or flat jars or wide-mouth jars.

[fol. 689] Q. Is there such a thing as a flowing cream?

A. On the order of a liquid, yes.

Q. What kind of container do you use for that?

A. If it is sufficiently flowing so that it is pourable, we probably use and we do use a glass bottle, and we also use a squeeze bottle in one case.

Q. When you say a squeeze bottle, do you mean a plastic bottle?

A. A polyethylene bottle.

Q. I show you these government's exhibits and ask you to select first the products which are liquids and identify them, if you can, as to the containers.

Mr. Hughes: May I ask that the witness go slowly so that we can take this information down?

The Court: Yes.

Mr. Handler: And please start with the first exhibit so that we have some order.

The Court: Are they in order?

The Witness: Yes, I will put them in order.

The Court: Will you please be good enough to do that.

A. The first one I have is 352. 352 is the one that covers the Seaforth line. We have here in glass bottles lotions, shaving lotions and a cologne. Those are the only two [fol. 690] items that are in glass bottles.

We have a plastic for the deodorant container, a polyethylene container, and we have a plastic spray deodorant container, once again a polyethylene squeeze bottle. Those are all of the liquids in this first exhibit.

Q. Is there an oval bottle?

A. Yes, there is an oval bottle for the shave lotion.

Q. Is there an opal bottle?

A. There is an opal, wide-mouth jar or bottle which has

a deodorant in it. There is an opal bottle for a cologne. There is a flint glass bottle for a flask lotion. There is a flint glass bottle used for a pre-electric-shave lotion.

Mr. Hughes: Your Honor, this is practically meaningless to us. We would like to have the benefit of a copy of this exhibit so that we can follow it.

Mr. Greenberg: You can refer to this.

Mr. Hughes: The testimony becomes meaningless——

Q. Do you have extra copies of these exhibits?

A. I have several here, but I don't know that I have [fol. 691] the same ones.

The Court: Will you please try to give the other side copies of this material. When you ask a witness to come, ask him to bring sufficient copies so that they can be distributed. It is very difficult for the defendants to follow what is going on, and for the Court too, if we do not have sufficient copies. There is no copy for me and there is no copy for the defendants.

Mr. Greenberg: I will follow that procedure, your Honor. However, they have been using annual reports and they have not been furnishing us with copies of them, but we will follow your Honor's direction.

The Court: Mr. Greenberg, do not tell me what they have not done. I am concerned with the proper conduct of this trial. If you want copies of documents and you do not get them, apply to me and we will try to get you copies. I want everybody to have copies of everything that is being referred to in this trial. That is my policy. I want to have them too so that I know what is going on.

Mr. Greenberg: I will try to do that, your Honor.

The Witness: I only have an additional copy of one of [fol. 692] the documents in evidence, that is 353, and I have checked it and it is the same thing.

The Court: Has the Pond's price list all of those pictures?

The Witness: Yes.

The Court: Then let us take that.

The Witness: I beg your pardon. These other lines are separate.

The Court: They are separate?

The Witness: Yes, they are in separate brochures.
The Court: All right.

Q. Sir, I show you Government's Exhibit 353 and ask you to identify the types of glass containers which you use for the various products.

The Court: Is that Exhibit 1 that Mr. Hughes has?
Mr. Greenberg: Yes, sir.
The Court: All right.

A. We have pictures on the front page here. On the top left we have Vaseline Hair Tonic. This picture actually shows the carton but there is a flint-glass bottle in it.

Just below that is Vaseline White Petroleum Jelly, and [fol. 693] that is a wide-mouth, flint glass jar.

And in the upper righthand corner we have a Pond's Angel Skin Lotion, and that is in a flint glass bottle.

Towards the center we have a picture of Pond's Angel Touch, which is in a plastic squeeze bottle, polyethylene.

In the lower left we have a picture of Pertussin Cough Syrup, also in a carton, but it contains a flint glass bottle.

In the center, below, is an opal glass bottle for Seaforth Shave Lotion.

In the lower right it pictures three jars containing Pond's Cold Cream, Vanishing Cream and Dry Skin Cream. These are all opal glass wide-mouth jars.

The inside is just a repetition of this, as far as any glass containers are concerned. There are such things as a tin talc can, a plastic dusting powder box, a glass lipstick case, a plastic compact.

Q. All right, Mr. Holloway.

Mr. Hughes: Have you gone through all of the items on the first page? Are there any that you did not describe?

The Witness: There could be.

[fol. 694] Mr. Hughes: How about Vaseline Lip Ice?

The Witness: That is a metal tube with a plastic swivel mechanism, and the other one is a compact, a plastic polystyrene compact, which is used for a pressed powder.

Q. As a matter of fact, aren't Hazel-Atlas jars shown on the face of that?

A. I don't know.

Q. Or the type that they produce?

A. They produce them but other people do too.

Q. Sir, who are the producers of opal containers, opal jars?

A. That we use?

Q. That anyone can use.

A. I am not sure that I know all of them.

Q. Whose do you use?

A. We use Hazel-Atlas Glass Company, Wheaton Company and Carr-Lowery.

Q. That is a division of Anchor Hocking isn't it?

A. Yes.

Q. Sir, I show you G-356 and ask you to identify the products which use glass containers and plastic containers.

The Court: What is G-356?

[fol. 695] Mr. Greenberg: The Prince Matchabelli line.

The Court: If you want to follow this, Mr. Hughes, you or one of your associates can come up and do so, so that you will know what the witness is referring to.

A. This is the Prince Matchabelli line in the Fall of 1959, all of the perfume items——

Q. I just want you to indicate what they are.

A. All the perfumes are in flint glass bottles. All of the colognes are either in flint glass bottles or if they are aerosol they are in plastic-coated flint glass bottles.

The bath oils are in flint glass bottles. The bath salts are in flint glass or wide-mouth jars.

The Polydern line of creams are in opal jars except that there is a skin freshener which is in a flint glass bottle.

The Black Watch line lotions and colognes are in flint glass bottles.

There are some other lotion items here but I don't know that that is necessary. It is more of the same flint bottles that are used for cologne.

The Court: Is there anything further you want on that, Mr. Greenberg?

[fol. 696] Mr. Greenberg: Are there any other creams or lotions that you have not mentioned?

The Witness: I can't think of any offhand, that I can see here.

Q. Sir, prior to 1956 did Hazel-Atlas sell your company glass containers?

A. Yes, sir.

Q. What type of glass containers?

A. Opal jars and flint glass bottles and flint glass wide-mouth jars.

Q. Referring to the flint glass containers, what products were they used for?

A. The wide-mouth flint glass jars?

Q. Generally speaking, what were they used for?

A. They were used for the Vaseline Petroleum Jelly. The flint glass bottles were used for Vaseline brand hair tonics, also for Pond's Angel Hand Lotion. And in the Matchabelli line, if this is prior to 1956, I cannot speak about this other than hearsay because we did not own the company then.

Q. But you have learned about that from your activities, generally speaking, what these containers have been used for?

A. Yes.

[fol. 697] Q. Since 1956 has Hazel-Atlas supplied you with the same type of containers?

A. Yes, sir.

Q. Generally for the same purposes, lotions, et cetera?

A. Yes.

Q. I don't think I asked you, sir, but will you briefly describe your duties and responsibilities since 1937.

The Court: Have you been Purchasing Manager of the company since then?

The Witness: Since 1937 there have been mergers in between.

The Court: Oh, I see.

Q. Will you just generally describe your duties.

A. I have been——

The Court: Is there any reason to go back to 1937?

Mr. Greenberg: Would you wish it later, in 1950?

The Court: Well, you have been with this company or its predecessors since 1937?

The Witness: That's right.

The Court: And always in the same general field?

[fol. 698] The Witness: That's right.

Q. Purchasing containers and things related to it?
A. Yes, sir.

The Court: You have had to do with purchasing mostly during that period of time?
The Witness: Mostly.
The Court: And you have been generally familiar with purchasing in this field during that period, particularly with reference to the companies you were associated with?
The Witness: Yes, sir.

Q. Sir, in your experience have representatives of plastic container companies been in contact with you for the purpose of promoting plastic containers for possible use by you?
A. Yes, sir.
Q. Can you give us, sir, the principal plastic container companies which have solicited business from your company?
A. In the plastic squeeze bottle field, it would be Imco of Kansas City, Plax Corporation, Hartford, and the old Elm Mills Corporation, which later became part of Continental Can. Those are probably the three leading ones [fol. 699] on plastic bottles. There were some rigid plastic jars sold by Colt Pat Firearms Company.
Q. Wasn't there a man named Thomacelli out in Long Island or some name like that who made plastic jars?
A. There was a plastic molder who brought in some models and brought in some jars and made a single cavity mold for use in the polyethylene jar, and also Imco had a polyethylene jar on the market.
Q. What kind of a company was this Long Island company?
A. That was a small company, mostly in the toy business, and nothing was ever done but samples.
Q. For what products have the plastic container manufacturers offered you their containers?
A. They have offered them for probably everything we have in the line.
Q. And what kind of people would you see?
A. Well, they were mostly——

The Court: Are they salesmen?
The Witness: Yes, sir.

The Court: Sales engineers?

The Witness: Yes, sir.

The Court: People of that caliber?

[fol. 700] The Witness: Yes, sir.

The Court: In other words, they were both technical men and salesmen trying to sell you their products?

The Witness: Yes. I personally did not see these people but my buyers would if I didn't.

Q. But did they report to you?

A. Yes.

Q. And you have been offered both plastic jars and plastic bottles?

A. Yes, sir.

Q. Sir, have the plastic container manufacturers when they came in brought samples of products of your competitors with them?

A. Yes, sir, on some occasions.

Q. And what did they try to do when they did that?

A. They tried to sell us the use of a particular package that they were trying to promote.

Q. They were interested in promoting the products of their company and——

A. Yes, certainly.

Mr. Hughes: I object to that.

The Court: In other words, all of the usual sales talk that you would expect from competent salesmen; is that [fol. 701] right?

The Witness: That's right.

Q. Has your company, during your experience with it, experimented with any of your products in plastic containers?

A. Yes, sir.

Q. Which ones?

A. Certainly every liquid or viscous cream or petroleum jelly in the entire Pond's line as contrasted with Prince Matchabelli, where you have colognes and things like that.

Q. Sir, bringing your thoughts back to 1955, your company had a reorganization, as I understand it.

A. Yes, there was a merger between Chesebrough Corporation and the Pond Extract Company.

Q. Do you recall what your president said about getting a new plastic jar?

Mr. Hughes: That is objected to as hearsay, irrelevant and immaterial.

The Court: I will sustain the objection.

Mr. Greenberg: Of course, your Honor, we have had many instances where answers have been based on hearsay but nevertheless have been relevant to the question—some have been worse hearsay than others, but here is a man [fol. 702] who heard the conversation——

The Court: In the first place, you have laid no foundation at all for this thing, whether this statement was made by the president over a cocktail in a bar, or in a speech over nationwide television, or in a sales conference. I haven't the slightest idea where it was made.

Mr. Greenberg: All right. I will lay the foundation.

The Court: Let us first find out what the conversation was about and where it took place.

Mr. Greenberg: I thought I would expedite it, but I will ask it in the next question.

Q. Do you recall around the time of your reorganization whether there were meetings with the president?

A. Yes.

Q. Did he say certain things to you people?

A. Yes.

Q. And where were they said?

The Court: To what people, to the staff, to the board of directors?

The Witness: To everybody, as far as I know.

Q. Did he refer to plastic jars in any way?

A. In the conversation that he had with me he referred [fol. 703] to plastic jars.

Q. And what did he say?

Mr. Hughes: I object to that as hearsay.

The Court: I will overrule the objection.

Q. What did he say to you?

A. He made, or perhaps backed-up my discussion when I was saying, "Well, if a plastic container is a better

mousetrap or a better thing to use, we want to be the first with it."

Q. And what did he tell you?

A. He told us to continue to investigate it.

The Court: Did you carry on investigations in plastic as a result of that conversation or was that an incident in the line of your investigation?

The Witness: It was an incident in the line of my investigation.

Q. Directing your attention now to the glass container companies which supply you, you mentioned that Hazel-Atlas has been one of your suppliers of glass containers.

A. Yes, sir.

Q. Have the glass container companies in their discussions with you or your representatives attempted to meet the activities of the plastic container companies?

[fol. 704] Mr. Hughes: Your Honor, I object to the form of the question.

The Court: Yes, I think that calls for a conclusion. What have the glass people done, if anything?

The Witness: What have they done to meet what? I don't quite understand the question.

The Court: What have they done, if anything, with reference to offers or attempts to sell you plastic?

The Witness: Well——

Mr. Greenberg: Glass, your Honor.

The Court: Glass?

Mr. Greenberg: Yes.

Q. What have the glass container companies done?

The Court: What have the glass container people done, if anything, as far as you are aware, in contacting your company with reference to attempts to sell you glass containers?

The Witness: They have pointed out that glass has the advantage of visibility. They obviously pointed out that it is cheaper in most cases and was in almost each instance. In many instances they pointed out that the life of the product was extended for a longer period, that if it was in glass, there was less loss of perfume, et cetera.

[fol. 705] Q. Has the differential in price between glass containers and plastic containers narrowed in that time?

A. Yes. In the very beginning, as the price of molding powder has come down.

Q. And these prices have been going down, plastic container prices?

A. Plastic container prices have been going down, yes, sir.

The Court: Have glass container prices been going down too?

The Witness: No.

The Court: Let us say a year ago. Can you give us a rough comparison between the price of plastic containers and glass containers, the price differential, in very general terms?

The Witness: Well, if I took a parallel price and if we are talking about a plastic bottle, which I assume we are now, versus a glass bottle—this is going to be rough—I would say that the plastic container is perhaps twice as expensive.

The Court: That, of course, varies between types and sizes and shapes and all the rest?

The Witness: That's right, there is quite a variable.

[fol. 706] Q. Assuming that to be true, sir, when you consider the freight differential——

A. Oh, the freight differential would mean that the differential of a 2-to-1 ratio would be raised a little because the plastic is lighter than glass for comparative sizes. It might bring it to a 3-to-1 ratio let us say, perhaps.

Mr. Hughes: Is what you are saying that that would be about 33-1/3%?

The Witness: Yes. But I have some records——

Q. Would you refer to your records and see if you can refresh your recollection.

A. I might do a little better. I have some cost figures here.

The Court: All right. You say you have some cost figures?

The Witness: Yes.

The Court: Suppose you take a look at your cost figures

over the luncheon recess, Mr. Holloway and give us your answer after lunch.

We will now take a recess until ten minutes after two.

(Recess to 2:10 p.m.)

[fol. 707] AFTERNOON SESSION

The Court: All right, gentlemen.

GEORGE A. HOLLOWAY resumed.

The Court: How much longer will you be with this witness?

Mr. Greenberg: Just a few minutes, your Honor.

The Court: Very good.

Direct examination continued.

By Mr. Greenberg:

Q. Sir, if you recall, we left the proceedings at a point where you were supposed to refresh your recollection from your records as to the comparative costs of glass and plastic containers. Have you done that?

A. In a very casual way because I do not have enough information to really be extremely specific.

Q. Then I won't press you on it.

The Court: What we want here is a fairly general idea of the differential. We are not looking for precise figures at the moment. Can you give us a general idea of the differential?

The Witness: Well, let's say that the plastic might start off being between two and three times—it depends so [fol. 707a] much, as your Honor pointed out, on the shape and everything else, like asking how high is the moon. It would be two times more on a delivered basis to use and it might get as high as three times; it would cost anywhere from two to three times the cost of a glass container landing in our plant, but that can vary.

The Court: All right.

[fol. 708] Q. Sir, when you consider the freight differences, does that ratio vary?

A. In certain containers it could come way down. In other words, when you are getting into these linear plastics, we don't have to use them, but the detergent people at the moment are, and you are getting way down, much closer to glass in cost. We don't happen at the moment to be using any of those.

Q. Sir, directing your attention to the activities of the aerosol tin can manufacturers, would you tell us whether they have attempted to sell aerosol cans for any of your products?

A. For any of our products?

Q. Yes.

A. Yes, we are using aerosol tin containers now for our Pertussin room vaporizers.

Q. Yes, and have they offered their container for other products as well, hair preparations?

A. Yes.. They have suggested hair preparations. For instance, any number of people have brought in samples that they have taken of our product and packaged it in aerosol and sold it in a tincan.

Q. Now, would you identify the companies, the principal companies that have come in to see you about using aerosol [fol. 709] cans?

A. I probably could.

Q. Pardon?

A. I think I could. There would be Continental Can, the American Can and probably Crown Can would be the three main ones. There may be some others of a minor nature to come in also.

Mr. Greenberg: Thank you very much, sir.

You may cross-examine.

The Court: All right, Mr. Hughes.

Excuse me, Mr. Hughes.

By the Court:

Q. Incidentally, where do you get your present aerosol cans from?

A. One is Continental, on this room vaporizer, and on this aerosol home shaver, it is Crown. It could be Ameri-

can, could be one of those other two. It could be Continental on the room vaporizer.

The Court: Thank you.

Cross-examination.

By Mr. Hughes:

Q. Mr. Holloway, does your company have more than one source of supply, container source of supply, for each of the products that you use?

[fol. 710] A. In almost every case we have at least two and anywhere up to eight or nine.

Q. Does Owens-Illinois Glass Company make opal glass?

A. If they do, I don't know of it. I think not.

Q. How many companies would you say are engaged in the manufacturing of toiletries and cosmetics?

A. I honestly don't know that figure. It must run into the hundreds.

Q. How many companies would you say are engaged in the business of manufacturing medicine, health and pharmaceutical products?

A. There again I am really not qualified to say. I assume it runs into hundreds.

Q. Approximately how many toiletries and cosmetic products are currently being sold commercially in the United States, taking into account all the companies in the United States?

A. There again, I am sorry, I honestly am not qualified to say, but I assume it runs into the hundreds and hundreds.

Q. Thousands perhaps?

A. Probably.

[fol. 711] Q. And approximately how many pharmaceutical products are currently being sold in the United States?

The Court: I take it the same answer?

The Witness: Same answer.

Q. Now, you don't have any knowledge, do you, of the dollars and units of containers used by other toiletries, cosmetic and pharmaceutical companies?

A. I do not.

Q. In your direct examination, of all the products that you alluded to, and of all the products that were listed in these exhibits that were put in evidence, am I correct that there were four which move in plastic containers?

A. (No response.)

Q. Well, there was the cosmetic cream; right? There was Angel Skin Lotion; is that right?

A. Yes.

Q. A plastic roll-on deodorant?

A. Yes.

Q. And a spray deodorant?

A. Yes.

Q. Can you think of any others of all the products that you have mentioned or listed in these exhibits?

Mr. Greenberg: May I have the question read back, your Honor?

[fol. 712] The Court: All right, you may read the question, Mr. Reporter.

(Question read.)

Q. (Continuing) Which move in plastic containers?

Mr. Greenberg: Are we talking about this witness's company, your Honor?

The Court: Certainly we are talking about this witness's company.

A. Yes, and this is an afterthought. We have recently bought a little company called Aziza, that is in the eye makeup business, and they have—these are very minor quantities—they have got some Imco jars for one item and they have got some Colt jars for another—I just thought of it now—just very small in terms of numerical volume.

Q. Now, the Angel Skin Lotion, that moves in another type of container as well, does it not?

A. As well as what?

Q. As well as plastic.

A. Oh, yes, the main business is in glass.

Q. And would you say that the amount that moves in plastic containers was significant?

[fol. 713] Mr. Greenberg: Your Honor, I will object.

The Court: Overruled.

A. I don't know. Insignificant? I don't know how to answer that.

Q. Well, insignificant in relation to the amount that moves in glass?

A. It is very small as compared with the glass, and we only bring it out in this container, let's say, on a special occasion, once every year or two, as sort of promotion for a comparatively numerically small quantity, fraction of it.

Mr. Handler: Could the witness keep his voice up, please?

Q. Now, Mr. Holloway, isn't it a fact that the number of units of your purchases of plastic containers in relation to your total purchases of units of all containers is an insignificant amount?

A. May I ask for a clarification of "insignificant amount"?

The Court: Let's change that "insignificant" to "very small."

The Witness: Yes, it is very small.

[fol. 714] Q. Would you say that it was 1 per cent or about 1 per cent?

A. Of all containers purchased, you are asking now?

Q. Yes.

Mr. Greenberg: Your Honor, are we including shipping containers?

A. I would say 2, 3 per cent.

The Court: Wait a minute.

Mr. Greenberg: If the Court please, we have the use of the term "containers." It could include cardboard boxes around the container.

The Court: No, we all know what we are talking about, Mr. Greenberg. We are talking about containers in which the products are packed or bottled and in which they were used by the ultimate consumer.

A. I can only give a guess, but I will say that at tops it would probably be around 3 per cent, but it might be 2, might be 1. I honestly, without getting some figures, couldn't nail it down closer to that, I don't think.

Q. No more than 3 and in the range between 1 and 3, would you say?

A. That is a guess, but I think it is a fairly accurate guess.

[fol. 715] Q. Now, did I understand you to say that you used glass aerosols?

A. Yes, we do, in the Matchabelli line.

Q. Is the market for the use of them an extremely limited market?

A. Yes, it is.

Q. And is there any reason for that? Well, are they very high cost? Let me put it to you that way.

A. Yes, 7 cents apiece just for the coating going around the glass, to limit it shattering.

Q. Is that a limiting factor on their use?

A. Yes.

Q. Isn't it true that your company has no cream other than Aziza or Azeza, in plastic?

A. On the market today? Yes.

Q. Mr. Holloway, I show you Exhibit 355 and call your attention to the aerosol can on the face of that exhibit; do you observe that?

A. Yes.

Q. Can you tell me how you classify this, whether as a household article, that is, this medicated room vaporizer, or would you classify it as a cosmetic?

[fol. 716] A. Not as a cosmetic, definitely.

Q. How about a toiletry?

A. No.

Q. A chemical?

A. No.

Q. Pharmaceutical?

A. Yes, in that area, or more in the pharmaceutical area. It is not a room deodorant, in other words.

Q. Is it a household article?

A. No, it is used for the shrinking of membranes that are set up by a cold, say, a child's cold. Definitely of therapeutic value.

Q. You say it is a pharmaceutical?

A. Pharmaceutical area.

Q. Now, you have told us of the approximate percentage of your products that move in plastic containers, and I

ask you whether there are any disadvantages in the use of plastic containers?

A. We have tested practically every product we have to see will it be compatible with a plastic container, and in many cases the answer is definitely no; and I am talking about a variation of plastics from linear polyethylene up and down the scale.

[fol. 717] Q. Yes?

A. We have also tested lined bottles, trying to overcome some of those disadvantages. But product compatibility would be one of the main reasons, I would say.

Q. Can you think of any others?

A. Well, it does come to container compatibility with the product in certain other areas, where you would get a collapsing of the bottle as action is taking place. Also, it is more porous and you can have loss of perfume; you can have oxidation of product as some of these plastics can deteriorate almost by osmosis.

Q. Is there a factor known as pharmaceutical elegance? Have you ever heard that expression?

A. Pharmaceutical elegance?

Q. Yes. Cosmetic elegance, have you ever heard that expression?

A. Yes, that I have heard.

Q. All right, let's go to cosmetic elegance. Would you say that plastics have less cosmetic elegance than other types of containers?

A. Are we talking about squeeze bottles? As I want to contrast that with jars, is why I wanted to ask the question.

[fol. 718] Q. Let's take jars.

A. Some jars—I know certain of our competitors, let's say, the higher-priced lines, like Elizabeth Arden's, do use some of these plastic-coated jars.

Q. You do not?

A. Other than this Aziza area.

Q. And, generally speaking, plastic is more expensive than glass, is it not?

A. I think glass, generally speaking—for a comparable item?

Q. Yes.

A. Although I know that today when you get into the detergent field, apparently those containers are very close

to glass. I know that from hearsay. We are not dealing in it. But in general I would say for the items in which we try to get a parallel size jar for Aziza out of glass, let's say, versus this plastic one, we would pay more for the plastic one.

Mr. Hughes: No further questions.

The Court: Any further questions?

Mr. Greenberg: Yes, I have just a few questions your Honor.

Redirect examination.

By Mr. Greenberg:

Q. Sir, ten years ago how many products of [fol. 719] your company were compatible with plastic containers? I will change that question around. Haven't there been advances in types of plastics, vinylite things of that nature, which have made more of your kind of product compatible with plastic containers over the years?

A. More compatible?

Q. Yes, sir.

A. Yes, but not completely compatible in all cases. A question of degree in many cases.

Q. Right, but the plastic container companies that you mention are working on this problem; correct, sir?

A. Oh, yes.

Q. And they are working very hard on it; right, sir?

A. I assume so. I hope so.

Q. Now, ten years ago, sir, were you aware of what the price of plastic containers were?

A. Yes.

Q. And were they extremely high compared to——

Mr. Hughes: Your Honor, I object to this. It is repetitious.

Mr. Greenberg: Withdrawn.

[fol. 720] A. Yes, they were.

Q. Sir, are you considering—and answer this in a general way—are you considering marketing other products in plastic containers in the near future?

A. If you mean considering, we are testing all products

in plastic that we have and trying it with the new plastics as they come along, to see if they have an application for us. We do not have any immediate thing that we are coming out with, which is in a plastic, if that is what you mean.

Q. Sir, are you aware of efforts by raw material suppliers and producers of glass bottles to reduce the cost of the polyvinylchloride coating around the aerosol glass container?

A. Yes.

Q. What types of activity are they engaged in to do that, in a general way?

A. I don't know that I am qualified to say, but I assume they are working with the plastic companies, trying to see if they can't get down to, one, either lower cost of powder, or, two, either thinner coatings or more mechanized method of application of these plastic coatings around the bottle.

Q. And you notice? You have heard this?

[fol. 721] A. Yes.

Mr. Hughes: Well, your Honor, he said he didn't know, he assumed.

The Witness: Well, I have not been there, I haven't been there when they have been talking with their suppliers, but I know from my conversations in the field.

By the Court:

Q. I take it in the trade generally there is discussion of this subject, is there, from time to time?

A. Yes. Can we get the cost down on this coating? It is too damn high.

Mr. Greenberg: May I have just a moment, your Honor, to confer?

Q. Sir, you stated that anywhere from 1 to 3 per cent of your containers were represented by plastic containers; did you say that?

A. Yes. That is an estimate.

Q. What did you mean when you said "containers"?

A. Well, what I meant was, I added up all, as near as I could guess it in a rough way, all the hair tonic bottles we use, all the vaseline petroleum jelly jars, all the Pons

cream jars we use, all our skin lotions, all the big mass market items, where they happen to all be in glass.

[fol. 722] Q. Right now.

A. So then I tried to compare that against the several items that he mentioned, and unitwise I was guessing that somewhere between 1 and no greater than 3 per cent. That is all I did.

Q. Now, five years ago, can you estimate that percentage, just estimate it?

Mr. Hughes: Well, I object to that.

Q. Can you estimate it, sir?

A. I can estimate, and I would say it would be lesser still, that there would be less plastic used, because there is one bottle that we have sold more stuff, I mean, part of that is acquisition, you see, companies we didn't have.

Mr. Greenberg: All right, no further questions.

Mr. Hughes: No further questions.

The Court: Thank you, Mr. Holloway.

(Witness excused.)

Mr. Hughes: Your Honor, as you recall, we had no cross-examination of Mr. Hellrung, but I would like to recall him to ask him—he is not here.

The Court: I think Mr. Hellrung has departed, if I am not mistaken.

Mr. Hughes: Well, I think he will be back.

[fol. 723] The Court: Well, if he comes back you may recall him for questions.

Mr. Hughes: One question, yes.

The Court: Next witness.

Mr. McManus: Dr. Wishart.

ARTHUR W. WISHART, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Wishart, by whom are you employed?
A. Knox Glass, Incorporated.
Q. And what is your position with that organization?
A. President of the company.
Q. And how long have you been president of Knox Glass?
A. Since October, 1954.
Q. And prior to 1954 were you associated with the glass container industry?
A. No.
Q. So your knowledge of the glass container industry is limited from 1954 to date.
A. That is correct.

The Court: Tell me at the outset, Dr. Wishart, what is [fol. 724] the gross volume, what is the total volume, approximately, of your company?

The Witness: Last year it was approximately 42½ million dollars net sales.

Q. And how many plants does your company have?
A. We operate nine factories.
Q. And where are they located?
A. They are located, one in Palestine, Texas; two in Jackson, Mississippi; one in Baltimore, Maryland; one in Danielson, Connecticut; three in Western Pennsylvania and one in Gas City, Indiana.
Q. Now, I don't like to skip around, but could you give me your background prior to 1954, Dr. Wishart?
A. Prior to 1954 I was associated with the Westinghouse Electric Corporation in Fairmount, West Virginia, as manager of their glass manufacturing division. Before that—that was for a period of about 1951 or '2 to 1954. Prior to Westinghouse I was vice-president of operations of the McKee Glass Company, in Jeannette, Pennsylvania, and that was for about two or three years. Prior to that with Corning Glass Works, Corning, New York.

The Court: So your business experience has been very largely in the manufacture of glass in one form or another?

[fol. 725] The Witness: Yes, sir; that is correct.

Q. You are primarily in the manufacture of flat glass or tubes; is that correct?

A. No. Prior to the Knox experience, with Westinghouse it was in the manufacture of tubing, glass tubing, and in the area of glass bulbs. Part of that with McKee, in a rather broad line of what is known in the trade as press ware, lighting ware, some tableware, that sort of thing. Part of that with Corning as a plant manager at two or three Corning locations, optical glass, a general line of press ware, tableware. Prior to that with Corning in the research and development areas of the glass business.

Q. I see. And prior to coming with Knox Glass Company, were you in the technical end of the business, Doctor?

A. Yes. I began work in the glass field with Corning, in the research department and followed that with activity in the glass technology department, in the technical end of the business.

Q. And you have a doctor's degree, Doctor?

A. Yes, sir.

[fol. 726] Q. And that is in what field?

A. Physical chemistry and physics.

Q. Now, you listed your glass plants. Could you tell me the area of the country that your company services, normally?

A. Generally, we sell in almost all areas of the country east of the Rockies.

Q. You do not sell on the West Coast?

A. Not in any appreciable quantity. We may make an occasional shipment to the West Coast, but very minor.

Q. At the time that you were working for Corning did you conduct experiments in what a layman might call increasing the tensile strength or hardening of glassware?

A. Well, not so much experiments in that area as manufactured products treated in that way for sale.

Q. And the purposes of these experiments were to do what?

A. Again I say——

The Court: He said he was not experimenting primarily.
The Witness: Not experiments.

Q. I am sorry.
[fol. 727] A. Primarily in the manufacture of glassware so treated, and the purpose of the treatment was to import greater mechanical strength to the glass articles so treated.
Q. Have you carried that knowledge over into the company you are presently with?
A. Well, I believe I have carried the knowledge, but we have not adopted the practice of that sort of treatment of glass containers.
Q. Is your company, if you don't mind telling us, at the present time attempting to increase the strength of glassware?
A. We are very definitely interested in accomplishing that, and we have some ideas and thoughts that we believe may lead to an actual increase in the strength of glass containers.
Q. Does your company have a marketing department, Dr. Wishart?
A. We have people engaged in marketing activities, that is, we don't call it a marketing department, but we do have people that do that kind of work.
Q. And their duties are the normal duties of marketing the products that you sell?
A. Well, they are somewhat more than simply a [fol. 728] sales kind of activity. They involve surveys of market potentials, some activities in the area of competitive products, interest on the part of customers in our product. It is more than just a sales organization, but it is marketing studies and that sort of thing.
Q. They attempt to expand the market in which glass containers are sold?
A. Not as much as that, as this sort of thing: For example, if we have an interest in locating a factory in a new area in which we are not currently located, in a market area, the marketing people would make market studies for demand for glass containers in that area. That would be useful in determining the desirable location of a new factory.
Q. Do these people also study usage of competitive containers?
A. Well, I am sure that they must get into the fringes

of that activity. I am sure they are aware of competitive materials and the usages. I don't know to what detail they get into these things.

[fol. 729] Q. You say you don't know of your own knowledge?

A. No. Let—well, it would be rather difficult to tell you just what I do know. I don't know a great deal of detail.

Q. The marketing department is the one that would have the detail on the particular specific usages of your product?

A. That's correct.

Q. You would know, it would be your job to know, whether your product was being sold under a beer classification or under a household and chemical classification? You would know that, wouldn't you?

A. I would know generally, but I of course would not know all of the details, no.

Q. You wouldn't know if the product that your company used specifically, you wouldn't know if the product your company was selling was being sold for a certain type of toiletry?

A. I likely would not. There may be exceptions where I might have specific knowledge of a particular account.

Q. That is the duty of your marketing department?

A. Yes, sales and marketing.

Q. And could you estimate, sir—you gave his [fol. 730] Honor your sales—what is your approximate position in the glass container industry, overall, one, two, three, four, five?

A. Well, we vary from about No. 4 to, I believe, No. 6, and one year we are likely to be—have been, we believe, No. 4 spot and perhaps the next year the No. 5 or No. 6, so today I am not sure just which position it is, between 4 and 6.

Q. Now, when you first went with your company, do you know approximately what position you held in the glass container industry at that time?

A. Well, at that time we were around $26 million in sales, and it may have been $26.5 million, but as to the position, I am not sure.

Q. But you have made quite a substantial increase in your sales volume under your direction; is that right, Dr. Wishart?

A. Yes, we have.

Q. And what type of glass-forming machinery does your company have?

A. We operate a number of different types of glass-forming machines, the WD machine, which is rather much a Knox development; what we call the JK machine, which is an adaptation of a Miller-type JP machine.

[fol. 731] We operate Lynch machines; we operate JP machines, Miller machines. We operate some IS machines.

Q. I don't want the specifics, unless you want to tell me, but could you tell me approximately what percentage of your machines are Hartford IS machines?

A. Rather small. I don't know the exact percentage, but apart from our Buck plant in Baltimore, out of the other eight factories we operate perhaps two or three or four Hartford-type machines.

Q. And with the other equipment, other machines, you have managed to increase your sales over the past six years from around 26 to 42 million?

A. Yes.

Mr. McManus: Your Honor, those are all the questions I have of Dr. Wishart.

The Court: Mr. Hughes?

Mr. Hughes: Yes, sir.

Cross-examination.

By Mr. Hughes:

Q. Doctor, your company makes no closures of any kind, does it?

A. No.

Q. Manufactures no plastic of any kind?

A. No, sir.

[fol. 732] Q. The only kind of products you make are glass containers; is that correct?

A. Yes.

Q. Now, would you say that most of your customers have more than one source of supply for their glass containers?

A. I would guess that is so. I don't know specifically, but I would estimate that that is so, or judge that it is so.

Q. Would you say that competition in the glass container industry is keen and vigorous?

A. Yes, I would.

Q. Do you equalize freight with any can manufacturing plant?

A. No, we do not.

Q. Do you equalize freight with any plastic container manufacturing plant?

A. We do not.

Q. Is the location of any can plant a factor with you in the location of any of your glass container plants?

A. No.

Q. Is the location of any plastic container factory a [fol. 733] factor with you in the location of your glass container plant?

A. No.

Q. Or any of them? Now, you do not offer your glass containers at prices below your regular prices to meet prices quoted for cans in any specific situation do you?

A. We do not.

Q. And you cannot charge a higher price than Owens-Illinois for the glass containers that you sell, can you?

A. Not to my knowledge.

Q. Now, what are your elements of cost in the manufacture of your glass containers?

A. Well, labor, raw materials and fuel, cartons, freight, delivery costs, material costs. I think those are the principal elements of cost.

Q. And of those elements, about what percent would you say goes into the labor cost, what percent of the total cost is for labor?

A. Well, if you are speaking of all labor, not only direct labor—do I understand you are including all kinds of wages and salaries?

Q. Yes.

A. I would say about 30 percent.

[fol. 734] Q. I meant to ask you this, too. You do not offer glass containers at prices below your list price to meet prices quoted by plastic manufacturers in any specific situation, do you?

A. No, sir.

Q. Now, can you again tell us quickly the kind of machines that you have, glass-forming machines?

A. WD machines, JK machines, JP machines, Lynch machines, IS machines.

Q. The IS machines are the Emhart machines; is that correct?

A. That's correct.

Q. Will you say that the IS machines are more efficient than the other types of machines?

A. I would say that depending on the Ware types produced, that the IS machines—and again I am thinking of five- and six-section machines rather than the four-section IS—I would say generally the IS machines are more efficient than the other types of machines that we use for everything but larger and narrow-neck bottles, everything but our WD machine.

Q. Doctor, you took charge of the affairs of Knox Glass in 1955, was it?

A. 1954, October 1954.

[fol. 735] Q. 1954. And you are generally familiar with your sales volume and profits from 1955 through 1959, are you not?

A. Yes, sir.

Q. Now in 1955 were your sales approximately $28 million?

A. That's correct.

Q. And was your profit that year approximately $701,000?

A. That's correct. That is after taxes.

Q. And in 1956 were your sales approximately $30,240,000?

A. I believe so.

Q. And were your profits after taxes approximately $878,000?

A. I believe that is correct.

Q. In 1957 were they $32,699,000 approximately?

A. I believe so.

Q. And were the profits approximately $814,000?

A. I believe that is correct.

Q. In 1958 were your sales approximately $36,808,000?

A. I believe so.

Q. And were your profits approximately $1,248,000?

[fol. 736] A. That's correct.

The Court: One million——

Mr. Hughes: $1,248,000.

The Court: I see.

Q. And in 1959 were they approximately $42,600,000?

A. That's correct.

Q. And your profits approximately $1,437,000?

A. That's correct.

Q. Now, since you have been in charge of the affairs of this company, has the company made any additions and improvements to plants and equipment?

A. Yes, sir.

Q. And can you briefly tell us, if you can recall, what those additions and improvements have been?

A. Yes. We have——

Q. And approximately when.

A. We have added a furnace and two machines and additional building space at Knox, Pennsylvania, for the production of—well, we are currently using that for the production of amber glass. We put it in, at the time we installed the furnace and additional machinery, we used it for the production of emerald green glass. That was about two or three years ago. I am not sure exactly regarding the date.

[fol. 737] And about that time or a little later we added a furnace and two fabricating machines and some additional building space at our Palestine, Texas plant for the production of amber glass. That was a little later, perhaps two years ago.

A year or more ago we built a complete new glass plant, glass container manufacturing plant, at Danielson, Connecticut.

We are currently working on a building that is currently under construction, a new glass container factory, in Atlanta, Georgia, or in the environs of Atlanta.

Q. Does that cover it?

A. Yes. There is one other thing. We purchased a factory in Baltimore within the last six or nine months.

Q. And you are doing some modernization of that?

A. We have done some modernization and plan to do more.

Q. You do not make opal glass, do you?

A. No.

Q. You could make opal glass if you chose to do so, couldn't you?

A. I am sure we could.

[fol. 738] Q. Dr. Wishart, if you chose to go into the manufacture of closures, you could do so, couldn't you?

A. I would assume so.

Mr. Hughes: That is all your Honor.

The Court: What about the closing machinery business, that is, the capping machinery to go with closures?

The Witness: Well, I would expect that there might be opportunities to purchase existing companies, for example, who have that kind of machinery.

By the Court:

Q. Supposing you were not purchasing one of those companies or supposing there were no existing companies available, would you feel that there would be great difficulties in the way of your going into that part of the business if you decided that it was for the best interests of your company to do so or if you wanted to do so?

A. Well, I am afraid that I cannot answer that, your Honor. I don't know just what the limitations are in the way of purchasing that type of equipment.

Q. You just do not know?

A. No, sir.

Q. And you have not gone into it?

[fol. 739] A. That's right.

The Court: All right.

Redirect examination.

By Mr. McManus:

Q. Dr. Wishart, are your glass containers normally sold on a delivered price basis?

A. Yes, sir.

Q. And they would be delivered at the customer's plant?

A. That's right, freight included.

Q. Does your company sell in the various zones where there are free delivery zones?

A. At one time there were free delivery zones but I am

not sure how many of those free zones still exist. I think that they have gradually been eliminated. There may be some but I am not sure.

Q. You testified that you do not equalize freight with can container companies.

A. That's right.

Q. If you sell at a delivered-price basis you do not equalize freight with any glass company plant either, do you?

A. I think the answer would be no. We simply pay the freight to the customer's door.

Q. So you do not equalize freight with either [fol. 740] can, glass or plastic companies?

A. I am not conscious of it; not that I know of.

The Court: Dr. Wishart, let me ask you this. As an example, let us suppose you are selling some sort of glass jars in suitable quanties to a customer in, let us say, Omaha. I presume that you would take those jars from the plant closest to Omaha that manufactures that item.

The Witness: That's right.

The Court: And when you sell it to the customer in Omaha, what would you do; would you take your list price and add a differential for the freight or would the customer in Omaha get the very same price as the customer in the town where the factory was located?

The Witness: That's correct, he would get the very same price.

The Court: He would get the very same price and you would absorb it?

The Witness: We calculate our costs with an average freight factor in the cost, so that built into our price list are our freight costs to an average destination, so that whether the customer had a factory in the same town as ours or whether he had it at some distance, they would pay the same price.

[fol. 741] The Court: They would pay the same price?

The Witness: Yes, sir.

By Mr. McManus:

Q. Do you know of your own knowledge whether this is generally true throughout the glass container industry?

A. I believe it is.

Q. Could you give us an estimate of what percentage of your glass containers are delivered in corrugated shipping containers, approximately?

A. Well, I would say that basically all of them are delivered in corrugated containers.

Q. Over 90 percent?

A. Yes.

Q. Could you tell me approximately what cost the corrugated shipping container represents to the selling price of the glass container?

A. Approximately 20%.

Q. In testifying about the types of machines that you have, Doctor, and I take it you are very familiar with them, were some of those machines Miller machines?

A. Yes, they were. Some of our machines are Miller-type machines.

[fol. 742] Q. So you have some Miller machines?

A. Yes.

Q. Are they wide-mouth machines?

A. Yes.

Q. And do you have some Lynch machines?

A. Yes.

Q. And what are they basically?

A. Basically they can either be used—we use them, I would say, largely for the narrow neck type.

Q. Then you have some of your own modified machines also?

A. Yes, we do.

Q. Recently has your company made any studies or have you given serious consideration to entering into the plastic container industry?

A. Yes, we have conducted some investigations along those lines and given some thought to it.

Q. And what have been the factors that have caused you and your company to consider the plastic container industry?

A. Well, we felt that we have a sales organization that could very conveniently sell a line of plastic containers. I think that that was the idea that got us basically interested [fol. 743] in it. We have a rather extensive sales organization and we felt that that type of product might fit into our sales organization.

The Court: It would sort of round out your line?

The Witness: That could be, too, that we have an interest in having a more diversified line.

Mr. McManus: Thank you, sir. That is all.

Recross-examination.

By Mr. Hughes:

Q. Dr. Wishart, do you give your customers an allowance for back hauls?

A. In some cases.

The Court: Tell me what that is, Dr. Wishart.

The Witness: Well, that is a case wherein the customer operates his own trucks and he may happen to have a truck that delivered his product in an area and then he picks up a lot of our containers——

The Court: And you give him sort of an allowance?

The Witness: A freight allowance for that.

Q. And are they equalized with your glass container plants?

A. Pardon me?

Q. They are equalized from your glass container plants, are they not?

[fols. 744-746] A. I don't know that that is exactly so. I am not sure that I understand you. What we do is take the freight rate——

The Court: In that case you would take the nearest glass container plant——

The Witness: I am not sure just what Mr. Hughes is getting at here.

Would you state that again.

The Court: You had better clarify that, Mr. Hughes.

Mr. Hughes: Yes, I will, your Honor.

Q. Are these freight allowances equalized with the nearest glass container plant or other glass container manufacturers?

A. No, sir.

Q. They are not? In what respect are they equalized? How do you work out the equalizing process?

A. Well, we don't work that out in the back hauls. We

allow—generally, I believe it is the normal carload freight rate, from our factory to our customer's location, and that is the allowance that we give generally for the back hauls.

The Court: All right, Dr. Wishart. Thank you very much.

(Witness excused.)

[fol. 747] CHARLES OLIN BALL, resumed.

The Court: Dr. Ball, you have already been sworn and you remember you are under oath.

The Witness: Yes, sir.

Mr. Johnson: Your Honor, I would like to have these [fol. 748] documents marked for identification: First is a volume entitled "Elements of Food Engineering, Volume 2."

(Marked Defendants' Exhibit G for identification.)

Mr. Johnson: Second is a volume entitled "Sterilization in Food Technology."

(Marked Defendants' Exhibit H for identification.)

Mr. Johnson: The third is the January, 1960, issue of Modern Packaging Magazine.

(Marked Defendants' Exhibit I for identification.)

Cross-examination.

By Mr. Johnson:

Q. Dr. Ball, I think you testified the other day in effect that substantially your whole active life has been spent in one aspect or another of food technology, is that correct?

A. That is right.

Q. And you have taught food technology for many years?

A. I have taught food technology academically for 11 years.

Q. And you have written numerous scientific works on food technology?

[fol. 749] A. I have.

Q. Dr. Ball, I know you are a modest man, but isn't it a fact that you are generally acknowledged as one of the foremost authorities in the field of food technology in the United States?

A. I have been told that, yes.

Q. And that reputation was achieved in the scientific field of food technology?

A. Yes, sir.

Q. Now, sir, I show you a book entitled "Sterilization in Food Technology," published by McGraw-Hill Book Company in 1957. Did you write that book, sir, in cooperation with F. C. W. Olson of Florida State University?

A. I did.

Q. Dr. Ball, the term "sterilization," without qualifying adjectives, what does it mean to you?

The Court: Do you mean in relation to food?

Mr. Johnson: In relation to anything for the moment.

A. In a strictly scientific sense?

Q. Yes.

[fol. 750] A. It means the destruction of all micro-organisms in material being treated.

Q. In short, it means surgical sterilization?

A. Yes.

Q. Now, are you familiar with the modification of that term as used by an authority by the name of Tanner?

A. Yes.

Q. On page 13 of your book you quote Dr. Tanner as saying:

> "Some canning technologists have modified the term 'sterilization' to indicate the bacteriological condition attained in some foods by processing. Since the term 'sterilization' implies the absolute destruction of all living organisms and since this condition may not be attained in some processed foods, the term 'commercial sterilization' has been introduced."

Mr. Greenberg: If the Court please, I would think that the proper procedure would be to show Dr. Ball the book and have him read it rather than listen to the words.

The Court: No, I am going to permit this kind of cross-examination of the expert.

Q. Then you go on to say:

[fol. 751] "Tanner stated that 'commercially sterile' canned food may contain viable spores of a type, such as the thermophilic, which will not develop under conditions that are normally maintained during storage of the food. Some of these spores are so highly resistant that to destroy them by heat one might overcook the food to such an extent that it would be unsuitable for sale."

Do you agree, sir, that some qualification of the term "sterilization" is required in food treatment and that commercial sterilization is an acceptable term for that?

A. It is accepted for the purpose, yes. It is a different connotation than the strictly scientific connotation of the word, but it is spoken of, that is, the term is used in respect to foods that have been treated so that they are commercially sterile.

Q. Am I correct in paraphrasing this to mean that it is the attainment of sterility with respect to the most resistant microorganisms present that would bring about spoilage?

A. That is what the term in that sense would mean, yes.

[fol. 752] Q. Sir, in your testimony the other day you referred to the term "hermetic" and said it was another word for "air tight"; do you recall that?

A. Yes, sir.

Q. Did you mean absolutely air tight, or is it another term which must be qualified?

A. Well, I think you will find that—it is my opinion anyway—that nothing is absolutely impervious to air. If we allow enough time a molecule or some molecules of air will get through almost anything under certain conditions. So it is a qualified term. There are gradations, and one must draw a line of demarcation if he is going to say what is air tight and what isn't.

Q. Yes. Can you get a hermetic seal, as that term is used in food technology, with a crown cap?

A. That I cannot say for sure. I have never worked with crown caps enough to learn that.

Q. In your testimony the other day you used the term "canned foods" and you said that you meant foods that have been sterilized and packaged in air tight containers for storage and distribution. Now, I assume that you meant commercialized sterilization, did you not?

[fol. 753] A. Yes.

Q. Now, will you tell me, sir, what you mean by the term "foods" as you used it in "canned foods"?

A. The term "foods"?

Q. Yes.

A. Well, in discussing the subject in this manner, the term "foods" refers to edible substances that are capable of being spoiled by micro organisms.

Q. Do you include vinegar as a food?

A. Vinegar?

Q. Yes.

A. Yes.

Q. Do you include soft drinks?

A. Well, again, I don't know enough about what is in a soft drink to be sure, but I think it would be included —they would be included.

Q. Do you include beer?

A. Yes.

Q. Do you include coffee?

A. No.

Q. Do you include spices?

A. I would have to qualify my answer there. I wouldn't say for sure.

Q. Do you include dog or cat food?

[fol. 754] The Court: What?

Mr. Johnson: Dog or cat food, pet food.

The Court: Pet food.

A. I wouldn't ordinarily, dehydrated dog or cat food.

Q. But other kinds?

A. Yes.

Q. How about wine?

A. Yes.

The Court: How about whiskey? Hard liquor, generally?

The Witness: I don't think so, your Honor. I don't think that would be destroyed or spoiled by bacteria.

Q. Are you familiar with the term "vacuum packed"?

A. Yes, sir.

Q. What does that term mean?

A. Broadly speaking, it means packing a material in a container which is sealed while under vacuum. But also, if it is a qualified term that you refer to here because it is used in connection with canned foods, it refers to a food in particular form which has a considerable amount of space between the particles, and is—which are not filled [fol. 755] with brine, but that food being closed under vacuum in a container.

Q. Now, if a product is vacuum packed, is it canned, within your definition?

A. Yes, sir.

Q. Can you define for me, sir, the term "pasteurization"?

A. Pasteurization is an intentional destruction of a part of the micro organisms that are in the product.

Q. Now, when a product has been pasteurized, it has been commercial sterilized within the meaning of the term as we define it, has it not?

A. No, sir.

Q. What is the difference?

A. The difference is that there are viable organisms in that food still which will spoil the food under the conditions in which it is held.

Q. Now, Dr. Ball, I am going to give you a list of products and ask you this question:

When the following products are packed in glass containers or metal cans, do you consider them as canned within your definition: mayonnaise?

A. No, I do not ordinarily classify that as canned food.

[fol. 756] Q. Catsup?

A. Yes.

Q. Vinegar?

A. Well, I don't know of that ever being packed in cans, but—yes, I would call that a canned food.

Q. Beer?

A. No, I think I would exclude that.
Q. Vegetable oils for shortening?
A. I would exclude that, also.
Q. Wet packed pet foods?
A. Yes.

Mr. Greenberg: What was that last one, Mr. Johnson?
Mr. Johnson: Wet packed pet foods.

Q. Syrup?

Mr. Handler: Was there an answer?
Mr. Johnson: Yes.

A. No.
Q. Pickles?
A. Ordinarily, yes.
Q. Juice in concentrated form prepared for freezing?
A. No.
Q. Whole milk?
[fol. 757] A. Whole milk?
Q. Yes.
A. If it is sterilized.
Q. Not if it is pasteurized?
A. Not if it is pasteurized.
Q. Barbecue sauces?
A. Well, my answer would be the same there. If they are sterilized, but not if not.
Q. Coffee?
A. Well, I ordinarily don't regard coffee as a food.
Q. Well, I was referring to canned rather than foods?
A. It is canned.
Q. Maraschino cherries?
A. Well, I would qualify this answer this way:
Maraschino cherries have a preservative. Some foods that are classified as canned do have some preservative, but I would not myself class Maraschino cherries as a canned food, sterilized canned food.
Q. Sauerkraut?
A. Yes.
Q. Olives.
A. Ripe olives, yes.
Q. Not green?
[fol. 758] A. They are preserved by acid.

Q. Peanut butter?

A. Restricting as I have to sterile foods, no.

Q. Fruit preserves?

A. Ordinarily, yes.

Q. Fruit jellies?

A. Same.

Q. Prune juice?

A. Yes.

Q. Now going back to beer, sir, when it is packed it is hermetically sealed, is it not?

A. Yes.

Q. And when it is put on the market it has attained sterility with respect to the most resistant micro organism present that would bring about spoilage, hasn't it?

A. No, that beer is pasteurized, sir.

Q. And what does that mean in practical effect?

A. It means that there still are some viable organisms that would spoil the product under ordinary conditions.

Q. Isn't that true with respect to peaches, also, having in mind our definition of commercial sterility and the necessity for that?

[fol. 759] A. It is not true of peaches, according to ordinary, to usual belief. I don't think anybody knows whether or not there are any viable organisms in peaches or acid products of that kind, because that question has never been studied exhaustively. It is because it hasn't been necessary. Peaches keep, but nobody knows whether they are absolutely sterile or not.

Q. Now, if you don't regard beer as canned, sir, what would you call the product?

A. Beer in cans, beer packaged in cans.

Q. All right, sir. No broad term for the process?

A. No, I think not.

Q. Dr. Ball, would you regard the following products as canned, within the definition you have given: First raisins packed in wax-sealed paper container?

A. No, sir.

Q. Why not?

A. They are not sterile. Ordinarily they are not in such a state that they would be spoiled by bacteria. They are viable bacteria there.

Q. Cornflakes in a wax-sealed paper carton?

A. Now, the question is what again in regard to [fol. 760] them?

Q. Would you regard this as canned, within your definition?

A. No.

Q. Sir, I have in my hand a copy of the Modern Packaging magazine for January 1960. On page 79 of this magazine there is a sentence, part of a sentence, that I want to read. There is a statement that a certain packer packs certain of its products in, and I quote:

> "A new and economical smooth wall aluminum foil cup that assures hermetic product protection."

That ends the quote.

Would you say, sir, that that was possible?

A. I would say it would depend upon the thickness of the foil.

Q. But you wouldn't say it was impossible?

A. I think that it would be necessary to have foil of a thickness practically like that which would be referred to as plate, aluminum plate, before you can be sure that it would be hermetic.

Now at page 44 of this magazine, sir, there is an article which says, and I quote:——

Mr. Greenberg: Your Honor, I don't see why the witness [fol. 761] can't see the article. I think there ought to be some identification of the author. He ought to be asked if he knows the author.

The Court: I think that is so. If you are referring to the article, let's have what the article is about, where it appears and who wrote it?

Mr. Johnson: Well, sir, I am interested only in whether this witness will agree or disagree that it is possible.

The Court: Well, I know that may be what you are interested in, Mr. Johnson, but I am interested in knowing at least what the nature of the article you are reading from is. I would ask you to let me know what it is before you read from it.

Mr. Johnson: All right, sir.

The Court: Who wrote it?

Mr. Johnson: The article I refer to was simply headed "Single Service Foil Cup."

Mr. Greenberg: Your Honor, articles of that type are usually advertisements put in by a particular company. If there is no identification of author, it is totally unreliable, and I don't see how we can use it with the witness to impeach him, or for any other purpose.

Mr. Johnson: I was not trying to rely on the article. [fol. 762] I am trying——

Mr. Greenberg: You are reading it into the record.

The Court: All right, the objection is overruled. If he wants to refer to advertisements and ask the witness about them, I will permit him to do so. We have a very broad scope of examination in this sort of situation.

Q. On page 44 of this magazine there is an anonymous article that is headed "Hermetically Sealed Plastic Cup Packages." It contains this statement:

> "Hermetically sealed plastic containers and machinery for sealing them are available from Plastomatic. The containers—called Seal-Tainer—are made in pint and half-pint sizes from transparent polyethylene. The lids are a lamination of polyethylene, polyester and saran."

Would you say, sir, that such a container could be hermetically sealed?

A. I don't know enough about making a seal on a plastic container to express an opinion.

By the Court:

[fol. 763] Q. Well, Dr. Ball, am I correct that with respect to a plastic container there would be two problems: First would be the question of whether or not it could be hermetically sealed at all, and the second problem would be a problem of the permeability after it was hermetically sealed; isn't that so?

A. Yes, your Honor.

In fact, the second problem is the one that—that is, I would feel safer in answering that it cannot be hermetic.

Q. Because of the inherent permeability of the material?

A. That's right.

[fol. 764] Q. Dr. Ball, the ultimate purpose of canning is to preserve foods from spoiling until they are ready to be used, is it not?

A. Yes, sir.

Q. Isn't the same purpose served by dehydration?

A. Yes, sir.

Q. And by smoking?

A. The same purpose?

Q. Yes.

A. I wouldn't say that the same objective is always obtained but that is the purpose.

Q. And by salting?

A. Yes.

Q. And by fermentation?

A. Yes, sir.

Q. And by treatment with sulphur dioxide?

A. Yes, that is a preservative that we use for the purpose of preventing spoilage and preserving the food until it is ready to be used.

Q. And by treatment with propylene?

A. I am not acquainted with the use of propylene.

Q. And by treatment with sodium benzoid?

A. That is commonly used.

Q. By treatment with sugar?

[fol. 765] A. Yes.

Q. By treatment with acetic acid or vinegar?

A. Yes.

Q. By freezing?

A. Well, that is in a different category because its preservation depends entirely upon the condition of storage.

Q. But the purpose is the same?

A. The purpose is the same.

Q. Dr. Ball, when you talk about canning you are not talking about one single process, are you? In other words, you cannot say about any product that you cook it for 20 minutes and cool it for 17 and that is all there is to it?

The Court: I don't follow that question.

Mr. Johnson: Let me restate it.

The Court: You have me very badly confused on it.

Mr. Johnson: I will try to restate it.

Q. Isn't it a fact that there is a different canning process for practically every canned product?

A. There is a different canning process for every canned product, yes.

[fol. 766] Q. Dr. Ball, would you tell me what is meant by thermal death time?

A. Thermal death time is the time required to destroy a microorganism when it is held at a given temperature constantly.

Q. Is that your definition of it?

A. Yes.

Q. Thermal death time will vary not only with the temperature but with the product, will it not?

A. Yes.

Q. Now, sir, turning to your book, I want to read a couple of paragraphs from page 14, and I wish you would listen to it and tell me if it represents your views today?

The Court: When was the book published?

Mr. Johnson: The book was published in 1957.

Q. "In determining the merits of a process, one must examine it from the standpoint of four factors: (1) economy, (2) quality of product, (3) uniformity of product, (4) sterilization of product.

"It may at first appear in this discussion that we should be interested only in factor 4. In studying processing we [fol. 767] quickly learn, however, that the four factors are inseparable. If the problem of processing involved only the sterilization of foods, it would be an extremely simple problem, solved by choosing for every process a temperature and a time that would leave no doubt as to the destruction of all micro-organisms. Along with the possibility of disregarding quality and uniformity, we should have the possibility of disregarding refinements of retort operation. We should not need to study venting, and variations in temperature with a retort would be of little practical importance.

"There may be a legitimate question as to how much the factor of economy has influenced the development of processing methods in the past, but there is no question but that now the bringing into use of certain new technics is being influenced greatly by considerations of economy.

Promised benefits in quality and uniformity of product are balanced against estimated cost with great deliberation. Observing this, one should say that economy is at least on a balance in importance with quality and uniformity of a product.

"The objective sought in all processing is to ensure ster- [fol. 768] ilization of the food with the least possible impairment of the quality. In order to obtain this objective, much attention must be given to the combination of time and temperature chosen. Some general principles have been learned that are helpful in this connection. For instance, it has been found, with products having the higher rates of heat penetration, that better quality can generally be obtained by processing at a high temperature than can be obtained by giving an equivalent process at a lower temperature. The shortest possible 'coming-up' time also has been found to be advantageous. The latter applies to most products, but is of less importance with those having the lower rates of heat penetration."

Does that still represent your view, sir? Would you like to look at it?

A. No, that's all right. Yes, it does.

Q. Now, Dr. Ball, looking at Government's Exhibits G-317 and G-318, is it not possible to generalize and say that the time required for processing low acid foods in glass containers is always longer than the time required to process them in metal cans?

[fol. 769] The Court: You might refer him to the two exhibits.

Q. These are the two exhibits that I have referred to?

A. Well, one has to define what you mean by the time required to process to answer that. If you use the same length of time to bring the temperature of the retort up to processing temperature, up to the holding temperature, it does take longer for glass containers than for metal cans, yes.

The Court: Can you tell me why that is—I mean simply?

The Witness: Well, the reason is that glass is not quite as good a conductor as metal.

The Court: I see.

The Witness: I am referring now to low acid foods.

Q. And the same is true of medium and high acid foods?

A. Yes.

Q. And, of course, the element of time is an important factor in any commercial operation, is it not?

A. Yes.

Q. Apart from such things as time and temperature, [fol. 770] there are numerous other differences in the processing of foods in glass containers than in metal cans, are there not?

A. Would you repeat that, please?

Q. Apart from the processing time and temperature, are there other differences in the processing of foods in glass containers than in metal cans?

A. Yes; there are.

Q. And some of these are referred to in these books which I showed you, which are Government's Exhibits G-317 and G-318, are they not?

A. Yes. I would say in practice that is true. I could add also that any process satisfactory for glass containers would also be satisfactory for a metal can.

Q. But not vice versa?

A. Not vice versa.

Q. The process of heat sterilization of food in the canning process is accomplished by the transfer of heat to the product, is it not?

A. Yes.

Q. Are you familiar with this treatise, "Elements of Food Engineering," by Milton Parker, published in 1954?

A. I have not read it carefully. I have seen [fol. 771] the book.

Q. Would you regard it as an authoritative work in the field?

A. I am not prepared to say that.

Q. Whether you are or not——

Mr. Greenberg: I am going to object to using this because the witness has stated that he is not familiar with it——

Mr. Johnson: All right, I will simply ask him whether he agrees with a couple of statements in it.

The Court: All right.

Q. "The tincan is the most efficient heat exchanger in effecting the transfer of heat in the thermoprocessing of food."

Would you agree to that statement?

A. That is a pretty broad statement. It doesn't say what it is comparing a tincan with.

Q. All right, sir. Would you agree with this statement: "Glass containers are definitely not as suitable for heat transfer as metal cans."

A. I would say they are suitable for heat transfer but they don't transfer quite as fast.

Q. Dr. Ball, in the commercially canning process, [fol. 772] is it regarded as good practice to put high acid products and low acid products in identical cans?

A. No, not generally.

Q. Do you know what struvite is?

A. Yes, I know what it is.

Q. Will you tell us what it is?

A. Well, it is cholesterol, which is a compound that is commonly derived from fatty materials.

Q. Do you know what hydrated ammonium magnesium phosphote is?

A. No, I don't.

Mr. Johnson: Your Honor, the defendant has no objection to Government's Exhibit G-317 and 318.

The Court: I reserved on those, as I remember.

Mr. Johnson: Yes, that is correct.

The Court: 317 and 318 will be admitted.

(Government's Exhibits 317 and 318 for identification received in evidence.)

Mr. Johnson: That is all.

Mr. Greenberg: I will just be a minute in getting these papers together.

[fol. 773] The Court: Would you like a minute or two to put them together?

Mr. Greenberg: I have practically everything that I want here now.

The Court: All right.

Redirect examination.

By Mr. Greenberg:

Q. Dr. Ball, getting into the details of processing I think we ought to get back to substantial matters and deal with containers and therefore I will discuss some of the types of processes rather than in the abstract. Do you have contamination of syrup after the sterilization process?

A. I think you have to recite the conditions that you have in mind.

Q. Isn't it true that pasteurized products will undergo contamination, the length of which depends upon contamination with micro-organisms that occur after the pasteurization process?

A. That can happen at times, yes.

The Court: Well, let me ask you this: I take it you mean by that or the point of your answer is that there are new micro-organisms that get into the pasteurizing material which cause the spoilage: and that is post-pasteurization, is that correct?

[fol. 774] The Witness: Well, that is the meaning that I had in mind.

Q. Is that true?

A. I beg your pardon?

Q. The statement that I made, is that true?

A. Well, will you ask the question again?

Q. Isn't it true that can and glass containers, as far as thermostatic characteristics are concerned, are as close to absolute perfection as any container can possibly be?

Mr. Johnson: I will object to that as a leading question.

The Court: I will allow it as a leading question, but I would be interested in hearing Dr. Ball's answer to it because I would be surprised if it isn't "No."

Is that right?

The Witness: In containers that are used for canned products, I think that is true.

The Court: It is not true, is it, Doctor, that it is as close to perfection as they might possibly be?

The Witness: Oh, no, not as close to perfection as it

might possibly be. I didn't understand the question to have that meaning.

[fol. 775] Q. Sir, from your experience in the canning field is there a broader definition of canning than the one that Mr. Johnson used here?

Mr. Johnson: I object to that. Dr. Ball gave his definition of canning the other day. It was the definition I used.

Mr. Greenberg: All right.

The Court: You are withdrawing the question and asking another one, is that right?

Mr. Greenberg: Yes.

Q. The definition that you used was a scientific definition in the context of sterilized foods, is that correct?

Mr. Johnson: I don't understand that question.

The Court: If Dr. Ball understands it he can answer it.

The Witness: No, I don't understand it.

Q. From your experience in the field have you found that there is a broader definition of canning—is there a definition of canning which was put out by the National Canners Association?

A. The National Canners Association concerns itself with foods that are sterilized and then protects it from contamination by a container.

[fol. 776] Q. Is there a broader definition of the term "canning" in the field which includes products which do not come within the definition of the National Canners Association?

Mr. Johnson: I object to the use of "a broader definition."

The Court: I will allow it.

A. I think that depends upon the field in which one happens to be discussing. You might call something else canning and another would not. I don't think that ordinarily the word "canning" is used beyond this point.

Q. Sir, are you familiar with what might occur, for example, to instant coffee after it has been processed if it is not protected against air and moisture?

A. I am not familiar with that product.

Q. How would you classify instant coffee, under what process?

A. Dehydration primarily.

Q. Let me ask you this question, sir: Referring to dehydrated products, is it true that dehydrated foods contain dormant viable micro-organisms which are waiting for an opportunity to grow?

[fol. 777] A. Most hydrated foods do contain such organisms.

Q. Is it true, sir, that such a high moisture condition may occur or result from the use of moisture permeable packages?

A. You mean the problem of possible spoilage?

Q. That is correct.

A. Yes.

Q. Sir, are cans and glass containers impermeable or pretty much so impermeable to gases and moisture?

Mr. Johnson: I object to the question, I believe he is impeaching his own witness.

The Court: Overruled.

A. I believe I am going to have to ask to have the question repeated.

The Court: Yes. Repeat it.

(Question repeated.)

A. As I said earlier, there is absolutely nothing perfect in that regard but glass containers are ordinarily called hermetic containers and for practical purposes of canning impermeable.

Q. For purposes of canning they are impermeable?

A. Yes.

Q. Is that correct?

[fol. 778] The Court: He just said that. You do not have to repeat it.

Q. Sir, are there products which are spoiled by oxidative effects?

A. Yes.

Q. What do you mean by that term "oxidative effects"?

A. Well, oxidation which is usually promoted with and by enzymes which may be in the food. It is a reaction

that ordinarily results in a variation of flavor and appearance of the food.

Q. Would you outline for us the various ways that foods can spoil, the perishability of foods?

A. Well, first, they may spoil from action of the microorganisms, and they may spoil from oxidative reactions. Under oxidative reactions you can include a rather broad category. There would be rancidity, the production of rancidity, or just a general deterioration of flavor and appearance.

Q. Scaling reactions, is that another manifestation of spoiling?

A. Well, that is a question as to whether that is another one or not. That may be included in the enzymic [fol. 779] spoilage or oxidative spoilage. I don't think scaling has been very well defined.

Q. Sir, after outlining all of these various means of spoilage, are there any containers that you know of at the present time which can be used with the greatest effect to minimize such spoilage?

A. In our experience the two containers that we have been discussing are those containers, tincans and glass containers.

Q. Sir, we had reference to the National Canners Association bulletins which described temperatures and times for various products; is that correct, sir?

A. Yes.

Q. And isn't it true, sir, that in many instances there is identical language in both pamphlets?

The Court: Mr. Greenberg, if there is identical language in both pamphlets, they are in evidence, and it is perfectly simple to point them out.

Q. Are there similarities in processing foods in can and glass containers?

A. There are similarities.

Q. Would you describe them for us, please?

A. The similarities consist of these: that the container is put into a retort, the retort is closed—speaking of pres- [fol. 780] sure-cooking now—the retort is closed and steam is admitted to the retort, producing a rising temperature, up to the necessary temperature for sterilization,

and then it is held at that state for a sufficient length of time, and then the retort is cooled.

The Court: Are you finished, Doctor?

The Witness: Yes.

The Court: Having told us the similarities, are there differences?

The Witness: There are differences in techniques, yes.

The Court: Can you give us an outline of what the differences are?

Mr. Greenberg: In processing—that is what we are talking about, sir.

The Witness: The difference is involved primarily in additional features that must be introduced into a process for glass containers over those that are used for metal containers because of the fact that glass containers used in canning have the side seal, which I think has been described to the Court previously.

These containers will not withstand very much pressure differential from inside out, that is, an excess of pres-
[fol. 781] sure inside over the pressure outside, without removing the cap. Therefore a special technique must be employed in order to hold the cap on the container during the process. The one that is commonly employed is to fill the retort with water well over all of the containers that are in the retort, and superimpose on that water air to increase the pressure over what it would be with steam alone, and that excess pressure will hold the cap on the jar.

Another difference comes from the fact that glass will not stand equal heat shock to a tincan, and the temperature must be changed more slowly or it must be changed not over a certain rate, in order to avoid an excessive heat shock which might crack the glass, and that is usually accomplished in the rise of temperature by introducing into the retort water—this water which I spoke of—at approximately the temperature of the glass jar themselves and the food in the glass jars at the beginning of the process. And then the steam is admitted at a specific rate so that there will not be too radical a change in the temperature on the outside of the glass container.

A similar procedure, although in reverse, you might
[fol. 781a] say, is done during cooling, by introducing cold

water, mixing it with the hot water somewhat slowly so as not to produce a heat shock on the container.

[fol. 782] Q. Now, sir, do you recall your article on comparative heat penetration studies on jars and cans, published back in 1949 in the Food Technology Journal?

A. My article?

Q. Sir, do you recall back in 1946 when you first started work on the application of temperatures for processing foods in cans, application of that technique to processing foods in glass containers? Do you remember the request from the California State Department of Public Health?

A. Yes, sir. That was in the 20's, I think.

Q. Well, do you remember in September 1946 a committee was formed to outline experiments for determining comparative rates of heat penetration in jars and cans of corresponding size?

A. Yes.

Q. And that was done in conjunction with the Glass Container Manufacturers Institute, sir?

A. Yes, I think it was.

Q. Now, what was your job then; what were you trying to do?

A. Study the—well, just what you stated in reading the name of the committee, study the comparative rates of heating of identical food or identical substances [fol. 783] in glass containers and metal cans.

Q. Sir, have you through the years attempted to overcome any of the problems that might have existed in processing foods in glass containers?

A. You mean in respect to rates of heating?

Q. Everything you have talked about, about the disadvantages or the differences, I should say, the differences between cans and glass containers when it comes to processing?

A. Well, one that I think of that has been introduced, and that primarily by the glass container manufacturers, is reducing the wall thickness of the containers, and that will make possible the more rapid heating than you would have with the thicker wall.

Q. Do you remember when you did some work for White Cap?

A. It was the White Cap in conjunction with others.

Q. And do you recall when that was, sir, just your best estimate?

A. Beg your pardon?

Q. Do you recall when that was, sir, just your best estimate?

A. I think that was in 1948.

[fol. 784] Q. And do you recall the type of work that was being conducted, the purpose for it?

A. Well, the purpose was to try to find a way to prevent perforations in metal covers of glass containers.

Q. And was that process licked?

Mr. Greenberg: Withdrawn.

Q. Was that problem licked?

A. Not by me.

Q. Well, I realize that, but was it licked by White Cap?

A. While I was starting to attack the problem from the standpoint of metal cap and coatings on metal to protect the metal, I was told by White Cap that they had solved the problem otherwise.

Q. Sir, this committee that you are on for the processing of food in glass containers, which is part of the National Canners Association, they get together for the purpose of improving the processing of food in glass containers; is that correct, sir?

A. That's right.

Q. And they hold discussions for that purpose?

A. Yes.

Q. And there are projects which are sponsored [fol. 785] for that purpose?

A. Yes.

Q. Can you give us just a general idea of what kind of projects are being carried on for such purposes?

A. Well, the problems that are being studied today for that purpose are primarily problems, or that are a study of the methods of rapid heating of foods so as to avoid the long periods of rise in temperature that are necessary in conventional processing.

The Court: Is that rather, would you say, the other side of the coin, from quick freeze, in other words, a very rapid

temperature change might avoid changes in flavor and quality that wouldn't otherwise occur?

The Witness: It is, your Honor, analogous to that in a sense, yes, although I think the principal advantage of quick freeze as it has been discussed in the past was from crystal structure, but the faster food can be frozen the less chance there is for deterioration to take place during the process.

The Court: That same problem would be likely to be so if there were rapid temperature change possible, I mean, in heat?

[fol. 786] The Witness: Well, it is so. We have learned that definitely.

The Court: Thank you.

By Mr. Greenberg:

Q. Sir, referring now to syrups——

The Court: How much longer are you going to be?

Mr. Greenberg: I don't think too much longer, your Honor.

The Court: Well, I think we will take our morning recess now.

(Short recess.)

By Mr. Greenberg:

Q. Sir, what kind of spoilage can occur after processing of mayonnaise?

A. Bacterial spoilage. I think where spoilage does occur it is generally bacterial spoilage.

Q. And how does this bacterial spoilage occur? What causes it?

A. Well, it can be from bacteria that are not destroyed in the pasteurization treatment, or it can be from other bacterial that may have gained access to the mayonnaise afterwards.

Q. Directing your attention to syrups, what kind [fol. 787] of spoilage can occur after processing for that product?

A. Well, now, do you refer to a syrup like maple syrup?

Q. For example.

A. Or corn syrup?

Q. Yes.

A. The only spoilage that might occur there, I think, would be enzymic spoilage, which would affect the quality somewhat.

Q. Now, enzymic spoilage is sort of triggered or can be triggered by oxidative effects; is that correct, sir?

A. Quite often, yes.

Q. Referring now to coffee, what kind of spoilage can occur after processing of coffee?

A. Spoilage from oxidative effects.

Q. Now I will just refer to one more product, sir. We have had you here for a long period of time.

Peanut butter, what kind of spoilage can occur after processing?

A. Well, that is principally the same type, usually rancidity.

Q. What does that result from?

[fol. 788] A. Well, that is—well, it can be from the effects of oxygen, or it can be from other chemical reactions.

Mr. Greenberg: May I have just a moment, your Honor, to confer with Mr. McManus?

The Court: Yes.

Mr. Greenberg: (After conferring) I have no further questions, your Honor.

The Court: Have you anything further with this witness, Mr. Johnson?

Mr. Johnson: I have one or two short questions.

The Court: Yes.

Recross-examination.

By Mr. Johnson:

Q. Dr. Ball, isn't there a difference in effect between moisture going through a film in liquid form against going through it in vapor form?

A. A difference in effect?

Q. In the effect, yes. Isn't it true that bacteria cannot go through a film in vapor form?

A. Yes, I think that is true.

Mr. Johnson: I have no further questions.

The Court: Just let me see if I understand what you are saying.

[fol. 789] Mr. Johnson: Your Honor, I could make a statement about that, if it will help.

The Court: It might.

Mr. Johnson: I just wanted to clarify a point that he made in cross-examination with respect to spoilage resulting from transmission of moistures.

The Court: In other words, what you are saying, Dr. Ball, as I understand you, is that if there is permeation of moisture in liquid form, that could carry bacteria with it, whereas if it was in vapor form, it could not? Is that the point of this last discussion?

The Witness: Well, I thought the question that I answered was whether or not bacteria could go through a film with moisture vapor.

The Court: The answer to that is no?

The Witness: The answer to that is no. Anything that moisture as liquid can go through, I should say that bacteria could go along with the moisture.

The Court: I see.

The Witness: (Continuing) With the liquid, bacteria could go along with the liquid. But the permeation of [fol. 790] moisture into the food, bringing about spoilage, did not necessarily have a connection with the passage of bacteria through the packaging material. I think when we were discussing it before, it was with the idea that the moisture getting into the food would create a condition which would allow bacteria that are already there to grow.

The Court: Yes, it would create a favorable climate for the development and multiplication of bacteria.

The Witness: That's right.

The Court: All right, thank you very much, Dr. Ball.

(Witness excused.)

Mr. McManus: Call the next witness, your Honor?

The Court: Yes, please.

Mr. McManus: Mr. Dallas.

RONALD H. DALLAS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. By whom are you employed, Mr. Dallas?

A. Anchor Hocking Glass Coroporation.

[fol. 791] Q. And what is your position with that corporation?

A. I am vice-president and sales manager of the Maywood Glass Company.

Q. And is Maywood a subsidiary of Anchor Hocking Glass Company?

A. Yes.

Q. Is it a wholly-owned subsidiary?

A. Yes.

Q. And what areas——

The Court: It is in effect operated as a division, is it?

The Witness: Well, actually, I understand it is called a subsidiary of Anchor Hocking.

The Court: I see.

The Witness: Instead of a division.

Q. Are there any plans to keep it as a subsidiary, or in other words, change?

A. Well, the plan is to dissolve Maywood at the end of this month.

Q. And what would Maywood become then?

A. Anchor Hocking Glass Corporation, Western Division.

Q. Now, Mr. Dallas, could you give us your back-[fol. 792] ground in the glass container industry?

A. Yes. I started in 1924 with the Long Beach Glass Company, in Long Beach, California. In 1934 the company was moved to Los Angeles and the name was changed to Glass Containers, Incorporated.

In 1947 I resigned and was employed by Anchor Hocking.

Q. And you have been with Anchor Hocking, the Maywood Company, ever since?

A. That is correct.

The Court: Are you principally in the production phase?
The Witness: Sales.
The Court: Sales.

Q. And the plants that you listed, are they located in the State of California?
A. That is correct.
Q. And your entire association with the glass container industry has been with companies located in California?
A. That's right.
Q. First, where are the Maywood Company plants located?
A. Well, the Maywood plant is located in Los [fol. 793] Angeles. There is only one plant under the Maywood name.
Q. Is this a plant under the Anchor Hocking plant?
A. That is in San Leandro, California.

The Court: What is that, North California?
The Witness: Yes.

Q. And is that under your direction, also?
A. Sales of the products from that plant are under my direction.
Q. Are there any other plants operated either by Maywood or by Anchor Hocking in California?
A. Yes. There is a metal closure plant operated by Anchor Hocking in South Gate, California.
Q. Do you sell their products, also?
A. Yes.
Q. What type of closures are produced by that plant?
A. The screw type closures.
Q. No vacuum caps are produced there?
A. That is correct.
Q. Now, you have a sales force operating under you, I presume; is that right?
A. I hope.
[fol. 794] Q. And could you tell me the states throughout which your sales force operates?
A. Yes.
California, Oregon, Washington, Idaho, Utah, Nevada, Arizona and the Hawaiian Islands.

Q. And to your knowledge do the sales from the plants from either Anchor or Maywood go into the states that your salesmen cover?

A. That is correct.

Q. In your sales work have you become familiar with other companies operating in this area, other glass container companies?

A. Yes.

Q. Do you know where the plant locations are? Do you know the names of the other companies operating in this area?

A. Yes, sir; I do.

Mr. Hughes: What area is that?

Mr. McManus: In the area in which he sells?

The Court: You are talking about the area which you defined by states a few minutes ago?

The Witness: Yes, that is my understanding.

Q. First, could you tell me the names of the—how many companies there are operating in that area?

[fol. 795] A. Ten in the entire area.

Q. Could you list those? I will count them for you.

A. All right.

Owens-Illinois, Glass Containers, Latchford Glass Company.

The Court: How do you spell that?

The Witness: L-a-t-c-h-f-o-r-d.

A. (Continuing) And Maywood Glass Company, Thatcher Glass Manufacturing Company; Hazel-Atlas Glass Division of Continental Can; Ball Bros. Glass Company; Kerr Glass Company; North Western Glass Company and the Gallo Wine Company.

They may have a separate name for their glass operation, which I am not familiar with.

Mr. Handler: The word "operation," does that relate to the location of plants in those states or sales in those states?

Mr. McManus: I asked him what companies have plants in this area.

The Court: That was the question.

Q. And to your knowledge, is Gall Wine selling glass containers in the area in which you service?

A. I don't believe they are.

[fol. 796] The Court: Do they only make it for their own use?

The Witness: I believe so, yes.

The Court: Make containers for their own use.

The Witness: Yes.

Q. Could you tell me where the North Western Glass Company's plant is located?

A. In Seattle, Washington.

Q. And do you know where Kerr's plant is located?

A. Santa Ana, California.

Q. And Ball Bros.?

A. Del Monte, California.

Q. And Hazel-Atlas Division of Continental Can?

A. They have one plant in Oakland and one in Pomona.

Q. And they are both in California?

A. Yes.

Q. And Thatcher?

A. Saugus, California.

Q. And you said Maywood is operating out there, and you have listed—that would include Anchor Hocking.

A. That would include the Anchor Hocking plant at [fol. 797] San Leandro, which we have named.

Q. And Latchford?

A. Los Angeles.

Q. And Glass Containers, Inc., did you say?

A. Well, they are called Glass Containers Corporation now. They have a plant in Vernon, California, one in Hayward and one in Antioch, California.

Q. And Owens-Illinois?

A. Oakland and Los Angeles.

Q. If I followed you correctly then—other than the Owens-Illinois plant in Portland, and the North Western Glass Company's plant in Washington State, all the other plants are located in California?

A. That is correct.

Q. Now, is it possible to tell by looking at a glass container the company that manufactured that glass container?

A. Depends whether the trade-mark is on the bottom. Some containers do not have the trade-mark on, but most companies do have a recognizable trade-mark.

Q. So that if the trade-mark was on the glass container, you could tell from the mark what company had made that glass container?

[fol. 798] A. If it is legible, yes. When you say could I tell?

Q. Yes.

A. I could qualify that by saying someone could tell. I am not sure that I am familiar with all of the companies' trade-marks.

Q. But there are publications which indicate the trade-marks of the various glass container companies?

The Court: Well, they are ascertainable.

Mr. McManus: Yes.

Q. I don't know if I covered this question. Other than the states that you listed for your sales force, does your company solicit business outside of those States?

A. No.

Q. You are of course familiar with the prices that Maywood charges for glass containers on the West Coast?

The Court: Before we go to that, would it be fair to say, Mr. Dallas, that the Maywood and Anchor Hocking operation in California produce what would be called a full representative line of glass containers?

The Witness: We make a fairly wide line, but there are some types we do not make.

[fol. 799] The Court: I mean, there would be some exceptions.

The Witness: That is correct.

The Court: What would be the exceptions that you don't make?

The Witness: We do not make toiletry and cosmetic containers. We do not make the graduated prescription bottles and we do not manufacture milk bottles.

The Court: Do you manufacture beer bottles out there?

The Witness: Make beer bottles, yes.

The Court: Now one other thing before we leave that general subject.

Would you give us an idea of your gross—well, whether

you use the figure not sales in the sense we have been using it here—your sales volume, your yearly sales volume in that area?

Mr. Martin D. Jacobs: (Counsel for Anchor Hocking) Your Honor, if I may be heard? I am very much afraid that that gets into an area of departmental or division sales or operations of the company, which of course Anchor, like all other companies, regards most sensitively as pretty [fol. 800] confidential trade secrets, and I suggest to the Court that certainly under the circumstances here this is something that shouldn't be inquired into.

The Court: Well, we won't go into it unless it is necessary. We will pass it for the moment, at least, Mr. Jacobs.

Mr. McManus: Although Mr. Dallas wasn't here, your Honor, maybe I could ask him:

Q. The sales of Anchor Hocking, of which we have a 10-K report, would reflect also the sales of Maywood Glass Company?

A. They are incorporated, yes.

Q. They are incorporated in that report?

A. Yes.

The Court: Of course, if you are going into this in any detail, I have, frankly, some question as to whether anything is very meaningful about specific companies or West Coast operations unless we have got some idea of volume and some idea of the position which Anchor Hocking occupies in relation to other people out there.

Mr. McManus: Your Honor, you are absolutely correct and we do have in our statistical chart a breakdown of the West Coast, separate from the rest of the country, [fol. 801] and we have given the unit figures to the defendants and we do have that chart. I think the objection is to bring out their dollar sales on this record at this time.

The Court: In any event, what I am going to require here at some point is some information as to the relative position that Anchor Hocking or the Anchor Hocking-Maywood operation on the West Coast bears with relation to other manufacturers at least.

Mr. McManus: Yes, sir; and we do have that information.

The Court: You do have it?

Mr. McManus: Yes. We don't want to put it on the record as a public thing here. I believe it is included in your statistical data.

The Court: Which will come in eventually.

Mr. McManus: Yes, sir; we hope so.

The Court: Under some sort of protective order.

Mr. McManus: That is correct.

The Court: All right.

By Mr. McManus:

Q. I believe you just testified that you just testified that you were familiar with the prices charged for glass [fol. 802] containers sold on the West Coast, either by Maywood or Anchor Hocking; is that correct?

A. That is correct.

Q. Are you familiar with the prices that Anchor Hocking charges for glass containers outside of the area that you service?

A. Yes, I am.

Q. Could you tell us the prices that you charge for the area in which you service are higher or lower than the prices charged outside the area in which you sell?

A. They are higher.

Q. They are higher where?

A. In the area that we service.

Q. Do you know if that has been true over a period of years?

A. Yes, it has.

Q. Would it be true over the past five or ten years?

A. Yes, sir.

Q. And prices, to your knowledge, are competitive with the prices of the other glass container companies selling on the West Coast?

[fol. 803] A. I believe they are, in general.

Q. Now, you indicated that Hazel-Atlas had plants on the West Coast?

A. Yes.

Q. Do you know the type, do you have knowledge of the general classification of glass containers that they sell on the West Coast?

Mr. Hughes: Your Honor, I think I will object. It seems to me there is a surer and more positive way of getting that than through this witness.

The Court: Well, let's reframe the question.

Q. Are you familiar that Hazel-Atlas Glass Company are selling glass containers on the West Coast?

A. Yes, sir.

Q. Since 1956, to your knowledge, has Hazel-Atlas Company sold any beer bottles on the West Coast?

Mr. Hughes: Your Honor, I don't want to appear to be technical, but since 1956 it is the Hazel-Atlas Division. You recognize that?

Mr. McManus: Yes.

The Court: Oh, yes.

Mr. Hughes: May we have the question again?

(Question read.)

[fol. 804] Q. Would you answer that?

A. I believe they have sold some, yes.

Q. And to whom have they sold beer bottles?

A. My information is they sold to Falstaff Brewing Company.

Q. Now, would they be of the amber type of beer bottle?

A. Yes.

Q. To your knowledge, have they sold any other amber glass on the West Coast since 1956, the Hazel-Atlas Division of Continental Can?

A. Yes. My information is that they have sold some bottle for sodium hypochloride.

Q. And to whom have they sold these bottles, or do you know?

Mr. Hughes: Your Honor, it does seem to me that this is all hearsay information. He says he understands.

The Court: Let's have some idea of the source of his information on this.

Mr. McManus: All right.

Q. And how did you become apprised of their sales?

A. Through the reports of my salesmen.

[fol.805] Q. And could you explain to me how they would have knowledge of such sales?

Mr. Hughes: I object to it.

The Court: Overruled at this point.

A. They call on the same customers.

The Court: In other words, you were informed by your salesmen that their customers had said that they bought the containers from Hazel-Atlas Glass?

The Witness: Yes.

The Court: I will take it. I am not going to apply the hearsay rule with such strictness to this situation. If it isn't so, Mr. Hughes, you have a very easy way of demonstrating that it isn't so.

Q. Now, are you a member of or is your company, either through Anchor Hocking or the Maywood Glass Company, a member of the Glass Container Manufacturers Institute?

A. Yes.

Q. And in participation with that Institute have you engaged in the promotion of soft drink bottles on the West Coast?

A. Yes.

Q. Is that promotion that your company has carried out, is that done on a nationwide basis, or is it limited [fol. 806] to the West Coast area?

A. Current promotion is limited to the seven most Western states, continental states.

Q. Now, do companies not member of GCMI, have they participated in that promotion?

A. No.

Q. It has been limited to the GCMI members?

A. That is correct.

Q. Prior to 1956 were there any such promotions, to your knowledge?

A. There were some promotions, yes.

The Court: Was this in the nature of some special campaign that is presently being carried on?

The Witness: The other question was in reference to a present campaign.

The Court: Yes.

Mr. Hughes: I didn't catch that answer. His voice dropped and I didn't catch that.

The Court: "The other question was in reference to a present campaign."

Q. When you were talking about promotions of soft drink bottles prior to 1956 by Hazel-Atlas Glass Company, would that be in the period 1950 to——

Mr. Hughes: Just a minute. He was talking about [fol. 807] Anchor Hocking, your Honor, and not Hazel-Atlas, as I understand it.

The Court: As far as I know, there has been no reference to Hazel-Atlas.

Mr. McManus: I am sorry. I will withdraw my question.

Q. You have been talking about promotion of glass container, of soft drink glass containers, on the West Coast, and I believe you testified that prior to 1956 there were such promotions; is that correct?

A. Yes, there were.

Q. And the members of GCMI participated in these promotions; is that correct?

A. That is correct.

Q. Did Hazel-Atlas Glass Company, to your knowledge, participate in these promotions?

A. Yes.

Q. Since 1956 and since the acquisition of the Hazel-Atlas Glass Company by Continental Can, have you had similar promotions of soft drink glass containers?

A. Yes.

Q. And has the Hazel-Atlas Division of Continental Can participated in these promotions?

A. They did not participate in 1958.

[fol. 808] Q. And do you have one currently?

A. Yes.

Q. And are they participating in that one?

A. That is correct.

The Court: Before we go any farther, let me understand the significance of this. Certainly the principal container used for soft drinks has traditionally been glass bottles, have they?

The Witness: That's right.

The Court: That is the purpose of this current promotion you talk of?

The Witness: The metal can manufacturers have been trying to get a part or a large part of it.

The Court: In other words, this a defensive measure?

The Witness: That is correct.

The Court: It is a defensive offensive. Put it that way.

The Witness: That is about right.

The Court: All right.

By Mr. McManus:

Q. Are you familiar in a general way at least with the cost items that are used in arriving at the price that you sell your glass containers?

[fol. 809] A. In a general way, yes.

Q. Could you estimate approximately the percentage of your glass containers which are shipped in corrugated shipping containers?

A. I would estimate them to be between 90 and 95 per cent.

Q. And could you estimate the relationship between——

Mr. McManus: I will withdraw that.

Q. Could you tell me what the corrugated shipping container cost represents in the final price in the sale of your glass container, percentagewise?

A. It would vary, but it would be between 15 and 18 or 19 per cent.

Q. Now, you have testified heretofore that you are familiar with Hazel-Atlas activities because your people called on the same customers; is that your testimony?

A. Well, there are two specific customers you asked about?

Q. To your knowledge, do they call on the same customers, the same customers in the food processing field?

A. Oh, practically all of them.

[fol. 810] Mr. McManus: That is all.

Cross-examination.

By Mr. Hughes:

Q. Mr. Dallas, you have no idea and cannot tell his Honor what the amount of the contribution of Hazel-Atlas was to this promotion campaign prior to 1956, can you?

A. No, I can't.

Q. And you don't know whether it is large or small or medium or anything else, do you?

A. That is correct.

Q. And is it correct to say that the funds for such a promotion are raised by an assessment against the members of the Institute who contribute into a fund, and then the Institute disburses that fund?

A. That is the way they are handled, yes.

Q. Now, Maywood makes only glass containers; is that correct?

A. That is correct.

Q. Makes no plastic products of any kind; is that correct?

A. That is correct, yes, sir.

Q. And do I understand that in addition to selling your glass containers, your salesmen also sell closures made by the Anchor Hocking?

[fol. 811] A. Yes, sir.

Q. And as they go about, I take it they try to sell both your glass container and the Anchor Hocking closure; is that correct?

A. Yes, that's right.

Q. And there are instances where they sell the glass, but don't sell the closure; is that correct?

A. That is correct.

Q. And instances where they sell the closure and don't sell the glass.

A. That is also correct.

Q. And other instances where they sell both; is that correct?

A. Correct.

By the Court:

Q. May I ask you this, Mr. Witness:

Does Anchor Hocking sell closure machinery? It doesn't in connection with the screw type closure, I take it?

A. That's right; no closure machinery in connection with screw tops.

By Mr. Hughes:

Q. And the glass containers that you sell are priced separately from the closures; is that correct?

[fol. 812] A. That is right.

Q. And sold separately?

A. Right.

Q. Mr. Dallas, would you say that competition in the glass container industry was keen and vigorous?

A. Yes, sir.

Q. Would you say that it was keen and vigorous in the seven state area to which you have referred?

Q. Yes, it is.

Q. Now, your company makes beer bottles and soft drink bottles; is that correct?

A. Yes.

Q. They do not make any of the crowns for those soft drink bottles or beer bottles; is that correct?

A. That is correct.

Q. Now, are some of your customers customers who do business on a national basis? That is, are they people who have a nationwide distribution of their products?

A. Do you mean are we selling people on the Pacific Coast who ship their products packed on the Pacific Coast to all parts of the nation?

Q. No, I meant do you have customers whose products are sold everywhere in the United States?

[fol. 813] A. Yes.

Q. Or substantially everywhere in the United States?

A. Yes.

Q. And do some of those customers do their purchasing centrally?

A. Some of the purchasing is handled in the East at headquarters, and some are handled by their local plants on the Pacific Coast.

Q. Now, in those instances where it is handled on the East Coast, how does it come to your attention? What are the mechanics by which you learn of and do anything about a purchase order?

A. Well, they would place the order with one of our salesmen of one of the Anchor Hocking sales offices in the East, and they would be transmitted to Maywood and be produced.

Q. And that order which was placed in the East might relate to purchases for numerous places, including the West Coast area; is that correct?

A. I don't know that any specific purchase order would specify partial production in the East and partial on the West. Perhaps I didn't understand your question.

[fol. 814] Q. In any event, when there is an order centrally placed in the East, as you have described it, it would be received there and forwarded to you for processing and execution; is that correct?

A. Yes.

Q. Is one of the unions with which you deal the American Flint Glass Workers Unibn?

A. Yes.

Q. And are the negotiations with that union on an industrywide basis?

A. Yes, that is correct?

Q. And are they on a national basis?

A. Yes.

Q. Is another one of the unions with which you deal the Glass Bottle Blowers Association?

A. That's right.

Q. And do you negotiate with them on an industrywide basis?

A. Yes, sir.

Q. And on a national basis?

A. Yes, sir.

Q. Do you know of any manufacturers of glassforming machines in this seven state area to which you have referred?

[fol. 815] A. I know of none.

Q. Do you know of any manufacturers of machines that makes the closures in the seven state area?

A. I don't know of any.

Q. And do you know of any manufacturers of the machines that make the seal between the container and the closure in this seven state area?

A. There was a very small company in Portland a couple of years ago that made a couple of machines, small machines. I think they have discontinued them. I believe the company was bought out by someone else.

Q. And they are out of business now?

A. I believe so.

[fol. 816] Q. Would you say that most of your customers use more than one source of supply for containers?

A. Yes, I would.

Q. Would you say that most of your customers use more than one source of supply for closures?

A. Of the type of closures that we manufacture, the screw type——

Q. When you say "we," you are distinguishing now between Anchor Hocking and Maywood, is that correct?

A. Yes. In the screw type of closure most of our customers use closures from a variety of suppliers, yes.

Q. Would you name for me the glass companies who have glass container manufacturing plants in the Southern California or Los Angeles area—I am distinguishing between Northern California and Southern California?

A. Owens-Illinois, Glass Containers, Maywood, Latchford, Thatcher, Hazel-Atlas, Ball and Kerr.

Q. Would you name for me the companies that have glass container manufacturing plants in the San Francisco area?

A. Owens, Hazel-Atlas, Glass Containers, and the Gallo Wine Company in Modesto.

[fol. 817] Q. How about Anchor Hocking?

A. Yes, Anchor Hocking.

The Court: Would you say, Mr. Dallas, that the bulk of your glass sales in the area you described were in connection with food products?

The Witness: I believe the majority of it is, yes.

The Court: Would your sales of beer and soft drink bottles represent a substantial segment of your business out there?

The Witness: Yes, it would.

Q. And if you took the beer and soft drink bottles and

what I refer to as food jars of one kind or another, that would be the bulk of your business actually, wouldn't it?

The Witness: We do a lot of sodawater business and a lot of wine bottle business.

The Court: Wine bottles?

The Witness: Yes.

The Court: All right.

Q. Mr. Dallas, you haven't the faintest idea of how many beer bottles Hazel-Atlas has sold out in that area that you operate in?

A. No, I have not.

[fol. 818] Q. That is, you don't know whether it is a large amount or a small amount?

A. I don't know.

Mr. Hughes: No further questions.

The Court: Anything further, Mr. McManus?

Mr. McManus: I just have a few questions, your Honor.

Redirect examination.

By Mr. McManus:

Q. Now, did you testify that you knew no closure manufacturers on the West Coast?

A. I was not asked that.

Q. Do you know if there are closure manufacturers on the West Coast of screw-type caps?

A. Yes.

Q. Now you indicated that for the screw-type closures a purchaser might have a number of suppliers?

A. Yes.

Q. Did you mean to indicate that for a vacuum-type of closure that they would be limited to one or two suppliers?

A. There would be a limit to the number of manufacturers that make the vacuum-type of which there aren't as many that make the screw-type.

[fol. 819] Q. Do you know how many there are on the West Coast selling vacuum closures?

A. Yes, there are three.

Q. And who are they?

A. There are four, excuse me.

Q. Yes.

A. Owens-Illinois, Crown Cork & Seal, White Cap and Anchor Hocking.

Q. Now just to get the record clear, to your knowledge, is Anheuser-Busch Company a national concern?

A. I think it is.

Q. If you sell a beer bottle to their plant on the West Coast, if you did, you would have no knowledge as to whether that bottle was used on the West Coast or shipped to St. Louis, would you?

A. Not specifically.

Q. You have also testified that the American Flint Glass Union—what is the name of that?

A. American Flint Glass Workers Union.

Q. Does that union negotiate with the industry on a national basis?

A. That is right.

Q. Are you familiar with those negotiations?

A. No, I am not.

[fol. 820] Q. Do you know if they negotiate salarywise in your area?

A. I couldn't answer that specifically.

Q. So you do not know what their salaries are throughout the country?

A. No, I don't.

Q. You also testified that the Glass Bottle Blowers Association negotiated on a national basis?

A. Yes, that is correct.

Q. Have you participated in those negotiations?

A. No, I have not.

Q. Would you know if the salary negotiations were conducted separately on the West Coast from those on the East Coast?

A. Well, the actual basic negotiations cover both the East and the West. The rates will differ.

Q. You are talking about hourly rates?

A. The hourly rates in the West would differ from the hourly rates in the East.

Q. Do you know that of your own knowledge? Are you familiar with that?

A. I haven't seen it in writing but I know from our conversations in the company that that would be the fact.

[fol. 821] Q. You know that there is a difference?

A. Yes.

Q. Do you know if they are higher or lower on the East or West?

A. They would be higher in the West.

Q. Do you know if that would be true with the hourly rates of the Flint Glass Union?

A. Yes.

Q. It would be higher in the West?

A. Higher in the West.

Q. Your company leases vacuum-closure machinery on the West Coast?

A. Yes.

Q. And does not sell them?

A. That's right.

Mr. McManus: That is all I have.

Redirect examination.

By Mr. Hughes:

Q. Mr. Dallas, does the Aluminum Company of America make vacuum closures?

A. Yes, they do. That is one I did not mention.

Q. And they sell on the West Coast?

A. Yes, that is right.

[fol. 822] Mr. Hughes: No further questions.

The Court: All right, thank you, Mr. Dallas, you may step down.

(Witness excused.)

The Court: I think we will take our luncheon recess now, gentlemen, and return here at five minutes after two.

(Recess to 2.05 p.m.)

AFTERNOON SESSION

The Court: All right, Mr. McManus or Mr. Greenberg, Mr. McManus? Mr. Algeo, will you take the stand.

JOHN S. ALGEO, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Algeo, I understand you are presently retired, is that correct?

A. That is correct.

Q. Before your retirement by whom were you employed? [fol. 823] A. Before I was actually retired I was employed by the Continental Can Company.

Q. And prior to that by whom were you employed?

A. Prior to that I was employed by the Hazel-Atlas Glass Company.

Q. And for a period of how many years with that company or its predecessor company?

A. 50 years.

Q. In what capacity?

A. Sir?

Q. When you left Hazel-Atlas what was your capacity?

A. Actually when I retired I was just an employee. When Continental Can Company had taken over Hazel-Atlas I had no official position.

Q. But prior to Continental taking over Hazel-Atlas what was your position with the Hazel-Atlas Glass Company?

A. I was the general sales manager up until—say for about six or seven years up to 1954—I think I am correct—I retired then and I have the title of vice-president, but I did not have the official title of general sales manager for [fol. 824] two years or some such time.

Q. At the time when Continental Can acquired Hazel-Atlas and for the years prior thereto, were you familiar

with the prices charged by the Hazel-Atlas Glass Company for its wares?

A. Yes.

Q. And on what basis were glass containers sold, were they f.o.b., delivered price, or on what basis?

A. Most glass containers were sold on a zone basis. We usually used the expression "free delivery territory" to mean the zoning system.

Q. Now could you tell us how this system came about?

A. Well, competition.

Q. In general——

The Court: Before we go into how it came about, let us first find out what it is.

Mr. McManus: Yes, Your Honor.

Q. Would you please explain that?

The Court: Tell us what the zone system is and what you mean by it.

The Witness: The zone system means that the price for an item is the same delivered to any point in that zone in car lots.

[fol. 825] Q. And what is the free delivery system, is that different from another zone?

A. I don't know whether I understand that or not. The free delivery territory, as we called it, was a zone.

Q. Now were there areas in 1956 outside of the free delivery zone?

A. Yes. The Pacific Coast, for example, was not a part of the territory that was covered by the expression "free delivery territory," and there were other points——

The Court: Now, Mr. Witness, do you mean by that whereas in zones outside of the Pacific territory containers were delivered to any customer in that zone at the same delivery price, that was not true in the Pacific Coast?

The Witness: That isn't what I meant. The Pacific Coast was a zone in itself.

The Court: It was a separate zone?

The Witness: Yes.

The Court: And when you say a free delivery zone, was each one of the zones a free delivery zone?

The Witness: Yes, that is correct.

The Court: So that the Pacific Coast was simply a separate free delivery zone?

[fol. 826] The Witness: Yes.

The Court: Is that correct?

The Witness: That is correct.

By Mr. McManus:

Q. Did you have occasion to study the pricing of glass containers over a period of years, Mr. Algeo, under the zone system?

A. Yes.

Q. When you testified that the East Coast had one zone separate from the West Coast, to your knowledge, was that true not only of your own company but of other companies?

Mr. Hughes: I object. I don't think that is what the witness said.

The Court: Let me have the question again.

(Question read.)

The Court: I will sustain the objection.

Q. You said that the West Coast had a free delivery zone, is that correct?

A. That's right.

Q. And was that zone separate and distinct from the free delivery zone in the East?

The Court: Wait a minute, Mr. McManus. As I under-

[fol. 827] stood the testimony of this witness, he said that there were a number of different zones, and within each one of those zones there was what was called free delivery at the list price.

How many of those zones were there, Mr. Witness, if you recall?

The Witness: That is a little difficult to answer. This zoning system was a result of an evolution in the glass container industry. The so-called free delivery zone originally 50 years ago comprised the part of the country, roughly speaking, north of the Ohio and Potomac and east of the Mississippi Rivers. When shipments were made outside of that zone, the price depended upon the extra freight outside of the so-called free delivery zone. The

custom in those days was to charge—it is getting a little bit difficult—the price in the free delivery zone was the price at the gateway, which would be St. Louis—Louisville, Richmond, Virginia, and so on.

The list price covering the freight to the gateway, and the customer paid the difference.

The Court: I see.

The Witness: So that both the so-called free delivery territory in those days there was no—the price at one [fol. 828] occasion was one and the price at another occasion was another one. Over the years, glass plants were built in these outlying territories, in Texas, Oklahoma and the South, and they created competition, and modifications had to be made, and other zones were built up.

And it resulted—by the time I retired, which was the end of 1956, competition had brought about this situation whereby in most of the country east of the Missouri River and south down to Oklahoma and Texas, the prices in all that territory was virtually the same. In other words, practically all of that territory became the free delivery territory in the lines in which we were important factors.

Now, in some other lines the story was somewhat different, but I am talking chiefly about food containers, which was our main product.

So over the years this evolution brought about virtually one free delivery territory which covered the bulk of the country. The Pacific Coast is still a separate zone, but the same theory was carried out, mainly, the price was the same at any point in that zone. There was a price——

The Court: That is, the price was equaled out there but higher than it was for the East?

[fol. 829] The Witness: That is correct.

The Court: I think I understand it. All right, Mr. McManus.

By Mr. McManus:

Q. Mr. Algeo, did your company produce containers for baby foods?

A. Yes.

Q. When did you first begin the production of baby food containers?

A. About 1922 or 1923. I couldn't give you the specific date but it was about that time.

Q. And that would be a glass container?

A. Yes, sir.

Q. And did you produce those baby food containers in glass steadily from 1922 right through to date?

A. Yes.

Q. When I say "to date," I am referring to the time that Hazel-Atlas Glass Company was acquired by Continental Can.

A. That is correct.

Q. And who did your company initially produce the baby food containers for, what company?

[fol. 830] A. Harold Clapp in Rochester, New York. I don't know whether he had a company; I know it was just Harold Clapp.

The Court: He was the baby food originator?

The Witness: That is correct.

Q. And did you continue to produce baby food glass containers for him up until 1956?

A. Oh, no, not for him. He sold his business long about 1930 or '31, and the company which bought him out turned to tincans, so we lost that business. But in the meantime others had gotten into the baby food business.

Q. And who would these other companies be?

A. Well, I don't remember the chronological order, but Beechnut was one of the first; H. J. Heinz Company was one; Libby, McNeill & Libby was one. A Detroit firm—the name escapes me offhand.

Q. All right, sir. And what type of closure did you use on your glass baby food containers?

A. On the original?

Q. Yes.

A. At that time we had our own vacuum cap. We called it the Hazel cap, and Clapp used that as long as he did business with us, that is, until he sold out.

Q. Did you manufacture machinery to put that [fol. 831] cap on the glass container?

A. Yes.

Q. What type of cap was that, what material?

A. It was made of aluminum, not tinplate.

Q. And did you, up until the time that you left the organization, continue to make this type of cap?

A. No.

Q. What were the factors that made you decide to discontinue to manufacture of this cap?

A. Well, the decisive factor was the fact that we weren't making a profit out of it. The reason we didn't make a profit was because the material, that is to say, aluminum, was costly as compared with tinplate. Our machine had become antiquated. It was not a straight line machine. It was what we call a bucks type machine. And I think I can assign another reason, which was this: that we thought more of glass than we did of caps. The cap business, vacuum cap business, sort of stuck to us, and we thought in terms of caps instead of glass, and all of those reasons, plus the fact that competitive caps had improved, and they had the big advantage over us, we just went out of the business.

Q. Now, you have testified here that one of [fol. 832] your major lines was the food line; isn't that correct?

A. That is correct.

Q. And would that be the narrow neck or wide mouth?

A. Chiefly wide mouth.

Q. Are there historical reasons why you were chiefly a wide mouth company?

A. Yes. We were always food-minded. The first container ever made by our original company, which was the Hazel Glass Company, was a fruit jar, a mason fruit jar, and we sort of got started in the wide mouth food business, and that was always our love. 1893, I think it was, we developed a semi-automatic machine for making jars, not bottles, jars. That was a considerable advantage to us for a number of years. We increased our wide mouth business. We had the machine and we liked it. And—I don't know how deep you want me to get into this thing, but that same time we still made bottles by the old hand method. Then in 1904 the Owens Automatic Bottle Machine became commercial. That machine made both bottles and jars. We acquired the rights to the wide mouth food container business, not bottles, jars, wide mouth. [fol. 833] The Owens machine was so far superior to

everything else that had been developed up to that time that we were handicapped in the bottle end of the business, but we stood all right in the jar end because we had acquired the Owens machine rights for the wide-mouth jars.

That answers your question, doesn't it?

Q. Just one more question: was that, the license to make wide mouth food jars, was that an exclusive license to your company?

A. Yes, sir; for that category.

Q. For wide-mouth food jars?

A. Going to the food packer.

Q. I see.

A. It did not include wide-mouth jars going to the consumer, which would be fruit jars or home canning jars.

Q. Now, when you left in 1956 was your company engaged in the production and sale of opal ware?

A. Yes.

Q. And what industries were you selling opal ware to?

A. Well, the bulk of our opal ware went to the cosmetic trade, a considerable part to the medicinal trade. [fol. 834] But the bulk of it was cosmetic.

Q. Now, did you make a line of Flint glassware?

A. Why, yes.

Q. And that would be white glass; is that correct, I mean, your transparent glass?

A. Transparent, crystal; that's right.

Q. And that would include your sales to food processors; is that it?

A. Yes.

Q. Now, would it also include sales to household and industrial users?

A. Yes.

Q. Out of the facilities of your company could you make amberware?

A. Yes.

Q. And what would be necessary when you left, what would be necessary to make amberware? What changes would have to take place to convert some of your facilities from Flint glass to amber?

A. Well, nothing except to put the proper ingredients

into the tank or furnace. The type of furnace required is the same for either amber or flint.

[fol. 835] Q. I see. So it would be just putting different ingredients into the tank or the furnace.

A. That is correct.

Q. Now, for the period of time that you were associated with the company, had the company always been a profitable operation? Had you always showed a profit?

A. Yes, with the exception possibly of the first three or four years.

Q. I see.

A. My recollection is we paid our first dividend in 1907. We never passed a dividend, but we increased it numerous times. We always operated at a profit.

Q. And that would be true for the two or three years prior to your leaving the company?

A. Yes, sir.

Q. During the period of time prior to your leaving the company, two or three years, were you on the board of directors at any time?

A. I was on the board in the spring of 1956, if I remember rightly.

Q. And when did you first go on the board, approximately?

A. Oh, about 1944 or '5. I don't remember exactly.

[fol. 836] Q. During the period of time that you were on the board of directors, had the board of directors offered to sell Hazel-Atlas Glass Company to any other company?

A. Not to my knowledge.

Q. Had there been any discussion during that period about selling your company to any other company?

A. Not to my knowledge. That is prior to——

Q. That is up to the spring of 1956?

A. Yes.

Mr. McManus: That is all I have.

Cross-examination.

By Mr. Hughes:

Q. Mr. Algeo, you told us that your company first started manufacturing baby food jars for the Clapp Food Company up in Rochester.

A. Yes, sir.

Q. And did there come a time when the volume of your business in baby food jars declined?

A. Oh, yes.

Q. And will you tell his Honor the story, if I may call it that, from the time of the first sale to the Clapp Baby Food Company to the time when you virtually withdrew from that business?

A. Well, I don't know how much of the story you want.

[fol. 837] Q. The whole story.

The Court: Well, yes, we want the whole story, but——

Mr. Hughes: In broad strokes.

The Court: —we want it in, shall we say, relatively broad outline.

Mr. Hughes: Yes.

A. Mr. Clapp adopted a pressed tumbler as his container for the first baby food, not a jar, a pressed tumbler. Clapp continued to use tumblers.

The Court: That was vacuum-packed?

The Witness: That was vacuum.

A. (Continuing) He continued to use tumblers as long as he owned the business, which was until about 1930 or '31, I forget the exact dates. He sold out and the company which bought him went to tincans. But in the meantime, or just about that time, other people had started into this baby food business, because it was growing, and the Beechnut Company adopted a baby food jar, which is the same type as the typical baby food jar today. We got that business for the jar. We didn't get the first business that Beechnut had because a competitor [fol. 838] got it, but they supplied a tumbler-shaped jar, quite a heavy, uneconomical item to make. We designed this typical, what has become the typical baby food jar, and got the business. The machine we used at that time was

in our opinion the best machine for making that type of a jar.

Q. What was the name of that machine?

A. Miller.

Q. Miller?

A. Miller machine. We considered it the best machine in use then for that particular type of jar.

Q. And will you fix that time, about?

A. About——

Q. The time you are now talking about?

A. Around '31 or '2.

Q. Yes.

A. Over the years another machine came into use, which turned out to be much superior to our Miller machine.

Q. What was that machine?

A. The Hartford Empire IS wide-mouth machine. They had both the wide mouth and a narrow mouth machine.

Q. Yes.

A. That machine proved superior to ours by a consider-
[fol. 839] able margin.

Q. It worked more efficiently and made a better product?

A. It made a jar of better quality and it made it much more efficiently.

Q. And rapidly?

A. Yes—well, that goes with efficiently, yes.

Q. Yes?

A. And we gradually lost a great deal of our position in the baby food field. That is the story.

Q. And your company didn't buy these IS machines when that development came along?

A. That is correct; we did not.

Q. So that with the advent of the IS machines, you gradually dropped out of this baby food business.

A. That is correct.

Q. And by the time you left the company you were making practically no baby food jars; is that right?

A. Relatively few; that's right.

Q. Relatively few.

A. Yes.

[fol. 840] Q. And this had all occurred, this story that you are telling us had all occurred approximately when? When was it that this IS machine became known?

A. Oh, I would say it became perfected in about '42—'41-42.

Q. Would it be fair to say that from that time on you were no longer a significant factor in baby foods?

A. Well, we——

Q. It tapered off?

A. Yes, it tapered off.

Q. During the time that you were with the company and prior to its acquisition by Continental Can, was there some resistance on the part of management to the acquisition of the so-called IS machines?

A. Yes, there was.

Q. You advocated the purchase of these IS machines, speaking for yourself personally, is that correct?

A. That is correct, yes, sir.

Q. You urged it at board meetings and in management discussions from time to time, did you not?

[fol. 841] A. Well, I don't remember whether I urged it at directors' meetings or not, but in management committee meetings I did.

Q. And up to the time that you retired Hazel-Atlas had very few of these IS machines in relation to the other machines, isn't that correct?

A. When you say IS you are talking about wide-mouth. We had narrow-neck IS machines.

Q. Yes, IS wide-mouth.

A. Yes.

Q. You had very few of them in relation to narrow neck?

A. I think when I retired we had only one wide-mouth. I may be wrong, but we virtually had none.

Q. And without pinning you down to figures, about how many of the other makes, of the Miller make, did you have?

A. Oh, I don't know.

Q. Would it be many more than that?

A. Well, it would be——

The Court: Would it be scores?

The Witness: It would be 20 or 30—I suppose 30 of them.

Q. Now you also told us that you made vacuum closures [fol. 842] and you mentioned——

A. In the twenties.

Q. Yes, and there came a time when you went out of that business, is that correct?

A. That is right.

Q. Will you again briefly tell his Honor the story of your entry into that business, its history and your withdrawal from it?

A. That is the vacuum closures?

Q. Yes; the vacuum closures.

A. Well, we hired a fellow along about 1919 who had an idea for a vacuum cap, and he developed a vacuum cap which we called the Hazel cap. It was made of aluminum. He developed a closet type capping machine, and we put the cap on the market and it sold pretty well for a number of years.

But in that period of time competitive caps had been improved. The White Cap Company came along about 1928, if I remember right, with a cap which worked on about the same principle as our Hazel cap but they had a different method of getting the vacuum on a straight-line operation.

Furthermore, their cap was made of tinplate and not aluminum, and the cost was less, considerably less than [fol. 843] the aluminum cap. When those things happened, our cap was outmoded.

Q. Then you told us you were more interested in the glass container business and——

A. In addition to that, we were interested in glass, and this vacuum cap was sort of a stepdaughter. We were interested in glass and we decided to get out of that.

Q. When did you get out, about?

A. About 1930.

Q. And you never went back into the vacuum cap business?

A. No.

Q. In your time anyhow?

A. No.

Q. Mr. Algeo, would you say that competition in the glass container industry was keen and vigorous in your time in the business?

A. Yes, sir, I will say sometimes it was worse than keen.

Q. And in your experience in the business, would many of your customers for glass containers have more than one source of supply for their glass containers?

[fol. 844] A. Oh, yes.

Q. And in your experience were the caps made by the Anchor Hocking Company, the closures made by the Anchor Hocking Company, used on glass containers which Hazel-Atlas manufactured?

A. Oh, yes, that is true.

The Court: Is that all, Mr. Hughes?

Mr. Hughes: Yes, sir.

The Court: Is there anything further?

Mr. McManus: Yes, your Honor.

Redirect examination.

By Mr. McManus:

Q. Now, Mr. Algeo, you testified that you had lost considerable business in the baby food market just prior to the acquisition of your company by Continental Can?

Mr. Hughes: No; I object to that. He didn't say that at all.

The Court: No, he said he lost it away back in the forties.

The Witness: I didn't say we just lost it; I said we had gradually lost it.

Q. Now in the years before, a year or two before or three or four years before the acquisition, did your company have any plans to get back into this market with the use of a new machine?

[fol. 845] A. Yes. We realized the fact that we had been negligent in not acquiring these improved machines, and we had plans to get into that field—yes, we did.

Q. And at that time, is that the time when you started to buy or when you bought this one Hartford Empire machine?

A. Yes, that is correct.

Q. Is it the best of your recollection that you only had one Hartford IS machine; is that correct?

A. That is my recollection, of the wide-mouth type, yes, the type I am talking about.

Q. Isn't it possible that your company may have acquired other Hartford IS machines that you had no knowledge of?

A. For making wide mouth?

Q. Yes.

A. No, I don't think so. It is possible I may be wrong in saying that we only had one, but I think I am correct in that.

Q. What is the difference between a Hartford IS wide mouth and a narrow neck? They both can make either one, can they not?

A. Well, I am not an engineer.

[fol. 846] Q. All right.

A. But I will explain it this way. The wide mouth, to make wide mouth you have got to have certain attachments.

Q. Yes.

A. That are not made for the narrow mouth, and don't ask me to explain that.

Q. But with these attachments you can make either one?

A. That's right.

Q. And just prior to the acquisition of your company by Continental Can, had you constructed any new glass plants?

A. You mean just a year or two before?

Q. Yes, or——

A. We had started Plainfield.

Q. And that is where?

A. That is outside of Chicago, in Illinois; not far from Chicago.

Q. Was that completed at the time of the acquisition of Hazel-Atlas by Continental Can?

A. I don't believe it was, but I am hazy on that. I don't believe it was.

Q. Do you recall what type of equipment, forming equipment, you had in that plant?

[fol. 847] A. I am hazy on that.

Q. If you can't remember, just tell me you can't.

A. I beg your pardon?

Q. If you can't remember, just tell me.

A. I can't answer that; I don't know.

Q. Did you sell flint glass for the cosmetic industry as well as opalware?

A. Yes.

Mr. McManus: That is all.

Re-cross examination.

By Mr. Hughes:

Q. Mr. Algeo, during the time that you were actively concerned with the business affairs of Hazel-Atlas, you were advocating the location of a plant in the Chicago area and in the New York area, isn't that so?

A. Yes.

Q. And will you explain to his Honor why you regarded it as important that glass plants be located in those two areas.

A. Well, it was a matter of competition again. Our original plants and the bulk of our manufacture was in what we always termed the Pittsburgh area.

[fol. 848] Q. And you regarded Wheeling as being in the Pittsburgh area?

A. Yes. Most of our glass was made in Washington, Pennsylvania. We had a plant in Clarksburg, West Virginia, and two plants at Zanesville, Ohio, but they were in the so-called Pittsburgh area which was half-way between the two big markets, namely, Chicago and New York.

In the days when rail transportation was virtually the only transportation, that location of ours was excellent. It was half-way between the two biggest markets. The freight rates were relatively low. We were in the gas belt; we had cheap fuel. We had access to soda ash and there was a good labor market. Our location was excellent.

Then this trucking business came along, at no specific date, but I always considered 1930 as about the time when the trucking business really became a factor in the transportation industry. Trucking grew and grew

and grew, and in the meantime competitive plants had been built.

Q. That is, glass plants?

A. Glass plants; in South Jersey, and in the Chicago area. And with this trucking facility, our competitors [fol. 849] located closest to those markets than we were, could give far greater service than we could, because we were too far away to give them trucking service, and the time consumed in shipping by rail was a great handicap.

The Court: I take it that was both a time factor and the actual cost?

The Witness: The difference in cost was not appreciable but the time factor was important. Not only time, but it enabled the packer, the customer, to get along with far, far less of an inventory than he had to have when he had to buy from us or anybody else in carload lots, and keep a stock on hand to take care of delays and all of that.

That was a very important factor, the cutting down of inventory, as well as the overnight deliveries.

Well, as time went on, our central location became a disadvantage, and we wanted plants in the Chicago area, first, that is, in the big markets, and New York second, and we had visions beyond that of New England and possibly other places.

Q. Does that pretty much tell the story of it?

A. Yes. I could go on and on, but it was a matter of competition.

[fol. 850] Q. Mr. Algeo, this plant at Plainfield—what state is Plainfield in?

A. Illinois.

Q. And you date the change in the industry to about 1930; is that about when you fix the time when——

A. I fix 1930 as this trucking date.

Q. Yes, and you fix that as the time as of which——

A. Trucking became a factor.

Q. That this became a factor?

A. Yes.

Q. Did Hazel-Atlas up to the time when you retired ever construct a plant in what I would call the New York area?

A. No.

Q. And in management discussions did you advocate

this point of view that you have been explaining to us and to his Honor today?

A. Yes.

Q. And when was it that they started this work in the Plainfield plant?

A. Well, I can't tell you——

Q. Was it just before you retired?

[fol. 851] A. My recollection is that it was six or seven months before I retired. I am hazy on that. I think it is a matter of record.

Q. Mr. Algeo, do you know the reason for your company's policy against acquiring these Hartford IS machines? Do you know of any reason back of it?

A. Gosh, we are getting into personalities here. Am I supposed to answer those questions?

Q. Would you prefer not to answer that question?

Mr. McManus: Your Honor, I would like to object. He said that they did but Hartford IS machines——

The Court: No, there was apparently a long period——

Mr. McManus: When they did not.

The Court: Yes, when they did not, and that is what Mr. Hughes is going into now.

Mr. McManus: If he is talking about the period that they did not, I will withdraw my objection.

The Court: Without going into personalities, Mr. Algeo, in which we are not interested, there must have been reasons advanced by people who did not want to buy them as well as reasons advanced by those who did. Give [fol. 852] us an idea of the thinking of the two sides.

The Witness: Well, there was prejudice against Hartford Empire. I hope I don't have to say anything more than that.

Q. And this prejudice was entertained by some of your top management people?

A. Yes.

Q. And those top management people remained at top management up until the time that you retired, did they not?

A. That's right.

Mr. Hughes: That is all.

Mr. McManus: Before we excuse Mr. Algeo, Mr. Hughes,

there was one document that we had marked for identification, and rather than have him called back——

The Court: Yes, let us do that now.

Mr. McManus: It is Government's Exhibit 781, your Honor.

Mr. Hughes: Are you offering that?

Mr. McManus: Yes.

Mr. Hughes: I object to that.

The Court: Well, gentlemen, in the first place, let me see it.

[fols. 853-856] (Exhibit handed to Court.)

Mr. McManus: I am not offering it yet. I am identifying it, at least, I am trying to.

The Court: All right. Are you going to lay some foundation for it?

Mr. McManus: Yes, I am going to ask this witness to take a look at Government's Exhibit 781.

Redirect examination.

By Mr. McManus:

Q. Will you read that?

A. This was in 1954. Do you want me to read all of that?

Q. You can look through that and see whether you are familiar with it.

A. Well, let me read that again.

The Court: I will tell you what we will do, gentlemen. This is something that Mr. Algeo plainly has not seen for some time. We will ask Mr. Algeo to step down and read this. If he wishes to go into my robing room and read it, he is welcome to do so. It will take him more than 10 or 15 minutes to run through it. You may proceed with something else and then we will call Mr. Algeo back.

(Witness excused.)

* * * * * * *

[fol. 857] JOHN S. ALGEO, resumed.

Redirect examination continued.

By Mr. McManus:

Q. Mr. Algeo, having read Government's Exhibit 781, do you recall that document?

A. I have a hazy idea of having written that, yes.

Q. Do you recall that you wrote it and signed the first page of the document, the covering page?

A. No, I can't remember that specifically. There is no question but what I wrote it, but I can't remember having written this one in particular.

Q. But this was the type of letter that you would write and there is no doubt that you did write it?

A. There is no question in my mind that I did.

Q. What was your position in the company on January 29, 1954?

A. What was my position?

Q. Yes.

A. I was the general sales manager.

Q. Were you a director at that time?

A. Yes.

Q. And do you recall that you made such a speech at the Canners Convention?

A. I have a recollection of having done so. The remarks I made there ring a bell. I remember this, talking about [fol. 858] those things at the time, but I can't remember just sitting down and writing that specific letter, but there is no question but what I wrote it.

Mr. McManus: Your Honor, the Government would like to offer Government's Exhibit 781.

Mr. Hughes: May I ask some questions?

The Court: Yes, you may ask some questions about it.

By Mr. Hughes:

Q. Mr. Algeo, this document, Government's Exhibit 781——

The Court: Has Mr. Algeo got it before him?

Mr. Hughes: Oh, excuse me.

The Court: I think he should have a copy of it before him if he is going to be questioned about it.

(Document handed to witness.)

Q. Mr. Algeo, Government's Exhibit 781 consists of three pages. The first page appears to be addressed to all agents, and then the next three pages appear to summarize some remarks that you made, is that correct?

A. Yes.

Q. And they were made to a group of your own people, Hazel-Atlas people, is that correct?

[fol. 859] A. That is correct.

Q. This was not a speech at the Canners Convention?

A. No, that was made to our own people.

Q. And this was not a company policy document in any sense, was it?

A. Well, no, it was not.

Q. It just represented your own thinking in trade discussions, is that right?

A. Yes.

The Court: Did it purport to be, as you recall it, Mr. Algeo, more or less a review of what had happened during the previous year and what the general plans were for the immediate future?

The Witness: That is exactly what it says, yes.

The Court: That is a fair statement of what it says?

The Witness: Yes.

Q. It was not customary or routine for you to make memoranda of this sort, was it?

A. Not in the sense that I do it every day, no.

Mr. Hughes: Your Honor, I object to it.

The Court: Overruled, I will take it. I will hear you [fol. 860] on it, if you wish, but I cannot conceive of any possible objection to a document of this kind.

Mr. Hughes: Your Honor, it seems to me that it is complete hearsay. It is a statement of what this witness recorded as the remarks he made in January, 1954. It certainly is not a document made in the usual and regular course of business.

The Court: I am not admitting it on the basis that it is a document made in the regular course of business,

Mr. Hughes: This is a document that is signed by the sales manager of Hazel Atlas, and that is enough for me.

Mr. Hughes: It was not given any circulation outside of the organization, your Honor.

The Court: That does not make any difference.

Mr. Hughes: Well, your Honor——

The Court: I cannot conceive of any reason why a document of this nature would not be admissible in evidence in a suit of this kind. I have read your memorandum with great care on this subject. I have read the United Shoe Machinery case, and I may say that I agree heartily [fol. 861] with Judge Wyzanski's reasoning in it, and it seems to me that this document is clearly within Judge Wyzanski's opinion in that case.

Mr. Hughes: Your Honor, are you taking it under 1732?

The Court: I am taking it just generally. I am not taking it under 1732. This is my judgment. It has very little to do with a 1732 situation. This whole area is fairly muddled and I don't think you can put it in a lot of pigeonholes——

Mr. Hughes: I just want to add, your Honor, that I do not think there has been any proof offered of any adoption of this document by Hazel-Atlas.

The Court: You are overruled.

(Government's Exhibit G781 for identification received in evidence.)

Mr. McManus: That is all we have from Mr. Algeo.

[fol. 862] Mr. Hughes: May the witness have this Exhibit G-781?

Mr. McManus: I would like to have one myself. Could you show it to him up there, if you don't mind?

The Court: Mr. Algeo can have my copy. It is slightly more legible anyway.

Recross-examination.

By Mr. Hughes:

Q. Now, if you take the first paragraph of this memorandum, Mr. Algeo, you there state that you had told these associates of yours that you intended building a plant in the Chicago area and in the New York area, and that

"We expected at that time to have the Chicago plant in operation in 1954"; do you see that?

A. Yes, sir.

Q. In other words, in 1953 you had told them you expected to have a plant in operation in Chicago in 1954; is that correct?

A. Yes, that is correct.

Q. And actually, you didn't have that plant in operation in 1954, did you?

A. No, sir.

Q. And you go on to say, "Unfortunately the building of the Chicago or Plainfield plant has been deferred due [fol. 863] to the fact that the estimated cost was far, far greater than we had in mind, and we thought we had a pretty fair idea as to what a plant would cost."

Do you recall what idea you had at that time as to what the plant would cost and what the estimates actually proved to be?

A. Well, my recollection is sort of hazy, but we figured roughly a one-tank plant cost three or three and a half million dollars, and I forget, but the estimate we got on the Plainfield was, I forget, five million dollars, something like that. It was far beyond any idea we had.

The Court: In other words, practically a third more than your estimate, at least?

The Witness: Yes, it was a third or a half more.

Q. So that in 1954, as you were addressing your associates, the company, as a matter of policy, had at least deferred going ahead with this Plainfield plant; is that correct?

A. We deferred it at least temporarily, yes.

Q. Then you went out and got additional estimates, did you?

[fol. 864] A. Yes.

Q. And did these additional estimates prove to harmonize substantially with the estimates that you had originally gotten?

A. I can't answer that. I don't remember enough about it.

Q. Well, can you remember sufficiently to tell me that?

A. I think—my recollection is that the final estimate

that we had was approximately the same as the first, but we went ahead anyway. That is my recollection of it.

Q. And when did you go ahead?

A. You are pinning me down to dates here. I think we started around the first of the year 1956. That is my recollection.

Q. And that building was completed subsequent to the merger between Continental and Hazel-Atlas; is that correct?

A. Yes, that is my recollection of it.

Q. Now, you also refer to the fact that you had had opportunity for making a deal for the Gas City plant of Knox Glass and that you took an option on that plant. Actually, that option was never exercised, was it?

[fol. 865] A. No.

Q. Did you have any plans with reference to some sort of improvement at Blackwell, some such place as that?

A. Not Blackwell. Blackwell blew down. What time are you talking about?

Q. Now Blackwell was located where?

A. Blackwell, Oklahoma.

Q. And you had a glass plant there, in Blackwell?

A. Yes.

Q. And what happened to that?

A. Well, they had one of these cyclones and it practically blew the plant away.

Q. It was a total loss, wasn't it?

A. Virtually a total loss.

Q. And from an insurance standpoint it was a total loss, wasn't it?

A. Yes, virtually so.

Q. You recovered your full insurance; is that right?

A. That is my recollection. I had nothing to do with insurance, but we got the insurance.

Q. And the proceeds of that loss were used as part of [fol. 866] the funds necessary to finish the Plainfield construction; isn't that correct?

The Court: May we have some water for the witness, please.

A. Yes. I recollect that the two things tied together.

Q. You don't remember how much it got for that Blackwell loss, do you?

A. No, sir. That was not my bailiwick. I don't know. I probably knew at the time, but I forget.

Q. Now, you also told that group that as a preliminary to expanding into New York you had rented certain warehouses at Kearney, New Jersey, and in Chester, Pennsylvania; is that right?

A. That is correct.

Q. And you regarded those warehouses as simply a stopgap, did you not?

A. That is correct.

Q. And by that you meant that as far as you were concerned you were looking toward the day when you would actually have a plant in the New York area?

A. That is correct.

Q. And in the meantime it helped to alleviate the situation to have some warehouses there where you could [fol. 867] ship glass from your Pittsburgh area into these warehouses and thereby improve service; is that right?

A. That is correct; yes, sir.

Q. And it was your view that as a result of that you managed to hold on to some customers you would have lost otherwise; is that right?

A. Yes, that is correct.

Q. And thus far there has been no plant built in the New York area, and you are still operating out of these warehouses, so far as you know?

A. Well, as far as I know, but I am out of touch with the situation now.

Q. And did you also acquire a warehouse at Rockdale, near Chicago, also as a stopgap operation in the Chicago area?

A. That is correct.

Q. And substantially for the same reasons that you have outlined with reference to New York?

A. That's right.

Q. And then you went on and told these gentlemen, "We have no specific plans for further expansion at the moment except at Plainfield."

Do you recall those remarks?

[fol. 868] A. Yes, sir.

Q. And that was in January 1954. So that as of that time the only expansion then in contemplation was this Plainfield plant; is that correct?

A. Yes, in a specific way. We had other visions beyond that.

Q. Yes.

A. But——

Q. But I am getting away from the realm of visions and down to the intense practicalities of the situation.

A. Yes, that is correct.

Q. Now you go on to advise these gentlemen that you have added to "Our decorating facilities at Clarksburg"; do you recall that reference?

A. Yes.

Q. And the decorating facilities you referred to there had to do with your pressed ware, did they not?

A. That's right.

Q. They had nothing to do with glass container manufacture; those decorative facilities had nothing to do with glass container manufacture?

A. That is correct. They had to do with the production of our Clarksburg plant, yes.

[fol. 869] Q. Now, you go on to say that "Last year," which would be 1953, "I spoke of our handicap in not having business in certain fields, for instance, in the carbonated beverage field."

Actually, you didn't have any business in the carbonated beverage field, did you?

A. No.

Q. And at that time you had practically no business in the beer bottle field; isn't that correct?

Mr. McManus: Excuse me, your Honor. The only reason I am going to interrupt Mr. Hughes is if he is going to read from this document, which is all right with me, I wish he would read complete sentences, and I object to him breaking off in the middle of a sentence.

Mr. Hughes: Well, I didn't think I was reading from it.

Mr. McManus: You are not reading from it?

The Court: I overrule the objection. The document speaks for itself. It is in evidence.

Q. I say, at that time you had practically no beer bottle business either, did you?

A. Nothing substantial.

[fol. 870] Q. No.

A. Nothing substantial. We never did have any substantial amount of beer bottle business.

Q. You told them that you were under a handicap in not being in the amber field, didn't you?

A. I guess I put it that way.

Q. And when you were referring——

A. Oh, yes.

Q. —when you were referring to the amber field, what did you mean when you were referring to the amber field?

A. When I wrote that letter it is apparent that I did not have beer bottles specifically in mind. Those beer bottles are amber. That is the big amber business.

Q. You weren't thinking about amber beer bottles when you used that expression, were you?

A. That is what I am saying. Our amber capacity—I speak two kinds, one for which we have sufficient business, and the other which operates spasmodically. I think that is the word I used—yes. Those two kinds we had were relatively small in size. They were not capable of producing beer bottles, which is a big tank item, at a [fol. 871] low cost. We couldn't have afforded to make beer bottles in those tanks. What I was thinking of was amber business in other fields. If I remember rightly I had specifically in mind amber wide mouth items going to the drug, medicinal trade, pill jars, stuff of that kind. I did not have in mind, I am certain, beer bottles, because we couldn't have made beer bottles economically on those relatively small tanks.

Q. Now, Mr. Algeo, from your viewpoint at that time there were also drawbacks to going into the carbonated beverage field, were there not?

A. Yes.

Q. Now, would you tell us what those drawbacks were, the problems involved?

The Court: Now, Mr. Hughes——

Mr. Hughes: Yes, I see that.

The Court: I have to rise now. I have this quite important meeting.

Mr. Hughes: Yes, I know you do.

The Court: Of the judges, and I have got to go to it. So that I am afraid we are going to have to take an [fol. 872] adjournment until tomorrow morning at 10:30.

Mr. Hughes: Yes.

Can we resume with Mr. Algeo tomorrow, your Honor?

The Court: You can resume with Mr. Algeo then, and I will have to ask Mr. Mandelbaum to come back at that time.

We will take an adjournment until 10:30 tomorrow morning.

(Adjourned to June 21, 1960, at 10:30 o'clock a.m.)

[fol. 873] New York, June 21, 1960; 10:45 o'clock a.m.

Trial resumed

The Court: Now, I take it the gentleman who was under cross-examination, Mr. Algeo, should resume the stand at this point.

Mr. Algeo, will you resume the stand, please?

JOHN S. ALGEO, resumed.

The Court: Mr. Algeo, you will remember you are still under oath.

The Witness: Yes.

Recross-examination continued.

By Mr. Hughes:

Q. Mr. Algeo, when we recessed yesterday afternoon you were about to tell us of the problems of a glass container manufacturer going into the business of making carbonated beverage bottles.

The Court: Mr. Hughes, before you do that, will Mr. Algeo need this document of his before him?

Mr. Hughes: I think not, your Honor.

[fol. 874] The Court: Very good.

Q. (Continuing) Can you tell us what the problems would have been that you faced in embarking on the carbonated beverage bottle business?

A. Well, to begin with, we were always food-minded. That was the bulk of our business. We didn't—but after the machine era started we didn't make bottles until about 1920, '21, when we acquired a machine that was capable of making bottles. But those bottles made during that period were mostly food bottles. We had never made by that time liquor bottles, beer bottles, wine bottles or carbonated beverage bottles.

After Prohibition ended we began to make liquor bottles. We got some beer bottle business, and quite a large volume of wine bottles, mostly on the Pacific Coast, the wine bottles. But we didn't attempt carbonated beverage bottles at that time, that is, directly after repeal.

At the time I wrote that letter, which was '54, we had been thinking of further diversification, and we considered the carbonated beverage field. Well, to our way of thinking there were a number of problems connected with the [fol. 875] carbonated beverage field. For one thing, the big accounts, such as Coca-Cola, were—the company, the Coca-Cola Company, for example, issued a franchise to a glass container manufacturer to make those bottles. That was the term we used, "franchise."

Q. In other words, they had a design patent on the bottle; is that correct?

A. Yes. They issued franchises to a certain glass company to make those bottles.

Q. That bottle has a distinctive appearance; is that correct?

A. Well, yes, all of them.

Q. And color?

A. And never having been in the carbonated beverage field, we didn't have any franchise or any right to make a bottle for these large companies who operated in that manner.

There was other carbonated bottle business, but they were local accounts, not national. Of course, we didn't know much about the carbonated beverage field; we had never been in it; we didn't know much about it, but the stories we got—mostly the credit rating of these local

companies was poor. That is one reason why we had not [fol. 876] been interested.

Then, from our point of view, there was another obstacle. Carbonated beverages create a great internal pressure in the bottle, which was the reverse of the vacuum that was created in food packing. We were accustomed to the vacuum, but carbonated beverage had an internal pressure, that went outward, and from our point of view there was a trick about making carbonated beverage bottles, and we had never been in that business, and that deferred us to some extent.

Well, we had decided to try to get into the carbonated beverage field, at least in a small way. At the time I wrote that letter—I am permitted to refer to that letter, am I not?

[fol. 877] Q. Yes, if you would like to.

A. At the time I wrote that letter, which was in '54, we had made a few, relatively few, carbonated beverage bottles, and we had made them successfully. We had not encountered any trouble.

And at the time I wrote the letter we were thinking of diversifying and getting into other lines, and I brought up the subject of this carbonated beverage business, and I made the statement in that letter that we had demonstrated the fact that we could make them successfully.

That is about all there is to it.

Q. But the fact is that up to the time that you retired from the company Hazel-Atlas had not gone into the carbonated beverage bottle business to any substantial or significant degree?

A. That is correct, yes.

Mr. McManus: I object to that unless there is a definition of "substantial." There will be statistical data here to show what that was.

The Court: Then the statistical data will show it, but I have a general idea of what "substantial" means in this connotation.

Q. Mr. Algeo, in your explanation you said that when [fol. 878] you entered the narrow neck field you were thinking primarily of the food products?

A. Yes, sir.

Q. Now does that mean such things as catsup and vinegar?

A. Yes, sir.

Q. And syrup bottles?

A. That is correct.

Q. Can you think of any other food products that you had in mind when you were referring to food products?

A. Well, do you mean categories of the food products in addition?

Q. You were telling us about narrow neck bottles. Were those the principal categories for which you made narrow neck bottles in the food line?

A. Well, I will add to that——

Mr. McManus: Your Honor, I would like to object to that question. We are using vague terms here.

Mr. Hughes: I will withdraw the question, your Honor.

Q. Mr. Algeo, will you name for us, if you can, the products for which you made narrow neck bottles in the food line?

A. In the food line?

[fol. 879] Q. Yes.

A. Well, we made the catsup bottles, chili-sauce bottles, vinegar bottles, syrup bottles——

Mr. Handler: Your Honor, could the witness speak just a little louder?

The Witness: Yes, try to keep your voice up.

A. (Continuing) Syrup bottles, salad dressing bottles, and I believe those were the chief categories.

Q. Yes.

A. All of those categories I mentioned were quite large relative to the total.

Q. Would you tell us the principal categories of products for which you made wide-mouth containers?

A. Well, most of our wide mouth was also for food. Do you want me to specify the categories of the food products?

Q. Yes, I still have food in mind.

A. Well, jams, preserves, pickles, mayonnaise and salad dressings of various types; maraschino cherry bottles, olive bottles—we called them bottles but they are in the

wide-mouth category—olive bottles and jars, mustard. There was a multitude, and I believe I have mentioned the chief ones.

Q. Yes. That is all that I was really after.

[fol. 880] A. All right.

Q. Now, Mr. Algeo, isn't it true that up to the time of the acquisition of Hazel-Atlas by Continental most of the Hazel-Atlas wide mouth machines were Miller machines?

A. Most of the wide-mouth machines were, yes.

Q. And could the Miller wide mouth machines be converted to make narrow neck containers?

A. No.

Q. Isn't it also true that at the time of the acquisition most of Hazel's machines for making narrow neck containers were Lynch machines?

A. That is correct.

Q. And could Lynch machines be converted to make wide mouth containers?

A. I don't believe that the type of Lynch machine we had at that time could be converted. I am not an engineer and I can't answer that specifically, but I don't believe they could.

Q. Isn't it true that neither the Miller machines nor the Lynch machines were as efficient as the Hartford IS machines?

A. Will you ask that again?

Q. Isn't it true that neither the Miller machines [fol. 881] nor the Lynch machines were as efficient as the Hartford IS machines?

A. At the time of the acquisition?

Q. Yes.

A. That is correct.

Q. With respect to the IS narrow neck machines that Hazel Atlas may have had at the time of the acquisition, isn't it true that those machines were older models which were not readily convertible to wide mouth?

Mr. McManus: Your Honor, I object. This witness is not a technical man.

The Court: If he knows, I will allow him to answer. If he doesn't know, he can say so.

A. Well, I am not an engineer. I think the answer to that—in my opinion, the answer to that is no, they could not be.

Q. Isn't it true that opal glass is extensively used in the manufacture of glassware?

A. Yes.

Q. You used the word "glassware." Will you just define that term for us and what it embraced?

A. Well, to us glassware comprehended tableware, kitchenware, decoratingware such as vases, and also [fol. 882] other non-container items.

Mr. Hughes: I have no further questions.

The Court: Any further questions, Mr. McManus?

Mr. McManus: Yes, sir, I would like to clear up a couple of things.

Redirect examination.

By Mr. McManus:

Q. Mr. Algeo, could your Clarksburg plant make glass containers and did it?

A. To a small extent. Just a second now. You say containers?

Q. Glass containers.

A. I think you mean bottles and jars, don't you?

Q. Well, I mean——

A. Let me explain: Our Clarksburg plant made many containers in the way of pressed tumblers which were used as containers for foods and so on.

Q. I want to clear up another thing. As I understood you testified that you had certain small tanks for making amber medicine bottles, is that correct?

A. I didn't say medicine bottles.

Q. What did you say?

A. Snuff bottles.

[fol. 883] Q. You said that those tanks were not readily convertible to amber tanks for making beer bottles.

Mr. Hughes: I object. That was not the testimony. That was not the way he explained it.

The Court: I will let the witness answer with the idea

that he can correct any statements of fact in the question, if there are any.

A. Ask that question again.

Q. You say that you had certain small tanks that you had planned to use for the manufacture of amber snuff bottles, is that correct?

A. Well, we had made the snuff bottles for many years. Ask me another question now. Go ahead.

Q. Let me ask you this: You had a number of tanks which could be used for the manufacture of amber glass, is that correct?

A. Yes, sir.

Q. Do you recall about how many tanks Hazel-Atlas had at the time you left?

A. My recollection is about 28 or 29.

Q. Could all of those tanks be convertible to the manufacture of amber glass?

Mr. Hughes: May I have that question again, please?

[fol. 884] (Question read.)

A. Why, yes, they were convertible.

Q. You listed a number of foods for which Hazel-Atlas made glass containers. Your company made baby food jars?

A. Yes.

Q. And this is at the time of the acquisition?

A. Yes.

Q. Soluble coffee jars?

A. Yes.

Q. Fruit jars?

A. You mean home canning jars?

Q. I am talking about jars for food processors, fruit jars.

A. Yes.

Q. Also vegetable jars?

A. Yes.

Q. Fruit and vegetable juices, jars or bottles?

A. Yes, to some extent.

Q. Honey jars, jars for honey?

A. Yes.

Q. Peanut butter jars?

A. Yes.

Q. Syrup jars—jars for syrup?

[fol. 885] A. Well, syrup was packed in bottles, not jars.

Q. Syrup bottles?

A. Yes.

Q. Jars for seafood specialties?

A. Yes, to some extent.

Q. Soup products?

A. Soup?

Q. Soup, yes.

A. I don't remember any soup accounts.

Q. Bird seed jars?

A. I don't recall.

Q. Beef steak?

A. Yes, we made beef steak jars. I remember that.

Q. You did make at the time of the acquisition beer bottles, is that correct?

A. Yes.

Q. Returnable?

A. Yes.

Q. Non-returnable?

A. Yes.

Q. Soft drink bottles?

[fol. 886] The Court: Tell me, this, before we go on: What is the difference between the returnable and the non-returnable beer bottle?

The Witness: You are speaking to me, sir?

The Court: Yes, sir.

The Witness: A returnable beer bottle is a bottle that was used and then sent back to the brewery and filled again and reused.

The Court: Yes, I understand that, but what makes a bottle non-returnable as distinguished from returnable?

The Witness: Well, the non-returnable bottles are made of much lighter weight and they are not susceptible to being reused; they will break in shipping.

The Court: I see. They are not as high a quality or standard in the sense of durability?

The Witness: In terms of durability, no.

Q. Prescription bottles?

A. No.

Q. Medicine bottles?
A. Yes.
Q. Powdered medicine bottles, bottles or jars?
A. Yes.
Q. Bottles for pills, for medical pills?
[fol. 887] A. Yes.
Q. For ointments and salves?
A. Yes.
Q. For Mercurochrome?
A. Well, I think so.
Q. Mouthwash?
A. Yes.
Q. Hair tonic?
A. Yes.
[fol. 888] Massage cream?
A. Yes.
Q. Deodorants?
A. Yes.
Q. Shaving soap?
A. Yes.
Q. Facial soap?
A. Facial soap?
Q. Did you make any jars for facial soap?
A. I don't recall.
Q. Dental floss?

The Court: What is the last one?
Mr. McManus: Dental floss.

A. Dental floss? I don't know.
Q. Solid creams?
A. What?
Q. Solid creams?
A. Solid creams?
Q. Toiletry bottle?
A. Oh, yes.
Q. Liquid cream, toiletries?
A. Yes.
Q. Face powder?
A. I don't know.
Q. Nail polish?
[fol. 889] A. Yes.
Q. Perfume?

A. Yes.
Q. Hair pomade?
A. Yes.
Q. Permanent wave solution?
A. Yes.
Q. Liquid shoe polish?
A. Yes, a lot of them.
Q. Paste shoe polish?
A. Yes—wait a minute.
Q. Paste.
A. Paste?
Q. Paste.
A. Yes.
Q. Furniture polish?
A. Yes.
Q. Silver polish?
A. Yes.
Q. Inks, writing inks?
A. Yes.
Q. Glue and mucilage?
A. Yes.
Q. Liquid bleach and starch?
A. Yes.
[Vol. 890] Q. Light duty detergents?
A. Light duty detergents?
Q. Yes, did you make bottles for light duty detergents?
A. We made bottles for detergents.
Q. You don't know whether it was light or heavy, but it was for detergents?
A. Yes.
Q. Rug cleaners?
A. Yes.
Q. Oven cleaners?
A. I don't know.
Q. Insecticides and disinfectants?
A. Yes.
Q. Space deodorants?
A. Yes.
Q. Paint, some paint and paint products?
A. Yes.
Q. Industrial chemicals?
A. Industrial——

Q. Industrial chemicals?

A. What was that—I don't know that one.

[fol. 891] Q. Chemicals for industry? I mean, did you make glass containers to hold chemicals for industry?

A. I can't recall any. We may have. I don't know.

Q. Laboratory chemicals?

A. Laboratory—I don't recall any.

Q. Artists' supplies?

A. Yes.

Q. Snuff?

A. Yes.

Q. Jobbers' jars and bottles?

A. What kind? What is that last?

Mr. McManus: I will withdraw that one.

Q. These would be a partial list of the glass containers that you made?

A. Yes.

Q. You made a varied number of glass containers?

A. Yes, we did.

Mr. McManus: That is all I have.

The Court: All right, Mr. Hughes.

Recross-examination.

By Mr. Hughes:

Q. Mr. Algeo, you said that you had two amber tanks at Hazel-Atlas at the time when you retired from [fol. 892] the business. Mr. McManus asked you whether you could convert other tanks to the manufacture of amber glass, and you indicated that you could; is that right?

A. Yes.

Q. Now, if you did that, it would be at the expense of some of your flint container business, would it not?

A. Ordinarily, it would.

Q. That is, you can't run out of the same tank flint glass and amber glass, can you?

A. No.

Q. It has to be used for one or the other.

A. That is correct.

Q. So that any manufacturer has to make the choice of

whether he is going to go into products of amber glass or remain with the flint production that he has; is that a fair statement of it?

A. Yes, that is correct.

Q. Now, you have also told us that you made some soluble coffee bottles; is that correct?

A. Yes, we made some.

Q. Now, actually, you didn't go into the manufacture of [fol. 893] soluble coffee bottles to any great extent, did you?

A. Well, at one time or another we had a pretty fair volume of business, but we were not the leaders in that category at all.

Q. Yes. Now, during the war you went into the business of supplying glass containers for coffee, that is, for ground coffee; is that right?

A. That is correct—you say during the war?

Q. Yes.

A. No, we were in it before the war.

Q. Yes. And did your volume increase during the war?

A. Yes.

Q. And did you develop that business and more or less neglect the soluble coffee end of the business?

A. Well, I wouldn't state it that way.

Q. Well, you state, give me the story.

A. Before the war we had developed a rather substantial volume of coffee jar business, the regular ground coffee, not the soluble type.

Q. Yes?

A. During the war the demand for those jars increased greatly, because tincans became scarce, and we cultivated [fol. 894] that business during the war just as much as we could. We thought—at least I thought—that after the war this coffee jar business would continue to increase, and we took care of as much of that demand as we could. We couldn't take care of all demand during the war because it was overwhelming. But we did handle a lot of this coffee jar business, because it was a food; we were helping the country; that was part of our effort, war effort; and we expected that that business would continue to increase after the war was over, because a lot of these jars, most of these jars, were reusable as

fruit jars, home canning jars, and most of the demand that we had was from agricultural sections, Minneapolis, St. Paul, Omaha, St. Louis, Oklahoma City—an agricultural area where home canning jars were largely sold.

So we made an effort to take care of that coffee jar business during the war, in the belief that it would continue. We made—we bet on the wrong horse.

Q. What happened?

A. Beg your pardon?

Q. What happened?

A. Well, the way we explained it is this, if I am correct: [fol. 895] This thing called "shelf space" became an important factor in the distribution of products. The supermarket—supermarket business had greatly increased, and this thing they called "shelf space" became valuable. Supermarket could devote only so much space to a product. Well, when it came to coffee jars, the average store had to carry three or four different brands of coffee, maybe a couple of national brands and a couple of local brands. He had to have two or three sizes. And when you got through he had that much shelf space (indicating). Well, if he used jars and cans both, he had that much—he had double that space.

So after the war was over and tincans became available, our jar business began to shrink, and we attributed it chiefly to this thing called "shelf space." They couldn't devote that much shelf space.

Q. Now, in the meantime what was happening in the soluble coffee field?

A. Well, my recollection is that the soluble coffee jar business started during the war. I don't know what year. It was around '42. We did not get in on the original soluble coffee jar business, although it was in our line; it was a wide-mouth jar and just the kind of ware that [fol. 896] we would like to make. But for one reason or another, I don't know just why, we didn't get in on the original orders.

That business developed, but we were devoting our attention, insofar as coffee is concerned, to this coffee jar business that we had already had. But during the war the demand for all kinds of containers was overwhelming. We couldn't take care of all the demand we had, and we

just couldn't—even had we had the opportunity of making the soluble coffee jars, we couldn't have taken any on without shortchanging our other customers.

Q. So that at that time——

A. So——

Q. Excuse me.

A. —during the war we really made no effort to get in on the soluble coffee jar business.

Q. But others were in it at that time?

A. Yes, that is correct.

Q. And developing the business at that time?

A. That is correct.

Q. And expanding it?

A. And after the war we did get into the soluble coffee jar business, not in a real big way, but we got some sub-
[fol. 897-913] stantial business. But in the meantime, our coffee jar business went downhill. So we did make soluble coffee jars and a pretty fair volume.

Q. But the fact is that during these war years and immediately afterwards you made the decision to stay with the jar for the ground coffee and regarded the soluble coffee end of the business as secondary to this jar for the ground coffee; is that right?

A. Well, as long as the war lasted, that would be correct, but, of course, we didn't consider that soluble jar coffee business being secondary. After all, we had the others to take care of.

Q. And when the war was over these other glass container manufacturers had already got into the soluble coffee field to a much more substantial degree than you and had the business, so to speak; is that right?

A. That is correct.

The Court: Anything further from Mr. Algeo?

Mr. McManus: No, your Honor, that is all.

The Court: Thank you, Mr. Algeo. You may step down.

The Witness: Am I through now?

The Court: You are excused, yes.

(Witness excused.)

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[fol. 914] HORACE RANSOM MUSTARD, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination

By Mr. McManus:

Q. Mr. Mustard, by whom are you presently employed?

A. Pittsburgh Coke & Chemical Company.

Q. What is your position with that company?

A. I am vice-president, secretary, controller and also a director.

Q. How long have you been employed by that company?

A. Since March, 1944.

Q. Have you ever been an officer associated with any glass container company?

A. I was financial vice-president of Neville Island Glass Company.

Q. Did the Pittsburgh Coke & Chemical Company have an interest in that company?

A. Originally it helped finance the company to purchase the $700,000 first mortgage bonds. Later it made both un-[fols. 915-921] secured advances for working capital and advances secured by accounts receivable, and during that period, but later than the issue of the first 700,000 bonds, an additional $500,000 worth of bonds was purchased by Pittsburgh Coke & Chemical Company.

Q. Now, Pittsburgh Coke & Chemical prior to this——

Mr. McManus: Excuse me, your Honor, did you want to continue with Mr. Mandelbaum?

The Court: Well, is Mr. Hughes ready?

Mr. Hughes: It is all right if we continue with this witness, but whatever is your Honor's pleasure.

The Court: Mr. Mandelbaum has been here for a couple of days and he ought to be permitted to get away as rapidly as possible.

You may step down for the moment, Mr. Mustard.

(Witness temporarily excused.)

* * * * * * *

[fol. 922] HORACE RANSOM MUSTARD resumed.

Direct examination continued.

By Mr. McManus:

Q. Now, I believe you had just testified, Mr. Mustard, that at one time you were associated with the Neville Island Glass Company. In what position were you associated with that company?

A. Financial vice-president.

The Court: What was the name of that company again?

[fol. 923] The Witness: Neville Island Glass Company. It may have an "Inc." on the end of it, but I do not recall.

Q. Could you tell us the circumstances surrounding your association with the Neville Island Glass Company?

A. Originally when it was formed and the plant was being built——

The Court: When was it formed, so that I get some idea of what time we are talking about?

The Witness: It was incorporated in the early part of 1946, and some time during 1946 the construction of the glass plant was begun.

By Mr. McManus:

Q. Could you tell us, when it was completed?

A. It was substantially completed March 1, 1947.

Q. Now, could you tell us who was the moving party in the organization of that company, and why your company became associated with it, that is, the Pittsburgh Coke & Chemical Company?

A. Yes. Walkerman D. Dugan was president of the Neville Island Glass Company. He organized the company, so to speak. He had dealings with investment bank-

[fol. 924] ers in New York with regard to the sale of common stock of the company. He was put in touch with Pittsburgh Coke & Chemical Company through Frazier-Simplex.

Q. Perhaps if I can interrupt you, Mr. Mustard, what is or who is Frazier-Simplex?

A. Well, I know nothing about them now, but at that time they were glass engineers, as well as I remember.

Q. They are the company that engineered and built the plant?

A. They did engineer and whether they handed out the construction to subcontractors or did some themselves I don't recollect.

Q. They directed Mr. Dugan to your company?

A. Yes.

Q. And then your company became interested, is that right?

A. Yes, because we wanted to sell our byproducts of coke and gas to some industry on Neville Island, because we, Pittsburgh Coke & Chemical, had an excess of such gas——

The Court: Where is Neville Island?

The Witness: 7 miles northwest of Pittsburgh on the Ohio River.

[fol. 925] Q. Did your company assist Mr. Dugan in organizing the Neville Island Glass Company?

A. To the extent of originally purchasing $700,000 worth of first mortgage bonds, which we offered to do if he could get approximately that amount of money in the sale of stocks.

Q. And did he?

A. He did.

Q. Approximately how much was that?

A. Between six and seven hundred thousand dollars.

Q. And you testified that in March of 1946, I believe, the construction of the plant began?

A. I don't think I stated a specific date. I say that some time during the first half of 1946, roughly, it began.

Q. Did the Frazier-Simplex Company engineer the plant?

A. Yes.

Q. And when was the plant completed?

A. Approximately, substantially completed March 1, 1947—wait a minute, March 31, 1947.

Q. Did you obtain equipment, glass-forming equipment, for this plant?

[fol. 926] A. Pittsburgh Coke & Chemical Company?

Q. Yes.

A. Pittsburgh Coke & Chemical, to my knowledge, had nothing to do with obtaining the glass-forming equipment.

The Court: When did you become associated with the new company, Mr. Mustard?

The Witness: It was approximately mid-summer of 1947.

The Court: In other words, after the completion of the plant?

The Witness: Yes, sir. It was after the completion of the plant.

Q. Were you familiar with the type of forming equipment that this plant had?

A. I know that the company that manufactured the equipment was the Hartford Empire Company.

Q. Do you know if it was a one-tank or two-tank operation?

A. It was a one-tank operation.

Q. Do you know how many lines it had?

A. It had six lines.

Q. The plant was completed in 1947?

A. Yes.

[fol. 927] Q. Did it immediately go into operation at that time?

A. There were start-up difficulties, as I recall, but it went into operation approximately March 31st, 1947.

Q. And what type of containers did it manufacture, to your knowledge?

A. Well, I don't remember all because I was never closely connected with the company from the point of view of operations, but by contamination I learned that they manufactured beers, milks, whiskies and I know that there were many other containers, but I don't recollect what they were.

Q. And for how long a period of time did this plant operate?

A. Approximately 11 months and then a bankruptcy petition under Section 10 of the Bankruptcy Act was filed on March 1, 1948.

Q. During that period of time was it a profitable company?

A. No, it never was.

Q. Now during the construction or the building of this plant was the forming equipment and the Lehrs and the equipment for manufacturing glass containers, [fol. 928] was that readily available?

Mr. Johnson: I object to that question. The witness has testified that he did not know anything about that.

The Court: Objection sustained.

Q. Could you tell me approximately, or do you know how long it took to build this plant?

A. Very roughly——

Q. Yes, roughly.

A. It was a long time ago, but I would say close to a year.

Q. A year or somewhat less?

A. I would think so now, yes, sir.

Q. And you became familiar with the operation of the plant by reason of your association with the company?

A. I was associated with Pittsburgh Coke & Chemical Company and not with the glass company from the standpoint of operation.

Q. But after it was operating you became generally familiar with it?

A. What is that?

Q. After it was operating and you were an official——

A. After it had been in operating for some period [fol. 929] of time, yes.

Q. To your knowledge, was there labor to operate the plant available?

A. At that time around Pittsburgh shortly after the war labor was hard to obtain but the Neville Island Glass Company I believe had sufficient labor.

Q. And then what happened at the plant in 1948. You say that up to 1948 it had not operated with a profit, is that right?

A. Until it went into Chapter X it never made a monthly profit but it always had losses.

The Court: Did it ever come out of the Chapter X with a reorganization?

The Witness: No, there was no feasible way found and they went into bankruptcy.

Q. But for the period of approximately one year it was making glass containers for sale?

A. That's right.

Q. Did you know the construction cost of this plant?

A. I believe that the total was around $1,800,000.

Mr. Johnson: Excuse me, I did not get the figure.

(Answer read.)

[fol. 930] Q. That, of course, did not include the leased equipment from Hartford?

The Court: Wait a minute. What is this about leased equipment from Hartford?

Mr. McManus: He has testified that they leased the forming equipment from Hartford Empire.

The Court: Well, I missed that.

Q. Didn't you so testify?

A. No. I testified that it was obtained from Hartford Empire.

The Court: He did not mention anything about leases.

Q. In what manner was the equipment obtained?

A. By buying a license for both production and minimum royalties under the agreement.

Q. Do you know what the approximate cost of that license was?

A. No, I don't remember.

The Court: In any event, the cost that you mentioned, was that exclusive of the machinery?

The Witness: To this extent, it didn't include any royalties. However, I believe that it included the original license fee and installation of the Hartford Empire equipment.

[fol. 931] Q. After the plant began operations did you or your company, Pittsburgh Coke & Chemical, furnish any more funds for operating this company?

A. Yes, we did. We made secured advances, secured by the pledge of accounts receivable. We also made ad-

vances on open account. We were never paid for services which we rendered, which principally was the furnishing of gas, and in September 1947 we purchased an additional $500,000 principal amount of bonds from the Neville Island Glass Company.

Q. Do you know how much your company invested in total in this company?

A. Well, no, because some of the advances on the pledged accounts receivable were paid back to us and new accounts receivable were pledged and so forth. However, I know what our total loss was approximately at the time of the bankruptcy.

Q. What would that be approximately?

A. It would be between $450,000 and $500,000 plus whatever difference there might be between the actual value of the Neville Island Glass plant without the machines and equipment, and the $1,200,000 principal amount of bonds with which we bid in the land and buildings of the glass company.

[fol. 932] Q. After March 1958 glass containers were no longer manufactured at this plant, is that correct?

A. It was closed—the plant was closed down immediately, that is correct.

Q. And what became of the forming equipment?

A. It was allowed to stay there until approximately the 31st of March, 1949, by order of the Court in order that there might be a chance for reorganization.

Q. But was never reorganized?

A. It never was.

The Court: What happened after, was the equipment recaptured by Hartford Empire?

The Witness: Yes, sir.

Q. And from that time the plant was never operated as a glass plant?

A. That is right.

Mr. McManus: That is all I have.

The Court: All right, Mr. Hughes or Mr. Johnson.

Cross-examination.

By Mr. Johnson:

Q. Mr. Mustard, you have stated that at some point, I believe you said in 1948, the company filed, that is Neville [fol. 933] Island Glass Company, filed a voluntary petition in bankruptcy?

A. Under Section 10 in 1948.

Q. Under Section 10 in 1948?

A. Yes.

Q. And do you remember who started that proceeding? What Court?

Q. Yes.

A. The Federal District Court.

Q. In Pittsburgh?

A. Yes.

Q. And in due time a trustee was appointed?

A. Yes.

Q. Do you remember his name?

A. There were two: Joseph—and his middle initial I don't remember—Bialas, and Richard M. Marshal, who was president of Pittsburgh Coke & Chemical Company as operating trustee. Bialas was the disinterested trustee.

Q. Were hearings held?

A. I suppose the Court directed that the hearings be held and hearings were held.

Q. Were the hearings actually heard before the Court? [fol. 934] A. No, before a Special Master.

Q. Before a Special Master appointed by the Court?

A. Yes.

Q. And this Master took testimony on many aspects of this company's business?

A. Very many, yes, sir.

Q. And, as a matter of fact, he submitted a complete report of the company's business?

A. It seems to me that he did, yes.

The Court: In other words, he not only took testimony but there was some sort of report rendered by the Special Master?

The Witness: There was a stenographic report of the hearings.

Q. And he examined into the questions of the possibility of reorganization of the company?

A. I don't know what report he may have made to the District Judge.

Q. But, in any event, a report was made?

A. The trustee made a report.

Q. The trustee made a report?

A. Yes, to the District Judge.

[fol. 935] Q. On the possibility or feasibility of a reorganization?

A. Yes.

Q. And, in any event, I think you have testified that the company, Neville Island Glass Company, never was reorganized?

A. That is true.

Mr. Johnson: I would like to have this document marked for identification.

(Marked Defendants' Exhibit J for identification.)

Mr. Johnson: Your Honor, I hold in my hand, Defendants' Exhibit J for identification, a copy of a petition of the disinterested trustee for direction as to form and manner of submission of trustee's report and statement under Section 167(5) of Chapter X of the Bankruptcy Act and related matters, to which there is also attached an order of the Court and a report and statement of the trustee.

The Court: This is a 167 report of the trustee?

Mr. Johnson: That is correct.

The Court: Yes.

Mr. Johnson: Which document has been certified by James H. Wallace, Jr., Clerk of the Eastern District [fol. 936] Court for the Western District of Pennsylvania. Will the Government stipulate that this is a true and correct copy.

Mr. McManus: We will stipulate that it is a true and correct copy of the trustee's report, your Honor. However, there are a lot of rambling statements in the report that we do not——

The Court: Mr. McManus, the best possible evidence as to what happened with this company comes from the

trustee's report in a reorganization proceeding which the Court will take in full.

Mr. McManus: I would think possibly the best evidence would be Mr. Mustard's testimony.

The Court: It may be, but we have Mr. Mustard's testimony now.

Mr. McManus: I have no objection to the report only in so far as it conflicts with Mr. Mustard's testimony.

The Court: Maybe the other side offers it in so far as Mr. Mustard's testimony conflicts with the report.

Mr. McManus: But they have a chance to cross-examine Mr. Mustard.

The Court: But this is an official proceeding [fol. 937] with respect to the insolvency of this company, and an official report of the trustee appointed by the Court: I will take it.

Mr. Johnson: I offer it in evidence.

(Defendants' Exhibit J for identification received in evidence.)

Mr. Johnson: Would your Honor like to see a copy of it?

The Court: Yes, I would like a copy, if I may.

Mr. Johnson: I call your attention particularly, your Honor, to certain statements on pages 10, 15, 16, 17 and 26.

The Court: Of the 167 report?

Mr. Johnson: Of the 167 report, yes.

The Court: I take it that the petition and so forth is of no particular concern here except as background documents, is that right?

Mr. Johnson: I have the whole file here, but your Honor knows that these documents tend to become very, very bulky.

The Court: Yes.

Mr. Johnson: And this, I believe, tells the story.

[fol. 938] The Court: Very good. I am not going to read it now, in any event. You can go ahead.

Mr. Johnson: I have no further questions.

Mr. McManus: We have no further questions of this witness:

The Court: All right, you may step down, Mr. Mustard, thank you.

(Witness excused.)

Mr. Greenberg: The Government's next witness, your Honor, is Mr. Herger.

HOWARD C. HERGER, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, Mr. Herger?
A. Port Allegany, Pennsylvania.
Q. You are employed by the Pierce Glass Company?
A. That is correct.
Q. How long have you been with the company?
A. Forty years.
Q. What is your present position?
A. President.
Q. How long have you held that position?
[fol. 939] A. Since 1944, 16 years.
Q. You know all about the company, is that correct, and have known all about it in the last 16 years?
A. Within my ability.

The Court: Within reasonable limits.
The Witness: Yes, sir.

By Mr. Greenberg:

Q. How many plants do you have?
A. One plant.
Q. Where is your plant located?
A. Port Allegany, Pennsylvania.
Q. What are the principal types of glass containers that your company has sold since 1953?
A. Narrow neck and we make wide mouth, general purpose containers.
[fol. 940] Q. What per cent—excuse me, had you completed?
A. Complete.
Q. Can you estimate for us, sir, what percentage of

your business in this period of time has gone into the non-food narrow neck field?

A. 75 per cent.

Q. What type of containers in the non-food field, for what products, for what areas?

A. Chemical and household, medicinals, cosmetics. That is about it.

Q. Sir, has your company, in your experiences with it, ever operated east of the Rocky Mountains?

A. No.

Mr. Hughes: East of the Rocky Mountains?

Q. West of the Rocky Mountains.

The Court: Just a minute. We are going a little fast here.

Mr. Greenberg: I am trying to expedite it, your Honor.

The Court: I take it Port Alleghany is east of the Rockies; is that right?

The Witness: That is correct, sir.

[fol. 941] The Court: And you have never operated west of the Rockies?

The Witness: Correct.

The Court: All right.

Q. Sir, can you estimate for us what percentage of your company's shipments, in your experiences with it, have been sold within a 300-mile radius of your plant?

A. 90 per cent.

Q. How many glass melting tanks——

By the Court:

Q. Port Alleghany, is it in the Pittsburgh area?

A. North of Pittsburgh.

Q. How far away?

A. 165 miles north.

Q. 65 miles?

A. 165 miles.

Q. In New York?

A. No, just below the New York State Line.

The Court: Thank you.

By Mr. Greenberg:

Q. How many glass melting tanks does your company have?

A. Two.

Q. Has your company, in your experiences with [fol. 942] it, manufactured closures for glass containers?

A. Never.

Q. Corrugated shipping containers?

A. Never.

Q. Processing line machinery?

A. Never.

Q. Can you estimate, sir, what percentage of your annual production from 1953 to the present has been transported in corrugated shipping containers?

A. 100 per cent.

Q. Can you estimate, sir, what percentage of your total selling price from 1953 to the present has been represented by shipping containers?

A. Approximately 30 per cent.

Q. What is the size of your sales force at the present time?

A. Five.

Q. How many employees in all do you have at the present time?

A. About 250.

Q. Sir, can you tell us, whether there are any other companies in the glass container industry which you know of, which have operations similar to yours?

[fol. 943] A. Yes, there are several, approximately. I am one of the smallest.

Q. Now, are there others in the same category? Buck Glass?

A. Depends upon what you mean by "category"?

Q. Similar operations, one or two tanks, size of your sales force?

A. Yes, Buck Glass Company, Diamond Glass Company.

Q. Lauren, would you say?

A. Lauren, Foster Forbes.

Q. Liberty?

A. Liberty.

By the Court:

Q. What was your gross in '59, gross sales, roughly, gross or net, whatever the figure is?

A. $5,000,000.

Q. 5,000,000?

A. Yes.

By Mr. Greenberg:

Q. Castle Hanson, sir, is that another one?

A. I would say so, yes.

Mr. Greenberg: You may cross-examine.

Cross-examination.

By Mr. Hughes:

Q. Mr. Herger, do I understand that a greater [fol. 944] percentage of your business is in narrow-neck containers?

A. Correct.

Q. But you do make some semi-wide mouth; is that correct?

A. Yes.

Q. And would you say about 50 per cent of your business was household and chemical?

A. About 50 per cent.

Q. About 25 per cent food products in this semi-wide mouth type of container?

A. That is correct.

Q. And about 25 per cent in toiletries and cosmetics?

A. And medicinals.

Q. And medicinals?

A. Yes.

Q. And do you make the all-purpose detergent bottle? Is that one of your products?

A. As far as I know, yes.

Q. That is, you make——

A. Make the bottles.

Q. Yes. And would you say that most of your customers [fol. 945] have more than one source of supply or use more than one source of supply for their containers?

A. Yes.

Q. You make nothing but glass containers; is that correct?

A. I beg your pardon?

Q. You make nothing but glass containers?

A. Nothing but glass containers is correct.

Q. You don't make any containers for beer?

A. No.

Q. Nor for soft drinks?

A. No.

Q. And you don't make closures?

A. No.

Q. Do you make any sales through jobbers at all?

A. Very limited.

Q. Nearly all through your salesmen; is that correct?

A. Yes.

Q. Now, would you say that competition in the glass container industry was keen and vigorous?

A. Yes, very vigorous.

Q. And do you regard the glass container industry as an industry separate and distinct from the metal can manufacturing industry?

[fol. 946] Mr. Greenberg: I will object to that, your Honor. It clearly calls for a conclusion.

The Court: It certainly does. It calls for an opinion, in essence. I will take this witness's opinion on the subject.

Mr. Greenberg: For what it is worth, your Honor.

The Court: I always take every opinion for what it is worth.

A. In my opinion it is a completely separate business.

Q: And in your opinion, is the glass container industry a completely separate and distinct industry from the plastic container industry?

A. As far as I am concerned, yes.

Q. Now, in selling your glass containers do you ever lower your price to meet the price of cans?

A. No, I have never come in contact with cans' price.

Q. And do you ever lower your prices to meet the price of plastic containers?

A. No.

Q. Now, you have indicated to his Honor that your sales [fol. 947] were approximately $5,000,000; was that for the year 19——

A. 1959.

Q. —59. And would you say that the sales in that year were greater than they had been, let's say, in 1954?

A. Yes, sir.

Q. And would you say that your sales between 1954 and 1959 were on an ascending trend?

A. Correct; it has been.

Q. And could you give us just approximately the percentage of increase in 1959 over 1954?

A. I would think about 25 per cent.

Q. And would you say that your earnings in 1959 were higher than they were in 1954?

A. Yes, thank God.

Q. Were the earnings between 1954 and 1959 on an ascending trend?

A. They were.

Q. And could you give us some idea of the percentage of that increase in 1959 over 1954?

A. I would say between 30 and 35 per cent.

The Court: You have been operating at a profit during that period?

[fol. 948] The Witness: I have, sir.

Q. Would you say that Anchor Hocking closures are used on your glass containers?

A. I cannot say with certainty, but I believe so.

The Court: Are Continental closures used on your products?

The Witness: I believe so.

Q. And Owens-Illinois closures?

A. I believe so.

Q. Now, you were the president of the Glass Container Manufacturers Institute, were you not?

A. I was.

Q. Can you tell us when you were president?

A. I think 1956. I am not certain.

Q. And you have also been on the board of directors of the Institute?

A. I have.

Q. Are you presently on the board?

A. No, I was replaced one month ago.

Q. How long did you serve on the board?

A. I spent two terms, three years each, and then an interim of three years. Then I went back for another three years.

[fol. 949] Q. And during that period you were active in the affairs of the Institute; is that correct?

A. I was.

Q. Do you know anything about the plastic industry?

A. Nothing whatever, I am sorry to say.

Q. Now, over the past ten years has your company expanded in any way, within the limits of your one-plant operation?

A. Yes.

Q. And will you tell his Honor just briefly and in a general way what the nature and extent of that expansion has been?

A. Prior to 1957 we had but one furnace with six machines on it. In 1957 we built a small end port furnace and put two machines on it. This year we are adding a third machine. That comprises our development.

Mr. Hughes: No further questions.

The Court: Mr. Greenberg?

Mr. Greenberg: Your Honor, the Government wishes to note for the record its objections, and hereby makes a motion to strike all testimony which deals with ascending in-

[fols. 950-951] come and ascending earnings until it is connected up with something which makes it relevant. We object on the ground it is totally irrelevant and immaterial to this action as it stands.

The Court: Objection overruled.

Anything further from Mr. Herger?

Mr. Hughes: I have no further questions.

The Court: No, Mr. Greenberg.

Mr. Greenberg: May I have a moment, your Honor?

The Court: All right.

Mr. Greenberg: I have no further questions, your Honor.

The Court: All right, thank you, Mr. Herger. You may step down.

The Witness: Thank you.

(Witness excused.)

[fol. 952] GEORGE W. MEYER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?
A. Allison Park, Pa. That is A-l-l-i-s-o-n.
Q. And by whom are you employed?
A. Glenshaw Glass Company.

The Court: G-l-e-n S-h-a-w?
The Witness: That's right.

Q. How long have you been with the company, sir?
A. Oh, some 50 years, odd years.

[fol. 953] Q. What is your present position?
A. President.
Q. How long have you held that position?
A. Since 1911.

The Court: How long?
The Witness: Since 1911, about nine years.
The Court: I am sorry, did you say——
The Witness: I beg your pardon. December, 1951.
The Court: I thought, Mr. Meyer, you were about to qualify for the oldest living president.
The Witness: Where that 1911 came from, I don't know.
Mr. Greenberg: Well, I didn't suggest it to you.

Q. Since 1951, as president, you have become familiar with all of the activities of the Glen Shaw Glass Company; is that correct?

A. I have, and I was quite acquainted with everything prior to that.

Q. And everything prior to that. How many plants does your company have, sir?

A. Just one.

Q. And where is that located?

[fol. 954] A. Glen Shaw, Pa.

Q. Where is that near, what big city?

A. Pittsburgh.

Q. And, sir, was your dollar volume in 1956 under $10,000,000?

A. It was.

Q. All right. What are the principal types of glass containers your company has sold since 1953?

A. Soft drink bottles, beverage bottles, beer bottles, liquor bottles.

Q. What percentage of your total production does that represent in 1953, just your estimate?

A. Oh, approximately 75 per cent.

Q. Sir, in your experiences has your company operated only east of the Rocky Mountains?

A. That is true.

Q. Sir, would you estimate for us what percentage of your company's shipments have been sold within a 400-mile radius of your plant, say, from 1953 to the present?

A. Oh, a hundred per cent. I can correct that to 99 per cent. We have shipped a few bottles to Cuba prior to the last two or three years.

[fol. 955] Q. How many glass melting tanks does your company have?

A. Four.

Q. From your experience, sir, what would be the average number of forming machines which can run off one melting tank?

Mr. Hughes: Run off from what?

Mr. Greenberg: One melting tank.

Mr. Hughes: In his plant?

Mr. Greenberg: I am talking about——

Q. Well, we will start off at your plant.

A. We have one furnace with five machines; two fur-

naces with four machines and a fourth furnace with three machines—a total of 16 machines.

Q. I was referring to one particular furnace and you broke them up for us. Sir, from your experiences in the industry, generally, can you give us an opinion as to what would be the average number of forming machines which can be run off one melting tank?

Mr. Hughes: I object to that.

Q. Can you, sir?

The Court: Can you give us an opinion on that?

[fol. 956] The Witness: I can give my opinion and my knowledge.

The Court: All right, let's have it.

I will overrule the objection.

A. The average, I would say, it would be five to six machines, although there are furnaces with two machines, as Mr. Herger so stated earlier today.

Q. Sir, has your company in your experiences with it manufactured closures for glass containers?

A. No, sir.

Q. Corrugated shipping containers?

A. No, sir.

Q. Processing line machinery?

A. No.

Q. So then, sir, your earnings depend solely on your sales of glass containers?

A. That is true.

Q. Can you estimate for us what percentage of your annual production from 1953 to the present has been shipped in paper corrugated shipping containers?

A. Oh, I would say 95 to 100 per cent. We do ship a few soft drink bottles in wooden cases the customers send in to us, but that percentage is small.

[fol. 957] Q. Sir, what is the size of your sales force at the present time?

A. At the present time we have about 11 salesmen. We have 11 salesmen.

Q. How many employees in all would you say, including

clerical help, messengers and everything else, do you have at the present time?

A. Clerical help?

Q. Just everyone who is employed with your company?

A. You mean our total employees?

Q. Total.

The Court: Yes.

A. Factory workers?

Q. Everything.

A. In the peak season it runs up to about 700. The average is about 640 for the year.

Mr. Greenberg: Would you mark this——

A. (Continuing) May I add a little bit to the statement you asked me about salesmen? In addition to the 11 salesmen we employ, we also sell about 25 per cent of our volume through two jobbers that we have. One is located in Chicago and the other is located in Detroit.

[fol. 958] Q. That is the extent of it?

A. Yes.

Mr. Greenberg: Will you please mark this for identification, just page 20.

(Marked Government's Exhibit 358 for identification.)

Mr. Greenberg: Your Honor, this purports to be a listing of the members of the Glass Container Manufacturers Institute, and the page I had marked is contained within a publication, or what we believe to be a publication of the Glass Container Manufacturers Institute, and I now show page 20 to Mr. Hughes for the purpose of scanning it.

At the present time, your Honor, I am merely going to mark it for identification, show it to the witness so he has a list in front of him, and he can refresh his recollection as to names of companies which will come out in answer to the next question.

The Court: All right.

Mr. Hughes: Are you just marking it for identification?

Mr. Greenberg: That is all.

Mr. Hughes: All right, and you are confining [fol. 959] your inquiries to this page; is that it?

Mr. Greenberg: Yes, sir.

Q. Now, I show you this list of glass container companies, sir, and I ask you to briefly scan the list, or quickly scan the list.

A. They are familiar to me.

Q. Sir, are there any other companies in the glass container industry which are listed there, which have operations smaller or larger to yours?

Mr. Hughes: Well, I object to that, your Honor.

Q. In your opinion?

Mr. Hughes: I don't think he is qualified to answer that.

Q. Can you give us an opinion of that type?

The Court: First of all, no, this is not a matter of opinion. He is not giving an opinion on anything. If he has certain knowledge about other companies and their operations that he acquired in the course of his business, let's see what foundation can be laid for this question. Ask him some questions.

By the Court:

Q. Are you a member of the Glass Container Institute, yourself?

[fol. 959a] A. Yes, sir.

Q. Container Manufacturers Institute?

A. Yes.

Q. In the course of your business do you come in contact with other companies in your same general area?

A. I would say we come in contact at our annual Institute meetings about twice a year with most of the executives of the companies.

[fol. 960] The Court: Have you acquired any familiarity with the volume that they do?

The Witness: Not too well. I do visit some of the plants at different times and I can observe and see about what their operation is comparable to ours.

The Court: Then let us confine ourselves to the operations that you have actually observed. Confine the questions to those, Mr. Greenberg.

Q. Sir, confining the questions to what you have observed, would you go through that list and tell us the names of the companies which have operations smaller or similar to yours?

Mr. Hughes: I object to the form of that question.

Mr. Greenberg: I will divide it up, your Honor. I will divide the question up, if that is what he wants.

The Court: That is not, I do not think, the basis of the objection primarily, but I will allow him to state any companies whose operations are roughly comparable to his in size, or smaller.

Mr. Handler: That is, based on his own observations.

[fol. 961] The Court: This is to be based on your own observations and not from information that was given to you.

The Witness: Yes, sir, I understand.

The Court: Very good.

Mr. Greenberg: Can I just ask one more question, your Honor?

Q. You read the trade journals, do you not?

A. Generally.

Q. And in those trade journals there are frequently announcements as to various improvements in the plants of companies and things of that nature?

Mr. Hughes: Your Honor, I object to this.

Mr. Greenberg: I will discontinue that.

The Court: All right.

Q. Would you go down the list, sir, and within the limitations prescribed, would you tell us the companies which are comparable in size or smaller than yours?

A. With your permission, I will go down the list and give the ones that I know of my own knowledge as being comparable to ours or smaller.

Castle-Hanson Corporation, Chattanooga Glass Company, Diamond Glass Company.

Q. What was that last one?

[fol. 962] A. Diamond Glass Company, Foster-Forbes Glass Company. I will eliminate Fairmount because I haven't been to their plant for 15 years. I know what their size is but I will eliminate that.

Gulport Glass Corporation, Lamb Glass Company, Latch-

ford Glass Company, Laurens Glass Works, Liberty Glass Works, Obear-Nester Glass Company.

Q. Sir, you have skipped Lincoln Container Corporation. Is that a glass container company——

A. I have never been in the Lincoln Container plant. That is part of the Obear-Nester Glass Company.

Q. All right. Obear-Nester was the last one you mentioned?

A. Oil City Glass Company and Metro Glass Company—I haven't visited them for years but I know of their size as result of some contacts with the executives.

Q. Would you tell us the size or——

The Court: No, let him finish what he is doing.

A. Tygart Valley Glass Company.

The Court: Which glass company is that?

The Witness: The last one on the list, your Honor, Tygart Valley.

[fol. 963] Q. Tygart Valley Glass Company is now a division of Brockway Glass?

A. It is now a division of the Brockway Glass Company, yes.

Q. That was a recent acquisition, was it?

A. Yes.

Mr. Greenberg: I have no further questions, your Honor.

The Court: All right.

Mr. Hughes, you may cross-examine.

Cross examination.

By Mr. Hughes:

Q. Mr. Meyer, did you say that you were mostly in the narrow neck field?

A. I did not make that statement but we are primarily, 95 per cent, in the narrow neck field.

Q. Would you say that competition in the glass industry is keen and vigorous?

A. It has always been keen and vigorous.

Q. During all the years that you have been associated with the industry, is that right?

A. Yes.

The Court: Did you notice, Mr. Meyer, any diminution in the keenness and vigor of that competition since the year 1956?

[fol. 964] A. Not a bit. In fact, it has gotten keener.

The Court: It has gotten keener since then?

The Witness: Yes, sir.

Q. You never change the price of your glass container to meet the price of a can manufacturer, do you?

A. We don't know what the can manufacturer's prices are.

Q. You don't?

A. No.

Q. You don't know what the prices are of plastic container manufacturers either, do you?

A. No, I do not.

Q. You cannot charge more than Owens-Illinois does for comparable glass containers, can you?

A. No, we cannot.

Q. You won't take any less than what they charge, is that correct?

A. That is true.

Q. Would you say that your sales were higher in 1959 than they were in 1954?

A. Yes, they were.

Q. And would you say that the percentages of sales have been upward during that period of time for [fol. 965] your company?

A. Yes, I think it is public knowledge that the glass container industry has shown a steady growth in the last five or six years.

Q. I was referring to your company, Mr. Meyer. Has that been your experience from 1954 to 1959?

A. The volume has increased proportionately over the years, and also the earnings.

Q. Would you care to express that in a percentage, what the percentage of increase has been from 1954 to 1959, approximately?

A. I would say approximately 25 per cent.

Q. And have the percentages of earnings also gone up during that period?

A. Yes.

Q. That is, of your company?

A. Yes, of my own knowledge.

Q. I am talking about your company?

A. That is right.

Q. Have you done any expanding of any kind over the last five years?

A. We had four furnaces five years ago but we are making probably 20 per cent more glass this past year than we did back in 1953.

[fol. 966] The Court: Have you found any difficulty in disposing of your additional production?

The Witness: There is always difficulty in disposing of your production, your Honor. That is where the sales department comes in, and our sales department has shown a lot of increased life over the past four or five years and prior to that time—comparatively prior to that time.

Q. Have you began any new plants or have you been thinking about building any new plants?

A. We broke ground two weeks ago in Orangeburg, New York for a new plant.

Q. And can you tell his Honor about what size plant that would be?

A. That would be a single furnace operation.

Q. And how many machines do you expect to use?

A. We will start off with three three machines.

Q. Mr. Meyer, you were referred to Government's Exhibit 358 for identification, and you picked out the names of some companies. Some of those companies do not publish their sales and earnings; isn't that correct?

A. That is true; the same as our own company.

Q. You don't do it and many of these companies that [fol. 967] you mentioned do not do it, is that correct?

A. That is correct.

Q. And in the discussions which you had from time to time with the representatives of these other companies that do not publish their earnings or sales, they do not tell you, do they, what their volume of sales is?

A. No, they do not.

Q. And they do not tell you what their earnings are?
A. That is true.
Q. So that when you testified you were drawing on what you considered to be your knowledge of the size of these companies as you observed them and your effort to compare them with your own operation; is that a fair statement of it?
A. I was only comparing them from a production standpoint; no comparison at all on earnings.

The Court: You made no evaluation of earnings?
The Witness: No, I did not.

Q. Have you ever visited the plants of these other companies?
A. I have.
Q. Would you be able to tell me how many machines [fol. 968] any one of these companies have if I took you down through the list?
A. Not accurately, no.

Mr. Hughes: No further questions.
The Court: Anything further, Mr. Greenberg?
Mr. Greenberg: Just one question, your Honor.

Redirect Examination.

By Mr. Greenberg:

Q. Sir, in the year 1959 were the earnings of your company under $12 million?
A. Yes.

Mr. Greenberg: I have no further questions.
The Court: All right.
Mr. Hughes: Just one moment?
The Court: You have one more question?
Mr. Hughes: Yes.
(Short pause.)
Mr. Hughes: No further questions, your Honor.
The Court: All right, sir.
Thank you, Mr. Meyer, you may step down.
(Witness excused.)

Mr. McManus: Mr. Hunt, please.

[fol. 969] DEAN B. HUNT, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. By whom are you employed, Mr. Hunt?
A. Oil City Glass Company.
Q. For how long have you been employed by that company?
A. Since 1954.
Q. What was your prior employment?
A. The Pyramid Rubber Company.
Q. Pyramid Rubber Company?
A. Yes, sir.
Q. And what capacity were you employed with Pyramid Rubber Company?
A. As an accountant.

Mr. Hughes: Would you please keep your voice up?
The Court: Mr. Hunt, try and keep your voice up a little more so that these gentlemen in the back can hear you.
The Witness: Yes, sir.

Q. And what is your present position with Oil City Glass Company?
[fol. 970] A. General manager.
Q. You have been general manager since when?
A. Since 1956, four years.
Q. What was your position with Oil City Glass Company prior to becoming general manager?
A. Comptroller.
Q. What occasioned your leaving Pyramid Rubber Company and going over to Oil City Glass Company?
A. I actually had not left them. They still owned Oil City Glass Company.
Q. Pyramid Rubber Company acquired Oil City Glass Company?
A. Yes, sir.
Q. About what period of time was that?
A. 1952.

Q. In what field is the Pyramid Rubber Company?

A. Baby feeding equipment.

Q. And that would be—when you say baby feeding equipment, would you be a little more specific and tell me, is that nursing bottles?

A. Nursing bottles, feeding dishes, appliances, et cetera.

Q. Where is Oil City Glass Company located?

A. Oil City, Pennsylvania.

[fol. 971] Q. And Oil City is located where, in what part of the state?

A. In the Western part, approximately 80 miles north of Pittsburgh and approximately 65 miles south of Erie, Pennsylvania.

Q. Does the Pyramid Rubber Company make any other products other than baby feeding equipment?

A. On occasion.

Q. And what type of products do they make other than that?

A. Rubber sundries, such as bath mats, custom molded products in the rubber industry.

Q. Does the Pyramid Rubber Company publish its annual sales?

A. No, sir.

Q. Would you object to saying whether your sales were over or under $10 million?

The Court: Wait a minute. Are you talking about Pyramid Rubber?

Mr. McManus: Yes, sir.

The Court: Or Oil City?

Mr. McManus: No, I am talking about Pyramid Rubber Company.

Mr. Hughes: What is the relevance?

[fol. 972] Mr. McManus: I just want to see how big Pyramid is.

The Court: All right, we will let you say how big it is.

The Witness: I can't answer, I am sorry.

Q. You cannot say whether it is or it is not?

A. No.

Q. Now, if we can go back:

Is Oil City Glass Company a division or a separate corporation?

A. It is a wholly-owned subsidiary of Pyramid Rubber Company.

Q. Now we will direct our questions to Oil City Glass Company. How many plants does Oil City Glass Company have?

A. One productive plant and one warehousing auxiliary plant, which would make two.

Q. And they are both located in the same place?

A. In Oil City, Pennsylvania.

Q. And the warehousing plant does not make glass containers, just warehousing?

A. Yes, sir.

Q. Was it formerly a producing plant?

A. Not as far as I know.

[fol. 973] Q. Did Pyramid Rubber Company merge with Oil City Glass Company or——

Mr. Hughes: Your Honor, I object to that. The witness has testified that it was a wholly-owned subsidiary.

The Court: All right. If you are going to ask him that, Mr. McManus, ask him whether he knows and what manner Pyramid acquired Oil City and when it occurred.

You can answer that question, Mr. Witness, if you know.

[fol. 974] Q. Would you answer that?

A. Yes, sir. They purchased the assets of the Oil City Glass Bottle Company in the fall of 1952.

Q. And was that an independent company?

A. It was not. It was a part of the Knox Glass Associates.

Q. Now, does your company make both wide-mouth glassware and narrow-neck?

A. Yes, sir.

Q. And in what field are those two most largely concerned with, either wide-mouth or narrow neck?

A. Approximately 40 per cent of our production is in the wide-mouth field; approximately 60 per cent in the narrow-neck field.

Q. Does your company make products for food containers?

A. Yes, sir.

Q. In the wide-mouth field?

A. Yes, sir.

Q. And does it make beer bottles?
A. No, sir.
Q. Soft drink bottles?
A. No, sir.
Q. Toiletries and cosmetics?
A. Yes, sir.
[fol. 975] Q. Glass containers for those?
A. Yes, sir.
Q. Does it make glass containers for household and industrial?
A. Yes, sir.
Q. And toiletries and cosmetics?
A. Yes, sir.
Q. Now, does it make glass containers in the narrow-neck field for food containers?
A. Yes, sir.
Q. Does it make narrow-neck containers for household and industrial?
A. Yes, sir.
Q. And toiletries and cosmetics?
A. Yes, sir.
Q. And of these groupings could you tell us what is the primary grouping that your company makes glass containers in?
A. Approximately 30 per cent in the food industry would be the primary.
Q. Would be the primary?
A. Yes.
Q. And the other 70 per cent would be in what areas?
[fol. 976] A. Around 30 per cent toilet and cosmetic line, toiletries. Here I have a problem. The baby nursing bottle, depending upon what classification you wish to put upon it, would represent 20 per cent.

The Court: What do you do, sell those to your parent?
The Witness: Yes, sir.

Q. Now, nursing bottles is one of your major items; is that correct, 20 per cent, did you say?
A. Yes, sir.
Q. You operate and make only flint glass?
A. Yes.
Q. You make no amber glass or no opal glass?

A. No.

Q. And you only have one tank?

A. Yes, sir.

Q. Does Oil City make any caps for glass containers?

A. No, sir.

Q. Does the Pyramid Rubber Company make caps for your glass containers?

A. No, sir.

The Court: Except in the sense that they make things to [fol. 977] put over the baby bottles; is that right?

The Witness: Pyramid Rubber Company has other companies, your Honor.

The Court: Oh, I see.

Q. Does Pyramid Rubber Company make the caps for your nursing bottles?

A. Pyramid Rubber Company as such does not make caps for our bottles.

Q. One of Pyramid's subsidiaries?

A. Yes.

Q. Who would that be?

A. Harcort Manufacturing Company.

Q. And you testified, you sell the bottles to Pyramid and they in turn sell it to the trade?

A. Yes, sir.

Q. You don't sell the nursing bottle directly to stores and retail outlets?

A. No, sir.

Q. Does Oil City Glass Company manufacture machinery for putting caps on glass containers?

A. No, sir.

Q. Does your company manufacture shipping containers?

A. No, sir.

[fol. 978] Q. Could you give me an approximation of what percentage of your glass containers are sold in corrugated shipping containers?

A. That we sell?

Q. Yes.

A. In corrugated shipping containers?

Q. Yes.

A. A hundred per cent.

Q. When you transfer your nursing bottles from your

plant to Pyramid, is that in corrugated shipping containers?

A. Yes, sir.

Q. And could you give me a breakdown in an approximation of, a cost breakdown, if you could do it, of what the raw material represents in the final cost of your glass container? Could you give me an approximation?

A. No, sir.

Q. Would you know approximately what your labor cost would be, in a percentage, approximately?

A. Roughly, 30 per cent labor.

Q. Would you now be able to recall what your raw material might be?

[fol. 979] A. It fluctuates to a degree that I would have to give you a figure.

Q. I see. And would you know what your shipping container cost would represent to the final cost of your item, approximately?

A. Approximately 23—20 to 23 per cent.

Q. Now, is most of your production in private mold or is it stock mold, or which?

A. Private mold.

Q. And by that the purchaser will designate the design and the type of container that he desires to have?

A. Yes, sir.

Q. And do you furnish the mold?

A. Yes, sir.

Q. You have your own mold shop?

A. We have our own mold shop.

Q. And do you normally make your own mold?

A. Very few.

Q. Do you have them made outside?

A. Yes, sir.

Q. Are nursing bottles today, to your knowledge, made of any other material other than glass?

A. No, sir—excuse me.

[fol. 980] Q. Yes.

A. Strike that. Plastic.

Q. How many salesmen does your company have, Oil City?

A. We have one salesman on our payroll.

Q. Do you normally sell through jobbers or——

A. We have one salesman and we sell the rest through sales commission men.

Q. Would there be a number of those?

A. We have two.

Q. And what percentage of your glass containers would be sold within approximately 300 miles of your plant?

Mr. Handler: Sold—I didn't get the last part of the question.

Q. Would be sold within 300 miles of your plant?

A. Around 50 per cent, approximately 50 per cent.

Q. If we went out to 500 miles of your plant, could you make an estimate of how many of your glass containers would be sold in that area?

A. 98 per cent.

Q. Are all of your sales east of the Rocky Mountains?

[fol. 981] Mr. Hughes: I am sorry. I didn't hear that question.

Q. Are all of your sales east of the Rocky Mountains?

A. All of our sales are east of the Rocky Mountains. We have on exception shipped to the West Coast occasionally.

Q. But that would be an occasional shipment?

A. Yes, sir.

Q. And would that be your nursing bottle?

A. We do not sell nursing bottles, only to one customer.

Q. I am sorry. So it would be an incidental shipment that you might make?

A. Yes, sir.

Q. And it could be any one of your lines?

A. Yes, sir.

The Court: How would that come in to you? Would it be an unsolicited order or something of that nature?

The Witness: It would be an order from an account that we would have, who would designate the shipment being made to the West Coast.

The Court: I see.

[fol. 982] Q. Now, you indicated 30 per cent of your production goes into food containers; is that correct?

A. Yes, sir.

Q. And could you estimate what percentage of that is in wide-mouth and what percentage is in narrow-neck, approximately?

A. Approximately 80 per cent of the 30 per cent would be in wide-mouth.

Q. Now, it is necessary as the manufacturer of a wide-mouth container to put a ring or some type of finish up to the neck, up near the neck, so that the cap will fit on; is that correct?

A. Yes, sir.

Q. Are there standard specifications for the finish on glass containers?

A. On most of those that we make there are standards set.

Q. Are there also standards set for the caps to fit the glass container?

A. This I do not know.

Q. Have you ever had an occasion, to your knowledge, where the cap would not fit your glass container?

A. Yes, sir.

[fol. 983] Mr. McManus: That is all I have, your Honor.

The Court: All right, Mr. Hughes.

Mr. Hughes: Just one moment.

The Court: Yes, sir.

What did you say your total volume at Oil City was, dollarwise, roughly?

The Witness: $5,000,000.

The Court: $5,000,000.

Mr. Hughes: Your Honor, could we take a short recess? The cross-examination is going to be short, but I think it would be helpful if I could have about five minutes.

The Court: Very good. We will take a five-minute recess.

(Short recess.)

[fol. 984] The Court: All right, Mr. Hughes.

Cross-examination.

By Mr. Hughes:

Q. Mr. Hunt, would you say competition in the glass container industry was keen and vigorous?

A. Yes, sir.

Q. Your Oil City Glass Company entered the glass container business in 1952; is that correct?

A. Yes, sir.

Q. And you started out with one customer; is that correct?

A. Yes, sir.

Q. And at the present time you are operating at capacity, are you not?

A. Yes, sir.

Q. And you are making money?

A. Yes, sir.

Mr. Hughes: That is all.

Oh, one further question, your Honor.

Q. You report your statistical data from time to time to the glass Container Manufacturers Institute, don't you?

A. Yes, sir.

Q. And in making those reports do you report on your sales of these baby bottles that you have described? [fol. 985] Do you include them in the report?

A. Yes, sir.

Q. And under what classification do you carry them as you report to GCMI?

A. Pharmaceutical line.

Mr. Hughes: That is all.

The Court: All right, anything further?

Mr. McManus: Yes, I have just one or two more.

Redirect examination.

By Mr. McManus:

Q. You indicated that you have a one-plant operation and that is making only flint glass.

A. Yes, sir.

Q. I guess it is so obvious I shouldn't ask you, but if you desire to make either amber glass or opal glass you would have to shut down the tank of making flint; is that correct?

A. Yes, sir.

Q. How many employees does your company have?

A. Approximately 380.

Q. Do you have decorating facilities for glass containers?
A. Yes, sir.
Q. And where is that located?
[fols. 986-993] A. In Oil City, Pennsylvania.
Q. And your company, that is, Oil City, only makes glass containers; is that right?
A. Yes, sir.

Mr. McManus: That is all I have.
Mr. Hughes: No further questions.
The Court: All right. Thank you, sir. You may step down.

* * * * * * * *

[fol. 994] Robert S. Solinsky, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Solinsky, by whom are you you employed?
A. National Can Corporation.
Q. And in what capacity?
A. Chairman of the board and chief executive officer.
Q. For what period of time have you held this position?
A. Well, as chairman of the board, about two years; prior to that, as president for about five or five and a half years.
Q. And how long have you been associated with the can business, metal cans?
A. It will be 52 years the first of July.
Q. And could you tell us what companies you have been associated with just through the years?
A. American Can, Continental Can, Cans, Incorporated, which is a company that I formed of my own, and National Can.

The Court: Before we go any further, I think that the record should note Mr. Goldberg's appearance, if it [fol. 995] does not already do so.

Mr. Goldberg: Thank you. I have already asked him for the copy of this transcript of this witness.

The Court: All right, you will note Mr. Goldberg's ap-

The Court: All right, you will note Mr. Goldber's appearance on behalf of Mr. Solinsky and the National Can Company.

Mr. Goldberg: Thank you, sir.

Q. Now, does your company, that is, National Can, manufacture any product other than metal cans?

A. No, sir.

Q. For how long a period has National Can been in existence?

A. Well, it is an outgrowth of other companies. It has been in business as National Can—it is hard to describe, because it is an outgrowth of many companies—but from its inception it has been in business over 75 years.

Q. I see.

A. Starting with some other name.

Q. You said you were originally with Cans, Incorporated?

A. Yes.

Q. And is that now part of National Can?

[fol. 996] A. It is merged with National Can.

Q. And for what period of time were you with Cans, Incorporated?

A. Started Cans, Incorporated, the first of February, 1939, and merged with National Can December 30, 1952.

Q. Now, was Cans, Incorporated—where was it located?

A. Chicago.

Q. And how many plants did you have?

A. Two.

Q. Were they both in Chicago?

A. One in Chicago and one in Warren, Ohio, which was not a can plant, it was a lithographic plant.

Q. And when you merged with National Can, how many plants did you have?

A. They have four plus our two, made a total of six.

Q. And where were their four located?

A. One was Maspeth, Long Island; Baltimore, Maryland; Hamilton, Ohio; and a suburb of Chicago, Clearing, Clearing, Illinois, which is Chicago.

Q. And since 1952 have there been any other consolidations by National Can?

[fol. 997] A. A few.

Q. Did you consolidated with Pacific Can?

A. We did in about the middle of January, 1955.

Q. And where were Pacific Can's plants located?

A. All in California. They had—they still have—the plants we had there, one at Los Angeles, Sunnyvale, Modesto, San Leandro, and a machinery plant for building can-making machinery at Santa Clara.

Q. So at the present time National Can has plants from the East Coast all the way to the West Coast?

A. Yes.

The Court: That would mean, as I understand your testimony, Mr. Solinsky, that plants of all natures, including machinery plant and lithographic plant—are you still operating the lithographic plant?

The Witness: Yes, we do.

The Court: That would be eleven plants; is that right?

The Witness: We have added more since.

The Court: You have added more since.

The Witness: We have added more.

Q. And will you tell us what plants you have added, [fol. 998] Mr. Solinsky?

A. Well, in order to compete with the large can companies we had to build small plants in areas that we were paying freight to meet competitive prices. So we built the small plants in the following locations:

Marion, Ohio; Cleveland—rented, these are all rented plants, although we built some and we rented locations in other places. I mention those two in Ohio.

We built a plant at Hanover, Pennsylvania, just completed. We bought the machinery and a plant from a canner who wanted to sell his plant and give us his business, which didn't work out entirely as we had planned, but we did this piece of business at Cambridge, Maryland. That is our Eastern.

Then we built a plant at Green Bay, Wisconsin, and we located another lithographing plant at Melrose Park, Illinois, which is another suburb of Chicago, and we have

added a plant at at Yakima, Washington, and Vancouver, Washington, just completed. That is the total.

In the meantime, we had other locations which we had to give up because we only had a limited amount of [fol. 999] equipment, but if we had continued all of the plants we had and added these new plants we might have had more, but we now have nineteen plants.

Q. I see.

A. (Continuing) We do not own any of these plants that we have added. We rent and we use the equipment taken from our other plants in order to be able to start these new plants to meet competition.

[fol. 1000] The Court: In other words, this is something of a decentralization operation?

The Witness: Somewhat.

Q. And you say that you have discontinued some plants?

A. Yes. I would not be prepared to say exactly where they were. I happen to remember one in California but it would be hard for me to give you that exactly.

Q. Now, for the record, could you in a general way tell us about the operation of a tin plant, starting from the tinplate and giving us a general description?

A. It will take quite a while to give it to you in general detail but I can give you an idea of it.

The Court: Just give us the highlights.

A. We buy tinplate and all of the other materials that go into it, like lithographing inks, paints, varnishes, compounds for soldering the side seams, paper and other things for proper packaging and cartons.

This tinplate is put through automatic equipment at a speed depending on the age of the equipment and the up-to-dateness of the equipment. And then in the main or packers' [fol. 1001] cans particularly, we run the cans at high speed automatically, and it is fed through a slipper, depending on the size of the cans, and the ends are made on presses, automatic and other types of presses. The bodies are fed through what we call a body-maker and it then goes through various stages. And in the proper position of the line, the ends are fed in for the bottom to be placed on the can. Then you have a finished can without a top.

Packers' cans are open top or sanitary cans which includes foods, oil and things like that. It comes out a finished can without a top so that the packer after filling the can, puts the top on in about the same manner as we put the bottom on.

The Court: Let me ask you this: Do you supply the tops to go with the open can?

The Witness: We sell them the tops. We sell them as many tops as we sell them cans.

The Court: In other words, the top theoretically is part of the can?

The Witness: The can is not a can without the top.

By Mr. McManus:

Q. And the price of the cans that you make normally [fol. 1002] includes the tops?

A. Normally. Sometimes there is a differential in the can price without the top, that is, the top may be separate but it adds up to the price for the can.

Q. The basic raw material for tincans is steel-coated plate, is that right?

A. Tinplate, steel-coated with tin. Some also is plain steel, black plate, we call it. It is steel without a tin coating. For some purposes tin is not required.

Q. In 1956 were you at that time selling cans both on the East Coast and on the West Coast?

A. Yes.

Q. And were your prices for your cans different on the West Coast than they were in the East?

A. Yes.

Q. Were they higher or were they lower?

A. They are higher on the West Coast than east of the Rockies.

Q. Generally speaking, why is it that they are higher on the West Coast than they are in the East?

A. Well, primarily it goes back to the period when there [fol. 1003] wasn't any tinplate made on the Coast, and the cost of shipping that tinplate to the Coast was greater than in the Middle West and East where there are steel manufacturers and tinplate manufacturers.

Following that, there were a few steel companies, steel plants built on the Coast, and the price was reduced slightly as a result of that, but it costs more to produce tinplate in California than it does east of the Rockies. As a result the price of tinplate is higher even today on the Coast than it is in this section or east of the Rockies, and that causes the higher price.

The Court: Does the differential in the cost of labor enter into that?

The Witness: No, I think—I am not in the steel business, but from the things that I have heard, it is because of the raw materials which they must bring in.

The Court: The raw materials?

The Witness: Yes, sir.

Q. To your knowledge, is tinplate shipped into the West Coast?

A. We ship a great deal in. All of the tinplate that is used out there is not made there, but they meet the com-[fol. 1004] petitive prices out there. The price out there is higher than it is east of the Rockies but they meet the competitive prices.

Q. Now, I heard you mention in your testimony here the term "packers' cans" and the term "sanitary cans." Will you explain that?

A. That is a term that started many years ago. It doesn't really mean what it did many years ago. Packers' can is a term used for food cans, for food that comes out of the ground and food that comes out of the trees, like fresh fruit that must be packed immediately. In effect, it is a sanitary can, an open top sanitary can which is used for food packing, whether it be food that must be packed immediately after it is taken from the trees or out of the ground, or dried beans or any of those source of foods, and prepared foods that are manufactured in a plant such as meats and things of that sort. But the same can is also used with some variations in the construction and things of that sort for beer, pet foods and things like that, oil, and many other things.

Q. Are there in addition non-food cans or other cans other than packers' cans?

A. There are.

[fol. 1005] Q. And do you have a general classification for that?

A. Well, they come into many classifications. They are known as general line. As a matter of fact, these items I mentioned such as pet food and oil and beer are termed general line in the can industry. But these other general line items are different types of cans. They are cans with different sorts of fittings and different shapes.

For example, we make paint cans, varnish cans, and grease cans, cans for talcum powder, tooth powder and various cans of that sort, and also the anti-freeze solutions which go into the automobiles, and waxes and polishes.

By the Court:

Q. Would it be a fair thing to say, Mr. Solinsky, that the packers' can is typical of the can when you buy a can of tomatoes?

A. That's right.

Q. That is your packers' can?

A. That's right.

By Mr. McManus:

Q. That is, there is no particular shaping of the can other than it being a cylinder with an open top?

A. That is correct.

[fol. 1006] By the Court:

Q. Then when you get to particular shapes of various cans, such as, for instance, a can of tooth powder, or other shapes, those go into general line, is that right?

A. That's right.

By Mr. McManus:

Q. Would you say that normally packers' cans are used for foods, is that right?

A. Yes, that is right.

Q. Now, Mr. Solinsky, could you tell me approximately what position you are in the industry, first, second, third, fourth or fifth?

A. We are in the third position in the can industry.

Q. And could you tell me now who is in the No. 1 position?

A. From statistical figures that we get through the De-

partment of Commerce and other means of getting figures, including reports which are issued by the different companies, American Can Company is first in the can business, Continental Can second and we are third.

Q. And who is the fourth?

[fol. 1007] A. Well, it would depend on whether you mean can companies that make cans for themselves or for sale.

Q. Let us take the can companies that make cans for sale.

A. Well, I believe that Crown would fit into the fourth place, the Crown Cork & Seal Company who have a can division.

Q. And would you be able to say who would be the fifth and sixth?

A. It would be very difficult but I could give you a general idea of what I think.

Q. All right.

A. Because they run way down from Crown to possibly —I would hate to tell them about their business—but I think it would be Heekin Can Company of Cincinnati.

Q. To your knowledge, American Can sells coast to coast?

A. Yes, sir.

Q. And that is true of Continental Can?

A. Yes.

Q. And your company would be also classified as selling coast to coast?

[fol. 1008] A. We sell coast to coast but we don't have plants in all sections of the country.

The Court: Let me ask you this: what is your overall volume?

The Witness: Well, last year we did $101,000,000.

Q. And does Crown Cork & Seal Company have plants both in the East and on the West Coast?

A. They have in the East but they only have one plant on the West Coast. That is the Crown plant, and they have two beer lines in that plant, and that is all the cans they make on the West Coast, to the best of my knowledge.

Q. You mentioned Heekin. Do you know the area or areas——

The Court: How do you spell that?

The Witness: H-e-e-k-i-n.

Q. Do you know the areas of the locations of their plants generally?

A. Approximately—they have a plant in Cincinnati. That is their home. They have one in Springdale, I believe is the name of the town, in Arkansas, and they have a plant in Tennessee, and I don't know the name of the town. [fol. 1009] It is in a customer's plant, I believe. They have can lines in a customer's plant or adjacent to it.

Q. Their plants are located generally a the central part of the United States?

A. Correct.

Q. All the companies that you have mentioned to date, do they make both packers' cans and general line cans?

A. Yes.

Q. Do they all make aerosol cans?

A. We do not make aerosol cans. Heekin does not make aerosol cans. The other three do.

Q. Do all of those companies make the vacuum-style coffee can?

A. Only two of them, American and Continental. You are speaking of the collar can, the open collar can, which is the vacuum-style coffee can. Other people make cans for coffee but they are not the popular coffee can. In other words, there is a small order of cans for some special type of coffee which may be made by anybody.

Q. Now, are there other companies—we went down to Heekin, but what are some of the other principal companies [fol. 1010] that you can recall?

A. Well, there are a number of them, but they are all. There may be one in general line cans that might be equal to Heekin but I wouldn't want to speak for them, but I believe the J. L. Clark Company in Rockford is one, and there are many other companies that are down lower in sales volume.

I know of many, possibly ranging from the size of just below Heekin and Clark, of companies that make less than a million dollars worth of cans a year, and there might be up to seventy-five of them in the country, but that is a guess.

Q. I see.

The Court: Mr. Solinsky, what would you judge, as far as you know, to be the volume range of Heekin and Clark?

The Witness: Your Honor, I wouldn't want to be quoted because——

The Court: Then let me ask you this: would they be selling about $50,000,000 worth a year?

The Witness: No.

The Court: Much less than that?

The Witness: Much less.

The Court: $25,000,000?

[fol. 1011] The Witness: Probably a little less than that.

The Court: Somewheres in between?

The Witness: I would say a little under $25,000,000 because it is my guess that the Crown Can Company or the Can Division of Crown, that the sales of the cans would just be a little over $50,000,000, and there is quite a spread between them and us and Heekin.

Q. Does the J. L. Clark Company makes packers' cans?

A. They do not.

Q. They make just general line cans?

A. They make general line cans and many odds and ends that are not even tincans but relate to the equipment that they use for can-making.

Q. And do you know where their plants are located?

A. They have a plant in Rockford.

Q. Rockford in what state?

A. Illinois. That is their main plant, and they recently, a couple of years ago, merged with or bought a company in Pennsylvania that makes general line cans only. I don't know the name of the town but it is in Pennsylvania.

[fol. 1012] Q. Now, any of the companies that you mentioned, these seventy-five smaller companies, do they operate on a regional or a sectional basis?

A. Yes, I believe they all do. I don't know of any that have more than—well, there may be one that has more than one location, and the others probably have only one location in just a section.

Q. There would be, to your knowledge, no other national company?

A. That's right.

Q. You have covered all the national companies?

A. That's right.

Q. When you were giving us estimates of sizes, there were certain companies, you said, that were making cans for themselves who were important in the industry?

A. Yes.

Q. Do some of those companies also sell to the trade?

A. Yes, sir.

Q. When you were trying to decide whether Crown was third or fourth or fourth or fifth, you had a company in mind that was a captive plant?

A. There has been a controversy regarding the size of [fol. 1013] one company compared with us, and that is the Campbell Soup Company who have made their own cans for many years. We believe that if they were to sell their cans and put a dollar value on it, we would be larger than they.

The Court: But there is some question about it?

The Witness: Yes. They do not sell cans.

Q. They sell no cans?

A. They sell no cans. As a matter of fact, they buy some for some of their products at times, and they have a subsidiary company that we sell some cans to in California.

Q. Are you familiar with the Armstrong Paint Company?

A. Yes.

Q. Do they manufacture cans?

A. They manufacture cans and they buy some and they sell some.

Q. What type of cans do they sell?

A. Paint cans.

Q. And to your knowledge that is all?

A. That is all they make.

Q. Do you know of the B. T. Babbitt Company?

[fol. 1014] A. Yes, I know of them.

Q. Do you know what type of cans they make?

A. As far as I know, and I am quite sure I do know, they make what we call a composite can.

Mr. Hughes: I am sorry, I did not get that word.

The Witness: Composite—fibre paper with metal ends, and we call that a composite can.

Q. The Borden Company, do you know that company?

A. Yes.

Q. They also manufacture cans, do they not?

A. They make the old style milk can that has been in existence ever since cans were first started to be made.

The Court: The great big milk cans?

The Witness: No, the small evaporated milk can. They

have sold milk cans. I don't know whether they have continued with it, but they have.

Q. They do sell some?

A. They have sold, and I don't know whether they still are, but they have sold cans to other milk companies.

Q. And they would be milk cans?

A. They make milk cans only.

[fol. 1015] The Court: What was the name of that company?

Mr. McManus: Borden.

Q. Now, the California Packing Company, is that company engaged in the manufacture of cans?

A. Yes.

Q. Do they make them for their own use?

A. Yes, sir.

Q. Do they sell cans, do you know?

A. They do not.

Q. Do they buy cans?

A. They buy some.

Q. Now, Carnation Milk, are they a manufacturer of cans?

A. They are a manufacturer of milk cans, the old-style evaporated milk cans, and they have always sold cans. They have been known as can sellers to other milk companies over the years, and several years ago they went into the dogfood manufacture, and they made their own cans, and they sell cans. Recently they have gone into selling other types of cans in the packers field.

[fol. 1016] Q. Does the Pet Milk Company also manufacture cans?

A. They manufacture their own cans, not for resale.

Q. And those would be the evaporated milk cans?

A. I believe so. There were a few others who have since gone out of manufacturing their own cans.

Q. But Pet makes the evaporated milk can.

A. Yes, sir.

Q. Does the H. J. Heinz Company manufacture cans?

A. They manufacture their cans in the East. They do not sell any cans. They have a few plants between the East and Middle West who buy some cans, and they buy all of

their cans at their Tracy, California, plant. They do not sell any cans.

Q. How about the Sherwin Williams Company?

A. They make cans for themselves and for resale.

Q. And what type of cans do they make for resale?

A. Well, they make paint cans, oil cans, and what we call the oblong cans for polishes and waxes and such things. They make a full general line of cans for sale.

[fol. 1017] Q. Are you familiar with the Hollingshead Corporation?

A. Yes, sir.

Q. Do they manufacture cans?

A. They manufacture cans for their own use. They do not sell. They buy some.

The Court: For what products do they make them?

The Witness: They make them for various lines of chemicals and waxes and polishes.

Q. Does the Otoe, O-t-o-e, Food Products Company manufacture cans?

A. Yes. They have a very small can operation for themselves only.

Q. And they do not sell, to your knowledge?

A. They do not sell.

Q. Now, Mr. Solinsky, are you a member of the Can Manufacturers Institute?

A. Yes, sir.

Q. And for how long a period of time have you been a member of that organization?

A. I think we joined it in the days of Cans, Incorporated, during the war, about in 19—I am not sure of the exact date, but I would say about 1943 or—about '44, 1944.

[fol. 1018] Q. And have you been an officer in that corporation?

A. Yes. I was president of it for two years.

Mr. Hughes: What was the title? I am sorry. I missed the answer.

(Answer read.)

Q. And what period of time, what two years, sir?

A. I believe it was either in '45, '46, or '46 and '47. I can't remember exact dates.

Q. And are you familiar in a general way with their requirements for membership?

A. In a general way, yes, sir.

Q. You have to be a manufacturer of cans to be a member?

A. Well, yes, you must manufacture metal cans.

Q. Does that organization negotiate with suppliers to the can companies, to get the suppliers to advertise cans?

A. They did at one time.

Q. And they would be contacting the steel companies?

A. They did at one time.

The Court: When was that?

[fol. 1019] The Witness: They discontinued it. They did that back, oh, it's at least six or seven years since it's been done. They do not do that any more.

Q. They negotiated right after the war? Did they do that right after the war?

A. Yes.

Q. And to your knowledge, they carried it up through—

A. For several years.

The Court: Those were the suppliers of tinplate, I take it, mostly?

The Witness: That is correct.

Q. And they would be normally the steel companies; is that right, large steel?

A. Yes.

Q. Mr. Solinsky, could you tell me who first came out with the soft drink can?

A. To the best of my recollection, the Pacific Can Company were the first to manufacture a soft drink for sale, that is, the first to sell soft drink cans. I believe the larger can companies may have been working on the development of such a container, but Pacific was the first to sell can back in '52 or somewhere in there.

[fol. 1020] Q. And your company consolidated with Pacific thereafter?

A. Well, we didn't consolidate—I believe—we didn't consolidate until '55. But there were other factors that came in in connection with that. In the meantime, other can manufacturers got into the manufacture of soft drink cans.

Q. You are presently manufacturing soft drink cans?

A. Yes.

Q. And our American and Continental also manufacturing soft drink cans?

A. Yes.

Q. Do any of the others? Does Crown, do you know?

A. I haven't seen any of theirs, but I would imagine they do, because they make these cans on beer can equipment.

By the Court:

Q. Is the soft drink can roughly comparable to beer cans?

A. Yes.

Q. Manufactured in the same type process?

A. Correct; made slightly different.

[fol. 1021] Q. Is there much more that has to be done with it than with a beer can?

A. Well, made a little different for the reason that the pressure of beer in the can is less than the pressure of soft drinks.

Q. I see, carbonated.

A. It has got to be a little bit stronger for that purpose.

By Mr. McManus:

Q. The lining will probably be different or the lacquer?

A. The lining has to be different for each product.

Q. Has your company contacted the steel suppliers to have them assist in the advertising of this can?

A. No, sir.

Q. Do you advertise, does your company advertise the soft drink can?

A. No, sir. We do not advertise per se. We allow our customers an advertising allowance.

Q. So that your advertising of this type of can through your company is by giving an advertising allowance to the bottler?

A. That's right; to meet competition.

[fol. 1022] Q. And he is then to advertise the soft drink can?

A. That is correct. He would advertise his product in the soft drink tin can.

Q. Now, I forgot to ask you one question about the Can Manufacturers Institute, if I can go back to that.

Do the members in that Institute have voting rights according to their size or number of employees?

A. Number of employees.

Q. And could you tell me how that works out?

A. Well, I can't give you exact figures as to number of employees, but I can tell you something about the memberships.

American Can and Continental Can, who are the largest, have three memberships on their Board of Governors. That is what you are referring to, I presume.

Q. Yes.

A. National Can & Crown have two each. I believe that Heekin and Clark each have one. That is a total of twelve. And I believe there are some—I'm not exactly sure of these figures—but I believe there are some fifteen or so more which are elected from the membership at large.

[fol. 1023] Q. I see. And this is broken down, you say, based on number of employees?

A. Yes.

The Court: Incidentally, how many employees have you got over there?

The Witness: Approximately 5000. We run more than that in our busy season.

The Court: Yes, just roughly.

The Witness: That is roughly.

Q. Would you mind estimating approximately the size of your sales force, Mr. Solinsky?

A. Say that again, sir?

Q. Would you object to telling us the approximate size of your selling force, your sales force?

A. I can just give you a guess on that. I would say that we might have, if you included in and out, inside and outside people, our entire sales force?

Q. Yes.

A. About a hundred.

Q. Does your company sell cans for catsup?

A. No, sir; except—we do not sell cans for commercial sale of catsup, no.

Q. I am sorry. Do you sell your cans to packers, who put catsup in them?

[fol. 1024] A. We sell the size that is used for repacking the No. 10 can for commercial use, rather than for resale.

Q. The No. 10 can?

A. That's right.

Q. Do you also sell this No. 10 to packers of salad dressing and pickles?

A. Yes, for the same purpose, however, not for——.

Q. In the No. 10 size?

A. Yes, sir.

By the Court:

Q. Let me ask you this, Mr. Solinsky:

Let's take a packer. Plainly, you know what its products generally are?

A. Yes.

Q. If he ordered, say, 10,000 No. 10 cans—whether that is a big order or a little order—you wouldn't know necessarily, he wouldn't advise you what he was going to put in those cans?

A. He must. We have got to know.

Q. You have got to know that.

A. We sell those cans based on specifications. We must know what is going into the can or we do not warranty the can.

[fol. 1025] Mr. Hughes: Your Honor, it may be helpful to you to have the distinction in mind that I think the witness has in mind. The No. 10 can is the so-called institutional size. I think the witness is distinguishing between the so-called institutional sizes and the so-called consumer sizes.

Am I correct about that?

The Court: You have got to assume, Mr. Solinsky, that I don't know anything about the canning business.

The Witness: I will try to keep that in mind.

Mr. McManus: I think that was my fault, your Honor. I was getting to that.

The Court: All right, perhaps I am anticipating.

The Witness: I shouldn't have used that word.

By the Court:

Q. But what would the consumer type can—remember I referred to what I called the good old-fashioned can of tomatoes—what size cans would those be?

A. Well, they would be in any size up to a No. 10, [fol. 1026] although for some products the consumer might buy a No. 10 can, depending on the size of the family.

Q. What is the capacity of the No. 10?

A. Well, it is actually, depending on the product, the weight of it, it is five-sixths of a gallon.

Q. Five-sixths of a gallon?

A. Yes, approximately the size of it.

Q. And the cans would range, I presume, from half-pints to pints to quarts and ranges in between?

A. If you are going to measure that way, yes, if you are going to use that measuring stick.

Q. What would you call a can, which perhaps erroneously is referred to as a quart can, what number would that be?

A. That would be a No. 3, but the standard can for most products on the shelf would be a No. 2 or No. 303, which is a little smaller than the No. 2.

The Court: Yes.

By Mr. McManus:

Q. Now, do you sell cans for tomato puree or tomato paste?

A. Yes, we do.

Q. In the 303 size?

[fol. 1027] A. Yes, we sell them in many sizes, and the 303 is one.

Q. And you have heretofore testified——.

A. I would like to change that statement though. I wouldn't want to say "puree." Tomato products.

Q. Tomato products?

A. Puree may be a product that may go in just a six-ounce can, and on the other hand, other products made of tomatoes would go in all sizes of cans.

Q. Could you tell us, do you know the difference between tomatoe puree and catsup?

A. Well, I know it from taste and looks, but I wouldn't know how to describe it.

Q. It is a tomato product?

A. Sir?

Q. It is a tomato product?

A. That is correct.

Q. And, as you say, you sell the No. 10 can for catsup, and there is no problem in regard to packing catsup in a No. 10 can.

A. Oh, no.

Q. And I think you also said you pack salad dressings and pickles also in No. 10 cans?

A. For institutional purposes.

[fol. 1028] Q. And you have no problems with packing these products in metal cans?

A. No, sir. We do not pack the product. We sell the cans.

Q. I am sorry. You sell the can for packing.

A. Yes.

The Court: When you say "salad dressing," would you pack mayonnaise, for instance, in institutional size cans?

The Witness: They would be packed in institutional size, yes.

Q. Have you ever, or are you presently intending to put any of these products, either catsup, salad dressing or pickles, in smaller cans than in No. 10?

Mr. Hughes: Now, your Honor——

The Court: Wait a minute. He didn't put any products in cans.

Mr. McManus: Excuse me.

Q. Are you, have you in the past or at the present, are you attempting to sell cans smaller than No. 10 for either catsup, salad dressing or pickles?

COLLOQUY BETWEEN COURT AND COUNCIL

Mr. Hughes: Now, your Honor, this I think gets us to the threshold of a question that I think is going to create the problem concerning which we spoke to you at the bench, [fol. 1029] and I object to it if there is going to be an attempt now on generalizing on attempts. What does "attempt" mean, and all that sort of thing? And I think we have reached the point where we are going to run into some problems.

It may be, your Honor, that your Honor might want to discuss with counsel the problem of how this is going to be handled.

The Court: I think that might be well at this stage, in order to avoid possible difficulties. I don't want to get in a position where I have taken a substantial amount of testimony and, for example, I have to entertain or in fact grant a motion to strike on the ground that the defendant hasn't had an adequate opportunity of cross-examination.

I think what we had best do, gentlemen, is to take a brief recess, and I will have Mr. McManus and counsel for both sides and Mr. Goldberg in the robing room, and we can discuss where we go from here.

Mr. McManus: All right, sir.

The Court: In terms of the problems that may arise.

(The following took place in the robing room, all counsel [fol. 1030] being present including Mr. Goldberg, representing National Can Company.)

Mr. Handler: Your Honor, we are very much concerned for the reasons that you have indicated before the recess was taken.

As Mr. Hughes put it, we are on the threshold of going into a line of questions which will produce great difficulty, and we thought it would be extremely helpful if we knew exactly where we are going and what will eventuate from this type of questioning.

The question asks the witness what he plans to do. The next step is to ask him what kind of business he solicits. Then, of course, we must, if we are to be helpful to your Honor, draw a distinction between action and planning, between solicitation and sale. There can be solicitation which is unsuccessful. There can be solicitation that yields only insignificant results. There can be solicitation which is followed by sale.

The Court: That goes into the whole question of Mr. Solinsky's canning business.

Mr. Handler: Precisely.

The Court: And sales program.

[fol. 1031] Mr. Handler: Precisely so.

We want your Honor to understand, we want the Government to understand, we want Mr. Goldberg to understand,

that we couldn't care less about any of their statistical material, from a business point of view. We are not using this trial to get information for our own self-interest. However, we do not want these generalized statements to get into evidence without following up with persistent and comprehensive cross-examination, which will yield the exact facts.

So that our position is very simple:

If we are going into this, I think everybody should understand that we will insist, subject of course to your Honor's ruling, but we will move in the direction of getting all the details, and the only way we can get those details is to have access to the books and records and papers of the company. We prefer not to do it.

The Court: In the first place, have you anything to say to that, Mr. McManus?

Mr. McManus: No, I have nothing to say as to that, your Honor.

The Court: Well, I think that what you should do, and I think no harm can be done at this stage, is to outline the [fol. 1032] course of inquiry that you intend to pursue with Mr. Solinsky at this point.

Mr. McManus: Well, I intended to pursue it to only as far as asking him if he was soliciting business in these particular lines, if he was actually soliciting the business, and if he says, "Yes," that is as far as I intended to go.

The Court: What do you say to that, Mr. Handler? You say that that is meaningless?

Mr. Handler: Well, if he says that he is soliciting business, and your Honor rules that this is meaningless, there is no point in keeping Mr. Solinsky on the stand. If, however, we don't get a ruling that this is meaningless, then we have to ask the witness, "You have said you have solicited business in these various field. Has your solicitation been successful?"

If he says it has been successful, we will then ask, "To what extent? Who are your customers? What is this dollar value of the sales that you have made of cans?"

There is a question here of sections. So we have got to find out where he has been selling, and the witness doubtless is going to say, "I don't remember these details."

[fol. 1033] Then we are going to ask that he come back here with his invoices.

The Court: Well, now, let me come to this: There is no doubt whatsoever in my mind, I think in anybody's mind, that National Can Company is in competition with Continental. That is so elementary we don't have to worry about that.

Mr. Goldberg? Correct.

The Court: What is the purpose of developing the current solicitation of National Can? First of all, what fields do you intend to cover here?

Mr. McManus: Well, I was going——

The Court: What ranges of product?

Mr. McManus: Well, I was asking him in catsups, salad dressings and pickles, if in any of those fields he is trying to sell cans to various packers in those fields.

The Court: Well, he has already testified that he is selling cans, as I understand it.

Mr. McManus: That's right. But is he selling a can smaller than a No. 10 can, I should say, now? Is he trying to get that type of business? That is what we are concerned with. Is he as a can manufacturer trying to get that [fol. 1034] type of business?

The Court: What do you say is the purpose of that testimony and what is its relevance to the issues here?

Mr. McManus: Your Honor, to me it is——

The Court: I am not saying it isn't relevant. I just want to know what your position is.

Mr. McManus: Well, the relevancy is, your Honor, that if he is trying to get business from pickle packers, for example, or catsup packers——

The Court: You say he is trying to get glass business?

Mr. McManus: That's right; and whether he is successful or not, he is in competition with those people. The degree of his success is measured partially by his effort and partially whether they packed them or not. But he is a competitor of those people if he is going around to those food processors and trying to get their business.

For example, the can people are trying to get into the beverage field. It is quite obvious they don't have a big percentage, they don't have a big percentage at all.

But the people in the industry will tell you that is the [fol. 1035] most vicious and the toughest competition in glass and cans today. So the degree of success, the number of units added up is not the only factor to be taken into consideration.

The Court: It is not the only factor, Mr. McManus, plainly, but it is a factor. In other words, let's assume that National Can had been trying for five years—just taking something out of the air—to sell 303 cans for mayonnaise, and they hadn't sold a can. Now that is one set of facts. On the other hand, suppose they started in a modest way and they have gone from a volume of $50,000 the first year to a million dollars, let's say, the third year or the fifth year. This makes a great deal of difference as to competitive impact, it seems to me.

Mr. McManus: Your Honor, let's go back to the soft drink.

The Court: Of course, in this thing, necessarily, the quantitative element does affect the measure of competition that we are dealing with and the competitive impact of the whole thing.

Mr. McManus: Your Honor, the period of time or the success doesn't necessarily, in my mind, measure the [fol. 1036] competition.

The Court: Well, that isn't the point, Mr. McManus. Your theory is that it is not an important factor, but that is a matter of argument.

Mr. McManus: That's right, and that is what I am arguing now.

The Court: I am not going to hold that the quantity feature is irrelevant. I will take the quantity feature and weigh it against what I would call the qualitative feature and the extent of the effort and the success of the effort generally to determine how important the competitive factor of this thing is, as I must necessarily do.

So that if you are going into this field, this line of inquiry, I would be inclined to say to you that either the door is then open to cross-examination, or the initial inquiry is stricken. You cannot have it both ways. Because the right of cross-examination is essential to any testimony in chief, and if you deny a defendant the right of cross-examination

on testimony in chief that may be relevant, you have denied the defendant, in my judgment, a substantial right.

Mr. Goldberg: This is where I come in.

[fol. 1037] The Court: This is where you come in, Mr. Goldberg.

Now, have you anything to say? Don't hesitate to join in this discussion, because it affects your client's interest.

Mr. Goldberg: I am only thinking in that regard. I don't want to in any way impose upon anybody here, including your Honor. But we certainly are very, very zealous about safeguarding the details of our business with our customers, numbers, and the like.

I have indicated this to Mr. McManus. This is something that is not new, because we think it could be detrimental to us.

I quite agree with Mr. Handler that he is not in this lawsuit merely to pry secrets from us, at least I hardly think so. But nevertheless, my function is to preserve for ourselves the sanctity of our records with your help.

The Court: In the first place, the election is with Mr. McManus as to whether or not he pursues the line of inquiry, because I have, I think, laid down what I consider to be the ground rules for an inquiry of that kind.

Mr. McManus: Your Honor, I am in a quandary now, [fol. 1038] because I can't see what I can do other than attempt to pursue this line of inquiry, because I think it is important to the Government's case.

The Court: All right. Now that being so, we have the line of inquiry being pursued, and under the ground rules that I have laid down.

Now, the next question that arises is, is there anything that can be worked out with Mr. Goldberg that will give sufficient information to the defendants to protect their rights, and at the same time not impinge on the rights of Mr. Goldberg's client? That I have no answer to except to throw it out as a possible solution here.

Mr. Goldberg: Your Honor——

Mr. Johnson: Excuse me.

Mr. Goldberg: Go ahead.

Mr. Johnson: I was going to say to the Court, we don't know yet what the answers are going to be.

The Court: That of course is true.

Mr. Goldberg: You see, Mr. Johnson, this is my problem, that at this moment I don't know the scope of the inquiry into the particular categories of products, because I didn't feel it would be fair to ask Mr. McManus that; I really didn't know how this would come about. If I knew that, [fol. 1039] I could ascertain from Mr. Solinsky if he knew —I don't know even whether he knows—but I have no way of probing this problem at the moment.

The Court: Then I think, gentlemen, so that we can move forward here, the thing to do is to let Mr. McManus pursue that line of inquiry; all the matter will be taken subject to a motion to strike. When we conclude his line of inquiry, then there can be some exploration between you gentlemen and Mr. Goldberg as to what if anything—I am not saying it can be, but it is worth exploring—can be worked out in terms of mutual protection. If nothing can be worked out in terms of mutual protection, I will then hear Mr. Goldberg on the question of trade secrets and the extent to which he feels he needs the protection of the Court. I will then determine the extent to which I will give him that protection.

Mr. Goldberg: I see.

The Court: Now, that seems to me to be where we go from here.

Is there any other suggestion?

Mr. Greenberg: Your Honor, may I ask one question at this juncture?

[fol. 1040] Assuming in the future an arrangement is worked out, whether it is an estimating arrangement or some other type of arrangement, with respect to National Can or Glass, I would assume this would be a two-way street and we would get comparable statistics from Continental Can and each of its divisions as it relates to other companies.

The Court: No, not necessarily at all. It is an entirely separate problem. I have decided each one of these issues as they came along, and when we come to Continental Can I will deal with the Continental Can problem as it arises. But I am not going to tie these things together in a package. We are dealing with specific items of evidence, with specific problems.

Mr. Handler: Your Honor, before we conclude this very helpful conference and adjourn to the courtroom, I would like to be sure as to whether or not I understood Mr. McManus correctly, so we understand the dimensions of the problem and we can do something in preparing about it.

Am I correct in understanding Mr. McManus, that he has assured your Honor that he proposes to ask the witness with respect to the three products that he mentioned— [fol. 1041] pickles, salad dressing and catsup, in consumer sizes? Is that the dimension of the problem that we have before us?

Mr. McManus: That is what you have right now, gentlemen.

Mr. Handler: Well, do you have more?

Mr. McManus: I would assume if we had any more we would have the same problems.

The Court: No, no. You were talking about with Mr. Solinsky?

Mr. Handler: With Solinsky, do we have more?

The Court: With Solinsky do you plan to go beyond those three products?

Mr. McManus: Well, if we include mayonnaise in salad dressing——

The Court: Well, I assume that mayonnaise——

Mr. Handler: It is a matter of four products.

Mr. McManus: Well, salad dressing—if I can name the products, I will name the products.

The Court: Yes.

Mr. McManus: Salad dressing to me gets a little confusing, because I don't know if mayonnaise would be included, a thing like Wesson oil.

[fol. 1042] The Court: Yes. Well, Russian dressing would be included; would French dressing be included? I am just an amateur salad dressing man. I don't like either of them.

Mr. McManus: Well, it would be in those areas, your Honor. That would be, I think, salad dressing.

Mr. Handler: Those four products.

Mr. McManus: I think there might be five. Mayonnaise, salad dressing, whether it is Wesson oil or whatever it is, you have got that oil type product, catsup, pickles and did we have another one, mayonnaise?

The Court: No, you have got mayonnaise.

Mr. Handler: You mentioned that it is in that area.

The Court: All right, that is the dimension of the problem, gentlemen.

Mr. Greenberg: Your Honor, out of the proposed documents, there is a document out of the defendant's files which seeks to define salad dressing to some degree, and it refers to Kraft dressing and other kinds of dressing. It is a scientific report describing an aerosol can.

The Court: Well, we will take salad dressing as a broad [fol. 1043] category, and nobody is going to quarrel at this point whether it is French or it isn't French. You say Russian can't be put in cans?

Mr. McManus: I don't say it can't be. All I say is it is not. I am not going into that area.

The Court: You are not going to go into the Russian field.

Mr. Goldberg: May I ask a question?

Merely as a record of procedure, will it be necessary at this point to state our position, or I think this carries on.

The Court: I think your statement of position, which is on the record, is sufficient at this time. Let me say to you that by failing to make specific objection during the course of this discussion, you will waive no rights and all of your rights will be preserved.

Mr. Goldberg: Very good. That little discussion we had before you in the early morning was not on the record?

The Court: No, that's right, but this is.

Mr. Goldberg: Very good.

The Court: We will have a brief respite, gentlemen, for your own comfort and convenience.

[fol. 1044] (Short recess.)

(The following took place in the courtroom:)

The Court: Mr. Solinsky, will you resume the stand, please?

Robert S. Solinsky resumed.

The Court: Mr. Goldberg, have you informed Mr. Solinsky about the course of our conversation?

Mr. Goldberg: I did not, your Honor. I did not. And I don't know whether it may not be a good idea. I did not have an opportunity.

The Court: It seems to me, in all fairness to Mr. Solin-

sky, that Mr. Solinsky should be aware of the general tenor of our discussions in the robing room, and for that I will give you a brief opportunity to confer with him before we resume questioning, so that he may be aware of the posture of the things at the moment.

Mr. Goldberg: All right.

The Court: Do you want to take him out?

Mr. Goldberg: Well, I can take him right outside the courtroom.

The Court: Suppose I give you a couple of minutes and [fol. 1044a] let me know when you have talked to him.

Mr. Goldberg. Thank you.

(Short recess.)

[fol. 1045] The Court: All right, Mr. McManus.

By Mr. McManus.

Q. Now, Mr. Solinsky, you have heretofore testified that you had sold cans of the No. 10 size to packers who were packaging catsup, salad dressing and pickles?

A. For institutional use.

Q. The No. 10 size?

A. Right.

The Court: Just let us for the moment, so that the record can be clear, define "institutional use."

What do you mean by that, Mr. Solinsky?

The Witness: Well, the products that go to restaurants, hotels, clubs, and so forth, which are in large containers, and repacked by them in the smaller containers for use in those places.

The Court: As I recall it, the No. 10 can, you said, would have a liquid capacity of three-quarters of a gallon?

The Witness: Actually five-sixths of a gallon.

The Court: Five-sixths of a gallon?

The Witness: Yes.

[fol. 1046] Q. You testified that you had sold to packers No. 10 cans for packaging catsup, salad dressings and pickles?

A. Yes, sir.

Q. Do you also sell the No. 10 cans for Wesson Oil—

Wesson Oil is a trade name, but do you sell the No. 10 cans for that type of product?

A. That isn't the type of can used for what you might call vegetable oils or vegetable compounds which are salad oils. That is not the type of can used for that purpose.

Q. Is it a smaller can or a larger can?

A. No, it is an oblong half-gallon or gallon can.

The Court: With a screw top?

The Witness: Yes, with a screw top.

Q. That would not necessarily fall into the institutional category, would it?

A. Not necessarily.

Q. Are these sold for home consumption, the Wesson Oil type of cans?

A. Yes, they are.

Q. Going back to the catsup, salad dressings and pickles [fol. 1047] and mayonnaise categories, are your sales people offering for sale containers smaller than the No. 10 can for any of those products?

Mr. Hughes: If your Honor please, I object to the form of the question. It seems to me that it should be broken up.

The Court: Yes, I think you better break it up.

Mr. McManus: I will withdraw the question.

Q. Is your company offering for sale any metal containers for packaging of catsup in sizes smaller than the No. 10 size?

A. I do not know of any particular offers of catsup for sale.

Q. Are you offering for sale smaller than the No. 10 size metal containers for salad dressings?

A. Our salesmen are instructed to go out and try to sell cans for that purpose. We have not been successful to date.

Q. Is your company attempting to sell containers smaller than the No. 10 size for pickles?

A. The same answer applies to that.

Q. To your knowledge, are there presently on the market containers smaller than the No. 10 size——

[fol. 1048] The Court: Let us get mayonnaise out of the way first.

Mr. McManus: Excuse me.

Q. Are you offering for sale containers smaller than the No. 10 size for mayonnaise?

A. The same answer will apply to those as to pickles.

Q. And the salad dressings?

A. Yes.

Q. Do you of your own knowledge know that there is presently on the market and presently being marketed pickles in metal cans in sizes smaller than the No. 10 can?

A. Yes.

Mr. Hughes: I object to that, your Honor, and I move to strike it out.

The Court: He asked, did he know.

Mr. Hughes: I beg your pardon.

The Court: That is all you asked him, is that correct?

Mr. McManus: Yes, I asked him if he knew.

The Court: Then he said, yes, he knows. Now the next question is, what do you know?

[fol. 1049] Mr. Hughes: I object to that.

The Court: All right, I will overrule your objection.

Q. How did that come to your knowledge, Mr. Solinsky?

A. I have seen it in my home.

The Court: The answer is that there are such products being marketed in those containers, is that right?

The Witness: Yes, sir.

The Court: And you have actually seen them?

The Witness: Yes, sir.

The Court: That is as to pickles?

The Witness: Yes, sir.

Q. As to pickles, to your knowledge, are there glass containers which are marketed to packers which are comparable to the No. 10 size?

A. I do not know.

Q. To your knowledge, are there glass containers marketed for packers which would fall into the institutional category?

A. I do not know.

Q. To your knowledge, is there catsup in sizes smaller than the No. 10 cans being marketed?

[fol. 1050] A. I have never seen them.

Q. Would your answer be the same for salad dressings?
A. Yes.

The Court: And mayonnaise?

Q. And mayonnaise?
A. Yes.

Q. Now, Mr. Solinsky, going to another subject, and back to the companies which you listed as the principal companies in this field, you testified that you entered this field in 1908, is that correct?

A. That is correct.

Q. Was American Can Company in the manufacture of cans at that time?

A. Yes, sir.

Q. Was Continental Can Company?

A. No, sir.

Q. Do you know when they went into the manufacture of cans, about?

A. I am sorry, I beg your pardon. I was wrong in that statement. Continental were in business in 1908. I am sorry. In order to explain my error, I meant they started after The American Can but they were in business in 1908.

[fol. 1051] And National Can, you testified, was in business at the time you entered in 1908?

A. Under some other name.

Q. Was Crown, the can division of Crown Cork & Seal in business at that time?

A. They were not in the can business at that time.

Q. To your knowledge when did they go into that business?

A. 1935.

Q. To your knowledge, was the Heekin Can Company in business at that time?

A. They were. I would like to change that answer. Heekin may have been in the can business. They were in the can business but whether they sold cans I do not know. They started as the Heekin Can Spice Company and made their own cans, and then went into the can business. Whether they were in it at that time I cannot remember.

Q. Was the J. L. Clark Company in business at that time?

A. Yes.

Q. Of the first six companies that you listed, the only one that has entered since 1908 was Crown in 1935?

[fol. 1052] A. Yes, sir.

Mr. McManus: That is all I have.

Cross-examination.

By Mr. Hughes:

Q. What about the captive companies?

A. They were in business, the milk companies, particularly.

Q. But they were not in the can-making business?

A. They were in the can business manufacturing their own cans, not for resale.

The Court: You are talking about the small evaporated milk cans?

The Witness: Yes.

Q. Was Campbell in the can-making business back in 1918?

A. No, sir.

Q. When——

A. 1908 is the time you were referring to.

Q. Was it in 1908, were they in the can-making business then?

A. It was not.

Q. What other——

Mr. McManus: Excuse me. I was not finished with the witness. Are you cross-examining now?

[fol. 1053] Mr. Hughes: Yes.

Mr. McManus: I wanted to get one thing cleared up. I hope that you understood my original question.

Mr. Hughes: Perhaps we should have the question repeated.

Mr. McManus: I would be glad to repeat it.

The Court: Wait a minute now, gentlemen. I am sorry, Mr. Hughes, but I don't know what you are talking about. What is the difficulty?

Mr. McManus: Well, I asked the witness a question as to whether the six companies that he listed—

The Court: Yes, I know.

Mr. McManus: I asked him if since 1908 the only entry of those six companies was the can division of Crown, and he said that is correct. I just wanted Mr. Hughes to realize that that was my question.

Mr. Goldberg: May I be heard, your Honor?

The Court: Yes.

Mr. Goldberg: I would like to refresh the witness's mind that there was one other entry that he knows about that he may have forgotten.

The Court: What is that?

[fol. 1054] Mr. Goldberg: There was an entry on the part of one of the glass companies into the can business, and I thought that the record ought to be clear on that point.

The Witness: I did not get the question properly then. The question I thought was whether there were other can companies still in existence at that time. In 1935 the Owens-Illinois Glass Company went into the can business but they are no longer in it.

The Court: Is that what you had reference to?

Mr. Goldberg: Yes, that is what I wanted him to clear up.

The Court: All right, Mr. Hughes.

Mr. Hughes: Your Honor, just so that I am sure that I have the full context of the last few questions to the witness, I wonder if we could have those read back?

The Court: Yes.

(Record read.)

By Mr. Hughes:

Q. You are not, Mr. Solinsky, in a position to state, are [fol. 1055] you, how many pickles are sold in cans smaller than the No. 10 size can?

A. No, sir.

Q. And isn't it a fact that about 1 per cent of the total number of soft drinks sold in this country are sold in the metal cans?

A. I don't know whether that is the figure but it is a very small amount.

Q. It is around that percentage, is it not?

A. It might be less.

Q. Would you say that competition in the can industry is keen and vigorous?

A. Yes, sir.

The Court: What would you say, Mr. Solinsky, with respect to the comparative keenness and vigor of competition in the can industry between 1956 and today?

The Witness: Much, much tougher today than it was in 1956.

The Court: Competition is tougher than it was in 1956?

The Witness: Yes.

By Mr. Hughes:

Q. Would you tell me when or approximately when each [fol. 1056] of the plants which you indicated as additions to your company were built, and fix the time approximately when each of them were built?

A. Going back to our first one, it was Cleveland in about 1954; Green Bay, Wisconsin, 1956—and do you want the names or rather, the dates of acquisitions or mergers?

Q. I was thinking of actual plants as additions.

A. Marion, Ohio, in 1957.

The Witness: I will ask Mr. Goldberg to refresh my recollection on Cambridge because he was involved in the deal.

Mr. Goldberg: May I do that, your Honor?

The Court: Yes.

Mr. Goldberg: I think Marion was 1958 and Cambridge was 1958.

The Witness: I think that is about right. We started building it in 1957 and finished in 1958.

Mr. Goldberg: And you have Yakima.

The Witness: Yakima, Vancouver, started last year and finished this year. Hanover started last year and finished this year.

[fol. 1057] By Mr. Hughes:

Q. And you mentioned Melrose Park?

A. That was in about 1957.

Q. And have you mentioned Cleveland?

The Court: Yes, he has.

Mr. Hughes: No further questions.

The Court: All right, you may step down, Mr. Solinsky. Thank you.

Mr. McManus: Excuse me, your Honor, may I ask one question?

The Court: All right.

Redirect Examination.

By Mr. McManus:

Q. Are your firm's figures published, Mr. Solinsky?

A. Yes.

Q. For the period 1956 to date have your earnings figures gone up or down?

A. Down.

Mr. McManus: That is all I have.

The Court: Is there anything further, Mr. Hughes?

Mr. Handler: Just one moment, your Honor.

The Court: All right.

(Short pause.)

[fol. 1058] Mr. Hughes: No further questions.

The Court: All right, thank you very much, Mr. Solinsky.

Mr. Goldberg: Thank you, your Honor.

The Court: It is a pleasure to have you, Mr. Goldberg.

(Witness excused.)

Mr. Greenberg: Your Honor, the Government's next witness is Mr. Burnham of Lehn & Fink.

The Court: Very well.

Mr. Greenberg: Mr. Burnham, will you please take the stand.

STANLEY W. BURNHAM, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. Greenberg: Your Honor, Mr. Hughes has requested me to wait for him and that is perfectly agreeable.

Mr. Hughes: All right, I am ready. I was just getting my file out.

Mr. Greenberg: Your Honor, before I commence with the examination of Mr. Burnham, I would like to cover one matter.

[fol. 1059] Last week the Government asked the defendant to admit that the Hazel-Atlas Glass Company had re-

ceived a license from the Wheaton Glass Company to produce plastic-coated aerosol glass containers, and that this license was terminated after the acquisition by Continental Can.

The Government renews its request for such admission or will produce documents in lieu thereof.

Mr. Hughes: Your Honor, I am not prepared now to make that admission. I have indicated to your Honor that we would investigate that matter and be prepared at the appropriate time.

We have been concerned not only during the court hours but other hours of the day in extensive day-to-day preparations which go into trying to dispose of witnesses and be prepared for the next succeeding day.

Your Honor, this is a matter that has been laid aside as something that could be dealt with at a later stage of this case. I have not overlooked it but will do so at an appropriate time.

The Court: All right.

Direct Examination.

By Mr. Greenberg:

Q. Mr. Burnham, where do you reside?

[fol. 1060] A. Little Silver, New Jersey.

Q. Are you employed by Lehn & Fink as director of purchasing?

A. I am.

Q. And have you held this position since 1951?

A. Yes.

Q. And just generally speaking what have been your duties and responsibilities?

The Court: We know what a director of purchasing does, I think, for any company.

Mr. Greenberg: Fine.

The Court: You direct purchases, don't you?

The Witness: Yes, sir.

The Court: All right.

The Witness: I have other duties, however.

The Court: All right, let us have the other duties beyond purchasing.

The Witness: I am also in charge of package engineering for the company.

Mr. Greenberg: Would you please mark these documents as Government's exhibits?

Will the record show that prior to the commencement of court today I supplied Mr. Hughes with copies of these documents?

[fol. 1061] The Court: Do you have copies for me?

Mr. Greenberg: Yes, sir, but I desire to give you the exhibits that are marked and then I have photostats for my own information.

(Marked Government's Exhibits 359, 360 and 361 for identification.)

Q. Mr. Burnham, I show you Government's exhibits which have been marked for identification and ask you to identify them for us.

A. These are price lists of several divisions of our company which are dated 1959, and these were annotated by me this morning showing the types of containers used for each of the items involved.

The Court: What are the three divisions of your company?

The Witness: Well, the three divisions that are referred to, that are referred to here, are the Dorothy Gray Division, and the Tussy Division and the——

The Court: What was that?

The Witness: Tussy, T-u-s-s-y, and the Lehn & Fink Products Division.

Mr. Greenberg: Your Honor, I offer Government's Exhibits 359, 360 and 361 into evidence for the purpose of aiding the Court.

[fol. 1062] The Court: You are not introducing them for the purpose of aiding the Court, you are introducing them as evidence of the facts here.

Mr. Greenberg: Yes, I am also introducing them as evidence of the facts.

The Court: Yes.

Mr. Greenberg: All prior offers of price lists of this type that have been offered were also offered for proof of its contents.

The Court: Yes.

Mr. Hughes: Your Honor, I merely want to call attention to the fact that there seems to be two items as to which there has been no indication of the container. There is this item of Midnight gift sets followed by a considerable number of items and then Bright Secret gift sets and Early Iris gift sets.

The Court: Let us have the witness tell us why it is that he omitted to mark those.

The Witness: The individual items listed on our price lists are commonly combined into gift packaging where there may be two or three items combined.

The Court: And they are repeated?

The Witness: They are repeated in the gift set series.

[fol. 1063] Mr. Hughes: And where there is lead marked here, that would indicate a collapsible tube?

The Witness: Yes, I think it shows that it is a tube.

The Court: All right, they will be received.

(Government's Exhibit 359 for identification received in evidence.)

Mr. Greenberg: Mr. Hughes is examining 360 and 361, your Honor.

The Court: All right.

Mr. Hughes: No objection on 360, your Honor.

The Court: All right, 360 will be received.

(Government's Exhibit 360 for identification received in evidence.)

Mr. Hughes: No objection on 361, your Honor.

The Court: All right, 361 will be received.

(Government's Exhibit 361 for identification received in evidence.)

By Mr. Greenberg:

Q. Sir, what type of containers do you use for liquid products?

[fol. 1064] A. Glass bottles.

Q. And generally speaking, what type of containers are used for cream and paste products?

A. Glass jars.

Q. You do use some plastic containers?

A. Yes.

Q. And that has been noted in the documents?

A. Yes.

Q. Are the plastic containers which you use at the present time squeeze containers?

A. Not necessarily.

Mr. Hughes: Your Honor, I object to this entire line——

The Court: Yes, I think it is——

Mr. Greenberg: I will withdraw it.

The Court: What difference does it make? I will allow it.

The Witness: We use some plastic containers, and in some instances they are not necessarily squeezed by the user but are used because they eliminate breakage possibilities.

Q. And what products are you referring to?

A. Oh, an item such as suntan lotion?

Q. Has Hazel-Atlas been one of your principal suppliers [fol. 1065] in your experience with Lehn & Fink?

A. Yes, they have been a large supplier of opal glassware and of flint glass containers.

Q. What type of products have used the flint glass of Hazel-Atlas?

A. Lotions and astringents, light liquids of one sort or another.

Q. And what type of products have used the opal ware of Hazel-Atlas?

A. Opal jars are commonly used for skin creams or any type of lubricating cream which is semi-viscuous in consistency.

Q. Sir, isn't it true that there are opal bottles which are used in the cosmetics trade?

A. Yes.

Q. What are they used for?

A. Well, they are not in very great use but normally they are used where it is not desirable to show the color of the contents and we try to disguise it.

Q. Does the Shulton Company use them?

Mr. Hughes: I object to that.

The Court: What is the name of that company?

[fol. 1066] Mr. Greenberg: Shulton Company, makers of All-Spice.

The Court: Does this witness know anything about the Shulton?

Q. Do you know anything about the Shulton Company?
A. I have read their advertisements.

Mr. Greenberg: It is pretty well known that they use——
Mr. Hughes: Your Honor, I object to that.
Mr. Greenberg: Withdrawn.

Q. Who are the manufacturers of opal jars and bottles?
A. The ones that I am acquainted with are Carr-Lowery Company, a division of Anchor Hocking, and the Wheaton Glass Company, also known as J. C. Wheaton Company, and there may be others with whom I am not acquainted. Of course, there is Hazel-Atlas Company, which should be included in that group.

The Court: Do you buy from all three of those companies?
The Witness: Yes, sir.

Q. Sir, have representatives of plastic container companies been in contact with you for the purpose of selling [fol. 1067] you?
A. With me or my staff.
Q. And your staff of course reports to you in the normal course of business?
A. Yes.
Q. Who have been the principal companies involved?
A. I think the most active have been the Plax Corporation, the Imco Corporation, and the Wheaton Plastic Company.

The Court: That is a division of Wheaton Glass Company?
The Witness: It is a separate corporation. It has the same active principals. The American Can Company and the Continental Can Company.

Q. Sir, what types of plastic containers have each of these companies offered?
A. Well—

The Court: Let me ask you something before we go to that.

I take it from what you have said, the salesmen from Continental Can have called upon you or your staff from time to time to promote the sale of plastic bottles. Are those different salesmen from the salesmen that sell you your Hazel-Atlas glass?

[fol. 1068] The Witness: Yes, there are separate sales forces, I believe, that are maintained by the various companies. It is very rare that—

The Court: Let me ask you this, if you can tell me, whether in your experience at any time any salesman for the plastic division of Continental Can have attempted to sell you plastic bottles to replace Hazel-Atlas opal glass?

The Witness: No, sir, not in my experience.

The Court: Not in your experience?

The Witness: No sir.

By Mr. Greenberg:

Q. Sir, when these plastic container salesmen contacted you they said certain things. Can you give us the substance of those conversations as they relate to their desire to promote plastic containers with your company?

A. Promote plastic containers?

Q. Yes.

Mr. Hughes: I object to this generalized form of question.

The Court: Let us put it this way: has this occurred recently or is it occurring continuously?

The Witness: It has for the last—since the war, I would say—since the plastic bottles have been manufactured.

[fol. 1069] The Court: Let me ask you a very simple question: what is the pitch?

The Witness: Unbreakability and light weight.

The Court: All right.

Q. And freight, of course, is a factor, is it not?

A. That, of course, is part of the lightweight principle.

The Court: I think, Mr. Greenberg, we will take our luncheon recess now and we will return here at a quarter past two.

(Recess to 2:15 p.m.)

[fol. 1070] AFTERNOON SESSION—2:25 pm.

STANLEY W. BURNHAM resumed.

The Court: Good-afternoon, gentlemen.
Mr. Greenberg: Good-afternoon, sir.

Direct examination continued.

By Mr. Greenberg:

Q. Sir, is it true that you are purchasing agent for Richard Hudnut from 1947 to 1950?
A. Yes.
Q. Sir, has Hazel-Atlas, in your experiences with Richard Hudnut and Lehn & Fink, always been a substantial alternative source of supply for flintware for these two companies?
A. For flintware?
Q. Flintware.
A. Well, I would say they are primarily suppliers of opalware, but also alternate suppliers of flintware, yes.
Q. Aren't they substantial alternative sources of supply for flintware as well?
A. Yes.
Q. Sir, from your experiences in the industry, what are the products for which opalware are being offered?
[fol. 1071] A. Well, traditionally——

The Court: Are being offered or are being used?
Mr. Greenberg: Being used, all right.
The Court: The two may be quite different.

A. They are being used primarily for cosmetic and deodorant creams, that type of products, as I mentioned earlier, and occasionally for liquid products, as I mentioned earlier, in which it might be desirable to create a special effect or to mask the color of the content.
Q. Now, have there been additional activities by the opalware producers to expand their market?
A. Yes. Like all people they don't sell enough; they try to sell more.
Q. Now, what other fields are they going into?
A. Well, they are offering their opal containers for shaving lotions and for vitamin pills, and they have had some success in that direction.

Q. And have they tried to better their decorating of these types of containers to do that?

A. Yes, the art of decorating has been improved greatly in the last fifteen years.

Q. Sir, has Lehn & Fink, during your experiences with [fol. 1072] it, engaged in cooperative research for plastic container companies?

A. Well, we are constantly attempting to find better packaging methods, and in the course of that we experiment with plastic materials of all types and cooperate with the manufacturers, not only of the plastic materials, but the container manufacturers who use these materials.

Q. Do you actually put the product in a container for testing?

A. Oh, yes.

Q. And does that product in a container frequently go to the plastic container manufacturers?

A. Oh, yes, that is very common.

Q. And do they conduct tests with that product?

A. If—

Q. Or what do they do?

A. Normally, if we were contemplating packaging a new item or an old item in a new type of container, we would request that their laboratories make simultaneous tests with our product in their laboratories while we are doing the same thing in ours.

Q. And has this been done, sir, during your experiences? [fol. 1073] A. Oh, yes.

Q. On what products?

A. Well, it is done with lotions, with shampoo products, with creams, with various types of materials which we manufacture and sell.

Q. And, sir, has your company carried on cooperative research activities with the glass container suppliers?

A. Yes.

Q. Has Hazel-Atlas been one of these?

A. Yes.

Q. And what types of activities have you carried on with these manufacturers, including Hazel-Atlas?

A. Well, normally the activities in regard to glass for the improvement of decoration and for the improvement of

closures, to eliminate leakage of containers—that type of research.

Q. How about new shapes, things of that nature?

A. Well, we are—in the cosmetic business we are constantly changing shapes and styles in order to try to make our packaging and our products more attractive, and we do this in cooperation with all of the glass container manufacturers who are sources of ours.

[fol. 1074] Q. Is there anything else along the esthetic line that you have been doing, including decoration?

A. Well, not that isn't covered by the general phrase of improvement in appearance.

Q. Lightweighting, things of that sort?

A. Well, lightweighting has been a continuing program for 25 years, and it has always been the effort to improve the structure of the glass container, make it stronger and to reduce its total shipping weight.

Q. Has that actually been done with any of your products?

A. Oh, yes, it's been done with many products through the years.

Q. And what is the purpose for such lightweighting?

A. Well, as I mentioned before, primarily to use the glass in the package to give the strongest unit with the fastest manufacturing techniques, to reduce cost of the container to us and to reduce the cost of shipment, inbound and outbound.

Q. Sir, when these glass containers are lightweighted, is the strength frequently increased, strength of the container?

A. It is quite normal to be able to achieve increased [fol. 1075] strength through lighter weight.

Q. Sir, directing your attention now to the plastic coated aerosols, the polyvinyl chloride coated aerosols, I think you have testified or you have noted on this price list that certain of your products are already in plastic coated aerosols; is that correct, sir?

A. Yes, sir.

Q. Have you become familiar with some of the activities to reduce the cost of the plastic coating around the bottle?

A. I know that I have been anxious to have the manufacturers reduce that cost, and I understand that some im-

provement has been made in the manufacturing techniques along that line. However, to my own knowledge, I am not aware exactly of anything that has been done, except that I know in one instance I was shown new manufacturing methods which were faster and better than those which were in existence four, five years previously.

Q. You were in Wheaton's plant, weren't you?

A. That was in Wheaton's plant, yes.

Q. Do you recall approximately when this was, just your best estimate?

[fol. 1076] A. 1958.

Q. And you went through the plant looking at this new machinery?

A. Yes.

Q. And you say this machinery was improved over what it was in the past?

A. It had been. I had seen the plant three or four years previously and knew the methods that they had previously used.

Q. And were these methods and new methods designed to reduce the cost of the container?

A. They were designed to manufacture more containers with greater speed. I don't know whether it has been successful in reducing the cost.

Q. And when you have so-called longer continuous runs of a container, that reduced the cost, from your experiences?

Mr. Hughes: Your Honor, I object to this. He is not a container manufacturer.

The Court: Yes, I will sustain the objection.

You are not a manufacturing expert, are you, sir, or do you know of your own knowledge?

The Witness: I am a purchasing agent, sir.

The Court: Yes.

[fol. 1077] All right, I will sustain the objection.

Q. Well, in your own business, in Lehn & Fink, on your processing lines, when you have so-called longer continuous runs, doesn't that lower the cost?

A. That is normal, yes.

Q. Sir, when you take the plastic coating away from this

bottle, do you just have a conventional glass container underneath?

A. Well, there have been and are some aerosols being packaged in glass bottles without the vinyl coatings, but the size of these has been limited and the shape has been limited. The margin of safety in transportation and use has to be carefully watched by the packer, and people like ourselves are responsible for these packages in the hands of consumer, and we have to have them so designed that we have maximum safety for the consumer.

Q. I understand those are the uncoated aerosols. I was going to get to them in a moment. I had a different question in mind, and I am sorry I didn't make myself clear.

Could you describe the plastic coated aerosol container for us? It's got a plastic coating, then it's just a plain [fol. 1078] ordinary——

The Court: Now, Mr. Greenberg——

Mr. Greenberg: Withdrawn.

The Court:—haven't we had people describe that thing for us two or three times?

Mr. Greenberg: Well, your Honor, I offer to prove that the glass bottle underneath the plastic coating is just a plain old ordinary bottle, which is as cheap as any other bottle.

The Court: Well, that may be, but that isn't the purport of your question. You are asking him to describe something which, as I understand it, has been described two or three times before by other witnesses. I don't think we have to go into this again. I know what the general description of it is.

Now, if you want to go into some specific features of it, go ahead.

[fol. 1079] Q. Sir, if you were to remove the plastic coating of the aerosol, would you have a conventional glass bottle underneath?

A. We specify in our purchases that they use a special glass in many instances because we feel it will give greater safety.

Q. Sir, have uncoated glass aerosol containers been used for your products?

A. Yes.

Q. For which have they been used?

A. Well, it depends on how we want to pack them. It is a practical matter. We feel that they are only suitable for certain light liquid products other than cologne.

Q. Sir, for what products have the polyvinyl chloride on plastic aerosol containers been offered to you?

A. The imagination of the purveyors of packages knows of no bounds, and they recommend it for everything.

Q. When you were in the Wheaton offices, sir, do you remember that showroom off the lobby?

A. Yes.

Q. Do you remember all the products in the glass cases? [fol. 1080] A. No, I could hardly remember them all. I remember that there were many of them.

Q. What product area did they cover?

The Court: He said that he did not remember them specifically.

Q. Do you remember the general areas that they covered?

A. Well, as I said, their imagination knows no bounds in this direction. They sell all types of materials packaged in aerosol.

Q. When you say all types of materials, can you be specific?

A. Liquids and semi-solids which are possible for propulsion from an aerosol package.

Q. Sir, do you keep track of costs of can, glass and plastic containers?

A. Well, I don't personally, but my staff does, and we, of course, are aware of the changing costs of packaging materials, of the types of packaging units.

Q. Is this an important factor to you in the overall selling price of your products, the cost of containers?

A. Not a very considerable factor.

[fol. 1081] Q. It is a factor?

A. It is a factor, of course.

Q. Is it an important factor, sir?

A. Relatively, yes.

Q. Sir, for low-priced items of your lines, what percentage of the cost is the selling price—in other words, what percentage of the selling price would be represented by a container?

Mr. Hughes: I am going to object to that, your Honor. I am not sure that I understand what "low-cost items" means.

Mr. Greenberg: I didn't say "low-cost," I said "low-priced."

Mr. Hughes: Well, low-priced——

The Court: Let us not have what the percentage of the selling price is, but let us have what the percentage of the cost is.

Mr. Greenberg: All right.

Q. What is the percentage of the cost——

The Court: Do you object to that, Mr. Hughes?

Mr. Hughes: Well, your Honor, my difficulty is that I do not know what the term "low-priced items" encompasses. [fol. 1082] The Court: I understood that "low-priced" was out of the question.

Mr. Hughes: Then may we have the question?

The Court: Yes, let us have the question.

(Question read.)

The Court: All right, reframe the question, Mr. Greenberg. Let us begin again.

Q. What percentage of the cost of the various products you market is represented by the cost of the container?

The Court: In general terms.

Q. In general terms, sir.

Mr. Hughes: Don't we have to determine cost first, your Honor?

The Court: We are not looking for precise figures here. We are not attempting to ascertain it with an accountant's precision, but I think you better break it up as between products packaged in glass and products packaged in plastic.

Mr. Handler: What relevance does it have in a Section 7 case?

The Court: I will take it.

Q. Directing your attention first to your products packaged in glass containers, what percentage of your costs is represented by the cost of the container?

[fol. 1083] The Court: Does it vary widely?

The Witness: It does vary very widely, because we have some extremely plain packages.

The Court: Then it does vary widely and I will sustain the objection to the question. You cannot generalize.

Mr. Greenberg: There is a range, your Honor, for certain items, low-priced items, and there is a percentage which he can estimate, and I think this witness is aware of them.

The Court: Then let us define our terms here. You have asked about low-priced items. First ask him what is meant by low-priced items.

Q. Are there areas where the cost of a container would be a greater percentage than in other areas?

A. Yes.

Q. What areas are those?

A. We offer many highly decorative packages particularly for high-priced creams and perfumes, and with such packages the cost of the packaging material may be as high as 50 per cent of the cost.

Q. Now, are there other areas where it might be less?

[fol. 1084] A. Yes.

Q. What are those areas?

A. Well, those areas are those in which there is a very utilitarian basic package, such as the Lysol bottle, where we are primarily concerned with getting the product to the consumer as economically as possible, and this is not an item for my lady's boudoir. It is something to be kept on the back shelf, so that in such instances the container costs may go down as low as 15 to 20 per cent.

The Court: That again would vary as between glass and plastic, I suppose?

The Witness: Yes.

Q. Would you give us what those variations would be?

A. The cost, the percentage of the cost of the plastic package would, of course, vary in much the same manner, depending on how well we decorated it or what the contents were.

Q. Now, sir, there have been recent advances in decorating plastic packages, plastic containers, have there not?

A. Yes.

Q. Would you describe them for us?

[fol. 1085] A. Well, the first plastic packages were sometimes labeled and sometimes silk-screened, with one or possibly two colors, and, in fact, in recent years it has become possible to have multi-colored decoration of the containers to make them more attractive, and various shapes have been improved, so that it is possible to make many more interesting shapes.

Q. Sir, do you know from your experience the various types of fittings or closures on glass containers which are used for dispensing purposes?

A. I certainly don't know them all. I am familiar with some of them. We use closures, cap closures with a tip cap, which permits the material to be poured out of the bottle without removing the cap. We use pumps or dispensers which pump the material, hand lotion particularly, out of the bottle, and we have had many other types of closures offered to us, but we don't have any others in use at the present time.

Q. What other types of closures have been offered to you with respect to dispensing?

A. Caps with swabs attached, and caps which lock on, and caps which permit the liquid to come out by drops, and there has been great ingenuity shown in the development of different types of closures.

[fol. 1086] Mr. Greenberg: You may cross-examine.

Cross-examination.

By Mr. Hughes:

Q. Mr. Burnham, you have told us that you have a Tussy Division, is that right?

A. Yes.

Q. And you have given us the list of products that that division produces?

A. Yes.

Q. And you have a Dorothy Gray Division; is that another division?

A. Yes.

Q. And you have given us the list of products and specified the products of that division?

A. Yes.

Q. And you also have the Lehn & Fink Division?

A. That is correct.

Q. You have given us the price list or the products of that division?

A. Yes.

Q. Do you have any other divisions in your company?

A. Yes, we have one called a National Laboratory Division which is only manufacturing for the sale of chemicals for sanitation purposes disinfectants and detergents and floor wax. Most of this business is done in bulk containers, [fol. 1087] in one gallon up to—well, we have one one-quart package and then the rest of them are up to 50-gallon capacity containers.

Q. What kind of containers are those?

A. Glass and tincans and steel drums.

Q. Do you have another division known as the professional division?

A. We have a professional division which sells disinfectants to hospitals, primarily to hospitals, and those products are sold in one-gallon and larger metal containers.

Q. When you say metal containers, you are referring to what kind of metal?

A. Well, some of the smaller one-gallon packages are in tincans, and the five-gallon and larger packages are in steel drums.

Q. Mr. Burnham, approximately what percentage on your total dollar purchases on containers have been your purchases of plastic containers?

A. Not above 3 per cent.

Q. What is the percentage of the sales of your company in plastic containers as against your total sales?

[fol. 1088] A. We are speaking now of dollar volume?

Q. Yes.

A. Between 5 and 7 per cent.

Q. Now you have alluded to the fact on your direct examination that there are some special characteristics of plastic. Would you say that plastic in the cosmetics industry was primarily for specialized uses and designed to meet the special needs of your customers?

A. Well, our uses in our company of plastic packaging has been in such instances where we were able to develop a package or a container which was more convenient for the consumer and which, in the instance of shampoos, for ex-

ample, may have made a person feel safer with the package when they had it in the shower or in the bathtub.

Q. And did you give us the illustration of suntan oil as another instance?

A. Suntan oil is another such instance where it would be carried to the beach and you would have the possibility of breakage.

Q. Are there any drawbacks to the use of plastic containers?

A. The difficulties are inherent in the permeability of the [fol. 1089] plastic itself, of the polyethylene or polystyrene material that is used, because it does not have the impermeability of glass, and the other difficulty is that it is not as transparent, and also that we have found that on long-shelf storage that they have a tendency to collect dirt and dust more than glass and it is more difficult to remove it.

Q. Now, in connection with the marketing of your products, do you conduct market tests of any kind? Do you do any market testing?

A. Yes, that is customary in our industry. Whenever we market a new product and if we want to make any radical change in the packaging, we normally first would submit it to a panel of possible buyers, of women who are users, and then subject it to a marketing test in a selected group of cities to determine whether the product and the package are acceptable.

Q. You have referred to the fact that you conduct these programs in cooperation, for example, with glass container manufacturers, using their products or their containers for your products. Do you recall that reference?

A. Yes.

[fol. 1090] Q. Many of those programs have to do simply with a change in the design of the particular container itself, isn't that right?

A. Well, that is quite possible, yes.

Q. In other words, a glass container company will try to interest you in the idea of a different shape of a glass container than you are presently using as an inducement for a sale, is that correct?

A. Yes, that is correct.

Q. And would you say that that kind of change consti-

tutes by far the greater number of changes that you make in packaging materials for your products?

A. Yes. We are constantly restyling our merchandise in order to keep abreast of competitive situations and we try to make it more appealing to the consumer.

Q. Now is it also true that you carry on these cooperative programs with persons making packaging materials other than plastic and glass and can containers?

A. Yes, we work with paper manufacturers or paperbox people, with the brass goods industry who make lipstick and rouge cases and compacts, and molding companies, plastic molding companies of all sorts.

[fol. 1091] Q. In the cosmetics field, about how many items do you market?

A. I don't know the exact tally.

Q. Approximately?

A. It must be seven or eight hundred.

Q. And isn't the great bulk of these in relatively small items?

A. You are speaking of small in size?

Q. Yes, small in size.

A. Yes.

Q. And small in quantity, too?

A. Well, unfortunately—

The Court: You mean small in quantity within the bottle?

Mr. Hughes: No, small in relation to the total volume.

Mr. Greenberg: What category are we talking about now? We have three or four items now.

The Court: Reframe the question, Mr. Hughes.

Q. In the cosmetics field, would you say that approximately 25 products of those six or seven hundred that you specified constitutes let us say 65 to 75 per cent of your total cosmetics production?

[fol. 1092] A. Yes.

Q. Now on this price list you have already indicated that you had a roll-on deodorant and you also indicated that you had a spray deodorant, is that right?

A. Yes.

Q. Is the formulation for the roll-on deodorant different from the formulation of the spray deodorant?

A. Yes.

Q. Your price list also indicates that you market some of your products in aerosols, is that correct?

A. Yes.

Q. Atom Mist would be one of those products?

A. Yes.

Q. Is Atom Mist marketed in both glass aerosols and tin aerosols?

A. We marketed in both glass and metal aerosol packages experimentally during 1958 and 1959. We are discontinuing the metal because we found that it was not—well, it was not well accepted.

Q. What is the trouble with tin aerosol; what did you find out about the reaction of the consumer?

A. Well, apparently it was that matter of cosmetic elegance that I earlier mentioned, that somehow did not sell. Glass aerosol was preferred, and apparently it was pre-
[fol. 1093] ferred for its appearance. Each of them was convenient for use but it was just a question of a woman's personal preference.

Q. A woman tends to associate tin aerosol with insecticides and things of that sort?

A. That I think is probably true, that they have bought a fly dead and that sort of thing in that type of can and they don't like it for cosmetics.

Q. Would it be correct to say that the only really successful tin aerosol is in the hair-spray market?

A. In my experience the hair-spray market has been the only one where the tincan aerosol has been very successful.

Q. How many companies would you say are in the toiletries and cosmetics business?

A. I wouldn't do any more than hazard a guess, but there are over a thousand.

Q. And about how many thousands of products would you say are made by the toiletries and cosmetics industry?

A. I have no real knowledge but it must be in the hundreds of thousands.

Q. Now is it also true that you frequently use a more
[fol. 1094] expensive container to market a product than a container that you might otherwise use?

A. Yes, in appealing or in presenting a product for use by a woman, for an improvement of her facial well being or her beauty, she likes to have it presented to her in a

beautiful package, and so we do our very best to come out with various types of packages.

Q. You try to market for that purpose a product of superior elegance, if I may use that term?

A. Yes.

Q. And for such a product you use a container of superior attractiveness?

A. Yes.

Q. Even though it is more costly?

A. Yes.

Q. Can you tell me about how long it takes from the time when you want to make a change, for example, in the form or the contour of a bottle to the time that you actually put that change into effect?

A. It largely depends on whether it is a product of small or large volume. If it is a product of small volume, we would be able to make such a change in eight or nine months, but if it involves a major product like Lysol, where there is a great deal of packaging equipment involved, in [fol. 1095] such an instance it would take a year and a half or two years.

Q. Mr. Burnham, isn't it true that Continental Can does not now sell plastic containers for packing products now packed in opal jars?

A. If they do I am not aware, but then they are not very active sales people in that area.

Q. On some of your plastic containers the squeeze feature is an important feature, is it not?

A. Yes.

Q. When you want to spray your product the squeeze feature is an important factor, is that correct?

A. Yes.

Mr. Greenberg: Your Honor, I find that I have left a book that I wanted to use back in my office, and when Mr. Hughes terminates with cross-examination I would like to have just one minute to go and get it and bring it back here.

The Court: Very well.

By Mr. Hughes:

Q. When you said that Continental Can was not active in this area, were you referring to the plastic industry generally?

A. I am just referring to the impact on me as a buyer.

[fol. 1096] Q. You do not see their salesmen as frequently as you see a Plax salesman, is that right?

A. My reaction would be that they are rather inept in that field in terms of selling.

Q. When you were giving his Honor some of these estimates of costs, were you including the cost of advertising in your estimate of costs?

A. No.

Q. And in your testimony you were not suggesting at any time, were you, that plastic containers do not cost more than glass containers?

A. Well, I buy some plastic containers that cost less than other glass containers, of course, because it depends a great deal on the decoration and the quantity bought, the conditions of purchase and so on.

Q. Generally speaking and taking a comparable size and a comparable container with comparable decorating effects, isn't it a fact that the plastic container is a more expensive container generally than the glass container?

A. Yes, the basic plastic container is more expensive.

Q. In determining the costs, would you tell his Honor what items you took into account in attempting to arrive

[fol. 1096a] at cost?

A. Well, in making the two product estimates that I did, I included cost of the basic jar or bottle, the cost of the decorations on it, whether it be a label or a silk screen, the cost of the box or carton in which are contained each of these products, the shipping container, plus the labor cost involved, plus the overhead on the labor involved.

[fol. 1097] Q. Would you say those were all the elements you took into account?

A. Those were the essential elements.

Mr. Hughes: That is all.

Mr. Greenberg: I would like just one moment, your Honor, to get the book I requested.

The Court: All right, go get it.

Mr. Greenberg: It is in the next room.

Redirect examination.

By Mr. Greenberg:

Q. Sir, do you know Mr. John Heinan, H-e-i-n-a-n, of Continental Can?

A. No.

Q. Sir, are you familiar with the Chemical Specialties Manufacturers Association?

A. Yes.

Q. And that is an association of aerosol container manufacturers and fillers; is that correct, sir?

A. Well, not only aerosol container manufacturers and fillers.

Q. Who else?

A. But packers like ourselves, manufacturers of ingredients that go into these packages.

Q. And, sir, isn't it true that they attempt to survey the [fol. 1098] aerosol field to determine what products are being packed in tin aerosols?

A. I have seen reports issued by the group, indicating what they thought to be the sales of various items in various types of aerosols, yes.

Q. Sir, at the present time, from your experience in the industry, isn't it true that there are suntan preparations in aerosol tin cans?

A. Yes. We offer them.

Q. You offer them?

A. Yes.

Q. And isn't it true that there are shampoos in aerosol tin containers?

Mr. Hughes: Your Honor, is this going into industry now or his own product?

The Court: Are you talking about his company or in general?

Mr. Greenberg: Talking about in general.

Mr. Hughes: I object to it.

The Court: If you know, and if you know of your own knowledge, you can tell us. If you don't, say so.

A. I have seen them advertised.

Q. And, sir, isn't it true that there are personal de-
[fol. 1099] odorants in aerosol tin cans?

Mr. Hughes: Same objection.

The Court: Overruled. If the witness knows.

A. I have already stated that we market and have marketed such a product.

Q. Hand lotions, would the same be true?

A. Not to my knowledge.

Q. Sir, there are other products as well, sir, in your field, other than the ones—

Mr. Hughes: I object.

The Court: No, no, not other products as well as, Mr. Greenberg.

Q. Sir, you recall your statement about the insecticide feeling on the part of some women when it comes to an aerosol can?

Sir, from your experiences in the packaging field generally, isn't it true that Continental Can presently sells an aerosol can for Tropicana orange drink, which is now marketed?

Mr. Hughes: I object to it.

A. I have no knowledge.

Mr. Greenberg: You may cross-examine.

Mr. Hughes: I have no further questions.

[fol. 1100] The Court: All right, you may step down, Mr. Burnham.

Thank you.

The Witness: Thank you.

(Witness excused.)

The Court: Now, I suppose we might as well take a brief recess before we put on a new witness, unless he is very short?

Mr. McManus: Sir, I think it would be good to take a recess now. We have three short witnesses, which I think will take up the rest of the afternoon.

(Short recess.)

The Court: All right, gentlemen.
Mr. McManus: Mr. Free, please.

WILLIAM A. FREE, JR., called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. By whom are you employed, Mr. Free?
A. By the Hungerford Packing Company.
Q. Where is that located?
A. Hungerford, Pennsylvania.
Q. What is your position with that company?
[fol. 1101] A. Plant manager.
Q. Is that a family-held corporation?
A. Yes, it is.
Q. And are you a member of the family that holds most of the stock?
A. Yes, I am.
Q. And you have been associated with the company, did you grow up with the company?
A. Yes.
Q. Now, what products does your company pack?
A. We pack string beans, boiled onions, kidney beans, dried lima beans and dried evaporated corn.

Mr. Hughes: Would you repeat that? Would you mind repeating that?
The Witness: String beans, boiled onions, kidney beans, dried lima beans and dried evaporated corn.

Q. And do you pack all of those products in metal cans?
A. Yes, we do.
Q. Now, are any of those products that you pack in glass containers?
A. The boiled onions and string beans.
Q. And for how long a period of time have you been packing your onions in glass containers?
[fol. 1102] A. Four years.

Q. And for how long a period of time have you been packing your string beans in——

A. Two years.

Q. Now, you also package these two products in metal containers?

A. Yes, we do.

Q. Do you mind stating what percentage of your onions are packed in glass?

A. 10 per cent.

Q. And the other 90 per cent in metal?

A. Yes.

The Court: What percentage of string beans?

The Witness: Less than a quarter of 1 per cent. It is an experimental pack right now.

Q. You just started packing your string beans in glass?

A. Yes.

Q. Could you tell me why did you decide to package your onions in glass containers? What made you go into that form of container?

A. We had to do it because competition had already been packing in glass and we had to maintain our markets by [fol. 1103] going in the glass business.

Q. Now, when you decided that you would go into the glass business, how did you go about it? What steps did you take?

A. Well, because we didn't realize how large or small it was going to be, we made—we had a makeshift production line, that was just about entirely a hand and slow-speed operation.

Q. Now did you have to—you had to obtain glass equipment; is that right?

A. Yes.

Q. And did you have to go to a supplier of the machinery for that?

A. Yes, we did.

Q. And whom did you go to?

A. We went to the White Cap Company.

Q. And did they assist you in setting up your glass line?

A. Yes, they did.

Q. And you lease this equipment from White Cap?

A. Yes, we do.

Q. You had no initial expenditure for the glass, for the capping machinery?

A. No.

[fol. 1104]. Q. And did you have to buy some additional equipment?

A. Yes, we did.

Q. And what would that be, principal equipment?

A. We had to have some retorts to put the product in.

Q. And of what type were they, the automatic type?

A. No, they were semi-automatic.

Q. Could you estimate approximately what it cost you to change over the line to——.

A. It cost us about $2,000.

The Court: That is, to the extent that you did change over, that is, for the 10 per cent in the onion business?

The Witness: Yes, sir.

Q. And do you use the same line also for string beans?

A. Yes, we do.

The Court: When you say costing $2,000 to change over, Mr. Free, that doesn't mean by any manner of means you change your whole production over from cans to glass, does it?

The Witness: No, it doesn't.

[fol. 1105] Q. What percentage of your total output would you say now is in glass as distinguished from cans?

The Court: In all products?

A. Not more than 3 per cent.

Q. 3?

The Court: 3 per cent of all your products?

The Witness: Yes.

Q. Prior to 1955 none of your products was in glass though, is that correct?

A. That's right.

Q. Now, you lease the White Cap equipment; do you also use their caps?

A. Yes, we do.

Q. And is that equipment a steam vacuum type? Is that a steam vacuum cap?

A. Yes, it is.

Q. And the vacuum type closure you use for that type of equipment, also?

A. Yes.

Q. Now, could you tell me your principal suppliers for your metal cans?

A. Continental Can and American Can.

Mr. McManus: That is all.

Mr. Hughes: May I have just a moment, your Honor?

[fol. 1106] Cross-examination.

By Mr. Hughes:

Q. Mr. Free, you say that you lease the equipment from White Cap; is that correct?

A. Yes.

Q. What equipment do you lease from White Cap?

A. We lease the capper and another piece of equipment called a head-spacer.

Q. And do you say you buy your closures from White Cap?

A. Yes, we do.

Q. White Cap doesn't require you, does it, to buy your closures from them?

A. No, we have used other equipment or closures on that machinery.

Q. What other closures do you use?

A. We have used some from Owens-Illinois.

Q. Anybody else?

A. No, they are the only ones.

Q. Now, how many other lines do you have besides the line which you described to his Honor as the makeshift line for putting up the onions?

A. Two other lines.

Q. And are these can lines?

[fol. 1107] A. Yes, they are.

Q. And do you ever use the can lines for packing any of the onions?

A. Yes, we do.

Q. These two lines to which I have referred?

A. We use one of the two lines that you refer to for onions.

The Court: Do you mean for packing onions in cans or for packing onions in bottles?

Mr. Hughes: That is what I was just coming to.

Q. For packing onions in cans; is that correct?

A. Yes.

Q. In other words, you use those two can lines only for packing products in cans; is that correct?

A. That is correct.

Q. You do not use the two can lines for packing any product in glass; is that correct?

A. That is correct.

Q. And isn't it a fact that it wouldn't be feasible for you to use those lines for packaging products in glass containers?

A. No, it wouldn't.

Q. From whom do you buy your glass containers?

[fol. 1108] A. Owens-Illinois.

Q. Do you have any other source of supply?

A. No, that is the only one.

Q. Do I understand that this pack of string beans in cans is an experimental pack?

A. In glass?

Q. In glass, yes.

A. Yes, it is.

Q. And can you tell me about how many cases of that experimental pack you put up?

A. Last year we put up around 5000 cases.

Q. Has it all been sold, do you know?

A. No.

Q. It has not all been sold?

A. No.

The Court: Have you tried to sell it?

The Witness: Yes, sir.

The Court: And you find some difficulty in moving it, I take it?

The Witness: Yes, sir.

Mr. Hughes: That is all.

Mr. McManus: I have one question.

Redirect examination.

By Mr. McManus:

Q. Now, when we are talking about can lines and glass [fol. 1109] lines, Mr. Free, the initial preparation of, say, your string beans would be the same up to the filler, whether it was going to go into a can or to a glass?

A. Yes, it would.

Q. So that you would be running up to the filler, you would be doing the same identical thing with string beans, up until you started to put it in either the can or the glass; is that correct?

A. Yes, it is.

Q. And indiscriminately, either the string beans would go down one filler for the cans or down the other for the glass; is that correct?

Mr. Hughes: Now, are we referring now to what he described as this makeshift line? Is that what you are referring to?

Mr. McManus: I am talking about his can line, in which he testified that the preparation of the product is identical up until the filler.

Mr. Hughes: Well, then I object to that. Unless he is prepared to describe what the complete canning operation is on the can line, it seems to me that the question is meaningless.

The Court: No, I will overrule the objection.

[fol. 1110] Do you understand the question?

The Witness: Yes, I do.

A. The two are exactly the same up to the filler.

Mr. McManus: That is all I have.

Recross-examination.

By Mr. Hughes:

Q. Then what happens after that on the can line?

A. Well, from the filler, the filler at that point, then the filler has to be adapted to either a glass operation or a can operation.

Q. And you are now talking about the—are you now talking about this makeshift can line?

A. Yes.

Q. The Court: Makeshift glass line.

Q. Makeshift glass line?

A. Yes.

Q. And you are not talking about regular can lines for putting products in tin cans; is that correct?

A. I am under the impression that he was talking about the two lines, the tin line and the makeshift glass line that we have.

[fol. 1111] Q. Well, what you are saying, isn't it, what we are describing as the makeshift line you use sometimes to pack in glass and sometimes to pack in tin; is that correct?

A. Right.

Q. And it was that line that you were referring to in describing these operations to his Honor; is that correct?

A. Yes.

Q. You were not alluding in any respect to the two other can lines; is that correct?

A. Well; I think we are talking about two different things.

The Court: Let me ask a question now.

By the Court:

Q. You take the beans and you cook them; is that right, somehow?

A. Yes.

Q. And then when they are cooked you put them either in a glass thing or a tin can; is that right?

A. That's right.

Q. Now once the beans are cooked, taking that same mess of beans, you could take a ladle and put one mess of them in a glass jar and seal that and sell it, or you could take the [fol. 1112] next ladle and put it in a can and sell that; isn't that right, or isn't it?

A. The only thing I have—

Q. In other words, the same old bean?

A. It's the same old bean, but they are pre-cooked first.

Q. Yes.

A. And they are pre-cooked and then they are filled,

and then the major difference between glass and tin takes place at that point.

Q. After that?

A. After that, with their final cook.

Q. Oh, there is another cook. That is what we are getting at.

A. There is the final cook.

Q. There is another cook. Now, is the cook that is necessary for glass any different from the cook that is necessary for tin, that is, the second cook?

A. It is very much different.

Q. It is, all right. Now tell us the differences between them?

A. Well, the difference is that we cook these containers in large retorts. We only have so many of them. The glass operation takes twice as long as the tin.

[fol. 1113] Q. You have got to cook it twice as long?

A. We have to keep it in that retort twice as long, because you have to cook it and cool it in the retort, whereas with the tin, you just cook it in the retort and cool it in a canal. So it takes twice as long in that operation.

Q. And that is because of the different heat or cooling qualities in glass, on the one hand, and tin on the other; is that right, largely?

A. Well, it is because glass would break if we subjected it to the same treatment as we subjected the tin to.

The Court: Now, Mr. Hughes, that clarifies it for me.

Mr. Hughes: I think it does, yes.

The Court: All right, is there anything further?

Redirect exmaination.

By Mr. McManus:

Q. Are you familiar with the high temperature short time processing method?

A. No, I am not.

Mr. McManus: That is all, your Honor.

The Court: All right.

[fol. 1114] Mr. Hughes: No further questions.

The Court: Thank you, Mr. Free.

(Witness excused.)

Mr. McManus: The gentleman from the Sommers Company.

HARRY J. MARTIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Martin, by whom are you employed?

A. Charles G. Sommers, Jr., Incorporated, New Freedom, Pennsylvania.

The Court: Now, Mr. Martin, you try and keep your voice up so that these gentlemen in the corner over there can hear you, will you?

The Witness: All right, sir.

Q. And your company is engaged in the packaging of vegetables, canning of vegetables?

A. That is correct.

Q. Does your company also operate a glass line?

A. Yes.

Q. And when did this glass line first go into operation?

[fol. 1115] A. Approximately five years ago.

Q. And for what product?

A. Boiled onions only.

The Court: Tell me this: What is there peculiar about boiled onions that you get in the glass?

The Witness: Eye appeal.

The Court: Eye appeal.

The Witness: Eye appeal.

The Court: All right.

Q. And you pack these in normal consumer sizes; is that correct, 303 size?

A. The glass?

Q. In glass, yes.

A. Only in one size, the 16-ounce vegetable glass.

Q. I see. And that is normally sold in retail stores?

A. Consumer size.

Q. What percentage of your onion pack is in glass containers?

A. About 19 per cent. That is the basis of a 303. That is the way it is all done.

Q. That is on a unit basis?

[fol. 1116] A. That is correct.

Q. Now, why did your company decide to go into packaging of this product for glass, put the product in glass?

A. Well, we had through our brokers, we had consumer requests, and also the other canning plants going into it.

The Court: Who went into it first, do you know?

The Witness: I don't know, sir.

The Court: You don't know who started the boiled onion in glass movement?

The Witness: No, sir.

Q. When you said you packed 19 per cent, you packed the remainder of your pack in——

A. Tin.

Q. —in tin?

A. Yes.

Q. When you decided that you would go into this business, did you approach suppliers of the equipment to put in a glass line?

A. Yes, we did.

Q. And whom did you approach?

A. One was Anchor Hocking. Incidentally, that is the [fol. 1117] material or the company that we buy the glass from.

Q. And you buy, and you got what type of equipment from them?

A. Well, we have Anchor's closing machinery and also their head-spacer.

Q. And that would be the closing—do you buy their caps, also?

A. Yes, we do.

Q. So you buy the Anchor machine, the caps and the glass?

A. All in the one company.

Q. And glass comes to you in corrugated shipping containers?

A. That is correct.

Q. So in effect you buy the closing machinery, the caps, the glass and the shipping container all from one company?

Mr. Hughes: Now wait a minute.

The Court: No, no. Sustained.

Q. The glass comes to you in corrugated shipping containers?

A. That is correct.

Q. And they assisted you in changing this line over?

[fol. 1118] A. Yes, they did.

Q. And in your case, what was the approximate cost?

A. I don't have the definite cost here with me, but it was in the neighborhood of between three and five thousand. I wouldn't like to give you a definite amount because I am not sure.

Q. And from what company or companies do you purchase your metal containers?

A. From Continental Can Company and also National Can Company.

Q. They are your principal suppliers?

A. That is correct.

Q. And could you estimate approximately what percentage of your total pack in units is represented by glass.

A. Approximately 4 per cent.

Mr. McManus: Thank you very much. That is all.

The Court: Mr. Hughes.

Mr. Hughes: Yes.

Cross-examination,

By Mr. Hughes:

Q. Mr. Martin, does your company pack dried lima

[fol. 1119] beans?

A. Yes, sir.

Q. In what kind of a container?

A. All in tin.

Q. Green lima beans?

A. That is correct.

Q. What kind of a container?

A. In tin.

Q. All in tin?

A. That is correct. The only item we packed in glass is the boiled onions, other than tin.

Q. Well, then will you tell me whether you pack the following items: ——

A. Yes, sir.

Q. Kidney beans and other dry pack beans?

A. Yes.

Q. Peas?

A. Yes, sir.

Q. Green stringless beans?

A. Yes, sir.

Q. Wax beans?

A. Yes, sir.

Q. Tomatoes, both whole and peeled?

A. Yes.

[fol. 1120] Q. Corn?

A. Yes.

Q. Carrots?

A. Yes, sir.

Q. Peas and carrots?

A. That is correct.

Q. Mixed vegetables?

A. Correct.

Q. Succotash?

A. Yes.

Q. Triple succotash?

A. Yes, correct.

Q. Okra?

A. Yes.

By the Court:

Q. What is this, what is the difference between succotash and triple succotash?

A. Triple succotash ——

Mr. Hughes: I have had a double Martini, your Honor, but not a triple succotash.

The Witness: Triple succotash consists of corn, lima beans and tomatoes.

The Court: Tomatoes are the tripling factor.

The Witness: That's right.

[fol. 1121] The Court: All right.

Q. Okra?
A. Yes, sir.
Q. Tomatoes in corn, that is, the combination tomatoes and corn?
A. Yes, correct.
Q. Okra and corn?
A. Correct.
Q. And all of those are exclusively in metal containers?
A. That is correct.
Q. Tincans?
A. Right.

Mr. McManus: Just one question.
Mr. Hughes: Just a minute.
The Court: Wait a minute.
Mr. McManus: I am sorry. I thought he was finished. I am sorry.

Q. How many other packing lines do you have besides this line that you use for packing the onions in glass?
A. Three.
Q. And are they can packing lines?
A. Yes, they are.
[fol. 1122] Q. And are they modern packing lines?
A. Yes.
Q. Relatively new and modern; is that correct?
A. That is correct.
Q. And is the method of packing on these lines different from the method of packing on the line on which you pack the onions in glass?
A. Yes, it is.
Q. And is it different from start to finish?
A. Well, actually the lines themselves are not from start to finish. Up to a certain point they are practically the same. But on can lines they are highspeed lines. On glass, it is very slow, it is a very slow line.
Q. Are there any actual differences up to the point of the filler between your modern lines and this makeshift line?
A. No.

Mr. McManus: I object to the word "makeshift." He has never said it was a makeshift line.
Mr. Hughes: I withdraw it, your Honor.
Q. Are there any differences in the methods by which

the product comes from the warehouse to the line, in the case of the glass line and the case of these three canning [fol. 1123] lines?

A. Do you mean the container?

Q. No, not the container, but the method of getting the container there and getting it through those preliminary steps to the filler?

A. Well, now, cans are—we have can lines running direct from a freight car to the filler, where on glass it has to be conveyed from a warehouse by hand and fed on to the glass line.

Q. And then it reaches the filler; is that correct?

A. That is correct.

Q. And what are the steps from the filler, in the case of the can lines?

A. In the case of the cans?

Q. Yes.

A. They go from the filler to the capper, from [redacted] capper they are conveyed to the automatic cooker. We [redacted] what is called a continuous cooker, and all 303 cans in, that is tin, go through the continuous cooker.

Q. May I interrupt you there to have you explain to his Honor the difference between a continuous cooker and a retort?

[fol. 1124] A. Well, a retort, mainly, you drop the canned vegetables in by way of a crane, or whatever way you have of getting them in the retort, seal the retort and cook them right there.

The Court: I see.

A. (Continuing) In an automatic cooker, the cans never stop; they travel on tracks inside of this cooker for a certain length of time, whatever is specified.

The Court: Then they come out of the cooker and they are cooked.

The Witness: They come out cooked, correct, and from there they travel on cooling tracks above the cooker, and eventually go to the labelling machine, where they are labeled and then shipped.

Q. Do you have any continuous cooker on the glass line?

A. No, indeed. They are cooked in retorts.

Q. You don't cook——

The Court: After you cook them in retorts on the glass line, then you have got to have a special cooling process?

The Witness: That is correct.

Q. And then what happens from that point on, on the [fol. 1125] can line, from the point that it gets out of the continuous cooker? Is it all fully automatic from that point on?

A. Yes, it is. It travels on a track until it eventually reaches a label machine, where it is labelled and then cased, and then of course put in the shipping department or immediately on a truck.

Q. How about on the glass line? Is it or is it not fully automatic after it leaves the retort?

A. It is not. They are put in the cartons by hand. It is a hand operation.

The Court: Any further questions?

Mr. Hughes: That is all, your Honor.

Mr. McManus: I have just a few questions.

Redirect examination.

By Mr. McManus:

Q. Now, despite all these problems and despite all these products, you have gone from zero in 1955 to 4 per cent of your business in glass; is that correct?

A. Yes.

Mr. Hughes: Object to the form of the question.

The Court: All right, the form of the question is not precisely ideal for someone who is examining in chief, let's put it that way. I will permit it, having been answered, but [fol. 1126] try not to ask questions like that.

Mr. McManus: All right, sir.

Q. Is your glass line new and modern?

A. No, it is not.

Q. Your glass capping equipment is new, though?

A. It is.

Q. Are you familiar with glass capping equipment generally? Do you keep yourself advised?

A. No, I am not.

Q. Are you familiar with any of Anchor's other machinery?

A. No, I am not.

Mr. McManus: That is all.

The Court: All right, thank you, Mr. Martin.

Mr. Hughes: That is all.

The Court: You may step down.

(Witness excused.)

The Court: Next witness.

Mr. McManus: Mr. Brown, please.

[fol. 1127] JOHN C. BROWN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Now, Mr. Brown, by whom are you employed?

A. The C. H. Musselman & Company.

Q. What is your position with that company?

A. Assistant purchasing agent.

Q. For what period of time have you been employed by them in this capacity?

A. Approximately 12 years.

Q. Could you tell me the products that your company packs?

A. Sliced apples, applesauce, apple juice.

Mr. Hughes: Would you mind going a little slowly? We are trying to take notes. Sliced apples.

A. (Continuing) Sliced apples, applesauce, apple juice, apple butter, apple-base jellies, tomato juice, tomato puree, sour cherries, spiced apple rings, pie fillings, and vinegar.

Q. Could you tell me in what type of containers—

The Court: Where is your plant?

The Witness: Sir, we have three of them. One is at [fol. 1128] Bingerville, where our home office is. Another

is in Wood, West Virginia, and the third at Gardners, Pennsylvania, located just north of Bingerville.

Q. Could you tell me in what type of container you package your applesauce?

A. Our applesauce is packed in both glass and tin.

Q. And your special apple rings?

A. Spiced apple rings.

Q. Spiced?

A. Are packed in both glass and tin.

Q. And your apple-base jellies?

A. Packed in both glass and tin.

Q. How about your apple butter?

A. Both glass and tin.

Q. And your apple juice?

A. Both glass and tin.

Q. And your pie fillings?

A. Both glass and tin.

Q. You have a number of different type pie fillings, I assume?

A. Yes, sir; we have four of them.

[fol. 1129] Q. Four different types.

A. Yes, sir.

Q. Are you familiar with any of the other companies in your area which package pie fillings?

A. I know of one of our competitors, yes, sir.

Q. Who is that?

A. Knouse Foods.

Q. How do they package their pie fillings, what type of container?

Mr. Hughes: Your Honor, I object to that.

The Court: If this man doesn't know, Mr. Hughes, what the competitors in his own areas pack their pie fillings in when they are competing in pie fillings, I don't know who could know it.

[fol. 1130] Mr. Hughes: We have a deposition on this subject.

Mr. McManus: It is not before us, you Honor. I mean, he knows.

The Court: All right, let's have it. I will overrule the objection.

A. I have seen their package in tin on a shelf. I don't know if they pack in glass or not.

Q. Now, are these products which are packaged in glass, your products, do you use what is known as a——

Mr. McManus: I will withdraw that.

Q. The products that we have gone over, which you package both in glass and cans, are they packaged under a vacuum cap, a steam vacuum cap?

A. Are you referring about the ones in glass?

Q. Yes.

A. All of the closures which we use on our glass packages are steam closures.

Q. I see. And your company has the equipment to put these closures on to the glass container?

A. You mean is the equipment in our plant?

Q. You do have that type of equipment?

A. Yes, sir.

[fol. 1131] Q. And what company or companies furnish you that equipment?

A. We have both White Cap Company closures and Anchor Hocking.

Q. And that would be the closing machinery and the closure, also?

A. We have referred to it as a capping machine.

Q. A capping machine?

A. Yes, sir.

Q. And you also buy caps from those two companies?

A. Yes, sir.

Q. Now, do you buy any non-vacuum caps?

A. We buy a twist cap for one of our vinegar package, which is not applied as a vacuum cap.

Q. And from what company do your purchase that?

A. Crown Cork & Seal.

Q. And who are your, today, your principal can suppliers?

A. American Can Company and Continental Can Company.

Q. And who are your principal glass suppliers?

A. Owens-Illinois Glass Company, Armstrong Cork Company, Anchor Hocking Glass Corporation, Hazel-Atlas Glass Company, Tygart Valley Glass Company and Metro [fol. 1132] Glass Company.

Mr. McManus: That is all, your Honor.
Mr. Hughes.

Cross examination.

By Mr. Hughes:

Q. Can you tell me what type of container you package your sliced apples in?
A. Sliced apples are in cans only.
Q. And your tomato juice?
A. Tomato juice is in cans only.
Q. And your tomato puree?
A. In cans only.
Q. And your vinegar?
A. In glass only.
Q. And your sour cherries?
A. In cans only.

And vinegar, we also pack barrel vinegar, which is sold in wooden barrels.

Q. And what is the approximate gallonage of a wooden barrel?
A. 52 to 55 gallons.
Q. Are you able to tell us any of the percentages of glass and cans in those products that move both in glass and cans? Are you in a position to give us any of those figures?
[fol. 1133] A. No, sir; I could not.
Q. You can't help us on that at all?
A. No, sir.
Q. Now, of those products that are packed in both glass containers and metal containers, are some of those packed in institutional sizes, so-called?
A. Yes, sir.
Q. And for the institutional sizes, what type of container do you use?
A. A No. 10 can.
Q. And that would be true of all the products that you have specified?
A. No, no, I have to make an addition there.

In the case of apple butter, that is packed in two institu-

tional sizes, both cans and glass, both No. 10 can, and what we refer to as No. 10 glass.

Q. With that exception, all of the other products that move in both containers, the containers are packed in the institutional size in cans alone; is that correct?

A. Yes, sir.

The Court: All right, you may step down, sir.

Thank you very much.

[fols. 1134-1137] The Witness: Thank you.

(Witness excused.)

* * * * * * *

[fol. 1138] New York, June 23, 1960; 10.30 o'clock a.m.

Trial resumed

The Court: All right, Mr. McManus.

Mr. McManus: Will Mr. Fisher take the stand, please.

JOHN W. FISHER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. By whom are you employed, Mr. Fisher?

A. Ball Brothers Company, Incorporated.

Q. And what is your position with that company?

A. Vice-president for sales.

Q. And for how long a period have you held that job?

A. Eight years.

Q. Were you associated with the company prior to this time?

A. Yes, sir.

Q. In what capacity?

[fol. 1139] A. First in the production department, and in later capacity vice-president for manufacturing.

Q. And all told, how long have you been with Ball Brothers?

A. 18 years.

Q. Where is the headquarters of Ball Brothers?

A. Muncey, Indiana.

Q. What products are manufactured by your company?

A. What products?

Q. Yes.

A. Glass containers, screw caps, metal closures, zinc products, rolled products; generally some fabricated zinc products; plastic products; rubber products and corrugated shipping containers; and we do some space research.

Q. Now, you say "zinc products"; what class would they be?

A. We make zinc fruit jar caps; we make battery cans for dry cell batteries; lithographer sheets, plates, engravers' plates; weatherstripping; terrazzo floor strips, and a few fabricated items of that character.

Q. Now, in your rubber products, what are they? Are they containers at all?

[fol. 1140] A. Well, we make jar rings for the old mason jar. Then we run into mechanical rubber goods, many shapes and forms for home appliances.

Q. Not associated with the container industry; is that correct?

A. That is correct.

Q. And you say you are in plastics, also?

A. Yes, sir.

Q. And is that plastic containers or is it——

A. Our principal products are decorated plastic items like horn buttons; decorative emblems for appliances, automotive products and vacuum-formed items.

Q. And they are not associated with glass containers?

A. They are not.

Q. Now, where are your glass container plants, the glass container plants located?

A. Muncey, Indiana; Asheville, North Carolina; Okmulgee, Oklahoma; El Monte, California; Hillsboro, Illinois.

Q. And you indicated you were also manufacturing screw-type caps?

A. That is correct.

Q. And where are your plants located for that operation?

[fol. 1141] A. Muncey, Indiana; Chicago, Illinois, and El Monte, California.

Q. And then you indicated that you also make corrugated shipping containers?

A. That is correct.

Q. Where do you make those products?

A. Muncey, Indiana.

Q. Now going to your corrugated shipping containers, do you manufacture all of your corrugated shipping containers that you use with your glass containers?

A. No, sir.

Q. Approximately what percentage would you manufacture?

A. 50 per cent.

Q. Then you buy the other?

A. Yes.

Q. Now, when you say you are engaged in the manufacture of corrugated shipping containers, would that carry you back as far as the mill, or do you just have the corrugating plant?

A. We only have the corrugating plant. We buy our own stock, fabricate boxes.

[fol. 1142] Q. You buy the rolled stock and manufacture that into your board and make your corrugated shipping containers?

A. That is correct.

Q. Now, you say that you make screw-type caps?

A. Yes, sir.

Q. Are they of the non-vacuum variety?

A. They are—yes, that is correct. There are some, after they are applied the vacuum is formed, but that is a simple property of a product that is put in the containers.

Q. And would that be, for example, like in home canning?

A. That's right.

Q. Where the product itself forms steam or something and that in turn forms——

A. That's right; hand-applied in the home.

Q. And I take it that you make no vacuum-capping machinery?

A. We do not.

Q. And you make no vacuum cap?

A. We do not.

Q. Has your company ever made vacuum caps? I am not talking about the home canning variety, but the normal [fol. 1143] commercial variety.

A. We have never manufactured them for commercial

use. We have done some experimenting, but we have never had anything for sale.

Q. Have you experimented also with the manufacture of the machinery, vacuum-capping machinery?

A. Only by virtue of taking an accepted standard machine and making some variations to the head for our experimental purposes.

Q. Now you say that you have experimented with the manufacture of the vacuum caps; is that correct?

A. That's right.

[fol. 1144] Q. What period of time would that cover, what years, approximately?

A. Well, in limited degree from the late 40's up until 1956-'57.

Q. And during that period of time you conducted experiments and sold none of your caps commercially, is that correct?

A. That's right.

Q. What were the factors that caused you to discontinue the experiments with vacuum caps?

A. We simply didn't have the products, to bring our products up to the competitive level that would allow us to market them. In other words, we did not have—we didn't achieve our objectives, our goals, in getting the kind of closures that we felt were the right closures and we discontinued trying.

Q. From your experience with the experiments that you were conducting, does it require a good deal of technical knowledge to manufacture caps?

A. Yes, I think any product like that requires a lot of technical knowledge, certainly.

Q. And your company experimented for approximately 10 or 12 years and were still unable to manufacture a——

Mr. Hughes: I object to that, your Honor.

[fol. 1145] The Court: Yes. I think that is what I would call a conclusive question.

Mr. McManus: All right, I will withdraw it.

Q. Could you tell me the types, the category types of glass containers that your company makes?

A. We make food containers, both wide mouth and narrow mouth. We make beer bottles, whiskey bottles; we

make bottles for chemical, household and industrial products, and perhaps a few simple items that might fall into the categories of the proprietary or cosmetic lines, but very, very few.

Q. What would your principal lines be?

A. Our principal lines would be wide mouth food containers and whiskey bottles and beer bottles.

Q. Now approximately what percentage of your glass containers is sold in shipping containers?

A. Oh, all of it I would say, with very few exceptions.

Q. Now what percentage of the selling price of the glass container is represented by the shipping container, approximately?

A. It depends upon the type of end use that the container is designed for and the size of the container, but I would say it would range in the neighborhood of 18 to 25 per cent.

[fol. 1146] Q. What are the other important items of cost that go into the manufacture of glass containers?

A. Labor, fuel, overhead charges, which represent extensive repairs—one has to make furnaces and machinery—and the usual taxes, property taxes, et cetera.

Q. Now your company has one plant on the West Coast?

A. Yes, sir.

Q. Are you familiar with the prices that your plant charges for its products on the West Coast?

A. Yes, sir.

Q. Are you familiar with the prices that your company charges for its glass containers in the eastern part of the country?

A. Yes, sir.

Q. Any by east I would mean east of the Rocky Mountains. Are the prices charged on the West Coast higher or lower than those charged east of the Rockies?

A. They are higher.

Q. And do you know why they are higher on the West Coast?

A. First of all, labor is much higher, fuel is much higher, [fol. 1147] raw materials are much higher.

Q. To your knowledge, do you ship glass containers from your El Monte plant over the Rocky Mountains into the East?

A. Absolutely not.

Q. Do you regularly ship glass containers from your eastern plants over into California?

A. No.

The Court: In other words, for all practical purposes, the El Monte plant is your source of supply for your Pacific customers?

The Witness: That is correct.

The Court: Of course, with certain exceptions.

The Witness: Oh, yes, minor.

The Court: Yes.

Q. When did you build your West Coast plant?

A. 1946-'47.

Q. What were the factors that prompted you to build a plant on the West Coast?

A. Well, at that time, you know, there was quite a shift of population to California, and there were many firms in the Midwest that were moving, at least, were building facilities on the West Coast. Freight rates were mounting, and in order to service those customers, we built a plant [fol. 1148] there to do so and to take advantage of the increased population in that area for our home canning jars.

Q. Does your company service national accounts, and by that I mean customers who have plants located in the central or eastern part of the United States?

A. Yes.

Q. Did those accounts in any way influence your construction of the plant on the West Coast?

A. To some extent, yes.

Q. And could you explain what you mean by that?

A. Well, as I explained earlier, if a company that had facilities in the Midwest was going to build its plant in California, we would like to retain our position as a supplier of that company and so we moved—I mean, we built a plant out there. That is one example. Another example is that other new products were started up out there that we would like to serve, and so we built a plant.

The Court: Can you give me an example of one of those new products?

The Witness: Well, I think in the West Coast, for instance, there were certainly packers in Los Angeles of instant coffee, which was a new product in the market, and

[fol. 1149] baby food customers started packing in glass at that time.

Q. Do you package these products in your plant on the West Coast, that is, products that you——

A. Do we package them?

Mr. McManus: Excuse me. I will withdraw the question and reframe it.

Q. Do you sell or do you manufacture for these products that you just mentioned, containers for baby foods and instant coffee, on the West Coast?

A. We have--I am not sure that we are right at the moment doing it, but we have since we built the plant, yes.

Q. Do you manufacture them in your plants that are east of the Rocky Mountains?

A. Yes, sir.

Q. Do you also sell other types of containers, or what would be the other types of wide mouth food containers that your company manufactures?

A. Peanut butter, mayonnaise, salad products of all types, and you get into a number of pickle items, all the way from fresh pack to relishes. There are quite a number in that category. Then there are jams, jellies and preserves.

[fol. 1150] The Court: Tell me this: As I recall it, you mentioned that you did not make vacuum closures yourself?

The Witness: Yes, I have.

The Court: But you do, I take it, produce wide mouth jars for foods which require vacuum closures, is that right?

The Witness: Yes, sir.

The Court: And your customers use closures made by other companies on those jars?

The Witness: That is right.

Q. Directing your attention to the wide mouth food containers, do you have a stock item type of glass container in the wide mouth food category?

A. We have a number of standard items that are used by packers of different sizes.

Q. Do you make them for the home consumer?

A. Yes.

The Court: Is the jar for home consumption known as a Ball jar or is that a word in the trade?

The Witness: I hope to tell you it is, sir.

The Court: Those for home consumption are quite different in shape and format from the ones which you sell to packers, are they?

[1151] The Witness: Yes, sir.

The Court: Are those the ones where you press a little wire thing down, or is it a screw top?

The Witness: Well, that is an older type, but some of those are still sold in New England and in some of those areas that rather stick to the ways of old canners.

The Court: But the modern jar is a two-piece——

The Witness: It is a two-piece closure. It has a lid and a band. You screw the band down and process the jar, and when it cools forms a vacuum and preserves the food.

Q. You said that you do have stock items on standard jars, wide mouth jars?

A. Yes.

Q. And would they be for the fruit and vegetable products?

Mr. Hughes: I object to that, your Honor.

The Court: Well, I don't understand it.

Will you read the question?

(Question read.)

Mr. Hughes: May we have the preceding question?

[fol. 1152] (Record read.)

The Court: I will allow it, Mr. Hughes.

Mr. Hughes: Your Honor, I think we are again getting into one of these problems of quantity and that sort of thing.

The Court: That is what concerns you at this point?

Mr. Hughes: Yes, it does.

The Court: I will allow this and we will see where we go from here, bearing that in mind.

Q. Would you answer that question?

The Court: The answer is yes, I take it?

The Witness: Yes.

The Court: And are these comparable in size to the metal containers or are they attempted to be?

The Witness: Well, yes, except that I think that there

are certain designations or differences that—when you say, are they, generally speaking, I say some of them are—many of them are.

Q. Mr. Fisher, are you a member of the Glass Container —is your company a member of the Glass Container Manufacturers Institute?

A. Yes, sir.

Q. And do you attend their meetings as a representative [fol.1152a] of your company?

A. Some of them.

Q. Do your represent your company on any of the committees of that organization?

A. Yes.

[fol. 1153] Q. And could you tell me which one, or one?

A. Market Research Promotion Committee.

Q. And for how long a period have you been a member of that committee?

A. Two years.

Q. What is the purpose of the Market Research & Promotion Committee? What does it do?

A. To expand the market for glass containers, I would say is the primary purpose of it.

Q. And as its name implies, it does market research?

A. Yes, sir.

Q. Makes analysis of markets and things of that nature?

A. That's right.

Q. Are you familiar with these market research programs that have been carried out by the Glass Container Manufacturers Institute?

A. Those in the last two years I have been, yes.

Q. And you have read them and studied them yourself?

A. I have, to the extent that one can.

[fol. 1154] The Court: You get more reading matter than you could read, I take it?

The Witness: That's right.

The Court: So do we all.

Q. Do you use that information as guidance in your own sales program, advertising?

A. Well, information that is applicable to us and that is useful to us, we try to use it, yes.

Q. And you rely upon it?

A. Yes.

Q. If it is applicable?

A. That's right.

Q. Now, since you have been a member of this committee, to your knowledge has its advertising program increased or decreased?

A. Are you talking about the dollar spent?

Q. Dollar spent, yes.

A. Yes, it has increased slightly. The rates have gone up.

Mr. McManus: Could I have just a minute, your Honor?

Q. Now, the period of time that you have been with your company, has the glass container generally become heavier or lighter?

[fol. 1155] A. It has become lighter.

Q. And has it still been able to retain its strength even though it has become lighter?

A. Its trend?

Q. Its strength. Is it still as strong a container as it was?

A. Oh, its strength.

Q. Yes, sir.

A. I think it is stronger.

Mr. McManus: Thank you. That is all.

The Court: All right, Mr. Hughes.

Cross-examination.

By Mr. Hughes:

Q. Mr. Fisher, would you say that competition in the glass container industry was keen and vigorous?

A. I am sorry. I didn't hear you.

Q. I say, would you say that competition in the glass container industry is keen and vigorous?

A. Yes, sir.

Q. Have you made any recent additions to your plants?

A. We have built a plant in Asheville, North Carolina.

Q. Will you tell me when or about when you completed that plant?

[fol. 1156] A. Well, it started in operation last month.

Q. And it has been building for how long? When did you start work on it?

A. Last fall, or summer, actually. Excuse me.

Q. Would you say that most of your customers use several sources of supply for glass containers?

A. The large ones do, yes, sir.

Q. And would you say that the closures that you make are used on the glass containers of other glass container manufacturers?

A. They are, sir, yes.

Q. And would you say that the closures of other glass container manufacturers are used on your containers?

A. That is correct.

By the Court:

Q. You don't sell your containers with closures; you sell the closures separately from the container, do you?

A. With the exception——

Q. With the exception of home——

A. —home canning, yes.

The Court: Yes.

[fol. 1157] By Mr. Hughes:

Q. Now, you have told us that you do make your own corrugated shipping containers; is that correct?

A. We make a portion of it.

Q. Yes, about 50 per cent of it?

A. That is correct.

Q. And you have your own corrugator; is that right?

A. That's right.

Q. And the machinery for forming the materials into the container?

A. That is correct.

Q. You did have a paper mill that made liner board and corrugated medium, didn't you?

A. Yes.

Q. And the products of that paper mill and liner board factory were for your own use; isn't that correct?

A. Plus sale to others.

Q. And you used the products of that mill for the making of corrugated board, which in turn went into the shipping container; is that correct, during the time when you held, owned those plants?

A. Yes, some of the products of those mills went into [fol. 1158] the box shop.

Q. Did you have two or three mills, do you recall?

A. We had a liner board mill and we had two corrugated strawboard mills, corrugating strawboard mills.

Q. And you sold those plants?

A. Yes, sir.

Q. Now, to the extent that you buy shipping containers from outside sources, are there several sources from which you can obtain shipping containers?

A. Yes, sir.

Q. And do you in fact obtain them from more than one source?

A. We do.

Q. And about how far from your plant are the shipping containers which you buy manufactured?

A. Oh, I think that all of them are within a few hours' delivery in time to the plant.

Q. How are they delivered to the plant?

A. Generally speaking, in trucks or by railroad car.

Q. And do various shipping container manufacturers try to get you to buy their shipping containers?

[fol. 1159] A. Yes, sir.

Q. And would you say that the competition in the shipping container industry is keen and vigorous?

A. Yes, it is.

Q. Now, isn't it true that the proportion of the cost of the shipping containers to the total selling price of glass containers varies considerably with the price and size of the glass containers themselves?

A. Well, it does with the size, I would say. The price hasn't much to do with it.

Q. Well, the size of the glass container would be a factor.

A. Yes.

Q. With some of them you have to have a heavier board than with others; is that correct?

A. Yes.

Q. Would whiskey bottles be an example, an illustration of that? That is a relatively high cost container.

A. Would what?

Q. Shipping containers for whiskey bottles would be an illustration of one where the cost was relatively high?

[fol. 1160] A. That's right; it would be.

By the Court:

Q. Let me ask you this: if you are shipping whiskey bottles to a distillery in corrugated containers, would the distillery use the same corrugated container?

A. Oh, yes. Practically all of the shipping containers that we make are for the reshipment of the product.

Q. There is a reshipment?

A. Yes.

Q. So that in effect what the shipper is buying from you, or in effect what he is doing is purchasing both the glass container and the outside container to ship the completed product in; is that right?

A. That is correct.

Q. Now, will you stamp the corrugated containers for him ahead of time?

A. We print them with his name.

Q. You print them?

A. You print them with his name, identification and everything on.

Q. So-and-so bourbon whiskey?

A. Yes, sir. That is the same with all types of containers [fol. 1161] that we make for reshipping use. We print the sales message or the identification on it.

Q. Whatever it may be.

A. Yes.

The Court: Thank you.

By Mr. Hughes:

Q. And are the shipping containers which you buy from others manufactured to your specifications?

A. Yes, sir.

Q. And do you regard the shipping container as one of the constituent parts of the product which you sell?

A. We do.

Q. And would you say that your total selling price is designed to return a profit over the total cost of the product, including the labor, the fuel, the raw materials, the shipping containers, the overhead and other elements of cost?

A. Yes.

The Court: I take it when you talk of the percentage of cost the shipping container bears to the balance of the cost, you are also including in that the cost of marking and stamping and labelling the container for customer use, are you?

[fol. 1162] The Witness: That is all done in a printer's slot. It prints and does part of the fabrication at the same time. It is a very simple method to print that message on.

The Court: Yes.

Q. Now, is this home canning jar, the Ball jar, one of the principal items of your product line?

A. It is one of them. It is not the largest item.

Q. That is how you classify it in the product line, confining ourselves of course to glass containers?

A. Of what we make of the industry?

Q. No, what you make?

A. Approximately 10 per cent of our glass containers.

Q. And would you say that any other glass container that you make is the higher percentage of your total container volume?

A. That would take in a number of sizes, of course, in that home canning line, and of course you don't have anything else to compare to that in the food line, why, we have a number of sizes of items that probably in total are larger than that, but they would be shipped to many customers.

[fol. 1163] Q. Well, I was under the impression that the home canning jar was the principal, your single principal item in the food container, in your food container line?

A. It isn't.

Q. Now, Mr. Fisher, does your company have available to it sources of credit and capital if it chooses to make use of them?

A. Within reason.

Q. And does your company have more than adequate cash reserve for the business that you are conducting?

A. Sometimes I think not, but most of the time we are able to make ends meet.

Q. Would it be true that except for your home canning jars, that most of your glass containers are made on special molds?

A. Well, now, I am not quite clear in what you mean by "special mold"?

Q. Well, do you have customers who require a sort of custom-made container for their use?

A. Yes, we have several.

Q. Would you say that it was that type of container [fol. 1164] which constituted the greater part of your glass containers, other than the home glass, home canning jars, eliminating them?

A. Well, I would say as an approximation that perhaps half of the containers we make are a standard item, and half of them are private, private mold; so to speak. But I would not want to say that categorically without an accounting.

Q. Do you have a staff of technical men and technicians?

A. Yes, sir.

Q. And you regard them as all good and competent men in their lines, don't you?

A. Yes, sir.

Mr. Hughes: Just one moment, your Honor.

Q. Are beer bottles made on standard molds?

A. Most of them are, yes.

Q. Some are not?

A. Very few.

Mr. Hughes: Yes. All right.

The Court: Anything further, Mr. Hughes?

Mr. Hughes: Nothing.

The Court: Mr. McManus.

[fol. 1165] Redirect examination.

By Mr. McManus:

Q. Now, you have told us that your company made instant coffee and baby food, for example, is that correct?

A. That's right.

Mr. Hughes: Well, your Honor, I am sure Mr. McManus didn't mean to state it that way. They don't make instant coffee.

Mr. McManus: I am sorry.

Q. They make containers to package baby food and containers to package instant coffee; is that correct?

A. That is correct.

Q. Now, would you consider a container for baby food a standard mold?

A. No, I don't think we make anything in standard mold.

Q. Would you consider it a special mold?

A. We call them private molds, yes.

Q. They would be private molds because the company that you would be making them for would have their design on it or something of that nature?

A. Well, the labels' panel or some peculiarity related to their product.

Q. Now going to the glass container that you make for [fol. 1166] instant coffee, would that be a special mold or would that be a standard mold?

A. Some of them are private molds; some of them are standard molds.

Q. And the private molds, when you talk about private mold, you consider it a private mold because it has some designation, customer designation, on it?

A. He purchases the mold; it is his.

Q. I see. Now, going back to your paper mill or mills, I should say, when did you dispose of your liner board and your strawboard mill, approximately?

A. These are approximate dates, but I believe our liner-board mill ceased operations about 1936. The property stood idle; we used it for warehousing purposes and we finally disposed of that property in about 1952 or '53. One strawboard mill we disposed of either during World War II or very shortly thereafter; and the last mill we sold was in 1953 or '54.

Q. And was the last mill you sold a strawboard mill?

A. Yes, sir.

Q. And could you tell me what is a strawboard mill?

A. Well, a strawboard mill is a mill that receives straw, [fol. 1167] either oats, wheat straws, as a raw material, cooks it with soda ash and a few other ingredients; cuts it up very finely after mixing with some pulp, perhaps waste pulp of some kind, to put on a paper machine and made into a sheet, and the properties are such that you use it for the stiffener in the corrugated box. It is the bridge, so to speak, that holds the liner papers apart and makes

your corrugated box. There are other materials that are used. We happen to make strawboard.

Q. And to make the container, the corrugated container, you would need more than a strawboard mill; you would need another type of mill to put the outer coating on the corrugation?

A. You can buy that. That is an open market product. You can buy any of those things.

Q. I understand that. But you don't make corrugated shipping containers solely from strawboard products; is that correct?

A. No, absolutely not. You couldn't make them satisfactorily.

Q. Now, your linerboard mill, would that linerboard mill be able to make corrugated shipping containers?

[fol. 1168] A. The products from the linerboard mill would be the liners that make up the part of the corrugated board.

Q. I see. So that neither the linerboard mill or the strawboard mill alone could make a corrugated shipping container; you need another product.

A. You see, those are only raw material producers. You have to go through a fabricating process to make a box after you get to the material. So the answer is no in either of those mills to make a box.

[fol. 1169] Q. You would have to buy from other types of suppliers in order to make corrugated boxes in addition to what you produce yourself, is that correct?

The Court: I do not get this, Mr. McManus. All that the witness is saying is that you have got certain types of paper and board, and then you have got another plant to make a box. A paper plant does not make a box. You have got to have a box plant, is that right?

The Witness: That is correct.

Mr. McManus: I understand that, your Honor, but I think that there is more to it than that.

Q. As I understand it, in making a corrugated shipping container, you have an inner corrugated liner in the wall, is that correct, an inner corrugation in the wall of the box, in the interior wall?

A. The box is made up of two liners interspaced with a corrugated medium which makes the bridge in there.

Q. The straw board makes that bridge?

A. That is only one product. I can name at least six products that you can use for that bridge in there.

[fol. 1170] Q. I understand that, but from your straw board mill you would be making the bridge, is that right?

A. That's right.

Q. And from your fiber board mill, would that be another form of bridging material?

A. You could make liner material—you could make a corrugated medium which would be obtained in the product, in the beginning of the process.

The Court: But you weren't making bridges in that factory, you were making liners?

The Witness: That's right.

Q. But the only point that I am trying to get straight is, with your fiber board mill and straw board mill, you couldn't, just with those products, make a corrugated shipping container without using other paper, isn't that so?

A. You could use those, the products of those two mills which would supply you with all the raw materials you needed to make a box, but you have to go through a fabricating process after that.

The Court: Mr. Fisher, can you tell us the factors that your company took into account in determining to dispose of this straw board mill, if you recall?

[fols. 1171-1195] The Witness: It is very simple. The mill was an old one, built at the turn of the century. It had lived a life span or it had operated its life span with most of its machinery and you had to rehabilitate the mill and bring it up to date to meet the competitive features and quality features or we had to dispose of it. We decided to dispose of both companies.

The Court: On the theory, I take it, that it was more economic and sounder to purchase the material than to manufacture it in a mill of that category?

The Witness: That is correct.

Q. There is just one more question, Mr. Fisher:

When you purchase your corrugated shipping containers on the open market, does the company that furnishes those

to your company, do they put the design and the name on those containers?

A. Oh, yes.

The Court: Is there anything further?

Mr. Hughes: Nothing further, your Honor.

The Court: Thank you, Mr. Fisher. You may step down.

(Witness excused.)

* * * * * * *

[fol. 1196] Wilson H. Ellis, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. What is your home address, Mr. Ellis?

[fol. 1197] A. Martinsberg Road, Mount Vernon, Ohio.

Q. By whom are you employed?

A. Lamb Glass Company of Mount Vernon, Ohio.

Q. And in what capacity are you employed?

A. Vice-president and salesmanager.

Q. And for how long a period have you been employed, Mr. Ellis?

A. I have been employed for seven years by the company, six years as sales manager, and vice-president for the past year.

Q. And were you formerly employed prior to that?

A. Prior to that I was employed by Anchor Hocking Glass Corporation.

Q. And for how long a period?

A. Approximately three years.

Q. Now, what product or products does your company make?

A. Milk bottles, home canning jars, narrow neck food containers.

Q. And how many plants does your company have?

A. Just the one plant in Mount Vernon.

Q. And how many tanks do your have?

A. We have two furnaces and two tanks.

Q. And could you tell me how many machines?

[fol. 1198] A. Eight machines.

Q. And of what type?

A. We have four IS machines and four Lynch MB machines.

The Court: What is your gross volume of business, roughly?

The Witness: Roughly, $4,000,000.

Q. And what products do you make on the Lynch machine?

A. The Lynch machines are primarily for manufacture of milk bottles and home canning jars.

Q. And what products do you make on the IS machines?

A. On the IS machines we are making milk and narrow neck food containers.

Q. Excuse me?

A. Milk bottles and narrow-neck food containers.

Q. And how many sections are these machines?

A. We have, let's see——

Mr. Hughes: Are you referring to the IS machine?

Mr. McManus: Excuse me. The IS machines, yes.

[fol. 1199] A. IS machines, we have two five-section machines and two six-section machines.

Q. And can these machines be converted from narrow-neck to wide-mouth?

A. Yes, with the proper equipment.

Q. And can they also be converted from wide-mouth to narrow-neck?

A. That's right. It's an interchangeable process.

Q. Now, in the narrow-neck field of food containers, what generally are the types of containers that you make?

A. Principally, we are making the gallon jug, one 28-ounce gallon jug, narrow-neck, and 16 and 32-ounce capacity cylindrical round containers. Basically, those are the two items we are in at the present time.

The Court: Is that the type you use for fruit packing?

The Witness: Basically for vinegar, fountain syrups, and so forth, lines of that nature.

Q. Now, when you say "fountain syrups," are you talking about the syrup that you would buy at soda fountains?

A. That is correct; and concentrate for bottling com- [fol. 1200] panies, like concentrated orange and concentrated strawberry flavor—extracts of that nature, which are sold to the bottling plants.

Q. And from your plant what area do you usually service accounts?

A. Primarily east of the Mississippi River, with the exception of Florida. We do not ship any to Florida.

Q. And approximately what percentage of your accounts would be within 500 miles of your plant?

A. I would say 75 to 80 per cent, in that neighborhood.

Q. Now, do you ship your products in—excuse me. What percentage of your products do you ship in corrugated shipping containers?

A. 100 per cent. Everything we ship is in corrugated.

Q. And what does the cost of the shipping container, what is the relationship of that, percentage-wise, to the price of the glass container?

A. Ours at the moment is approximately 8 per cent.

Q. Has it been more or has it been less?

A. It has been less. For example, in as recent as 1956 [fol. 1201] it was approximately 5½ per cent. But due to the diversification program which we have undertaken, and getting into other types of containers other than milk, our carton cost have become a greater percentage of the salesprice of the item.

Q. And why is that?

A. Primarily because milk containers were packed in open-top trays. In other words, to cite an example, they only come up to the holder of the containers. It is not a completed closure which all your food containers are packed in a complete carton. You requ[illegible] less corrugation, so therefore your cost per unit was considerably less than it would be had we used a full-type carton.

The Court: How many milk bottles does a carton take, usually?

The Witness: We pack, for example, quarts, two dozen to the tray, and the tray height—well, to cite you an example again, the quart milk container is 8⅝ths inches in height.

We use a tray 6 inches in depth. The rest of it is open, which cuts your carton cost considerably.

[fol. 1202] Q. And I think you stated as you had moved into the food line the percentage cost has increased; is that right?

A. That is correct, sir.

Q. Now, I would like to get back and ask you, you say you make your milk bottles on your Lynch machines.

A. Milk bottles and home canning jars.

Q. Is the milk bottle a wide-mouth container, considered to be or not?

A. Yes, sir; it would fall under the category of wide-mouth.

Q. Are you able to make wide-mouth ware on your Lynch machines?

A. Other than the milk bottles and mason jars, we are not. It is not adaptable to general line of wide-mouth food containers such as used by the canning industry and people like that. The machine is not adaptable to that type of production.

Q. Is your company a member of the Glass Container Manufacturers Institute?

A. Yes, they are.

Q. And do you attend their meetings as your company representative?

[fol. 1203] A. Yes, I do.

Q. For how long a period of time have you been doing this?

A. Well, since 1956.

Q. And are you a member of any of their committees, or have you been since 1956?

A. Yes, I am on their Market Research and Promotion Committee.

Q. And for what period of time have you been a member?

A. Since '56.

Q. Could you tell me the purpose of this committee?

The Court: Well, now, Mr. McManus, we have had the purpose of the committee from Mr. Fisher, who, I understand, was chairman of that committee.

Mr. McManus: Your Honor, what I want to show is that he is familiar with the committee and with the reports and

studies they make, and that his company relies upon these reports.

The Court: Well, ask him that.

By the Court:

Q. Do you follow the activities of the committee pretty closely?

[fol. 1204] A. Yes, sir.

Q. Do you read their literature?

A. Yes, sir.

Q. You attend their meetings from time to time?

A. Yes, sir.

Q. In your business do you take into account the literature they send in formulating your own policy?

A. Yes, we do.

The Court: All right.

Mr. McManus: That is all I have.

The Court: Mr. Hughes.

Cross-examination.

By Mr. Hughes:

Q. Mr. Ellis, do most of your customers use more than one source of supply for their glass containers?

A. I say by and large that is true, with the exception of possibly a few small users, who do not buy sufficient quantities to have more than one supplier.

Q. Would you say that competition in the glass container industry was keen and vigorous?

A. Most assuredly so.

Q. Do you have more than one source of supply for the [fol. 1205] corrugated shipping containers that you use?

A. Yes, we do.

Q. How many do you have?

A. Oh, approximately five.

Q. And are they mostly from areas fairly near your plant?

A. Most of them within a radius of 175 miles.

Q. And would you say that competition in the corrugated shipping container business was keen and vigorous?

A. It is.

Q. And would you tell us how the shipping containers are delivered to your plant?

A. They are all delivered by truck in our particular case.

Q. And would you say that proportion of the cost of the shipping containers to the total selling price of the container varies with the size or other characteristics of the container?

A. That is correct.

Q. That is what you were explaining to his Honor on direct examination.

A. Right.

[fol. 1206] Q. Are your shipping containers manufactured to your own specification?

A. That is correct; with the exception of some items in the food line, the narrow-neck food line, where the carton may be specified by the customers for certain requirements to meet his specifications.

Q. But for the most part?

A. For the most part it is built to our specifications.

Q. It is built to specification.

A. That is correct.

Q. Do you regard the shipping container as one of the constituent parts of the product that you sell?

A. Insofar as the selling price is concerned?

Q. Yes.

A. Absolutely.

The Court: Let me ask you this: is that also true of milk bottles?

The Witness: Yes, sir.

Q. And your total selling price is designed to return a profit over the total cost of the product, including all of the elements of cost, such as labor, fuel, raw materials, shipping containers, overhead, and items of that kind?

[fol. 1207] A. That is correct.

Mr. Hughes: No further questions.

The Court: Anything further, Mr. McManus?

Mr. McManus: No, nothing further.

The Court: You may step down. Thank you.

(Witness excused.)

The Court: Next Witness.
Mr. McManus: Mr. Collins.

GEORGE F. COLLINS, JR., called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. What is your home address, Mr. Collins?
A. 2211 East 41st Street—street address?
Q. Yes, fine.
A. 2211 East 41st Street, Tulsa, Oklahoma.
Q. And with what company are you associated?
A. Liberty Glass Company, Sapulpa, Oklahoma.
Q. Will you talk just a little bit slower, if you will, and a little bit louder?
A. I will.
Q. And in what capacity?
A. I am president of the glass company.
[fol. 1208] Q. And for how long a period of time have you been president?
A. Since May of '39.
Q. And were you employed by the glass company prior thereto?
A. Yes, since '36, 1936.
Q. And who was president prior to that time?
A. My father.
Q. Is your company a closely-held corporation?
A. It is.
Q. Could you give us an approximation of your gross sales? You could give it in a range if you would rather not be too specific.
A. Net sales, I'd say over $7,000,000.
Q. Around $7,000,000.
A. Yes.
Q. You have just the one plant in Sapulpa?
A. Just the one plant.
Q. And how many tanks do you have?
A. Four. We call them four furnaces, or tanks.

Q. And how many machines?

A. 11 machines.

Q. And what are the type of machines that you have?

[fol. 1209] A. We have Lynch machines, which is a Lynch 10 machine. We have a Lynch MB machine, which is a milk bottle machine, and we have the Hartford IS machines.

Q. And what do you make on your Lynch MB machines?

A. That is milk bottles only.

Q. And what do you make on your Lynch 10s?

A. Beverages mainly—I'd say only, almost 95, 98 percent.

Q. And what do you make on your Hartford IS equipment?

A. Both milk and beverage bottles.

Q. And when you say "beverage bottles"——

A. I am talking about the soft drink bottles.

Q. Not beer?

A. No, not beer.

Q. What percentage of your sales are within 500 miles of your plant?

A. I'd say in the contiguous area, let's say, the contiguous states, I would say over 60 per cent of our sales.

Q. Do you ship any of your products to the West Coast?

[fol. 1210] A. Very few.

Q. And what type would those be?

A. Milk bottles.

Q. And have you always shipped milk bottles to the West Coast since you have been president of the Company?

A. Yes, yes, very definitely.

Q. And has the amount of milk bottles that you shipped to the West Coast over that period of time increased or decreased?

A. Decreased.

Q. Are you able to ascribe a reason for this decrease?

A. Yes. There have been three manufacturers on the West Coast that have gone into milk bottles since the time we have been shipping there.

Q. And because of your location you——

A. The service and so forth that we could render would not be as good as the three companies that went into the milk bottle picture.

Q. Now, what percentage of your sales are in corrugated shipping containers?

A. Most of them are. We shipped—most of our sales are beverages and milk, and they are shipped in beverage trays [fol. 1211] or cartons, with the exception of wooden cases that are sometimes supplied by our customers.

Q. And when you said "wooden cases," would that be your milk bottle customers?

A. No, that is beverage bottles.

Q. Beverage bottles?

A. Your regular beverage case, wooden case.

Q. Would you mind tell us who some of your beverage bottle customers are?

A. No, not at all. Coca-Cola, we ship Coca-Cola bottles; Dr. Pepper; Pepsi Cola; Canada Dry; 7-Up—we try to cover the beverage field.

Q. And do you have to make a glass other than flint glass for these?

A. Very definitely.

Q. What type of glass do you make for these soft drink bottles?

A. One glass is an emerald green glass. The other glass is what we call a Georgia Green glass, which is the type the Coca-Cola bottles are made of.

Q. And could you estimate the percentage of your selling price which is represented by corrugated shipping containers, approximately?

[fol. 1212] A. I would say it's around 14 to 16 per cent.

Q. And is your company a member of the Glass Container Manufacturers Institute?

A. Definitely, it is.

Q. And do you attend their meetings as representative of your company?

A. Yes, I do.

Q. And for what period of time have you been attending them?

A. Ever since it was organized as GCMI.

Q. And that would be from approximately when?

A. Oh, gosh, that was organized after—oh, in '42, I think it was, '42 or '41, I mean.

Q. And you have been a member since about that time?

A. Yes, I have been a member since that time, we have, our company.

Q. Are you a member of any of their committees?

A. Yes.

Q. Which one?

A. There is a Milk Bottle Promotional Committee that I am a member of, and there was recently organized a Beverage Bottle Committee, that I have been made chairman of, and they have only had an organization meeting [fol. 1213] on that so far.

Q. And what is the purpose of the Beverage Bottle Committee?

A. Well, the one that has just been organized is of course to consider the same thing as the Milk Bottle Promotion Committee, to expand our sales and to compete with the competitive materials like soft drink cans, for example. That is going to be the one big problem.

Q. And when was this Beverage Bottle Committee organized?

A. The one I am speaking of, just this year.

Q. Just this year. And what was the purpose—why was the Milk Bottle Promotion Committee organized, if you know?

A. Well, it was to expand the sales of milk bottles, and to also do everything we could to ward off a paper container, which made inroads into our field.

Mr. McManus: That is all I have, your Honor.

The Court: All right, Mr. Hughes.

Cross-examination.

By Mr. Hughes:

Q. Mr. Collins, how old is your company?

[fol. 1214] A. The predecessor to the Liberty Glass Company was Premium Glass Company, in 1912.

Q. And your father ran the business before you, and now you are running it; is that right?

A. He founded the business in 1912, yes, sir.

Q. And would you say that the competition in the glass container industry was keen and vigorous?

A. I sure would.

Q. Would you say that most of your customers use more than one source of supply for their glass containers?

A. We love to sell our customers a hundred per cent, but I think—yes, they do, our customers buy from other glass companies, naturally.

Q. Now, do you have more than one source of supply for the corrugated containers you use?

A. Yes, we do.

Q. About how many sources do you have?

A. We have five, three main ones. Five.

Q. I didn't catch that. Five?

The Court: Three main ones.

A. Three main ones.

Q. Yes. And are those sources of supply fairly close to your plant?

[fol. 1215] A. Fairly close.

Q. How far away would you say the furthest was?

A. Well, the shipping plant, I'd say, Louisiana, Springdale, or something like that.

Q. Are they delivered, are the corrugated container shipments delivered to your plant by truck?

A. Mostly by truck.

Q. What other means is used?

A. By rail, if any.

Q. And is the competition in that field keen and vigorous for your business?

A. Yes.

Q. Would you say that the proportion of the cost of the shipping container to the total selling price of the container varies with the size of the container?

A. And type, yes.

Q. And type of container.

A. Yes.

Q. Now when you were giving us that range of percentage, you were thinking in terms of the variation in cost of the different containers; is that correct?

A. That's right.

Q. Are your shipping containers manufactured to your [fol. 1216] specifications?

A. Yes, and our customers'.

Q. And do you regard the shipping containers as one of the constituent parts of the product you sell?

A. Yes.

Q. And is your total selling price designed to return a profit over the total cost of the product, including the various elements of cost, which would include the corrugated containers?

A. Yes.

Mr. Hughes: Just one moment.

Q. Has the number of beverage bottles sold by your company increased since 1955?

A. Yes.

Mr. Hughes: That is all.

The Court: Anything further?

Mr. McManus: Just one question, your Honor.

Redirect examination.

By Mr. McManus:

Q. Now, you stated that your customers have other sources of supply for glass soft drink bottles; is that correct?

A. Yes.

[fols. 1217-1218a] Q. Do your customers have other sources of supply for soft drink containers other than glass?

A. Yes.

Q. And what type of container would that be?

A. Other soft drinks are cans, they are cans.

Mr. McManus: That is all, your Honor.

The Court: All right, thank you, sir. You may step down.

(Witness excused.)

. . . . . .

[fol. 1219] JOHN R. HARKNESS, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do your reside, sir?
A. Acton, Indiana.
Q. By whom are you employed?
A. Fairmount Glass Works, Inc.
Q. Where is that located?
A. Indianapolis, Indiana.
Q. How long have you been with the company?
A. Approximately 25 years.
Q. And your present position is that of president?
A. Correct.
Q. How long have you held that position?
A. Four years.
Q. And what have been your prior positions?
A. Vice-president, sales manager and director.
Q. And you are familiar with the general operations of your business in that period of time?
A. Yes, sir.

[fol. 1220] Q. How many plants do you have at the present time?
A. One.
Q. And that is located where?
A. Indianapolis.
Q. Sir, was your net dollar volume in 1959 under $12 million?
A. Yes, sir.
Q. Sir, what have been the principal types of glass containers which your company has produced and did produce since 1956?
A. Liquors, wines, pharmaceuticals, household chemicals, general line.
Q. Sir, can you estimate what percentage of your business in this period had been devoted to such types of containers?

The Court: Wait a minute. I don't follow that. What do you mean by such types. I thought he told us the types.

Mr. Greenberg: Liquors, wines, pharmaceuticals and household chemicals.

Mr. Hughes: He testified to that.

Mr. Greenberg: I will try to rectify it. The witness misunderstood me.

[fol. 1221] The Court: All right.

Q. Sir, referring now to liquors, wines, pharmaceuticals and household and chemical containers, can you estimate what percentage——

A. 75 per cent of that.

Q. And has your company in your experience operated only east of the Rocky Mountains?

A. Yes.

Q. Can you estimate what percentage of your company's containers in your experience have been sold within a 400-mile radius of your plant?

A. 90 per cent.

Q. How many glass melting tanks does your company have?

A. Four.

Q. Has your company in your experience manufactured closures for glass containers?

A. No, sir.

Q. Has it manufactured corrugated shipping containers?

A. No, sir.

Q. Processing line machinery?

A. No, sir.

Q. So that all of your earnings come solely from the [fol. 1222] sale of glass containers?

A. Entirely.

Q. And can you estimate what percentage of your annual production from 1956 to the present time has been shipped in paper corrugated shipping containers?

A. All in paper shipping containers and 90 per cent in reshipping cases.

Q. That is a corrugated container?

The Court: When you say reshipping cases, you mean cases that the customers can use to reship their products in?

The Witness: Yes, sir.

The Court: In other words, you manufacture those or you have those manufactured so that they are sold to your customer containing the glass container, and he in turn when he fills it, uses the corrugated container to ship out the completed product?

The Witness: That is correct, sir.

Q. Sir, can you estimate for us what percentage of your total cost from 1956 to the present has been represented by these shipping containers, both reshipping and otherwise?

A. An average of 15 per cent.

[fol. 1223] Q. What is the size of your sales force at the present time?

A. We have about fifteen men. We have no sales force as such. We deal entirely through manufacturers' representatives.

Q. Do they handle other products?

A. In some instances, yes.

Q. How many employees in all, including clerical help, messengers and so forth do you have?

A. Approximately 750.

Mr. Greenberg: May I please have the booklet from the GCMI?

(Exhibit handed to Mr. Greenberg.)

Q. Sir, I direct your attention to page 20 of Government's Exhibit 358 for identification and ask you——

Mr. Hughes: Excuse me, isn't the only part of the document that constitutes the exhibit just that single page?

Mr. Greenberg: I think that was established the last time that I referred to it.

Q. I direct your attention to page 20 and ask you to scan the list.

(Witness examines exhibit.)

[fol. 1224] Q. Sir, have you become familiar with the activities of some of the companies on that list?

A. Yes.

Q. How have you gained this familiarity?

A. Mainly through associations in GCMI activities.

Q. Have you been to some of the plants?

A. Yes, I visited several of them.

Q. Would you go down the list, sir, and tell us which of the companies on that list have operations similar to yours or smaller?

Mr. Hughes: Objection.

The Court: Objection sustained.

Q. Would you, sir, based on your observations, your perception, your eyes, tell us, sir, which of the companies on that list have operations similar to yours or smaller?

Mr. Hughes: Same objection.

The Court: I will overrule that objection.

You are confining yourself now, Mr. Witness, to plants that you have personal knowledge of by having been there and looked at them.

The Court: Foster-Forbes Glass Company, Tygart Valley Glass Company.

[fol. 1225] Q. Is that a subsidiary or a division of another company?

A. It is now.

Q. When was it acquired by Brockway?

Mr. Hughes: I object to that, your Honor.

The Court: We have had all of that.

Mr. Greenberg: No, we did not have that yet.

Mr. Hughes: I object to that.

The Court: You had the Brockway man here and if you wanted him to tell you when it was acquired, the time and place to get that was from Brockway and not by indirection from this witness.

Mr. Greenberg: Your Honor, we will do that.

The Court: All right.

Q. Have you covered the list?

A. Of the companies that I have visited and seen firsthand, yes.

Q. Now at the GCMI meetings do you get into discussions with these glass container manufacturers about improvements in their plants and about what they have in their plants and things of that nature?

Mr. Hughes: I will object to the form of that question.

[fol. 1226] The Court: I will allow it.

Q. Do you?

A. In some instances, yes.

Q. Sir, have you gained familiarity with the type of operations that any of these companies have through your association in the industry?

A. Yes.

Q. Could you tell us in detail how you have gained this familiarity?

A. Through discussions and committee work.

Q. Would you go down the list, sir, and tell us which of these companies have operations similar to yours or smaller?

Mr. Hughes: I object to that.

The Court: Sustained.

Mr. Greenberg: I have no further questions.

Cross-examination.

By Mr. Hughes:

Q. Mr. Harkness, will you tell us whether your sales have increased over the period from say 1955 to 1959?

A. Yes, sir.

Q. And could you express that in a percentage?

Mr. Greenberg: I am going to object, your Honor, to a question of that type until a foundation has been laid for [fol. 1227] it. If he wants to ask——

The Court: What sort of a foundation do you want?

Mr. Greenberg: If he wants to ask what the sales figures are instead of an estimated percentage, there is no basis for it.

The Court: You have already brought out yourself that his sales were less than $12 million.

Mr. Greenberg: Yes, sir.

The Court: And I presume that you did that and expressed it in those terms for the reason that you did not want to ask him for precise figures.

Mr. Greenberg: That is correct, your Honor, but we do not even have a range or a base figure to which we can apply a ratio to determine——

The Court: Then I am going to let Mr. Hughes cross-examine on the actual figures, if that is what you want. If

you want to expose your witness to that, that is your business.

Mr. Greenberg: We have no desire to do that, your Honor.

The Court: Then if that is so, I am going to strike your estimate of $12 million.

Mr. Greenberg: I withdraw the objection.

[fol. 1228] Q. Mr. Harkness, would you——

The Court: Mr. Greenberg, you cannot eat your cake and have it, too. This thing has got to cut both ways. Go ahead.

Q. Would you tell us approximately what per cent that increase has been from 1955 to 1959?

A. Between 25 and 30 per cent.

Q. And during the period from 1955 to 1958 were your earnings on an uptrend, that is, from 1955 to 1958?

A. Yes.

Q. And what about your earnings in 1959, were they up or down over 1958?

A. They were down.

Q. Were there any operating reasons that caused that decline in earnings?

A. Yes, sir.

Q. Would you tell his Honor what they were?

A. The usual and unusual expenses attached to the starting up of a new installation.

Q. Will you tell us what that new installation was?

A. We increased our manufacturing facilities with the installation of an additional tank which increased our pro[fol. 1229]ductive capacity by approximately 40 per cent.

Q. And it was that installation and the starting up costs and that sort of thing that affected your earnings in 1959, is that correct?

A. I say in the main, yes.

Q. Now, would you say, sir, that competition in the glass container industry is keen and vigorous?

A. Very definitely.

Q. And most of your companies have more than one source of supply for glass containers, do they not?

A. Yes, sir.

Q. Is the only thing you make glass containers?

A. Yes, sir.

Q. Now are Anchor Hocking closures used on your glass containers?

Mr. Greenberg: I am going to object, your Honor, until we have a foundation for that. How would he know that only Anchor Hocking closures are used?

The Court: Let me say this, Mr. Greenberg:

If the president of this company does not know what closures are used on his containers, he is not as good a president as I think he is.

[fol. 1230] Mr. Greenberg: I also object to the question, your Honor, on the ground that it is ambiguous. Is Mr. Hughes referring to 100 per cent of his containers, some part of his containers or a substantial portion?

The Court: All right, reframe your question.

By Mr. Hughes:

Q. Are Anchor Hocking closures used on your glass containers?

A. Some of them, yes.

Q. Are Owens-Illinois closures used on your containers?

A. Yes, sir.

Q. Are the White Cap Company closures used on your containers?

A. Yes, sir.

Q. And the Ball Company closures?

A. Yes, sir.

Q. And those of the Bernardin Company?

A. Yes, sir.

Q. And Armstrong?

A. Yes, sir.

Mr. Greenberg: Your Honor, I am going to object to the use of the term "closures" at this time. There are various [fol. 1231] types of closures produced by these various companies.

The Court: You can bring that out on redirect, if you want to.

Q. Do you have more than one source of supply for your corrugated shipping containers?

A. Yes, sir.

Q. About how many suppliers do you have?

A. Five.

Q. And could you tell us about how far away the farthest one is from your plant?

A. The fabricating plants are generally within 100 miles of our plant, although we do get some deliveries direct from the mills which could be four or five hundred miles away.

Q. And are the containers, the shipping containers, delivered to your plant for the most part by truck?

A. For the most part, some by car.

Q. That is rail car?

A. Yes, sir.

Q. Would you say that the competition for your shipping container business is keen and vigorous among your suppliers?

[fol. 1232] A. Definitely.

Mr. Greenberg: Your Honor, I am going to object to the use of the term "competition" until it is made clear as to whether it is price competition, service competition, or something of that nature.

The Court: Overruled.

Q. Isn't it a fact that the proportionate cost of the shipping containers to the total selling price of the glass containers varies with the shape and size of your containers?

A. Yes, sir.

Q. Are your shipping containers manufactured to your specification?

A. Yes, sir.

The Court: Or your customers' specification?

The Witness: As given to us.

The Court: And you pass those on?

The Witness: Yes.

Q. Do you regard shipping containers as one of the significant parts of the product that you sell?

A. Yes.

Q. Is the total selling price designed to return a profit to you over the total costs of the product, including labor, [fol. 1233] raw material, overhead, shipping containers, and any other elements of cost?

A. Yes, sir.

Q. Is your company in any way affiliated with the Inland Container Company?

A. Inland Container is our largest corrugated supplier. Does that answer your question?

Q. Is there any relationship between it beyond that, between your company and the Inland Container Company?

A. As far as the Inland Container Company itself, no.

Q. Do you have any stock interest in the Inland Container Company?

A. No.

Q. Does it have any stock interest in your company?

A. Not the Inland Container Company as such. Its president, Mr. George B. Elliott owns a small block of stock in our company.

Q. What is the business of the Inland Container Company, is it a manufacturer of corrugated containers?

A. Yes, sir.

[fols. 1234-1251] Q. Is that its only business, so far as you know?

A. It manufactures corrugated board as well as boxes. I think that is its main business, yes.

Mr. Hughes: No further questions.

The Court: Anything further, Mr. Greenberg?

Mr. Greenberg: No further questions.

The Court: All right, thank you, sir. You may step down.

(Witness excused.)

. . . . . .

[fol. 1252] Christopher H. Buckley, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. At 209 Marmaroneck Road, Scarsdale, New York.

Q. What is your present position?

A. My present position is Special Projects Engineer, Sales Engineer, for Kaiser Aluminum & Chemical Corporation.

Q. What has been the duration of your employment with Continental Can——

The Court: One minute.

Mr. Greenberg: Pardon me?

The Court: The witness said that he is employed by Kaiser Aluminum. Has he been employed by Continental Can?

Mr. Greenberg: Yes.

The Court: Then ask him, were you employed by Continental Can and how long were you employed by them.

Mr. Greenberg: All right.

[fol. 1253] By Mr. Greenberg:

Q. Were you employed by Continental Can?

A. Yes.

Q. What was the duration of your employment?

A. From June 1953 to October 1956.

Q. What positions did you hold with the company during that period of time?

A. Products sales manager for beer and carbonated beverages.

Q. Now can you briefly describe for us what your duties and responsibilities were in that position?

A. Well, I was responsible for the promotion and sale of cans for soft drinks and beer cans for that market.

The Court: That was company-wide, was it?

The Witness: Company-wide.

Q. You were national products manager?

A. That's right.

Q. Sir, would you describe for us the types of reports and memoranda, et cetera, that your staff and yourself executed during your employment as products manager?

Mr. Hughes: Your Honor, I think that we would be making more progress if we took this on a document by [fol. 1254] document basis.

The Court: Let us go to the documents and then see what

happens. If you have to go into more detail we can do it then.

Mr. Greenberg: I do have some other questions, your Honor. I realize that this is the first run on this type of witness and I would want to explore the other departments that his group was associated with.

The Court: All right, you can do that.

What were the functions of your department, what were the functions of other departments and what was the relationship between them. You may ask him that.

Mr. Greenberg: All right.

Q. Now, sir, what was the function of your group?

A. Well, we were to promote the sale of soft drinks and beer containers, and also we were responsible for the profitability of those particular containers.

Q. How did you go about doing that?

A. Well, one of the things, of course, was to contact the sales force through various sales memos, pointing out the [fol. 1255] advantages of cans for those two products, beer and soft drinks, and that is essentially what we did.

Q. Sir, were there any other departments related to your department in some way?

A. Well, not directly, but we did work closely with the market research department, the advertising department, contracts, and so on.

Q. Did your staff receive copies of documents from the market research department?

A. Yes.

Q. And from the other groups that you mention?

A. Yes.

Q. I show you Government's Exhibit G-600-A and ask you if you recognize it.

A. Yes.

Q. And can you identify it?

A. Yes.

Q. Would you tell us what it is?

A. It is a products bulletin to promote a new size soft drink can, a cap seal soft drink can.

Q. Do you know, sir, what distribution was made of this document?

The Court: Was it prepared by you or under your super-
[fol. 1256] vision and direction?

A. Yes, sir, it was.

Q. Do you know what distribution was made of it?

A. It was sent to all of the salesmen at the district and division levels.

The Court: Do you offer it?

Mr. Greenberg: The Government offers this document in evidence.

The Court: Is there any objection?

Mr. Hughes: May I ask some questions?

Mr. Greenberg: This is voir dire?

The Court: Yes, on voir dire.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. Buckley, in so far as you know, was this document circulated outside the company.

A. No, as far as I know, it was not.

Q. And do you know whether any action was taken upon this document of any kind by anybody else in the company?

A. No.

Mr. Hughes: No objection.

The Court: Let me ask you this, Mr. Buckley:

Do you know what your salesmen did, having gotten this
[fol. 1257] bulletin?

The Witness: Well, they were supposed to use the bulletin and contact potential users of soft-drink containers.

The Court: In other words, according to your internal arrangements, these salesmen were supposed to go out and sell this thing?

The Witness: That is right.

The Court: Is there any objection?

Mr. Hughes: No objection.

The Court: It may be received.

(Government's Exhibit G-600-A for identification received in evidence.)

By Mr. Greenberg:

Q. Sir, I now show you Government's Exhibit 613 marked for identification. Do you recognize it?

A. Yes.

Q. What is it?

A. Well, it is a promotion piece of material that was sent out to the salesmen, and once again it was prepared by my department.

Q. Did you prepare this document?

A. I believe it was prepared mostly by my assistant and I helped him on it, but I think he did more work on it [fol. 1258] than I did.

The Court: You reviewed it after he prepared it?

The Witness: Yes, that is right.

Mr. Greenberg: The Government offers G-613.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Did this receive any outside circulation, so far as you know?

A. So far as I know, it didn't.

Q. Do you know of any action taken by any of your superiors in the Continental Can Company on this document?

A. No.

Mr. Hughes: I object to it.

The Court: Overruled.

(Government's Exhibit G-613 for identification received in evidence.)

By Mr. Greenberg:

Q. Mr. Buckley, I show you G-617. Can you identify it for us?

A. Yes, that is another products bulletin discussing the economics of cans for soft drinks.

The Court: Was this made under the same circumstances [fol. 1259] and distributed in the same manner?

The Witness: Yes, it was.
Mr. Greenberg: The Government offers this.
The Court: You may cross-examine.
Mr. Hughes: Which document is this?
Mr. Greenberg: G-617.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Do you have the document there before you?
A. No, I don't have it in front of me.

The Court: Let the witness have the document please.

(Mr. Greenberg hands document to the witness.)

Q. Mr. Buckley, who actually prepared this document, do you know?
A. Well, most of the work in this document was done by Mr. Carey and Mr. Leonard, who was an engineer with the company at that time.
Q. And this document purports to summarize, does it not, certain activities which these gentlemen were engaged in and submitted in the form of this report, is that correct?
A. That is correct.
Q. You did not actually participate, did you, in the visits [fol. 1260] that these gentlemen made to the places that are indicated in this memorandum?
A. No.
Q. You were not present when there were discussions with soft drink manufacturers of the items of cost which purport to be indicated in that?
A. No, I wasn't there.
Q. Whatever happened to this document, you do not know?
A. No, I don't know.
Q. Was any action taken on it so far as you know by anybody?
A. No.

The Court: Was it distributed to the salesmen?
The Witness: It was distributed to the salesmen.
The Court: In the same manner as the other documents?
The Witness: In much the same manner, yes, sir.

Mr. Hughes: I object to it.

The Court: Objection overruled.

(Government's Exhibit G-617 for identification received [fol. 1261] in evidence.)

By Mr. Greenberg:

Q. Sir, I show you Government's Exhibit 445. Do you recognize that document?

A. Yes.

Q. Did you receive this document during the period dated in the document?

A. Yes.

Q. Do you know what was done with it after you received it, what distribution was made?

A. No, I don't.

Mr. Greenberg: Your Honor, I think that we can expedite this proceeding in this respect:

The rest of the documents are documents which this witness will testify he received copies of. These are listed in this book of exhibits, and, if I may, I will read off the numbers and he can refer to the documents.

The Court: All right.

Q. Mr. Buckley, would you turn to G-601?

Mr. Hughes: Weren't you on 445?

The Court: We are going to get information first with respect to a number of these documents. Mr. Greenberg wants to form a pattern.

[fol. 1262] Mr. Greenberg: I am not saying that we will necessarily offer the rest of these documents at this time, but these documents were prepared by the market research department and were received——

The Court: Let us first find out whether they were or not.

Mr. Greenberg: All right.

Mr. Hughes: Your Honor, I suppose that it should not matter to me, but it does seem to me that if there is going to be any examination on the voir dire, as I feel there will be, on many of these documents, and if Mr. Greenberg is going to examine this witness on them without taking them up on a document by document basis, that that would make it very confusing.

The Court: No, I do not think it will, Mr. Hughes, because we will first get the general testimony with respect to these documents, and such of those that you wish to examine on on the voir dire, you can do so seriatim, and we will have a picture of the situation.

By Mr. Greenberg:

Q. Sir, would you turn to G-601. Do you have that?
[fol. 1263] A. Yes.
Q. Do you recognize that document?
A. Yes.
Q. Did you receive a copy of that document?
A. Yes.
Q. Do you recall what was done with it?
A. No.
Q. G-602?
A. Yes.
Q. Do you recognize the document?
A. Yes.
Q. Did you receive a copy of it?
A. Yes.
Q. Do you recall what you did with it when you got it?
A. No.

The Court: Who is Mr. D. H. Walker, for example?
The Witness: He was in charge of the commercial research department for Continental Can.

Q. Sir, if you recall, have you gotten reports of this type, and do you recall what you did with them after receiving them?

Mr. Hughes: I object to that.
[fol. 1264] The Court: I will sustain the objection. Reframe the question.

Q. Let me go over the rest of the list and maybe I can direct my questions that way.
Turn to 608, please. Do you recognize that?
A. Yes.
Q. Did you receive a copy of it?
A. Yes.
Q. Can you recall what you did with that document when you got it, what use you made of it?

A. No.

Q. 610—will you turn to that?

The Court: Who is Dana Hill?

The Witness: Well, he followed Mr. Walker in the same position.

Q. Do you recognize that?

A. Yes.

Q. Did you receive a copy of it?

A. Yes.

Q. Can you recall what you did with it?

A. No.

Q. 604—did you receive a copy of that?

A. Yes.

[fol. 1265] Q. 605—did you receive a copy of that?

A. Yes.

Q. Can you recall what you did with either 604 or 605 when you received it?

A. No.

Q. 607—did you receive a copy of that?

A. Yes.

Q. Do you recall what you did with it when you received it or what use you made of it?

A. No.

Q. 614—you received a copy of that, is that correct?

A. Yes.

Q. Do you recall what you did with it?

A. No.

Q. 615——

The Court: Who is Mr. Everett?

The Witness: I don't know Mr. Everett, your Honor, but I believe he was in the same commercial research department.

Q. Would you turn to 615?

A. Yes.

Q. You received a copy of it?

A. Yes.

[fol. 1266] Q. Do you know what was done with it?

A. No.

Q. Now, sir, turning to——

The Court: Let me ask you this: Let us take 615 and the distribution shown here to Fogarty, Wojtul, Fisher, Neuman, Johnson, Ylvisaker, Murray, Donahue, Larkin, Fenn, Blinn, Morgan and Hill. Of those gentlemen, how many of them do you know?

The Witness: Well, I know all of them.

Q. Who were they, tell us respectively?

A. Well, at the time Mr. Fogarty was executive vice-president of the company in charge of the metal division.

Mr. Wojtul was general sales manager—vice-president in charge of sales for the company. Mr. Fisher was in charge of market research for the company. Mr. Neuman was the general sales manager of the company. Mr. Johnson was the advertising manager of the company.

Q. Mr. Ylvisaker, was director of staff, which I guess you might say that he was Mr. Fogarty's assistant. Mr. Murray was the eastern division general sales manager. Mr. Donahue was the products engineer in the eastern divi- [fol. 1267] sion for beer and soft drinks. His position was somewhat of a counterpart of mine at the division level.

Mr. Larkin was the general sales manager in the central division.

Mr. Fenn was the products manager in the central division. Mr. Blinn was the general sales manager of the Pacific division.

Mr. Blinn might have been promoted to vice-president of the Pacific division, I am not sure which.

Mr. Morgan was the district sales manager in the Los Angeles district.

And Mr. Hill was the commercial research head reporting to Mr. Fisher.

Mr. Greenberg: If the Court please, I would like to make one comment:

If your Honor will recall, the Government's motion to produce asked for studies at a fairly high level, and therefore we will frequently see a long list of "c.c." or people who received copies, and I would just like to ask, since this is the first witness of this type, whether your Honor would like the Government to identify by position the persons who received copies of these documents.

[fol. 1268] The Court: Well, I just asked him that.

Mr. Greenberg: Very well.

Q. You were on 615.

The Court: 615 is the last exhibit that we were dealing with.

Q. Will you turn to 614. Do you see any additional names?

The Court: There are no additional names on there.

Mr. Greenberg: No.

Mr. Hughes: Your Honor, just in the interests of saving time, I think your Honor should know that there is a stipulation between counsel which stipulated to certain facts with reference to these or to many of these documents.

Are we now on document 615?

Mr. Greenberg: That is right.

Mr. Hughes: For example, there is a stipulation—and it is now an exhibit in the case, is it not?

Mr. Greenberg: Yes, that is right.

Mr. Hughes: That "This document was produced by the defendant from its files. It was either prepared on or about August 31, 1955 by or for W. D. Way, Jr., then a market [fol. 1269] analyst of the defendant. It was distributed to the addressee and to the persons named on page 2, each of whom was then an employee of defendant."

I would like to call attention to that, your Honor, because it seems to me that as we go along, even though we may have some objection to these documents, we have stipulated to certain facts with respect to them.

The Court: Yes.

Mr. Greenberg: If the Court please, on some of the previous exhibits we did not have identification of the positions.

The Court: But we have now on 614, as I see it, the distribution is to three of the individuals already covered.

Mr. Greenberg: Yes, that is right.

The Court: What previous exhibit did you have in mind?

Mr. Greenberg: 607.

The Court: I don't think there is anybody on there who has not previously been covered.

The Witness: That is the same distribution.

The Court: It is the same distribution.

[fol. 1270] The Witness: Yes.

Q. 605 is the next one.

A. That is practically the same.

The Court: That is practically the same distribution. At least, there are names omitted but the others are on there.

The Witness: Yes.

Q. Will you turn to 605?

The Court: The same applies to 605, as far as distribution is concerned.

Mr. Greenberg: All right.

Q. 610.

A. The same.

The Court: 610 has substantially the same distribution.

The Witness: The same.

The Court: 610 is signed by a gentleman named T. L. Sanders. Who is he?

The Witness: Well, T. L. Sanders was a member, I believe, of the commercial research department group reporting to Mr. Hill.

Q. 608?

A. That is substantially the same.

Q. 602?

[fol. 1271] A. Yes.

Q. Any additional ones?

A. This is a shorter list.

Q. 601 is the next one.

A. There is one addition, and that is Mr. Perin, R. L. Perin.

Q. Who is he?

A. He was the vice-president of the Eastern Division.

Q. 445, I think, is the next one.

A. I don't have that.

The Court: You have somebody named Hatfield on there.

The Witness: R. F. Hatfield became the general sales manager in place of Mr. Neuman, and then we had Mr. Carey. I believe Mr. Carey at that time was my assistant.

The Court: He was your assistant?

The Witness: Yes.

Mr. Greenberg: You may cross-examine or do what you like.

Mr. Hughes: Your Honor, I would like to make a preliminary objection on the ground that it appears now from [fol. 1272] the testimony apparently given by the witness that there is no proof of any circulation of any of these documents outside of the confines of the corporation.

The Court: What differences does that make?

Mr. Hughes: And no proof——

The Court: What is the significance of that? You have said that several times but I do not conceive that it is significant whether it was circulated within or circulated without.

Mr. Hughes: Your Honor, I do think that there is a considerable difference in testing whether the document constitutes an admission of a corporate defendant. We have some authorities on that, your Honor, which I would be very glad to show you, which, among other authorities, is Judge Wyzanski's opinion, to which your Honor alluded the other day, which draws a distinction between the circulation of a document inside and outside of the confines of a corporation, where it is being offered as a document in the nature of an admission.

And, of course, there is another line of cases which say that where a corporation is involved, in the absence of a showing that the corporation has adopted, or in some way [fol. 1273] has acted upon a document, if mere circulation was among corporate personnel, that it does not make that document or that it does not constitute an admission.

The Court: I think that may be so, and for that reason I will permit you to examine on the voir dire.

Mr. Hughes: Before I do that, your Honor, may I go back to Exhibit 617 as to which I made an objection, and I think I perhaps should have amplified that. That was the document that was prepared by Mr. Carey——

Mr. Greenberg: Which one is that?

Mr. Hughes: From C. H. Buckley to L. A. Carey, G-617. Upon its face it purports to be a report of a study which Mr. Carey made by going to certain soft drink bottlers and reporting back certain items on cost. It seems to me that that is the rankest sort of hearsay in the present context of this case, and it certainly——

The Court: It is much less rank because it comes from your files.

Mr. Hughes: I am prepared to recognize, your Honor, that as to the degree of hearsay and the question of ad-
[fol. 1274] missibility, there may be a difference where you are dealing with a third party document than when you are dealing with a document of a party to the action, but it seems to me that when you get right down to the basis of admission, in nearly every case it will either be because it does come to an admission by a corporation or that it was a business record within the meaning of Section 1732.

The Court: I think, philosophically, Mr. Hughes, this goes back historically to the indicia of reliability, and that is the whole basis of the application of the hearsay rule. The hearsay rule has been greatly weakened, particularly in this court, there is no question about it.

Mr. Hughes: I hope not too much.

The Court: Well, perhaps not too much, but certainly, in my judgment, when you come a document which represents a study by an employee of a company, of a party, and the party in turn sends the document to its salesmen for information in connection with making sales, there is no reason in the world to exclude it.

Mr. Hughes: Well, your Honor——

The Court: On this one I will overrule you.

[fol. 1275] Mr. Hughes: Well, I just want to perhaps point up the problem that I am dealing with by inquiring, as I understand it is proper to do in one of these complicated and protracted cases where you are dealing with documents, as to the purpose of such a document as this. What is it attempted to prove?

The Court: I think that is a proper request.

Mr. Hughes: What is it really expected to prove?

The Court: Let us take 617 as an example.

Mr. Greenberg: Obviously, your Honor, I have not had an opportunity to go through this one, but, however, if I merely focus my eye on the last page of this memorandum, which is entitled "Comparison of Costs, Bottles versus Cans for Soft Drinks," I think, your Honor, the Government will contend that this document is relevant to show that a can company considered the prices and the costs of competing

containers and took those into account in dictating its sales policy.

Mr. Hughes: Well, your Honor, is that the purpose for which it is being offered, as evidence of that fact? For [fol. 1276] example, could that be offered as proof of the costs of certain undescribed beverage companies? They are not even described in the document. If it is offered for proof of any such facts, we are going to get into a tremendous problem.

The Court: As I understand it, this is not offered for the purpose of showing, for instance, the details contained in the last part, primarily. What it is offered for, I would suppose, was for the purpose of indicating certain data which the defendant had before it and which it used in its efforts to sell cans for soft drinks. If that is so, it seems to me that this may be relevant.

Mr. Hughes: Well, take the memorandum——

The Court: It may be relevant on the issue, for example, without in any way being determinative, of whether in fact cans and glass compete in the soft drink industry.

Mr. Hughes: Your Honor, let us take the next to the last paragraph on page 3 of the report itself, the sentence which reads:

> "Such major plants as Nehi, Dr. Pepper, Cott, Mason, Hires and Graf have demonstrated the profit-[fol. 1277] ability of the can to their own satisfaction."

Now is this document being offered to prove that enormous generality? Is the Government, when it comes time to briefing this case, whether in this court or elsewhere, going to rely on this document to prove that these large beverage companies were satisfied in 1956 of the profitability of cans?

It seems to me that that is not the way to prove such an enormous series of facts as that, such an enormous conclusion of facts.

If it is taken in without some indication, we are confronted with the proposition that we have to run through all of these documents with a fine tooth comb——

The Court: Mr. Hughes, it certainly can be offered as proof of the fact that responsible people in Continental Can

told their salesmen this, and whatever limitations you may seek to place upon generalities or statements as general as these, this is certainly what Continental Can told their salesmen.

Mr. Hughes: It seems to me that all this amounts to is a statement by Mr. Carey to Mr. Buckley who in turn may have imparted the information to others that these major [fol. 1278], companies have demonstrated the profitability of the cans to their own satisfaction.

The Court: Mr. Hughes, you see, the difficulty of your position is that you are arguing against a memorandum circulated by your own company to its salesmen on which its salesmen purported to act.

Mr. Hughes: Well, your Honor, I go along with you up to the last part of your statement.

The Court: This was information which was designed to help them in selling cans, and this witness testified that they were trying to sell cans at this point for soft drinks.

No, I will overrule you, Mr. Hughes. If at any point during the discussions here, or at some stage you seek to limit in some way the applicability of the specific statements in this report, I will hear you on that question when it comes, but it is going to go in evidence in any event, but as to how limited the purpose will be, I will hear you on that.

[fol. 1279] Mr. Hughes: Well, do I understand then, your Honor, that the document is really being received for all purposes?

The Court: At this time it is being received for all purposes, subject to a motion to limit it.

Mr. Hughes: Well, your Honor, it seems to me that this does pose an enormous problem for us.

The Court: I am only ruling on 617 at the moment, mind you.

Mr. Hughes: Excuse me, your Honor.

Well, for the moment, your Honor, just so I am clear about this, because I do consider that this may have enormous significance to us later, this is taken really for proof of the fact that such a document containing such statements was circulated among the sales force of Continental Can Company.

The Court: That's right. Now, it may very well be that

the Government would ask me to draw an inference from that, that in so doing Continental vouched for the reliability of this report. But we will cross that bridge when we come to it.

Mr. Handler: You are not taking it in, Judge, to prove [fol. 1280] that it was proof of that ultimate fact.

The Court: No. At the moment I am taking it on the basis that this was what Continental told its salesmen.

Now, as to the accuracy of the statements that they told their salesmen, I think that the Government might ask me to draw the inference that in substance the defendant vouched for these statements by passing the information on to their salesmen in that document. But that is something that is a bridge we will cross when we get to it.

All right, Mr. Greenberg, or is Mr. Hughes about to go into the voir dire?

Mr. Hughes: We will turn to Exhibit 445, which I believe is the next in the order in which the documents were offered by the Government.

Mr. Greenberg: Your Honor, I think Mr. Hughes misunderstood something. We haven't offered 445 as yet.

The Court: Oh, haven't you?

Mr. Greenberg: No, your Honor.

The Court: Well, haven't you offered this batch of documents you just asked the witness about?

[fol. 1281] Mr. Greenberg: G-609-A, G-613 and G-617 were offered and admitted. The other documents, from 445 on, were documents which this witness received and he identified the recipients.

The Court: You are not offering them at this time.

Well, since they are not offering them at this time, then if you want to examine this witness about them, Mr. Hughes, you may.

Mr. Hughes: Well, I don't see any point in doing it until there is an offer.

The Court: Well, only this, that if this is part of the background on which Mr. Greenberg relies for a foundation, you may want to inquire into this portion of the foundation.

All right, Mr. Greenberg, I misunderstood you.

Mr. Hughes: Which was the first of those that has been marked?

The Court: Let's check off. We have got 617 in, 600-A in, and what is the other we have in?

Mr. Greenberg: 613, your Honor.

The Court: 613.

[fol. 1282] Mr. Hughes: Where are the other ones?

Mr. Greenberg: Then there is 445.

Mr. Hughes: All right, that is what I thought.

The Court: Then we start off with 445.

Mr. Hughes: That is what I thought, your Honor.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. Buckley, did you prepare this document?

A. No, I didn't prepare it.

Q. Do you know anything whatever about the circumstances of its preparation?

A. No, I don't know the actual process of getting it prepared.

By the Court:

Q. Did you tell us who Mr. Walter Way was?

A. Yes, he was a member of either the Commercial Research Department or the Market Research Department, one or the other.

By Mr. Hughes:

Q. And he was not in your department; is that correct?

A. No.

[fol. 1283] Q. And you didn't direct or cause this document to be prepared; is that correct?

A. I played a part in asking that this be prepared, yes, but I didn't have anything to do with the actual preparation of it.

Q. And you know nothing of the circumstances of its preparation and what study or effort of any kind went into its preparation; is that correct?

A. That is correct.

Q. And do you know what circulation this document received?

A. Yes. That went to the salesmen, the district sales managers and the division sales managers.

Q. And did it go outside the company?

A. No, as far as I know, it didn't.

Q. Was its circulation within the company limited to those people whom you have just specified?

A. Yes.

Q. Do you know of any action that any one of them took on this document, or with respect to it?

A. No.

Mr. Hughes: Again, your Honor——

The Court: It hasn't been offered yet, Mr. Hughes.

[fol. 1284] Mr. Hughes: Oh.

The Court: So let's cross that bridge when we come to it. I presume there is going to be more testimony concerning it.

Mr. Greenberg: Yes, sir.

Mr. Hughes: You are right.

What is the next exhibit you offered?

Mr. Greenberg: 601, Mr. Hughes.

By Mr. Hughes:

Q. Document 601, Mr. Buckley, that was prepared by Mr. Walker?

A. Yes.

Q. And what was his position at the time?

A. He was the director of commercial research.

Q. And was he under your supervision and control?

A. Not under my direction and supervision, no.

Q. Do you know anything about the circumstances of his preparing this document?

A. I only know that he was asked to make this type of survey, that is all.

Q. Did you ask him to?

A. Well, I together with other people, yes.

[fol. 1285] Q. Who were the other people?

A. The general sales manager, and, well, I guess that is all. The general sales manager and his superior, Mr. Fisher.

Mr. Greenberg: Your Honor, may I just interrupt at this juncture?

You have the stipulation of the defendants before you, and before we came to court some time ago the Government analyzed these stipulations and they break down—oh, yes, stipulations and answers to a request to admit, which I don't think have been brought to your Honor's attention.

The Court: The stipulations with respect to documents are before me now, and I am following them.

Mr. Greenberg: Then there are defendant's answers to plaintiff's request to admit, which I do not know whether they have been filed or not, in which they, as to certain items, say that the document was prepared in the course of work or the course of employment.

Is that correct?

Mr. Hughes: That is correct.

The Court: Well, presumably there is no doubt about the fact that these documents were prepared in the course [fol. 1286] of employment. The testimony shows it.

Mr. Hughes: Yes. Well, we have stipulated with reference to a certain number of these documents that they were prepared in the course of the work of the author of the document.

Q. Mr. Buckley, did this memorandum have any circulation outside of the company?

A. None outside of the company.

Q. And do you know of any action of any kind taken by any officer or employee of the corporation, with reference to this document?

A. No.

The Court: Is this also distributed to salesmen, generally?

The Witness: General distribution, but mostly just to the divisional sales managers.

The Court: Divisional sales managers?

The Witness: It wasn't a product bulletin like the others.

Q. Now, I show you document G-602 for identification, and I ask you whether that had any circulation outside of the corporation?

A. No, no, it didn't.

[fol. 1287] Q. Do you know of any action taken on that document?

A. No.

Q. And in paragraph 1 on page 1 there is a reference to a resident field supervisor of A. J. Wood & Co.; do you see that reference?

A. Yes.

Q. Do you know anything about that survey, except as it is referred to in this memorandum?

A. Only as it is referred to in the memorandum.

Q. Do you recall ever having seen that survey by this resident field supervisor of A. J. Wood & Co.?

A. Yes.

Q. And did you have anything whatever to do with the devising or execution of that survey by A. J. Wood & Co.?

A. No.

Q. And you don't know how it was conducted or carried out, do you?

A. No.

Q. And do you have any recollection of the contents of that survey?

A. No.

Mr. Greenberg: Do you want the next number?

[fol. 1288] Mr. Hughes: Yes.

Mr. Greenberg: 608.

By the Court:

Q. Will you take a look at 608, Mr. Buckley, and see whether or not your answers with respect to the questions that Mr. Hughes just asked you about the previous document would be the same as to 608? Do you have 608? You may use my copy.

The Court: (To Mr. Hughes) You have heard my question, have you?

Mr. Hughes: Would you please repeat the question?

The Court: Yes.

(Question read.)

A. Yes, sir; I say that it would be essentially the same, except in the previous document the mention was made of A. J. Wood as the market research company getting the documentary information, and of course there is no mention of that here.

Q. No mention of Wood here.

A. Because they did not take part in this particular survey.

By Mr. Hughes:

Q. Does this purport to be nothing more than the obser-
[fol. 1289] vations of Mr. Hill on somebody else's survey; is that correct?

A. That's right; it was a telephone survey.

Q. Now, what was your official capacity at the time?

A. Products sales manager.

Q. Did you have any supervision or authority over the sales force?

A. No.

Q. Well, what would be the purpose of these documents, such as Exhibit G-608 for identification?

A. Well, the purpose of the document was to give us some idea as to whether or not canned soft drinks were penetrating into these three markets, and we wouldn't know unless this telephone survey were made.

Q. You were just passing on such information as you collected from these various random sources?

A. That's right.

Q. To people in the same organization itself?

A. Within the company; that's right.

Q. Just for the purpose of keeping them——

A. Advised.

Q. —currently informed of such information that you picked up?

[fol. 1290] A. Right.

Q. Is that correct?

A. Yes.

Q. Would that be true of all of these documents that we have thus far considered?

A. It would be true of most of the surveys.

Mr. Hughes: Well, now, it may expedite matters, your Honor—I believe the next group is a group of surveys, is it not? What are your next documents?

Mr. Greenberg: 601.

The Court: Better give your copy to the witness, Mr.

Greenberg, so that I have one and the witness has one, and you can look over Mr. Hughes' shoulder.

Mr. Greenberg: All right.

Q. Well, Mr. Buckley, you are mindful of his Honor's question with respect to Exhibit G-608, are you?

A. Yes.

Q. And I show you Exhibit G-610 and ask you if I put those questions to you in detail, would your answers be substantially the same?

A. Yes, they would.

Q. And if I may summarize it, this is a summary of [fol. 1291] Mr. Sanders of a survey made by other persons; is that correct?

A. That's right.

Q. With which you had nothing whatever to do?

A. Correct.

Mr. Greenberg: 604.

The Court: That leaves what, 614 and 615?

Mr. Greenberg: 604, 605, 607, 614, 615.

Q. Exhibit G-604 for identification, Mr. Buckley, have you got that in front of you?

A. Yes.

Q. Is that the same sort of summary of a survey by Mr. Walker, survey made by somebody else?

A. Yes.

Q. You didn't participate in its preparation?

A. No.

Q. And it wasn't circulated outside the company?

A. No.

Q. Did it serve the same purpose as these other surveys?

A. Yes.

Q. I show you Exhibit G-605 for identification. Again, is this Mr. Walker's summary and comment upon a survey made by others?

[fol. 1292] A. Yes.

Q. And these others were outsiders, is that it, that is, persons outside of the company?

A. Right.

Q. You had nothing to do with devising or executing the survey on which this purports to report?

A. No.

Q. Made for the same purpose?
A. Yes.
Q. Not circulated outside the company?
A. No.
Q. As far as you know. Any action taken on it, so far as you know?
A. No.
Q. I show you Exhibit G-607 for identification and ask you if this is the same sort of report on the same kind of survey?
A. Yes.
Q. With the same general purpose?
A. Yes.

The Court: And the same things can generally be said about it; is that right?
The Witness: That's right.
The Court: All right.

[fol. 1293] Q. I show you Exhibit G-614 and ask you if you identify that as the same kind of a report on the same kind of a survey?
A. Yes.
Q. And that was a survey made over the telephone?
A. Right. These were all telephone surveys.
Q. And for the same purpose?
A. Same purpose.
Q. And again not circulated outside the company?
A. No.
Q. No action taken on it, so far as you know?
A. No.
Q. Finally, Mr. Buckley, I show you Exhibit G-615, and ask you if this is the same sort of report on the same kind of a survey?
A. Yes.
Q. And if I were to interrogate you in detail, would your answers be the same as they have been to his Honor's previous questions?
A. Yes.

The Court: Now, is there anything further from this witness, gentlemen?
Mr. Greenberg: No, your Honor.
[fol. 1294] The Court: Have you, Mr. Hughes?

Q. Now, going back to Exhibit 600-A——

Mr. Hughes: 600-A is in evidence, is it?

Mr. Greenberg: Yes, it is.

Q. —that shows some pictures of some cap-sealed soft drink cans; do you see that?

A. Yes.

Q. Whatever happened to them?

A. Well, they were discontinued as not being acceptable in the industry, and they were really a failure.

Mr. Greenberg: Your Honor, we don't seek to prevent information of any kind coming out, but we are going beyond——

The Court: I quite realize that and I am perfectly prepared to permit Mr. Hughes to examine this witness concerning anything in any documents that have been admitted in evidence through his testimony.

Mr. Greenberg: Right.

The Court: You say these three cans were failures?

The Witness: Yes, sir.

The Court: All right, anything further?

Mr. Hughes: Just one moment, your Honor. These docu-
[fol. 1295] ments are going a little slower.

Q. Now, Mr. Buckley, I refer again to Exhibit G-617 in evidence, and to the first page and to the second paragraph, in which you say in part, "We have analyzed operation where the can has been added successfully as a supplementary package to a bottle line with good consumer acceptance."

The Court: Where is that, Mr. Hughes?

Mr. Hughes: In the second paragraph of the first page.

The Court: The first page, yes.

Mr. Hughes: I didn't read the entire text.

The Court: That is all right. I have it.

Q. Will you tell us what you meant when you used that term "supplementary package," Mr. Buckley?

A. Well, we were constantly trying to show the idea that a soft drink bottler could use a can as another package in order to sell his product without affecting the sales volume that he had in just bottles, which was the very conventional

package at the time, and this together with other bulletins always emphasized the fact that this new type of container would not take away from the sales volume in his returnable or one-way bottles.

[fol. 1296] Q. In his regular bottle line?

A. That's right.

Q. In other words, that it would be in the nature of plus business, so to speak?

A. That's right.

Q. And was that the way you felt about it at the time?

A. That is the way I felt about it, and it is the way the company felt about it.

Mr. Hughes: That is all, your Honor.

The Court: All right, anything further, Mr. Greenberg?

Mr. Greenberg: I just wanted to point out for the record —and I don't wish to protract this any more than it has been—that this was their sales pitch.

The Court: No, no, Mr. Greenberg, No, no.

Mr. Greenberg: Your Honor, I make the statement only because Mr. Hughes has gone beyond voir dire and was getting into——

Mr. Hughes: Now wait a minute.

The Court: No, he hasn't gone beyond voir dire. This is a witness who sponsored the document. He can ask him any questions in the world about a document he sponsored, [fol. 1297] Mr. Greenberg. He is not going beyond anything.

Mr. Hughes: And the document is in evidence anyway.

The Court: It is in evidence anyway. When you have a fellow who prepared a document, or under whose supervision it came, and he is on the stand, you can ask him anything in the world about that document, let there be no doubt about that. We are not talking about a voir dire or anything else. At least that is my understanding of the law.

Thank you, Mr. Buckley, you may step down, sir.

(Witness excused.)

The Court: We will take a brief recess at this point.

(Short recess.)

The Court: All right, let's have the next witness, gentlemen.

Mr. Hughes: Your Honor, there are a few questions that I wanted to ask Mr. Buckley, that I overlooked asking about these documents. It will take just a couple of minutes.

The Court: Will you resume the stand, Mr. Buckley, [fol. 1298] please.

CHRISTOPHER H. BUCKLEY, resumed.

By Mr. Hughes:

Q. Mr. Buckley, referring to the various documents that were marked for identification and in evidence during the course of your testimony, were these documents, from your standpoint, in the nature of sales promotional material which you sent to the sales department in an attempt to generate interest in the can as a soft drink medium? Was that the idea of it?

A. Yes, it was a promotion piece.

By the Court:

Q. Well, now, wait a minute, before we leave. Just what do you mean by a promotion piece? Do you mean that in those documents you were engaging in puffing, or were you attempting to give the salesmen what you conceived to be facts on which to operate?

A. Well, they were documents that were sent out, your Honor, to stimulate the salesmen, and there were some general statements made.

Q. You think you were drawing a long bow in those documents?

A. Well, I'd say in some cases I was, and I think that [fol. 1298a] if I were put in a position where the management of the company had to make a decision on, say, heavy capital investment for a new can line or a new plant, I might not have been so—

Q. Enthusiastic?

A. —enthusiastic. It was mostly a promotion item.

[fol. 1299] Q. Do I understand that was to stimulate your own sales department, is that right?

A. That is right.

Mr. Hughes: That is all.

Mr. Greenberg: Your Honor, we are not going to ask the question any further questions at this juncture because we feel that the documents speak for themselves and reflect the true intent and purpose of this corporation during this period.

The Court: Let us not be under any delusions that this reflects the true intent and purpose of any corporation. This document may be relevant as indicating certain things, but I am not going to hold that this document represents the true intent and purpose of the corporate defendant.

Is there anything further from Mr. Buckley?

(No response.)

The Court: All right, you may be excused.

(Witness excused.)

Mr. McManus: The Government calls Mr. Dukehart.

The Court: And, moreover, Mr. Greenberg, I think you should bear in mind that primarily you are offering these documents as admissions, and once you have any written [fol. 1300] admission or otherwise it is always subject to explanation by the defendant or by a party.

All right, gentlemen, will you pay attention to the swearing of this witness.

Morton Dukehart, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. What is your present position, Mr. Dukehart?

A. I am manager of can sales for Crown Cork & Seal Corporation, Philadelphia.

Q. Were you formerly employed by Continental Can Company?

A. Yes, I was.

Q. For what period of time?

A. From about 1936 to June 1, 1956.

Q. During the period of 1948 to 1952 could you tell me what your position was with Continental Can?

A. I was a products sales manager in charge of the soft-drink and beer cans, essentially the same as Mr. Buckley's job. In fact, Mr. Buckley was my successor.

[fol. 1301] Q. Were your duties the same as Mr. Buckley's?

A. With the exception that his duties were added to and included soft drink cans which had not been invented when I had been there.

Q. I would like to show you Government's Exhibit 439. Did you prepare that document, Mr. Dukehart?

A. I wrote the accompanying letter but I did not prepare the document.

Q. But the attachments went out with the letter?

A. That's right, as an attachment.

Q. And it was sent to all of the district sales managers?

A. Yes.

Q. And was it sent to the people here under "c.c."?

A. Yes, that is right.

Mr. McManus: Your Honor, do you want him to explain who these people are?

The Court: No, I think we have the same group here, do we not?

Mr. McManus: They are generally the same.

The Court: Generally they are the same group, is that [fol. 1302] correct?

The Witness: The jobs were essentially the same but the names are different because of promotions within the company.

The Court: I see.

Q. What was the purpose of sending out this document?

A. It was to disseminate information to the field sales force.

The Court: How many documents are you going to ask Mr. Dukehart about?

Mr. McManus: I am going to offer this one in evidence, your Honor. I have four more to ask him about for background information.

The Court: But you are not going to offer those?

Mr. McManus: No, sir.

The Court: Then, Mr. Hughes, you may examine about this one.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. Dukehart, do you know from what sources the information contained in these three sheets attached to your letter constituting part of Exhibit G-439 were assembled?

[fol. 1303] A. No, they were assembled by the commercial research department, but I don't know the sources.

Q. You haven't the faintest idea of the accuracy or inaccuracy of any of that data, is that correct?

A. That is correct.

Q. And did this document have any circulation outside of the company?

A. No.

Q. Do you know of any action that was taken by any of your corporate officers or any responsible employee of the company in connection with this document?

A. No.

Q. Were you here when Mr. Buckley testified?

A. Yes I was.

Q. Would you say that this document was in the nature of promotional material from your department to the sales department?

A. The purpose of the letter was the same as that described by Mr. Buckley.

The Court: Do you think that you two were puppets?

The Witness: Again I would have to say that this was [fol. 1304] information used as a stimulant to our field sales department and they would have had to have more authority to warrant expenditure of any large amounts of money within the company.

Q. You would not recommend building factories in this manner, would you?

A. No.

Mr. Hughes: Your Honor, I object to it.

The Court: Overruled.

(Government's Exhibit 439 for identification received in evidence.)

Q. I show you Government's Exhibit 440; do you recognize that document?

A. Yes, I do.

The Court: Can't we take these in numerical order?

I have the list which you have given me which refers to 439, 440-A, 441 and 600. Can't you take 439-A next?

Mr. McManus: Your Honor, this witness is not concerned with 439-A.

The Court: He is not concerned with 439-A?

Mr. McManus: No, sir.

The Court: All right, we will strike that off this list.

[fol. 1305] Mr. McManus: I do want to apologize to the Court.

440-A should be the next one.

The Court: All right.

By Mr. McManus:

Q. Will you take a look at that document?

The Court: 440 or 440-A?

Mr. McManus: 440-A is the first one.

The Court: I don't have any 440-A.

Mr. McManus: It is in front of 440.

The Court: Is that called "non-returnable beer bottles"?

Mr. McManus: It is "The future of canned beer," dated January 29, 1952.

The Court: Yes.

Q. Would you look at that document and tell me if you recognize it?

A. Yes, I do.

Q. Did you receive that document?

A. Yes, sir.

Q. Do you recognize the party that wrote the document?

[fol. 1306] A. Yes.

The Court: Who did write it?

The Witness: It was written by Mr. D. H. Walker.

The Court: That is the same Mr. Walker that was referred to before?

The Witness: Yes, that is correct.

The Court: That Mr. Buckley mentioned?

The Witness: Yes.

Q. Do you recognize these gentlemen to which carbons were sent?

A. Yes.

Q. Could you tell us who they are? I don't believe that they have previously been identified.

A. At the time Mr. Dake, I believe, was director of the commercial research department. Mr. Neuman was—I don't remember that exactly—Mr. Neuman, I think, was in charge of the products group, and other than that I cannot identify him.

Mr. Cameron was the general manager of the central division. Mr. Gill was one of his assistants. Mr. Fenn was one of Mr. Cameron's assistants. And Mr. Westerback was the district sales manager at St. Louis.

[fol. 1307] Q. When you received this document what did you do with it?

A. I stored it away with other similar information which would be used when necessary in discussing problems with the sales department.

Q. You would take this information and you would discuss it with your field sales departments?

A. Yes, that is right.

Q. Going to Government's Exhibit 440 do you recognize that document?

A. Yes, I do.

Q. The same Mr. Walker wrote that document?

A. That is right.

Q. And what was his position again?

A. I believe at that time he was director of commercial research.

Q. And when you received this document to what use did you put it?

A. Again it was used along with other similar documents to provide general information concerning the products for which I was responsible for disseminating information to the field sales departments.

Q. And you would use the information here to disseminate to your sales departments?

[fol. 1308] A. That's right.

Q. Going now to document 441, do you recognize that document?

A. Yes, sir.

The Court: If the same questions were asked of you with respect to document 441 as have been asked with respect to the previous documents, would your answers be the same?

The Witness: Yes, they would.

The Court: All right.

Mr. McManus: I only have one more document to ask this witness about, and that is 600-B.

Q. I show you document 600-B, Mr. Dukehart. The same Mr. D. H. Walker prepared that document?

A. That's right.

Q. And you received that document?

A. Yes.

Q. And this document did not relate to beer, did it?

[fol. 1309] A. This was a preliminary investigation of the potential market for soft drink cans.

Q. And when you received this information did you use it in the same way that you used the other information that you testified about?

A. Yes.

Q. You would disseminate this information——

A. And probably use it in connection with other similar information to accumulate knowledge of the potential market for the sale of our products.

Q. That being soft drinks?

A. That is correct.

Q. And you would again disseminate that to the sales personnel of Continental Can?

A. That is right.

Mr. Hughes: Are these documents being offered?

Mr. McManus: No, just the one that I have offered.

Mr. Hughes: Well, then I do not want——

Mr. McManus: Yes, they are going to be offered.

The Court: They are going to be offered eventually, as I understand it, is that right?

[fol. 1310] Mr. McManus: That is right. That is all I have.

Cross-examination.

By Mr. Hughes:

Q. Mr. Dukehart, was Exhibit 440-A for identification circulated outside of the corporation?

A. No.

Q. As far as you know?

A. No.

Q. Do you know of any corporate actions of any kind that were taken on the basis of that document?

A. No.

Q. There is a reference in this document to a Mr. Dake. Can you tell us who he was?

A. He was Mr. Walker's superior at the time.

Q. Was Mr. Walker in your department at that time?

A. No.

Q. What was his position at that time?

A. Mr. Walker at that time was in the commercial research department. I am not sure what his title was at that time, but his job was to provide information of this kind to me and to others in similar jobs under the direction of Mr. Dake.

Q. And this makes reference to a "summary of discussions we have had." Do you see that reference?

[fol. 1311] A. Yes, I do.

Q. You did not participate in those discussions yourself, did you?

A. No, they were probably discussions between Mr. Walker and Mr. Dake.

Q. This document was not circulated to the sales managers or any people in the sales department, was it?

A. May I see it?

Mr. McManus: Which one is that?

Mr. Hughes: The same one.

A. No, this was to a selected few who were more interested in the sale of beer cans than others.

Q. I show you Exhibit 440 for identification and ask you

whether Mr. Walker held the same position at the time when this memorandum was prepared?

A. That is right.

The Court: If the same questions were asked with respect to the document under discussion as were asked with respect to 440-A, would your answers be the same?

The Witness: Yes, they would.

Q. This document refers to an attached report, and you will observe that there is an attached report?

A. Yes.

[fol. 1312] Q. Did you have anything to do with the preparation of that report?

A. Nothing.

Q. And you don't know anything about the circumstances of its preparation?

A. No.

Q. Or what the sources of the information were?

A. No, they were general sources gathered by the department in their normal course of operation.

Q. Gathered here and there from some random sources, is that correct?

A. Yes.

The Court: I thought you said you didn't know where they got that information from, Mr. Witness?

The Witness: Well, I would say that again, sir.

The Court: In other words, you just don't know where they got the information?

The Witness: No, Sir.

The Court: You don't know what was from random sources or what was not, do you?

The Witness: No, I do not.

The Court: All right.

Q. I show you Exhibit 441 for identification——

[fol. 1313] The Court: I am sorry, Mr. Hughes, to interrupt you, but how much longer are you going to be with this witness?

Mr. Hughes: I have just one or two more documents.

The Court: Because I have some other people waiting

for a hearing, but if you are going to be just a couple of minutes, you may go ahead.

Mr. Hughes: I will move along quickly, your Honor.

The Court: All right.

Q. Did this receive any circulation outside of the company, so far as you know?

A. No.

Q. Did you have anything to do with the compilation of any of the factual data that purport to be recorded in this document?

A. No.

Q. And did this go to the sales force generally?

A. Yes, it did.

Q. It was not circulated outside the company?

A. No.

Q. Do you know of any corporate action taken upon this document?

[fol. 1314] A. No.

Q. There is one more——

The Court: Yes, 600-B.

Q. I show you document 600-B, and I ask you whether this document received any circulation outside of the corporation?

A. None.

Q. And was this circulated to the sales force generally?

A. Yes.

Q. Do you know of any corporate actions taken upon this document?

A. No, sir.

Q. Did you have anything to do with the assembling of the data that purport to be reflected in this document?

A. No, I did not.

Mr. Hughes: That is all, your Honor.

The Court: Anything further, Mr. McManus?

Mr. McManus: No, your Honor. We have two witnesses, I believe, that are still here and we would like to continue tomorrow with them with some other documentary testimony. I will ask them to come back at 2 o'clock tomorrow.

The Court: Who are those gentlemen?

[fols. 1315-1317] Mr. McManus: Mr. Green and Mr. Frame.

The Court: Are those two gentlemen here? Is Mr. Green here and Mr. Frame?

Mr. Frame: Yes, sir.

The Court: Mr. Frame, will you attend here tomorrow at 2 o'clock, please.

Mr. McManus: That is all.

Mr. Johnson: Your Honor, we were given a list of persons to be called for tomorrow after we came in to court today, and I am informed that two of those individuals are out of town and as of now they apparently have not as yet been notified that they were to be called. At least, the company has not been able to get in touch with them.

The Court: Are those employees of yours?

Mr. Johnson: Yes. We have received no further information as to whether they have gotten in touch with them.

The Court: In other words, you have done your best to get in touch with them and you have been unable to do so?

Mr. Johnson: That is right, your Honor.

The Court: You may step down, thank you.

(Witness excused.)

. . . . . .

[fol. 1318] FRANK A. VICKERY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Were do you reside, sir?

[fol. 1319] A. In West Hartford, Connecticut.

Mr. Greenberg: Will you mark these for identification while I continue with the examination.

Q. What is your present employment?

A. I am employed with Emhart Manufacturing Company.

Q. How long have you been with the company?

A. Since 1956, June.

Q. What is your position with the company?

A. I am now administrative sales manager.

Q. What work do you do in connection with sales?

A. The work I do is internal administration of the sales department operations, liaison with engineering departments and with production departments in the company.

Q. Mr. Vickery, I show you Government's Exhibit 363 which has been marked for identification and I ask you if you recognize it?

A. Yes, I do.

Q. And what is it, sir?

A. This is a recording of Continental Can's Hazel-Atlas Division by plant and serial number of IS machines as of July 31, 1958.

Q. Sir, do you know——

[fol. 1320] The Court: It is a record of your machines in the plants of Continental Can?

The Witness: Yes, sir.

Q. Do you know how it was compiled?

A. This was taken from company records, our company records.

Q. Did you supervise the compilation of this document?

A. I did.

Q. How did you go about compiling this document?

A. By a review of our plant records showing machines shipped.

Q. What type of records were those?

A. We record for identification by serial number each piece of our equipment, and these records were reviewed.

Q. How far back in time did you go?

A. 1935, as I recall.

Q. Are these the routine business records of your company, would you say?

A. Yes, they are.

Mr. Greenberg: Your Honor, I offer this exhibit into evidence.

Mr. Johnson: No objection.

[fol. 1321] The Court: It may be received.

(Government's Exhibit 363 for identification received in evidence.)

The Court: So that this is clear to me, Mr. Vickery, this is really a record of shipments to particular plants, is that correct?

The Witness: Yes, your Honor.

The Court: If you ship one of your machines to the plant of a customer, is it your practice to help in the installation of that machine?

The Witness: If so requested by the customer.

The Court: If requested by the customer?

The Witness: Yes, your Honor.

The Court: You do not know whether that practice was followed with Continental Can or not?

The Witness: In some cases it was.

The Court: What I am getting at is, if this exhibit purports to be shipments of machines to these various locations, it does not necessarily follow from this that the machines are presently in those locations?

The Witness: No, it does not.

[fol. 1322] The Court: Very good.

Mr. Greenberg: Your Honor, since the exhibit is in evidence I would like to direct your attention, before the inception of my examination as to this document, to the section or the column which is entitled "Purchase Authorized By."

The Court: Yes.

Mr. Greenberg: And underneath that column there is designated or that column describes the particular company which acquired the machine, which in this case is Hazel-Atlas——

Mr. Johnson: Your Honor, I believe that the witness should be asked to describe what that column means.

The Court: I think so, too. I see the notation in the column but as to the significance of that, let the witness testify.

[fol. 1323] Mr. Greenberg: May I have the documents, your Honor? I will show them to the witness.

By Mr. Greenberg:

Q. I direct your attention to the column which is entitled "Purchase Authorized By." Now, what does that mean?

A. This column was compiled by examining purchase orders received by us.

Q. There are references to Hazel-Atlas in this column; is that correct, sir?

A. Yes, there are.

Q. Is that reference to Hazel-Atlas Company prior to 1956, or prior to the acquisition by Continental Can of the Hazel-Atlas Division?

Mr. Johnson: I will object to that.

The Court: No, no. I will sustain an objection to that.

By the Court:

Q. What is the source of the words "Hazel-Atlas" placed on that document?

A. The Hazel Atlas purchase order was issued.

Q. And what do you mean by a "Hazel-Atlas purchase order"?

A. Hazel-Atlas Glass Company, prior to acquisition.

[fol. 1324] Q. In other words, the order form from which you took that information contained the legend "Hazel-Atlas Glass Company"; is that correct?

A. Yes, your Honor.

Q. And with respect to Continental Can, the order form from which you compiled that information contained the legend "Continental Can Company"?

A. Yes, your Honor.

Q. And you are not trying to draw from those legends any legal conclusions. All you are trying to say is that is what the purchase orders said, period.

A. Yes, your Honor.

Q. All right. Were there any purchase orders, as you recall it, entitled "Continental Can Company—Hazel-Atlas Division"?

A. Yes, your Honor.

Q. How were those listed?

A. As Continental Can.

The Court: As Continental Can.

By Mr. Greenberg:

Q. Sir, I direct your attention now to the part of the document, the columns in the document, which deal with the number of sections of the machine and the equipment ordered with the machine, that is the last column, and ask [fol. 1325] you how they were compiled?

A. Again, from our records, as previously described.

Q. Sir, referring now to the last column, which indicates what the machines ordered were, it lists the 62 single gob, and so on and so forth, will you tell us what each of those items are?

A. Yes. 62 single gob is a machine for wide mouth single gob operation.

62 double gob is a machine equipped for double gob wide mouth operation. Blow and blow single gob is a machine equipped for narrow neck single gob operation. Blow and blow double gob is a machine equipped for narrow neck double gob operation.

The Court: All of those machines listed in that exhibit are machines for making glass containers, are they?

The Witness: Yes, your Honor, they are.

Q. Sir, all of the machines which are listed on this exhibit, referring to all the machines which are listed on this exhibit, can you tell us, sir, whether all of them are convertible either to wide mouth or narrow neck containers?

A. They are, with the addition of attachments.

[fol. 1326] Q. What kind of attachments?

A. If a machine is equipped for 62 single gob, an attachment can be put on the machine to make 62 double gob.

Q. Now, sir, what is the cost of an attachment at the present time?

A. The attachments run variously from approximately $8,000 for a six-section machine to as much as $30,000 for full equipment.

The Court: When you say "the attachments," you mean the converting attachments?

The Witness: Yes, your Honor.

Q. Sir, what is the cost of these machines at the present time?

Mr. Johnson: I object to that. I don't understand what he means by "these machines."

The Court: Well, plainly, the witness will have to specify prices of individual machines.

Can you do that for us?

Mr. Greenberg: Do I understand, your Honor, that we go back to 1935 and try to put a cost estimate on it?

The Court: Let me see this.

Well, the question is, are you talking about original [fol. 1327] selling price or present cost of this type of machine?

Mr. Greenberg: I referred, your Honor, I thought I referred in the question to cost at the present time. I realize it is quite a burden to have the witness go back in time and try to place an estimate on original cost.

The Court: That isn't the basis, I think, of Mr. Johnson's objection. Mr. Johnson merely wanted not a generalization but a statement of what prices apply to which machine.

Is that correct?

Mr. Johnson: That is correct.

Mr. Greenberg: All right.

Q. You have been with the company since 1956? Is that correct, sir?

A. That is correct.

Q. And have you become familiar with the prices for the——

The Court: All right, we will assume he is familiar with the prices.

Mr. Greenberg: All right.

Q. Now, for machines which have been sold since 1956 and which are described on this list, will you tell us the [fol. 1328] cost of each of those machines?

The Court: As of now or——

Mr. Greenberg: After.

Q. From 1956 to the present, when they are ordered?

The Witness: This is a rather broad request, your Honor.

The Court: Yes, I can understand that.

By the Court:

Q. Have you any data to which you can refer?

A. We could research our files.

Q. Well, suppose you tell us what they cost at the present time? Can you do that?

A. Yes.

Q. The machines of the various types?

A. Various machine types were run from $75,000 to $110,000, depending on the scope of the specification.

By Mr. Greenberg:

Q. Sir, can each of these machines with attachments make a full line of food and non-food containers?

Mr. Johnson: I object to this.

Mr. Greenberg: I am referring to the machines on the exhibit.

The Court: You mean glass containers?

[fol. 1329] Mr. Johnson: I object to the form of that question. I don't understand the use of the words "full line of containers."

By the Court:

Q. Well, let's understand one another here.

Mr. Witness, could one of these machines make a five-gallon glass jug?

A. No, your Honor.

The Court: All right.

By Mr. Greenberg:

Q. Referring now to glass containers other than a five-gallon glass jug, will you tell me, sir, whether each of these machines with attachments can make a broad range of food and non-food glass containers?

Mr. Johnson: I will object to that.

The Court: I will allow that, Mr. Johnson. I think we know pretty well we are talking about the ordinary open mouth and narrow neck glass containers.

Do you understand what I mean by that?

The Witness: Yes, your Honor.

The Court: Very well.

A. These machines are capable with attachments of making ware from fractional ounces to gallons.

Q. Sir, from your experience with Emhart, do you know [fol. 1330] whether machines of this type have been converted?

A. I don't quite understand the question.

The Court: Well, we all know that.

Mr. Greenberg: It has been in the record, your Honor?

The Court: There has been evidence ad nauseam that machines of this type can be converted and were converted in a number of plants.

Mr. Greenberg: Very well, your Honor.

The Court: Whether they were here or not, I don't know. If you want to introduce that evidence, all right.

Q. Mr. Vickery, I show you Government's Exhibit 185, which has been marked for identification, and ask you if you can identify it?

A. Yes, I can.

Q. Will you tell us what it is?

A. This is an advertising sales brochure for the IS glass-forming machine.

Q. Do you know how it was compiled?

A. Yes.

Q. How was it compiled?

A. From various company records and the experience [fol. 1331] of our people in manufacturing and operating the machinery.

Q. And do you know what use and distribution was made of this exhibit?

A. Yes. It is used presently and has been as a piece of advertising literature, distributed widely.

Mr. Greenberg: I offer this exhibit into evidence.

Mr. Johnson: I object to it as irrelevant.

The Court: Overruled.

(Government's Exhibit 185 received in evidence.)

Mr. Greenberg: You may cross-examine.

The Court: Have you a copy of the exhibit that you put in with this witness for me?

Mr. Greenberg: Yes, your Honor. You may use this copy.

I would like the record to show that the defendants were also supplied with a copy of this exhibit.

I assume they were.

All right, Mr. Johnson.

[fol. 1332] Cross-examination.

By Mr. Johnson:

Q. Mr. Vickery, do you know the date on which Hazel-Atlas Glass Company agreed to sell its assets to Continental Can Company?

A. No, I don't personally recall that.

Q. The IS machines, if I may say, are now regarded as one of the best container forming machines on the market, are they not?

A. Yes, they are.

The Court: You expect a "Yes" to that question.

Mr. Johnson: I did.

Q. Have they been improved considerably over the years?

A. Yes, they have.

Q. Is a machine that was made after 1950 a better machine than one that was made during the 40's?

A. Well, that is a rather hard question to answer.

Mr. Greenberg: Your Honor, may we have a foundation for that? He began with the company in 1956.

The Court: He is your witness. You have taken him through company records back to 1937 or '38 and——

[fol. 1333] Mr. Greenberg: Just the statistical records.

The Court: —and presumably he is, in the course of his duties, familiar with——

By the Court:

Q. Are you generally familiar with the types of machines produced prior to your employment?

A. Yes, I am, generally, your Honor.

Q. In the course of your duties did you make yourself familiar with the previous products of the company?

A. Yes, your Honor.

The Court: Very good.

You know, Mr. Greenberg, I am going to tell you something. When you have a fellow in a business position of this nature, I am perfectly willing if you want to have all kinds of technical foundations laid, but I assure you that these technical foundations are in nine cases out of ten simply an enormous waste of time.

Go ahead, Mr. Johnson.

By Mr. Johnson:

Q. Let me ask you this, sir:

Will you describe some of the improvements in IS ma-
[fol. 1333a] chines that have been made since 1950?

A. There have been many minor improvements made in material and improvements made to the attachments to make them more operable and more effective in operation.

[fol. 1334] The Court: Has there been any radical change in design?

The Witness: No, your Honor.

The Court: There has not?

The Witness: No.

The Court: It is the same basic machine with improvements in material and the matters you have just described?

The Witness: Yes, your Honor.

By Mr. Johnson:

Q. Is the changed equipment that is now used substantially different from the attachments that were used before 1950?

A. Not substantially different.

Q. There are some changes?

A. Minor changes, yes.

Q. Do they make changes faster?

A. I don't get that.

Q. Do they make it possible to make changes faster in the types of ware?

A. Changes in processes?

Q. Changes from one type of ware to another?

A. No.

Q. They do not make it faster?

[fol. 1335] A. No.

Q. When did the first six-section IS come out?

A. I believe in 1954.

Q. Is the six-section IS regarded as a more efficient machine than the four-section which was made before 1940?

A. It is a larger machine by two sections.

Q. You would not say that it was more efficient or less efficient?

A. Well, with more sections, with six sections—you are speaking now of productivity, I gather?

Q. Yes.

A. A six-section machine is more productive than the four-section machine.

Mr. Johnson: I should like to have marked for identification a copy of a letter from Emhart Manufacturing Company dated October 21, 1958, addressed to the United States Department of Justice, with the list referred to therein, but it does not attach to it the printed material referred to in the body of the letter.

This document is numbered 164-B in your Honor's documents.

[fol. 1336] Mr. Greenberg: Your Honor, may we look at this document to see what parts Mr. Johnson is using?

The Court: Has it been marked for identification before?

Mr Johnson: Yes, it was marked.

The Court: You undoubtedly have it in your file then.

Mr. Greenberg: Yes, but I would want to see what part he was using and what part he was not.

The Court: You may look at it.

(Marked Defendants' Exhibit K for identification.)

The Court: Let me have this document.

Mr. Greenberg: Your Honor, we have not marked this exhibit Mr. Johnson refers to in your exhibit book.

The Court: All right.

Mr. Greenberg: I want to point that out for the record.

The Court: Very good. Somebody marked it for identification. Who did that, Mr. Johnson?

Mr. Johnson: Yes.

[fol. 1337] The Witness: Your Honor, may I ask a question in connection with this list?

The Court: The list in evidence?

The Witness: Yes—not that list, your Honor—the attachments to the October, 1958, letter.

The Court: Have you seen those?

The Witness: I have a recollection of that.

The Court: He is about to show them to you.

The Witness: Oh.

Q. Have you seen that letter before, Mr. Vickery?

A. Yes, I have.

The Court: Wait a minute. Before we go any farther, I am going to ask that somebody here find 164-A, which I do not seem to have.

Mr. Johnson: I referred to the office records, your Honor, not to the exhibit book.

The Court: Oh, I see. 164 seems to be minutes.

(Documents handed to Court.)

The Court: I am sorry, Mr. Johnson, is that the December 31st letter addressed to your firm?

Mr. Johnson: That is a copy of the transmittal letter from the Department of Justice to me. The letter which I [fol. 1338] am referring to is immediately under that.

The Court: I have it now.

Q. This material was prepared by Emhart Manufacturing Company, was it not?

A. That is right.

Mr. Greenberg: I did not hear the question.

Q. This letter was prepared by Emhart Manufacturing Company?

A. Yes, it was.

Q. And it was prepared from its files and records?

A. Routine records, yes.

The Witness: In connection with this, your Honor, I

would like to make a request. This listing is quite comprehensive, and I feel somewhat in the area of trade secrets, and if it would be possible not to make this public information I would very much appreciate it.

The Court: Well, we have no intention, I think, of having it go beyond counsel and the Court at this stage.

The Witness: I see.

The Court: And, in fact, I will so direct with respect to this exhibit.

[fol. 1339] Mr. Greenberg: Your Honor, we wish to state at this juncture that the Government stipulates to the admissibility of that document.

The Court: You stipulate to its admission?

Mr. Greenberg: Yes, and therefore we can avoid the necessity of examination of it.

The Court: All right.

Mr. Johnson: In connection with your Honor's statement, I do want to point out that this material has been made available to us and has been available to us for some time, and has been available to the defendant heretofore in connection with trial preparation.

The Court: Let us put it this way: that the distribution that has been had of the document up to now shall not be extended.

The Witness: I appreciate that.

The Court: Very good. I can see why you make that request.

(Defendants' Exhibit K for identification received in evidence.)

Mr. Johnson: I am sorry, I am not offering the whole document.

[fol. 1340] The Court: You are not offering the whole document?

Mr. Johnson: I am offering the letter dated October 21, 1958, from Emhart to the United States Department of Justice.

The Court: Consisting of six pages?

Mr. Johnson: Consisting of six pages, yes, sir.

The Court: Yes.

Mr. Johnson: Together with four lists, three of which

are the lists referred to in paragraph No. 1 of the letter and described as follows:

Under the heading "IS Machines, List By Plants Showing Serial Number, Date of Shipment, and Number of Sections."

Under the heading "28 Machines, List By Plants Showing Serial Number and Date of Shipment."

Under the heading "65 Machines, List By Plants Showing Serial Number, Date of Shipment and Number of Sections."

The fourth list is a list described under paragraph 3 on page 3 of the letter under the heading "Other Companies' Machines," and described as follows, "A list of Such Machines Showing Characteristics Is Enclosed."

[fol. 1341] Mr. Greenberg: Your Honor——

The Court: Yes, Mr. Greenberg?

Mr. Greenberg: The Government would like to offer the rest of the document. It is one document, your Honor, and the defendant offered part, and we offer the rest of it.

The Court: Have you any objection to the rest?

Mr. Johnson: No objection.

The Court: All right, it may be received. The portions offered by the defendant have been noted and the balance will be considered as portions offered and received on behalf of the Government.

Mr. Greenberg: And, your Honor, the Government assumes that that will likewise be covered by the confidentiality agreement.

The Court: Yes, my direction with respect to confidentiality covers the document as a whole.

The portion marked by the Government, I think, Mr. Clerk, that you better arrange with counsel, so that the record may be clear, at the end of the session that Defendants' Exhibit K refers to the letter, and the three sections referred to by Mr. Johnson, and then give the balance of it an exhibit number for the Government.

[fol. 1342] (Marked Government's Exhibit 364 in evidence.)

Q. Mr. Vickery, are you familiar with glass container forming machines manufactured by companies other than Emhart Manufacturing Company?

A. I am not personally familiar with them.
Q. Have you any familiarity with them at all?
A. Not physical familiarity, verbal.
Q. You could not describe their operation?
A. No, not in detail.
Q. You have never seen one operate?
A. Yes, I have.
Q. Do you know what a Lynch machine is?
A. Yes, I do.
Q. What is a Lynch machine?
A. It is a rotary forming machine for glass containers.
Q. What kind of ware, what kind of glass containers?
A. Lynch machines can manufacture narrow-neck—certain types can manufacture narrow-neck and certain other types wide-mouth.
Q. When you say that, which types can manufacture [fol. 1343] each?
A. I don't recall the particular numbers. That is described in one of the exhibits, if I might refresh my memory.
Q. How about a Lynch 10, what will that make?
A. A Lynch 10, as I recall it, is a narrow-neck manufacturing machine.
Q. Will it make anything except narrow-neck glass containers?
A. I am not familiar with that.
Q. You just don't know?
A. No.
Q. And if I asked you about other Lynch machines would your answer be the same?
A. Yes, it would.
Q. And that is the extent of your familiarity with the Lynch machines, is that right?
A. Yes.
Q. Do you know what a Miller machine is?
A. Only by description of them. I have never seen them.
Q. You have never seen one?
A. No, I have not.
Q. Do you sell Hartford IS machines?
[fol. 1344] A. Do I personally sell them?
Q. Do you either sell them personally or supervise your salesmen?

A. In an indirect way, yes.

Q. In what way?

A. Do you mean if——

Q. What is the extent of your authority over salesmen?

A. I am responsible for their expense reports and various internal reports which they must submit to us.

Q. But you are not responsible for their selling activities?

A. No, I am not.

Q. Can you answer this question, Mr. Vickery: can you economically make baby foods with Miller machines?

A. I cannot answer that.

Q. Were you ever in a Hazel-Atlas Glass Company plant prior to September, 1956?

A. Yes, I have been.

Q. What plant?

A. Zanesville, Ohio

Q. I am talking about the period prior to September, 1956.

[fol. 1345] A. Prior to September, 1956?

Q. Yes.

A. I am sorry, I did not get the year.

Q. September, 1956?

A. No, not prior to September, 1956.

Q. Looking at Government's Exhibit No. 363, could you tell me what the significance of the information in column No. 8 is?

A. Based on our records, the machines that were ordered as described were ordered with this equipment, either assembled or shipped loose with the other machines.

Q. If the attachments referred to were not shipped with the machine, would you know what effect that would have on the effectiveness of the operations of the machine?

A. As to their versatility?

Q. As to their versatility?

A. Well, the machines as shipped and with the attachments can make ware within the ranges and processes described in each column.

Q. If they do not have the attachments they cannot make it within those ranges?

Mr. Greenberg: Your Honor, I did not hear the question.

[fol. 1346] Q. If they do not have the attachments they cannot make it within those ranges, is that true?

A. No, the attachments may be available or could be made available through purchase. You are speaking as of today or as of the day they were shipped?

Q. Well, I am speaking——

The Court: If they did not have the attachments at all, they would not have the versatility?

The Witness: Not at the time of shipment.

The Court: The attachments might be shipped later, but, however, it did not require that they be shipped at the time that the machine was shipped?

The Witness: That is correct.

Q. And that document shows what attachments were ordered with the machines, is that correct?

A. Yes, it does.

Q. Are you familiar, sir, with any litigation between Hazel-Atlas Glass Company and Hartford Empire Manufacturing Company?

A. No, I am not.

Q. You have no information with respect to any such litigation?

A. No, I have not.

[fol. 1347] The Court: Incidentally, I may say in that connection, has Mr. Algeo returned?

Mr. Johnson: No, sir, as far as I know he has not.

Mr. McManus: Your Honor, did you want him?

The Court: No, simply that the questions that I desired to ask Mr. Algeo were in connection with that litigation, and there was an opportunity for you gentlemen to examine him on that subject matter while he was here.

Mr. Johnson: I have no further questions of this witness.

The Court: All right. Mr. Greenberg?

Mr. Greenberg: May I just have one moment?

The Court: Yes.

(Short pause.)

Redirect examination.

By Mr. Greenberg:

Q. Just two questions, Mr. Vickery: can the attachments that we have been discussing be transferred from one machine to the other?

A. Yes, they can.

Q. Sir, what is the difference between a four-section machine and a six-section machine?

[fol. 1348] A. Two sections.

(Laughter.)

Q. And all that means is increased production?

A. Yes.

Mr. Greenberg: That is all, your witness.

Mr. Johnson: No further questions.

The Court: All right, you may step down, Mr. Vickery, thank you.

(Witness excused.)

The Court: Next witness, gentlemen.

Mr. McManus: Mr. Foster.

JOHN M. FOSTER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. By whom are you employed, Mr. Foster?

A. Foster-Forbes Glass Company, Marion, Indiana.

Q. What is the nature of your business—your company manufactures glass containers primarily?

A. A general line of glass containers.

Q. And how many plants does your company have?

A. We just have one plant.

The Court: What are you, president of the company?

[fol. 1349] The Witness: Yes, sir.

Q. Is your company a publicly-held company?
A. Yes, sir.
Q. Does the stock have wide distribution?
A. It does not, sir.
Q. Is most of the stock in your family?
A. In the Foster family and the Forbes family.
Q. And where is your plant located?
A. Marion, Indiana.
Q. You said you had just the one plant?
A. That's right.
Q. And how many employees do you have?
A. About 850 to 900.
Q. And approximately how many salesmen do you have?
A. Approximately 15 to 20.
Q. Were your sales for the year 1959 reported?
A. Yes, sir.
Q. Were they made public?
A. Yes, sir.
Q. And you report on a calendar year basis?
A. Yes, sir.
Q. And approximately what were your sales in 1959?
[fol. 1350] A. 12 million 6.
Q. Could you tell me within what area you usually ship your glass containers?
A. Mostly within the Mid-West area.
Q. Within a 500-mile radius of your plant, what percentage of your wares do you ship?
A. The only answer to that question that I might make would be a guess, but I would say 90 per cent.
Q. Could you tell me what types of wares you sell primarily, by census categories or otherwise?
A. Yes, sir. We manufacture food containers, both narrow and wide-mouth, cosmetic and toilet containers, beer bottles, proprietary drug and prescription bottles, liquor bottles, household and chemical bottles and jars. Those would be our main line.
Q. Does your company make any caps?
A. We do not, sir.
Q. Do you make any capping machinery?
A. No, sir.
Q. Do you make any corrugated shipping containers?
A. No, sir.

Q. Could you estimate the percentage of your glass con-
[fol. 1351] tainers that are shipped in corrugated shipping containers?

A. I would guess one hundred per cent.

Q. Could you estimate the approximate cost of the shipping containers to the price or the selling price of your product?

A. I don't know—I could make a guess but I don't really know.

The Court: Can you give us a fair estimate?

The Witness: Some place between 15 and 20 per cent, I would say.

Q. Could you tell me if any of your glass containers are sold west of the Rocky Mountains?

A. Practically none.

Q. When you say "practically none," you might have an occasional shipment?

A. Occasional.

Q. Do you sell any other types of containers other than glass containers?

A. No, sir.

[fol. 1352] Q. Do you sell containers made of any product other than glass?

A. No, sir.

Q. Do you sell any aerosol containers?

A. Yes, sir.

Q. And you sell an aerosol glass container?

A. Yes, sir.

Q. For how long a period have you been selling that item?

A. There again, it would be a guess, sir. I would presume three years.

Q. And is this aerosol glass container coated or uncoated?

A. It is uncoated.

Q. You have no plastic covering?

A. We do not.

Q. And for what purpose is that container used?

A. Mainly for cologne, toilet water and so on, hair spray.

Q. Now, you stated that you sell beer bottles; correct?

A. Yes, sir.

Q. Do you sell the returnable type?

A. Yes, sir.

[fol. 1353] Q. And do you sell the non-returnable type?

A. Yes, sir.

Q. Could you tell me if the price for the returnable is higher or lower than the price for the non-returnable?

A. It is higher.

Q. And could you tell me why that is so?

A. A returnable bottle is considerably heavier in glass weight than a non-returnable bottle, and is run more slowly on a machine, and for that reason it therefore commands a higher price because of its higher cost.

Q. Are there any other reasons?

A. Not that I know of, sir.

Q. For how long a period have you been manufacturing the non-returnable type, approximately how many?

A. Well, I can't answer that question.

Q. I see. Were you manufacturing returnable beer bottles before you went into the non-returnable field?

A. Simultaneously, I think.

Q. You went into both of them at the same time?

A. Practically, I believe, if my memory serves me cor-

[fol. 1354] rectly. It is quite a long time ago.

Q. Is your company a member of the Glass Container Manufacturers Institute?

A. We are.

Q. Do you attend as your company's representative?

A. At the annual and semi-annual meetings, we are in attendance.

Q. And for how long a period have you been attending?

A. Since it was formed.

Q. At the present time are you a member of any of their committees?

A. I am personally a member of one committee, the market and promotional committee.

Q. And you are familiar with the market research and promotion carried on by that committee?

A. Yes, sir.

Q. And are you furnished or have you examined the material prepared by that committee?

A. All of the material that comes to my desk I have examined, yes.

Q. And do you or do you not rely on that committee in helping formulate the sales policy of your own company?
A. It helps only, but doesn't guide us.

[fol. 1355] Mr. Johnson: I object to that question.
The Court: Overruled.

Q. What was the answer?
A. It helps, but it doesn't guide us.
Q. It is a factor in helping you?
A. Yes.

Mr. McManus: That is all I have.
The Court: All right, sir.

Cross-examination.

By Mr. Johnson:

Q. Mr. Foster, would you say that competition was keen and vigorous in the glass container industry?
A. At the present time, sir?
Q. Yes, sir.
A. Yes, sir.

The Court: Do you find that it has grown more keen and vigorous or less keen and vigorous since 1956?
The Witness: More.
The Court: More.
The Witness: Yes.

Q. Do you obtain your shipping containers from more than one source, Mr. Foster?
A. Yes, sir.
Q. How far from your plant are the shipping containers [fol. 1356] manufactured, which you buy?
A. 95 per cent of them are made within five miles of our plant.
Q. How are they delivered to your plant?
A. By truck, on pallets.
Q. Is there any particular reason why you buy them so close to your plant?
A. Yes, for service reasons.
Q. By "service reasons," you mean what?
A. I mean that we get practically overnight service on

cartons for a run of bottles the next day. If we order them one afternoon, we will get them in the morning, and when there is less than five miles to haul, there isn't much of a delivery problem.

Q. Does that mean that you don't have to warehouse very many shipping containers?

A. That is correct, sir.

Q. And is that important to you?

A. Very important.

The Court: I take it shipping containers are items that take up a great deal of warehouse space?

The Witness: Your Honor, that is correct.

Q. Do various shipping container manufacturers try to get business from you?

[fol. 1357] A. Yes, sir.

Q. Now, you referred to the proportion of cost of your shipping container to the total selling price of the glass containers. Isn't it true that the proportion of cost of the shipping container to the total selling price varies greatly depending on the type of ware?

A. That's right.

Q. Type of glass container?

A. That is correct, sir.

Q. Your shipping containers are manufactured to your own specifications, are they not?

A. That is correct.

Q. Do you regard the shipping container as one of the constituent parts of the product which you sell?

A. Yes, sir.

Q. Your total selling price is designed to return a profit on overhead, raw material, fuel, shipping container and all the other things that go into the total product, is it not?

A. That's right.

Q. Do many of your customers, sir, buy glass from other suppliers?

A. The majority of them do, sir.

[fol. 1358] Q. Do the brewers, to whom you sell beer bottles, all also use cans?

A. Yes, sir.

Q. Sir, do you have a decorating plant?

A. We do not.

Q. Does the fact that you do not have a decorating plant have any effect on your sales of beverage bottles?

A. Has a very, very great effect on the lack of sales—I mean, our lack of having a decorating plant.

Q. What is that effect?

A. It makes us sell fewer soda bottles.

Q. Why is it important to have a decorating plant?

A. Most of the large users of soda bottles now require decorative bottles.

Q. You do have a New York office, do you not?

A. We do, sir.

Q. New York sales office?

A. Yes, sir.

Q. And you do sell in this area some at least?

A. We sell a certain amount of selective items in this area.

[fol. 1359] Q. Now, sir, you referred to a plastic-coated glass aerosol.

Mr. McManus: I object, your Honor. He did not.

Mr. Johnson: Sorry.

The Court: Well, somebody referred to it in the course of the examination.

Q. Am I correct, sir, that on your direct examination you were asked if you sold aerosol bottles?

A. I was asked if I—

Q. Aerosol?

A. Yes, sir.

Q. And you testified, did you not, that you sold the glass aerosols?

A. That is correct.

Q. And those are coated glass aerosols?

A. I said they were uncoated.

Q. They were uncoated. I am sorry.

I don't want to get into specific details, Mr. Foster, but is there some way that you could indicate to me what relationship the volume of those glass aerosols bears to the rest of your business?

The Witness: Well, that would be a very confidential question, your Honor. I will answer it if you so rule.

[fol. 1360] The Court: Well, I don't want to do anything

that will embarrass any of these witnesses. Let's just put it this way:

Is there any substantial volume in that, sir?

The Witness: There is not, sir.

The Court: There is not.

Is that sufficient for your purpose?

Mr. Johnson: I believe so, sir.

The Court: I say "substantial" when I compare your entire volume.

The Witness: Yes, sir.

Mr. Johnson: Will you mark this document for identification.

(Marked Defendants' Exhibit L for identification.)

Q. Are you familiar, sir, with this document, which has been marked Defendants' Exhibit L for identification?

A. Yes, sir.

Q. Tell me what it is?

A. That is our 1959 annual report to stockholders.

Q. And this report contains a table, showing amongst other things your net sales by years since 1950 to 1959, does [fol. 1361] it not, sir?

A. '50 to '59; that is correct, sir.

Q. It also shows among other things your net income after Federal income taxes.

A. Yes, sir.

Q. And it shows that your sales for the year 1955 were seven million nine plus; does it not?

A. That's right.

Q. And your earnings in that year were $250,000, approximately?

A. Approximately; that's right, sir.

Q. It shows that your sales in 1959 were twelve million six plus, does it not?

A. That's right, sir.

Q. And your net income after Federal income taxes for that year were $896,000 plus, were they not?

A. That's right, sir.

By the Court:

Q. Let me ask you one thing, Mr. Foster:

In connection with these gross dollar volume of sales figures, has the price of the glass container risen appreciably between 1955 and 1959, sir?

A. Your Honor, that is a question that I really can't answer. I know in the last year the prices have weakened [fol. 1362] tremendously.

Q. Thinking in terms of the prices that you and your competitors charge to your customers?

A. I woud say that they have not risen appreciably.

Q. They have not risen appreciably?

A. That's right.

Q. Perhaps there has been some rise, but it is insubstantial?

A. I would say such a thing.

Q. Correct. And you say the price structure has weakened during the last year?

A. During the last year, substantially.

Mr. Johnson: I offer Defendants' Exhibit L for identification.

Mr. McManus: No objection, your Honor.

The Court: That will be received.

(Defendants' Exhibit L for identification received in evidence.)

By Mr. Johnson:

Q. Mr. Foster, you referred, I believe, on direct examination to glass containers sold by your company for use as food containers?

A. Yes, sir.

[fol. 1363] Q. Could you tell me the principal end uses for which those food containers, those glass containers, are used?

A. Catsup, sweet cider or apple juice, jam, pickles, mayonnaise, honey, peanut butter.

By the Court:

Q. Mr. Foster, plainly, the shape of the container for catsup would be different, for instance, from that of a container for cider; is that right?

A. That's right; yes, sir.

Q. But except for the differences in shape, there is no difference in the material used for any of these different things; is there?

A. Glass material is all the same.

Q. Is all the same.

A. In our plant.

Q. Yes.

A. I might add to that one more thing. In the flint color, in the clear flint glass. Now, in making amber glass, we make slightly different material than we use in making flint glass. I would like to qualify that statement.

Q. Is that, Mr. Foster, because of the amber color? Is it because of the coloring?

[fol. 1364] A. Yes, on account of the coloring.

Q. In other words, I take it that the compound is slightly different because you use a color method.

A. Yes, we use a substitute for lime. We use a steel mill slag.

By Mr. Johnson:

Q. Do you sell any opalware?

A. We do not.

Q. This glass aerosol, to which you referred, is that a relatively high priced glass container?

A. It is.

Q. Just as a matter of definition, you used the term "returnable bottle"—

A. Yes, sir.

Q. —on your testimony. Will you tell me what you meant by "returnable"?

A. A multiple trip container.

Mr. Johnson: That is all.

Mr. McManus: No further questions, your Honor.

The Court: Thank you, Mr. Foster. You may step down.

(Witness excused.)

The Court: Now I think we will take our morning recess [fol. 1365] at this point before the next witness.

(Short recess.)

The Court: All right, next witness, please.

Mr. McManus: Mr. McDonald, please.

F. W. McDONALD, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. McDonald, by whom are you presently employed?

A. Foster-Forbes Glass Company.

Q. And for what period of time have you been employed by them?

A. For about three months.

Q. And prior to that were you in the glass container industry?

A. Yes, I was with the Glass Container Corporation on the Pacific Coast. Prior to that, the Glass Containers, Incorporated, on the Pacific Coast.

Q. And what span of years would that cover?

A. About 13 years.

Q. And was the Glass Containers, Incorporated, the same company—

[fol. 1366] Mr. McManus: I will strike that.

Q. Did that have the same plant facilities as Glass Containers Corp.?

A. No, there has been a change. Glass Containers, Incorporated, had two plants. Do you want me to explain that?

Q. Yes. Will you tell me where they were located?

A. Well, one at Antioch and one in Los Angeles, California.

The Court: Is Antioch in the North?

The Witness: Yes.

Q. And that was Glass Containers, Incorporated?

A. Right.

Q. Now, how many plants does Glass Containers Corporation have?

A. Three.

Q. Three plants?

A. Yes.

Q. Where are they located?

A. Well, the ones,—Los Angeles, Antioch, and the former United Can & Glass plant, at Hayward, California, which is also—that is now also operated by Glass Container Corporation.

[fol. 1367] The Court: In other words, Glass Container Corporation, what did they do, merge, or did they simply purchase another plant?

The Witness: Glass Containers, Incorporated, was purchased by Hunt Foods, who already had a plant. The three of them are now operated as one company.

Q. And are they operated by Hunt Foods?

A. As a wholly owned subsidiary of Hunt Foods.

Q. And was Glass Containers, Incorporated, a subsidiary of another company?

A. Yes.

Q. And of what company?

A. Wholly owned subsidiary of Fiberboard Company, Incorporated.

Q. And for what period of time were you associated with Glass Containers Corporation?

A. About five years, just a little less.

The Court: When did the change from Glass Containers, Inc. to Glass Containers Corporation take place?

A. June 20, 1955.

Q. And you were with Glass Containers Corporation from that date until just several months ago?

A. Approximately four months ago.

[fol. 1368] The Court: What position did you hold?

The Witness: I held the position of vice-president, general manager, executive vice-president and vice-president.

Q. And would that be for all three of the plants? Would you cover all three of the plants?

A. Yes.

Q. Could you tell me how many tanks they had at the Los Angeles plant?

A. Two tanks.

Q. And do you know how many machines?

A. Eleven.

Q. And at the Antioch plant?

A. Six and one, one furnace, six machines.

Q. And at the Hayward plant?

A. One furnace, six machines.

Q. We will confine our questions now to Glass Containers Corporation and the time that you spent with them.

A. Fine. Well, now, of course, I would like to have this clear. I am no longer with the company and I don't have access to their records.

Q. I understand that, but we are only covering your knowledge during the five years that you were with that [fol. 1369] corporation.

A. Fine.

Q. Can you tell me first the type of glass containers that your company was selling?

A. Yes. It represented pretty much of a cross-section of the industry, and we made food containers, both narrow neck and wide mouth. We made beer bottles, both returnable and non-returnable. We made beverage bottles, milk bottles, household chemicals, and pretty much of a general cross-section of the industry.

The Court: Was Hunt Foods one of your large customers?

The Witness: Yes.

Q. Could you say or could you give an approximation of the amount of glass that was purchased or that you delivered to Hunt Foods?

A. Well, yes, I know approximately. That of course would be confidential information, unless I am instructed to answer.

Q. Could you do it within a range, so that it would not be too revealing?

By the Court:

Q. Well, let's put it this way:
[fol. 1370] Did Glass Container Corporation publish their figures?

A. No, sir; they did not.

Q. Can you tell us in general what their gross volume of business was?

A. In dollars?

Q. Yes, roughly?

A. 18 to 20 million.

Q. 18 to 20. And can you tell us without going into it, without violating any confidence, roughly what proportion of that went to Hunt Foods?

A. Approximately 8 to 12 per cent.

The Court: Yes.

By Mr. McManus:

Q. 8 to 12 per cent.

A. Yes.

Q. And could you tell me in what area you sold?

A. We sold in the eleven Western states—seven Western states.

Q. And could you list them for us, please?

A. Well, that would be California, Oregon, Washington, very little in Idaho; Utah, Nevada and Arizona, and into Colorado. I think that covers it.

[fol. 1371] Q. You, of course, are in the position of being familiar with the selling prices on the West Coast and in that area?

A. Yes, sir.

Q. And have you become familiar with the selling prices in the Eastern area?

A. No, I couldn't say that I have.

Q. Are you familiar enough with the selling prices to know if they are higher or lower on the West Coast?

A. Historically the prices on the Pacific Coast have been higher than in the East.

The Court: Can you tell us by way of rough approximation how much higher?

The Witness: The historical figure is about 15 per cent, but now that does not apply to all classes of ware.

The Court: I understand that.

Q. On the West Coast, and confining our questions to the West Coast, have prices of glass containers generally increased or decreased from 1955 to when you left?

A. Well, that is a very difficult question to answer. There have been some general increases in that period, but on [fol. 1372] the other hand—yes, I would say, over-all, they have increased.

Q. There may be selected items as to which they have increased appreciably and others that have not?

A. And at times somewhat of a softening of the market.

Q. So that on the West Coast it is very difficult to tell unless you go item by item?

A. Yes, I would say over-all they are higher now than they were in 1955 but I couldn't give you an estimate.

Q. Could you tell me how many employees you had at your three plants when you left?

A. Approximately one thousand.

Q. How large a sales force did you have?

A. About 12 to 15.

Q. Was Glass Containers Corporation a member of the Glass Container Manufacturers Institute?

A. Yes, sir.

Q. They were at the time you left?

A. Yes, sir.

Q. And were they during the period 1955 to when you left?

A. Not during the entire period.

[fol. 1373] Q. What period of time, approximately?

A. As I recall, all but one year of that, and that would be the first year—I am not completely sure of that.

Q. Did you attend the meetings of the Glass Container Manufacturers Institute?

A. I have not in the last five years—correction. I did attend West Coast meetings, yes, but not in the East. I was thinking of the national meetings. I have attended West Coast meetings.

Q. You say that you have attended West Coast meetings. Do they have meetings on the West Coast which are separate from the rest of the country?

A. Yes, they do.

Q. Do you have a separate division out there?

A. Well, we have subcommittees out there that function on the Pacific Coast only. They are separate committees of the major committees on the East.

Q. Have you been active in any of the subcommittees?

A. On the West Coast, yes.

Q. What committees would those be?

A. Government and industry relations and sales promotion and research.

[fol. 1374] Q. What was your activity in the Sales Promotion and Research Committee?

A. My personal activities or the activities of the committee?

Q. First, the activities of the committee.

A. The sales promotion primarily—we have now underway a beer bottle campaign—the industry has a beer bottle promotion campaign now, and I believe that at the present time on the West Coast they have a promotional campaign on one-way beverage bottles. Our activities would be concerned with things like that.

Q. When you say one-way beverage bottles, you are talking about soft drinks as being differentiated from liquor bottles?

A. Yes.

Q. And alcohol bottles?

A. Yes.

Q. Have there been prior sales promotions of the type that you mention?

A. Yes, sir.

Q. On the West Coast?

A. Yes.

Q. And of which you have knowledge?

A. Well, I have some recollections of them.

Q. Were you active in any such campaigns?

[fol. 1375] A. Yes.

Q. In what category of way would those be?

A. Well, principally in the one-way non-returnable beer bottle.

Q. Were other companies represented on that committee that was promoting one-way non-returnable beer bottles?

A. Generally all the companies that made beer bottles.

Q. How about soft drinks? You say that there was a soft drink campaign?

A. There is a campaign now, I understand, a promotional campaign on the Pacific Coast, about which I am not familiar.

Q. You are not active in that?

A. No.

Q. Were there prior campaigns on soft drinks to your knowledge?

A. Yes, I believe that there were.

Q. Were you active in those prior campaigns?

A. Yes, sir.

Q. Do you know the other companies that were active with you in those campaigns?

A. Yes.

[fol. 1376] Q. And who would they be?

A. Do you want me to name all of the companies?

Q. All of them that you can recall.

A. I don't know whether all of the companies out there—I don't recall whether all of the companies out there that made soft drinks were active or not.

Q. I am just asking you for the ones that you can recall.

A. Owens-Illinois, Maywood Glass Company, Latchford Glass Company and ourselves.

Q. Those are the only ones you can recall?

A. Yes, sir. I am trying to think of the other people out there, but those are the only ones that I can recall.

Q. There could be others but you do not recall them?

A. There could be.

Q. We are still confining ourselves to the Glass Containers Corporation in the period of time you were with them. Did that company make caps for glass containers?

A. No.

Q. Did you make capping machines?

[fol. 1377] A. No.

Q. Did you make corrugated shipping containers?

A. No, sir.

Q. Could you estimate approximately how many of your shipping containers were sold—how many of your glass containers were sold in corrugated shipping containers?

A. Oh, 98 or 99 per cent.

Q. Could you estimate the approximate cost of the final

selling price of the glass container which was represented by the shipping container?

A. That depends on what business we are in. I would say on an average of 20 per cent.

Q. We are talking about the Glass Containers Corporation.

A. Well, I would say 20 to 25 per cent.

Mr. McManus: That is all.

The Court: All right, Mr. Johnson.

Cross-examination.

By Mr. Johnson:

Q. Mr. McDonald, did Glass Containers Corporation ship into Denver?

A. Yes.

Q. You referred to sales of glass containers to Hunt [fol. 1378] Foods. Do you know for what end products Hunt Foods used these glass containers?

A. Yes, I do.

Q. Would you tell me what they were?

The Witness: Your Honor, am I required to answer questions which might be confidential? I am no longer with this company but—

The Court: Well, it seems to me that I would doubt, frankly and very seriously, Mr. McDonald, whether the products put out by Hunt Foods in your containers would be confidential. If you can explain to me how that information would be confidential or might adversely affect the interest of either company, I would consider it, but I don't quite follow how that could be.

A. Catsup and vinegar.

Q. Would you tell me what kind of closures Hunt Foods used on these glass containers?

A. To the best of my recollection, they used the Alcoa cap on the catsup bottles, and I don't recall what they used on the vinegar bottles.

Q. Did Glass Containers Corporation at the time you left have more than one source from which it obtained shipping containers?

A. Yes, sir.

[fol. 1379] Q. How far from the Glass Containers plant were these shipping containers which Glass Containers Corporation purchased manufactured?

A. Well, we had three plants, and one of them was just across the railroad tracks, another plant was perhaps 8 to 10 miles away, and I would say about the same with the other plant.

Q. All within a very few miles?

A. Yes.

Q. How were they delivered to the Glass Containers plants?

A. On palletized trucks.

Q. Again referring to the time just previous to when you left Glass Containers Corporation, did various shipping container manufacturers solicit your shipping container business from you?

A. Yes, sir.

Q. You referred to the proportionate cost of a shipping container to the total selling price. Isn't it true that that proportion varies depending on the type of glass containers that you manufacture?

A. Yes, principally on the size of the glass container.

Q. Glass Containers Corporation's shipping containers were manufactured to its own specifications, were they not?

[fol. 1380] A. Yes, sir.

Q. Do you regard shipping containers either in your experience with Glass Containers Corporation or Glass Containers, Inc. as one of the constituent parts of the products that you sell?

A. Yes, sir.

Q. And the total selling price is designed to return a profit over the total cost of labor, fuel, raw material, shipping containers——

A. Yes, sir.

Q. —and all of that?

A. Yes, sir.

Q. You referred to the prior owner of Glass Containers Corporation and I think you said that was Fibreboard Products Company?

A. Fibreboard Products, Inc., yes, sir.

Q. Would you tell me what Fibreboard Products, Inc. was, what its business was?

A. They manufactured boxboard parts.

Q. Did they operate paper mills also?

A. Yes, sir.

Q. I think you said that they sold Glass Containers Corporation in 1955?

A. Yes, sir.

[fol. 1381] Q. Now prior to that sale who had been the supplier of shipping containers to Glass Containers Corporation?

A. Fibreboard Products was our parent company and they supplied the shipping containers.

The Court: I take it that after the transfer of ownership of the company that was no longer true?

The Witness: They continued to supply us.

The Court: All or part?

The Witness: A part.

The Court: A part?

The Witness: Yes, sir.

Q. And at the time you left Glass Containers Corporation had more than one source of supply?

A. Yes, sir.

Q. Did Glass Containers Corporation's customers have more than one source of supply for glass containers?

A. Yes.

Q. Did Glass Containers Corporation supply glass containers to national accounts?

A. Yes, sir.

Q. You referred to the higher prices of glass containers in the West over the East. Do you know why those prices [fol. 1382] are higher?

A. The costs have always been higher on the Pacific Coast than in the East, and it was necessary to charge higher prices out there.

The Court: Due to what factors?

The Witness: Labor costs are higher out there and have been higher, and up to a very short time ago some of the other materials which we purchased were higher.

The Court: Was there any shortage of raw materials on

the West Coast which required the importation of those materials?

The Witness: Not any major materials, no. We do ship our materials longer distances out there, I believe.

Q. With reference to some of the prior promotions of Glass Container Manufacturers Institute, I believe you said that there was a one-way returnable promotion, and you thought that there might have been a soft drink promotion, is that correct?

A. Yes, sir.

Q. Do you know how those were financed?

A. Yes, they were financed by the—I am thinking of the beer bottle campaign quite a few years ago and that was [fol. 1383] financed by the beer companies on the Pacific Coast.

Q. And was that financed by——

A. By the glass companies.

Q. Was it financed by assessments, by special assessments?

A. Yes, by agreement.

Q. You were in the glass business on the West Coast in 1956, were you not?

A. Yes, sir.

Q. Were you familiar with the plants and business of Hazel-Atlas Glass Company on the West Coast?

A. I was not familiar with their plants, no, sir.

Q. Were you familiar with their business?

A. I tried to be as familiar as I could with their business.

Q. Do you know if they manufactured the beverage bottles?

Mr. McManus: Your Honor, I am going to object to that. I think that there is better evidence than this gentleman's knowledge.

The Court: That may be, but if he knows, he can say.

Mr. McManus: But, your Honor, I would think that evidence of what they actually sold are in records that are [fol. 1384] available to us. This gentleman is really making a guess estimate.

The Court: Well, if he knows.

Do you know whether they manufactured beverage bottles on the West Coast? If you don't know, say so.

The Witness: I don't know.
The Court: You don't?
The Witness: No.

Q. And you do not know whether they participated in prior promotions, is that right?
A. I don't recall.
Q. Do you know if they participated in any of what you referred to as a later promotion?
A. I don't recall that either.
Q. What kind of machines does Glass Containers Corporation have, that is, glass container forming machines?
A. IS machines.
Q. Entirely?
A. Yes, sir.
Q. Glass Containers Corporation manufactured beverage bottles, did it not?
A. Yes.
Q. Was the number of beverage bottles which Glass Con-
[fol. 1385] tainers Corporation manufactured and sold increased each year during the period 1956 to 1959?
A. I couldn't give you a definite answer on that.
Q. Let me ask you this: was the number sold in 1959 more than in 1956?
A. I no longer have access to Glass Containers Corporation's records and I couldn't answer that.
Q. You can't remember?
A. No.
Q. Would you say that competition on the West Coast is keen in the glass container industry?
A. Yes, sir.

The Court: Can you tell us whether or not competition in the glass container industry on the Pacific Coast was more keen and vigorous or less keen and vigorous in 1959 than in 1956?

A. I would say that, if anything, it was more vigorous in 1959.

Q. I think you said, Mr. McDonald, that Glass Containers Corporation does not publish its sales figures, is that correct?
A. Yes, sir.

Q. And they do not publish their earnings figures either, is that correct?

[fol. 1386] A. That is correct.

Q. At the time that you were with Glass Containers Corporation, did Hunt Foods, which I understand was the parent company of Glass Containers Corporation, own any other subsidiaries?

A. Yes, a number of them. Now, you say subsidiaries. They certainly had interests in other companies, but whether or not they were subsidiaries I don't know.

Q. Did Hunt Foods either directly or through a subsidiary manufacture and sell cans?

A. Yes, sir.

Q. Did the Glass Containers Corporation's salesmen sell cans?

A. Not ordinarily, no.

Q. Did the Hunt Foods people, whatever division it was, its can salesmen, sell glass containers?

A. Not ordinarily, no.

Q. Did Hunt Foods, either directly or through any of its subsidiaries, manufacture or sell closures?

A. We did manufacture closures for a very short period of time, several years ago.

Q. Glass Containers Corporation?

A. No, that was the Can Division of United Can & Glass.

[fol. 1387] Q. What type of closure was that?

A. Screw-cap closures and the roll-on closures for wine bottles.

Q. Were those closures sold separately from the glass containers?

A. Yes, sir.

Q. They were priced and sold separately?

A. Yes, sir, but that was for a very short period of time.

Q. When was that?

A. What is that?

Q. When was it?

A. Two or three years ago, I would say.

Mr. Johnson: That is all.

The Court: All right, Mr. McManus.

Redirect examination.

By Mr. McManus:

Q. Mr. McDonald, could you estimate what percentage of Glass Containers Corporation's sales were in the State of California, approximately?

A. It would be a rather wild guess estimate.

Q. Well, I will take that.

A. My guess——

Mr. Johnson: I object to that.

The Court: If the witness doesn't know, there is no use [fol. 1388] of having pure guesswork.

Q. You said that you did ship some glass containers into Denver?

A. Yes, sir.

Q. Did you have more than one account in Denver?

A. Yes.

Q. Did you have more than five?

A. No, sir.

Q. Did you have more than one type of container that you shipped into Denver?

A. Yes, sir.

Q. Did you have more than five?

A. No, sir.

Q. Would you know approximately what percentage of your glass containers went into Denver, would it be under 5 per cent?

A. Yes, sir.

Q. It would be under 5 per cent?

A. Yes, sir.

Q. You mentioned that your company used the Alcoa cap?

A. I said I believe that they did, yes.

Q. And that is a metal screw cap?

A. Yes.

[fol. 1389] Q. It is not a vacuum-type cap?

A. Yes, it is a vacuum type cap.

Q. It is a vacuum-type cap?

A. Yes.

Q. Have they always during the five-year period that you

were familiar with this business, have they always used the vacuum-type cap for their catsup bottle?

A. As far as I know, they did.

Q. To your knowledge, they have not used the non-vacuum screw cap?

A. Not that I know of.

Q. And that would be from 1955 to 1959?

A. Yes, sir.

Q. Now you were asked a question in which you said you thought that the shipping container was a constituent part of the product. Will you explain what you mean by a constituent part?

A. Well, I was asked that question. It is a very integral part of the package.

Q. Your company does sell glass containers?

A. We sell them, yes, sir.

Q. And the corrugated shipping container is the means of transporting the glass containers, is that correct?

[fol. 1390] The Court: Let us find out from this witness about these corrugated containers.

The corrugated container in which you ship the glass container, is that corrugated container prepared by you for eventual use by the customer?

The Witness: Yes, most of them are. Most of them are used by the customers.

The Court: In other words, in shipping off that corrugated container, it has the customer's name, insignia and so forth on them?

The Witness: Many of them are printed with the customer's name and his trade-mark.

The Court: Or a symbol, or whatever it may be?

The Witness: Yes, sir.

The Court: And can you tell us whether or not in such instances the customer sends out the filled and capped jars in that container to his eventual customer?

The Witness: Yes, sir.

The Court: He uses the same container?

The Witness: Yes, sir.

The Court: To ship it out to the distributor or wherever it is going?

The Witness: Yes, sir.

The Court: And is that what you meant by a shipping [fols. 1391-1405] container?

The Witness: Yes, I think that explains it quite as well as anything.

Q. You indicated that your company sold national accounts?

A. Yes, sir.

Q. Would Hunt Foods be considered as a national account? Is that the type of account you had reference to?

A. I would consider that a national account, yes, sir.

Q. In your sales to national accounts, you didn't ship them east of the Rockies, did you?

A. No, sir.

Q. Only——

A. On the Pacific Coast.

Mr. McManus: That is all, your Honor.

The Court: Anything further, gentlemen?

Mr. Johnson: No, sir.

The Court: All right, you may step down, thank you.

(Witness excused.)

[fol. 1406] STANLEY FRAME, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. Greenberg: Your Honor, the Government will refer to Government's Exhibits G-419-A, B and C with this witness.

Direct examination.

By Mr. Greenberg:

Q. Where do you reside?

A. 1 Bay View Road, Plandome, Long Island.

Q. What is your present position?

A. I am director of market research, National Biscuit Company.

Q. How long have you held that position?

A. 14 years.

Q. Just generally what are your duties and responsibilities in that position?

A. Expanding of our market position and development of new products.

Q. Were you employed by Continental Can Company?

[fol. 1407] A. Yes.

Q. During what period of time?

A. September, 1943, to May, 1946.

Q. What position or positions, if more than one, did you hold with Continental Can Company?

A. Manager of market analysis.

Q. How long did you hold that position?

A. Three years.

Q. What were the functions of the market analysis department?

A. To get an orderly understanding of our market position and to expand the sphere of our markets.

Q. What were your duties and responsibilities within that framework?

A. The determination of the acceptance of Continental Can Company's products.

Q. Was your group connected with any other group within the company?

A. Not with our department directly.

The Court: With what departments did you maintain liaison?

The Witness: Sales department.

Mr. Greenberg: What was that?

The Witness: Sales department.

[fol. 1408] Mr. Greenberg: Now, your Honor, we have a stipulation here that this witness executed the documents, and I would just as soon offer them at this time rather than go through the routine of asking questions that have been stipulated to.

The Court: All right. The Court will allow Mr. Hughes to examine on the voir dire.

Mr. Greenberg: I offer G-419-A, B and C.

The Court: Does Mr. Frame have the same relationship with respect to 419-A, B and C?

Mr. Greenberg: He signed them and wrote them, I believe.

The Witness: I am not sure just which ones——

The Court: You better let him see them.

Q. I show you Government's Exhibit 419-A for identification and ask you if you recognize it, if you do recognize it?

A. Yes, I recognize this, 419-A.

Q. Do you recognize 419-B?

A. Yes.

Q. Do you recognize 419-C?

A. Yes.

Q. What are they, sir.

A. They are a study of consumer attitude towards baby [fol. 1409] foods, the packaging of baby foods, with particular emphasis between glass and tin or metal containers.

Q. Who compiled this document?

A. I did.

Q. Do you know what distribution was made of this document?

A. I know that Mr. Fogarty got a copy, and it was rather restricted inside the company's office. I don't think there was any outside.

Q. Who within your organization received copies of these documents?

A. The vice-president for sales, I believe and Mr. Perin, Mr. Falk, Mr. Fogarty, as is indicated here.

The Court: What were their titles respectively?

The Witness: Mr. Fogarty, I believe, was the Eastern Divisional Sales Manager at the time, or director of sales, Eastern Division. Mr. Carlier was on the West Coast, director of sales in the Pacific Division. No, I am sorry, Mr. Fogarty was director of sales for the company, and Mr. Perin had been director of sales for the Eastern Division and Mr. Falk was on the Coast.

Q. There were other individuals who purportedly received 419-A. Do you know whether copies were received [fol. 1410] by these individuals?

A. Yes, I know they were. Mr. Funderburg——

Q. Who is Mr. Funderburg?

A. He is vice-president for sales.

Q. He was at that time?

A. Yes. Mr. Carlier was director of advertising. Mr. Baldwin was in charge of general line can sales. Mr. Nichols I don't know, and Mr. Hodgson I don't know—I didn't know them personally

The Court: Let me ask you this: Did your department conduct this market analysis itself?

The Witness: Yes, sir, we did.

The Court: You had a staff?

The Witness: A very limited staff, about three people.

The Court: And those three people did the sampling that is reflected in these reports themselves under your supervision?

The Witness: This was a survey made by mail.

The Court: By mail?

The Witness: Yes, sir.

The Court: All right.

[fol. 1411] Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. Frame, isn't it a fact that Exhibits 419-B and 419-C are merely a part of 419-A?

A. Yes, they are all the same report, yes.

Q. And 419-B and C are just other copies of part of the total Exhibit 419-A; isn't that right?

A. Let me see it.

Q. That is 419-A.

A. Yes. Actually the question—yes, it is all the same.

Q. Now, at the time when this document was prepared, were you an officer of the corporation?

A. No.

Q. Were you a director of the corporation?

A. No.

Q. Did you have any power to commit the corporation to any sort of expenditures?

A. No.

Q. Did you make policies for the corporation?

A. No.

Q. And were your duties confined to the market analysis department?

A. Yes.

Q. And would you say, and did you consider at the time, [fol. 1412] that this survey was preliminary in nature?

A. Wholly preliminary, wholly exploratory, merely an indication, not definitive.

Q. Would you be in a position to tell the extent of the bias in the sample that you used?

A. No, but for that very reason—excuse me. No, the answer is no.

The Court: What do you mean by the "extent of the bias," Mr. Hughes?

Q. Would you tell his Honor what is meant by that term?

A. Yes. This is rather technical, but whenever you are measuring a universe, you must make sure, if you are trying to get a sample—in this case we had to get a sample of all mothers who had had babies within the last—between three months ago and nine or ten or eleven months ago—to find out what the market for baby food in strained and chopped was. However, the bias and the extent to which we can determine it was simply this: That we, through a private source that lists from hospitals, who furnish the names of such mothers, we don't know whether they represented all the various levels and reaches of the population we were trying to reach. Therefore we didn't——

[fol. 1413] The Court: Therefore, you don't know how accurate it was, or whether it was a true cross-section of maternity?

The Witness: That's right; we do not.

Q. And do you know what happened to this document after you prepared it, beyond the fact that you supplied copies to the gentlemen whom you have indicated on your direct examination?

A. No, sir; I do not.

Q. Do you know of any action taken by any of them on this document?

A. No.

Mr. Hughes: Your Honor, I object to it as incompetent, irrelevant and immaterial.

The Court: Do you want to be heard on the subject?

Mr. Hughes: Well, your Honor, it does seem to me that in accordance with the cases that there hasn't been any showing of adequacy of the sample. Indeed, the witness acknowledges that he isn't able to measure the extent of the bias.

The Court: I think, Mr. Hughes, that this is a document from your files with reference to certain activities that were [fol. 1414] carried on by your employee. Whether it has any weight at all or whether it is any evidence of a state of mind, it is evident that these facts report the deed, that this material, let's call it that, was brought to the attention of the responsible officers of the company.

I will take it without in any way commenting on the weight that may be given to it.

Mr. Hughes: May I make just two additional observations?

One, that the witness has indicated that it was merely preliminary and exploratory.

The Court: That's right; it is all taken against the background of the witness' testimony.

Mr. Hughes: Yes. And may I add further a ground of objection, that there is no proof of adoption in any respect by the corporation of anything contained in the document.

The Court: Well, that may be, Mr. Hughes, but I don't think that the adoption theory is of any consequence. It is information that came to the attention of responsible officers of the company, and this is not, as I understand it, being offered to show any action by the company. It is being [fol. 1415] offered merely for the purpose of showing that here was some information, of whatever value it may be, that was brought to the attention of responsible officers, period.

COLLOQUY BETWEEN COURT AND COUNSEL RE DOCUMENTS

Mr. Hughes: Well, your Honor, I think this raises again the question which I raised yesterday, and which I would just briefly like to allude to again, and that is the procedure that we are being confronted with in this enormous mass of Government documents. Your Honor has indicated that you thought that the purpose was merely some indication,

that it was being offered as some indication of the state of mind. I was under the impression throughout——

The Court: I didn't even say a state of mind.

Mr. Hughes: Well, in any event, your Honor, I was under the impression from the pretrial that when we got to the presentation of the documentary proof, that the procedure would be that the Government would in each instance specify the purpose for which it was being offered.

The Court: I think, Mr. Hughes, that is a very pertinent question, which you are entitled to ask and you are entitled to hear from the Government.

[fol. 1416] Mr. Hughes: Well, I do so now.

The Court: I am assuming from the face of this thing, perhaps making assumptions that I am not justified in making. If that is so, let's hear from the Government, to hear what they say the purpose of this document is.

Mr. Greenberg: Your Honor, we are not putting in this document to show that Continental Can found that a certain percentage of mothers preferred one type of container or another. We realize there may be biases and things of that nature involved. But it fits into the background. It shows the context in which the various operating departments of this corporation operated in, and it shows that they were concerned with competition from other containers.

The Court: Are you trying to show that it shows awareness of other problems?

Mr. Greenberg: Yes, sir; and tied in with other documents and other facts contained in the documents and the record, we say it proves the proposition that containers compete, and this company was involved in that competition.

The Court: Well, may I say, so that there is no mistake about it, that this standing by itself proves little if anything [fol. 1417] except that the responsible sales officers of the company were aware of a problem.

Mr. Hughes: Yes. Well, as I understand it, that is the purpose of the offer.

The Court: Yes.

Mr. Hughes: Very well.

The Court: And I will take your objection, Mr. Hughes, and overrule it.

Mr. Hughes: Yes.

The Court: And take it with the express understanding that any such documents are to be read not only in the light of what they say about themselves, but also in the light of the testimony of the witnesses with respect thereto.

(Government's Exhibits 419-A, B and C received in evidence.)

The Court: Now, is there anything further from Mr. Frame?

Mr. Hughes: There may be, your Honor.

The Court: Yes.

Cross-examination.

By Mr. Hughes:

Q. Mr. Frame, do you recall about how much was expended in conducting the survey that became reduced to [fol. 1418] writing in Exhibit 419-A?

A. Yes. Actually, the total out-of-pocket expense was not, as I recall the figure, was not over $300. I think it was $250, but in no event over $300.

Q. And was this a document that was given any serious or heavy consideration by anybody within the corporate organization, so far as you know?

A. Not as far as I know.

Q. And can you tell us briefly how you went about preparing the survey and administering it or executing it?

A. Well, the key factor was the development of the ascertainment of the specific names, in other words, those mothers who had babies and therefore were thought to be the most representative group of people that we could identify. And this questionnaire was developed without any pretesting. It was a situation where you actually had to have personal contact, but since the company didn't want to then spend the money, the mail substitute was developed, and it was a very poor substitute, therefor.

Q. Are you saying that for a survey really to be efficacious, there has to be a pretesting of the survey itself?

[fol. 1419] A. Yes, very much so in this case.

Q. And that was not done in this case?

A. That was not done.

Q. Well, do you know and can you tell us whether in fact any one in the organization read this document?

A. I am sure it was read. I know it was read.

Q. Beyond that you wouldn't go?

A. No, I wouldn't.

Mr. Hughes: That is all.

The Court: Anything further?

Mr. Greenberg: Just one question, your Honor. There is a slight ambiguity here.

Redirect examination.

By Mr. Greenberg:

Q. And did the $300 estimate that you gave include in your mind salaries of yourself and your staff?

A. No, no, it did not.

Mr. Greenberg: All right.

The Court: You may step down, Mr. Frame. Thank you.

(Witness excused.)

Mr. Pettit: Your Honor, the Government calls Mr. L. A. Carey to the stand.

[fol. 1420] The Court: Now what exhibit are you going to refer to?

Mr. Pettit: 445, your Honor.

Lee A. Carey, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Pettit:

Q. Mr. Carey, by whom are you employed?

A. Continental Can Company.

Q. How long have you been employed by the Continental Can Company?

A. Ten years.

Q. What position did you occupy in 1956, if you recall, sir?

A. In 1956 I was assistant products sales manager for beer and beverage cans.

Q. What were your responsibilities in that position?

A. They were the same essentially as those of the products sales manager, namely, to develop the programs for sale of beer and beverage cans; to assist in the promotion of them and to assist in the establishment of the policy concerning their sale.

[fol. 1421] Mr. Pettit: Your Honor, we have a stipulation concerning this document, which states that Mr. Carey received document 445.

The Court: He received it.

Mr. Pettit: Received it.

Q. Do you recall receiving this document, Mr. Carey?

A. Yes.

The Court: Is 445 still for identification?

Mr. Pettit: Yes, sir, for identification.

Q. Do you recall—perhaps I should show this to you again.

The Court: Just a minute, please.

All right.

Q. Do you recall, Mr. Carey, what use if any you made of this document after receiving it?

A. Well, we used it to add to our information as to the success or lack of success of a competitive can.

Q. You said you were involved in products sales; is that correct?

A. That is correct.

Q. Would you use it in any way in promoting sales of Continental Can's containers?

[fol. 1422] A. No.

Q. Not directly, anyway?

A. Not even indirectly.

Q. Did you from time to time receive letters or studies of this type from the commercial sales department?

A. Yes, sir.

Q. Do you have any idea of the distribution of this document, to whom was this document sent, if you know?

A. Well, I can recall it was addressed to Mr. Buckley, and that copies came to me, I believe Mr. Neuman, Mr. Fisher. I don't recall who else.

Mr. Pettit: Your Honor, the Government is not going to offer this document at this time.

The Court: All right.

Mr. Pettit: That is all I have.

The Court: Do you want to examine about it?

Mr. Hughes: You say you are not going to offer it?

Mr. Pettit: Not going to at this time.

Mr. Hughes: All right.

[fol. 1423] Cross-examination.

By Mr. Hughes:

Q. Mr. Carey, can you tell us what you did before you were assistant production sales manager for Continental Can?

A. I was assistant to the general manager of sales of the metal division prior to that, and prior to that I had been supervisor of sales training for the Continental Can Company.

Q. And about how long have you been connected with Continental Can Company?

A. Since 1950.

Q. And prior to that what was your business experience?

A. I was employed by a brewery in Albany, New York, which is now part of the Schaefer Brewing Company, from 1940 until 1950, except for four years during the Service.

[fol. 1424] Q. And in what capacities were you employed with that brewery?

A. I was a trainee for one year working in the plant in 1940, and subsequently I was a salesman for a year, a district sales manager for two years, and purchasing agent for two years.

Q. Now at the time that this document, 445 for identification, came into existence, who was the production sales manager?

A. The products sales manager.

Q. Who was the products sales manager?

A. The products sales manager was Mr. Buckley.

Q. And you were his assistant?

A. I was his assistant.

Q. Did either Mr. Buckley as products sales manager or you as his assistant have any authority over the salesmen themselves?

A. No, sir, we had strictly staff responsibilities.

Q. And from your standpoint and your department's standpoint, to get any sort of activity out of the salesmen you more or less had to promote ideas to these salesmen, is that correct?

A. That is correct.

Q. Was that one of the important functions of your de-
[fol. 1425] partment?

A. Yes, sir.

Q. To assemble and provide material for the salesmen to generate their interest in those particular sales ideas?

A. Yes, sir.

Q. Returning to document G-445, you did not prepare this document, did you?

A. No, sir.

Q. Do you know who did prepare the document?

A. My recollection is that Mr. Way of the Commercial Research Department prepared it.

Q. Do you know whether he personally prepared it or whether other people under his supervision prepared it?

Mr. Greenberg: Your Honor, Mr. Way will appear as a witness.

The Court: That may be but he is asking this witness at the moment.

A. My understanding is that Mr. Way himself prepared it.

Q. Did this document have any circulation outside of the company, so far as you know?

A. No, sir.

Q. To your knowledge, do you know what circulation it
[fol. 1426] had beyond the fact that a copy came to you?

A. No, sir.

Q. And do you know or have you any knowledge as to

how, in fact, the material summarized in the report was assembled and prepared?

A. Yes, sir.

Q. You do know that, you say?

A. By assembled, do you mean collected?

Q. Collected or collated, yes.

A. Yes, I do.

Q. And what is the extent of your knowledge on that subject?

A. I know that a number of sales trainees were sent to a large number of retail stores in the Chicago area and made inquiries in those stores pertaining to the one-way—to the quart can.

Q. And were the results of those inquiries then compiled in the form of this document which is G-445 for identification?

A. Yes, sir.

Q. At the time that this document was prepared you were not an officer or director of the corporation, were you?

A. No, sir.

[fol. 1427] Q. At that time you had no power to commit the corporation?

A. No, sir.

Q. Did you make policy for the corporation at that time?

A. No, sir.

Q. Did you take any action on this document G-445 for identification?

A. No, sir.

Q. Do you know whether anybody else took any action on it?

A. I know that no action was taken. The results did not call for any action.

Q. Tell me, if you know, what was the purpose of this document? What is it all about?

A. Well, the Continental Can Company for a great many years had produced a cap-sealed quart beer can. About the time of this document we were on the verge of abandoning production of this can because of a lack of market for it.

To our surprise at this time a major brewer, Pabst, came on the market with a cap-seal quart can similar to but somewhat different from the one that we had been on the market with for a good many years. In order to ascertain that we

[fol. 1428] were not making a mistake in abandoning the manufacture of our cap-sealed quart can at this point, we naturally wanted to determine exactly what success the new cap-sealed can being produced by our competitor's can manfacturer was going to have.

We requested someone from the research department to investigate at least one market in order to help us arrive at a decision as to the probable success of this package.

Insofar as you were concerned, what decision did you personally arrive at?

A. I myself felt that the quart can did not have a place in the market, and, as a matter of fact, it was at my request that this survey was made in order to confirm this belief on my part.

Q. And did Continental Can cease to make the cone cans for beer——

A. It did cease to make the cone-cap can for beer.

Q. Will you tell us about when they ceased to make it?

A. I believe we actually went out of manufacture in 1958. We would have gone out sooner but we had to make switch-overs.

[fol. 1429] Q. Do you know whether American Can now makes a cone-top quart can?

A. To the best of my knowledge, they do not.

Mr. Hughes: Well, your Honor, I object to it.

The Court: It has not been offered yet.

Mr. Hughes: Excuse me.

The Court: You may step down.

Mr. Pettit: I have a further question.

The Court: All right.

Redirect examination.

By Mr. Pettit:

Q. You said that you requested this survey to be made?

A. Yes, sir.

Q. I am not sure, but did you say that surveys of this type often came to you in your position; not on the same subject, but of this general type?

A. We regularly received information from the Commercial Research Department.

Mr. Pettit: Thank you, that is all I have.
The Court: All right. Thank you, you may step down.

(Witness excused.)

The Court: Who is next?
Mr. McManus: Mr. Johnson.

[fol. 1430] DELBERT JOHNSON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. McManus: Your Honor, to assist both your Honor and the defendant in the order in which I expect to take these up, 687 through 693 will be the first group because they are quite similar.
The Court: All right, go ahead, Mr. McManus.

Direct examination.

By Mr. McManus:

Q. By whom are you presently employed?
A. Continental Can Company.
Q. What is your present capacity or position with the Continental Can Company?
A. I am manager of advertising and sales promotion.
Q. Is that for the entire company?
A. Yes.
Q. How long have you held that position?
A. Since about 1948.
Q. And your duties in that position are the normal duties of advertising and sales promotion?
A. Generally speaking, yes.

The Court: Gentlemen, I have been thumbing through this material. It appears to contain figures having to do [fol. 1431] with cans for soft drinks. Have you any objection to this?
Mr. Hughes: Your Honor, there were some questions that I wanted to ask on the voir dire.
Mr. McManus: Suppose I offer it first, your Honor, and——

The Court: Yes, suppose you offer it. After all, here is the fellow, I take it, that has something to do with the preparation of this material. Did you?

The Witness: Yes.

The Court: All right, let Mr. Hughes go right ahead on the voir dire and see what develops.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. Johnson, will you take G-687 for identification and will you tell his Honor what you know about this document and about how that document was prepared?

A. In a general sense?

Q. Yes.

A. This document has material in it that was supplied by an outside organization, the Advertising Distributors of America. They had been retained by Continental Can Company to gather such information. They, through their organization, they have a field organization, gathered this by [fol. 1432] their methods and passed it on to Continental. There were a series of such letters. We set up a mechanical method within the department whereby certain excerpts from these reports that they sent in, short ones, a few lines, were reproduced in this, and just got printed in this form.

Q. Did you hold the same position then that you hold now?

A. Yes, sir.

Q. And you were neither an officer or a director of the corporation at that time?

A. No, sir.

Q. You had no authority to commit the corporation?

A. No, sir.

Q. And you did not make any policy decisions for the corporation?

A. No, sir.

The Court: I take it that the rest of these, 687, 688, 689 and 690, were simple follow-ups of the first one?

The Witness: The same type.

The Court: The same type of material?

The Witness: And the same method.

Mr. Hughes: No objection, your Honor.

[fol. 1433] The Court: All right, received.

That is, 687 to 693, inclusive.

Mr. Hughes: May I just ask this one further question?

The Court: Of course.

Mr. Hughes: If I asked the same questions with reference to the succeeding exhibits, would your answers be the same?

The Witness: They would all be the same, exactly the same.

The Court: All right.

(Government's Exhibits 687 to 693 for identification received in evidence.)

Mr. McManus: Your Honor, the remaining documents are those that Mr. Johnson received, and I would like to ask very briefly regarding them, but I am not offering them at this time.

The Court: In other words, the balance of the documents you are examining him on but you are not offering at this moment?

Mr. McManus: That is right.

The Court: All right.

Are you taking these in the order that I have them, in numerical order?

Mr. McManus: Starting with 419 and going up.

[fol. 1434] The Court: All right.

Direct examination continued.

By Mr. McManus:

Q. Do you recognize this document?

A. Yes.

Q. And you received this document?

A. Yes.

Q. What did you do with the document when you received it?

A. Well, I glanced through it and forwarded it to our sales organization.

Q. You forwarded it to the sales organization of Continental Can Company?

A. Yes, the metal division.

Q. Was it a regular part of your duties to receive this type of survey and to forward it to the sales department?

A. I don't know exactly what you mean. I don't recall another survey like this.

Q. Was it your duty to receive surveys which you would forward to the sales department?

Mr. Hughes: I am sorry, I did not hear that.

Q. Was it your duty to receive surveys that were conducted by either the Continental Can people or others——

[fol. 1435] The Court: Just ask it this way: did this come to you in the course of your duties?

The Witness: Yes, this particular one did.

The Court: This one did?

The Witness: Yes, sir.

The Court: And in the course of your duties it was distributed in the manner that Mr. McManus asked you about?

The Witness: I would send this one on to our sales organization.

The Court: All right.

Mr. Hughes: Are you offering it?

Mr. McManus: No, we are not offering it.

Now these will be 589, 590 and 591.

Q. Do you recall receiving this document?

A. No, I don't.

Q. These are your initials?

A. They are.

Q. Is it normal for you in your position to receive a document of this type?

A. It wasn't functionally normal. I might have been on the mailing list, a long mailing list like this, but it had no functional meaning to me.

Q. Would your answers to 590 be the same?

[fol. 1436] A. Yes.

Q. If you were asked the same questions with respect to document No. 591——

The Court: Well, gentlemen, look. Here are some figures, and presumably they are figures that Continental Can had. I don't know, frankly, gentlemen, of what possible

significance this could have, unless you are putting this in—are you intending to offer this for the truth of the figures?

Mr. McManus: Yes, sir, we are. Your Honor, this particular document is also offered to show their concern, that is, on page 3 of 590, their concern for the competition that they are getting from glass. Page 3 is glass container industry beer bottle shipments versus Continental's beer container business.

The Court: I am frank to say to the Government that I do not know what possible significance this can have. Plainly, Continental Can was selling beer cans and it was concerned with beer sold in bottles. They very naturally would be. If that is all this is designed to show, it seems to me that we are putting in an awful lot of stuff to prove an awfully obvious fact which, it seems to me, has already been pretty well established, and indeed, I am sure that that is not denied by the defendant.

[fol. 1437] Mr. Hughes: That is right.

The Court: What do you say to that, Mr. McManus?

Mr. McManus: Up to now I was not sure of that, your Honor. I would be glad——

The Court: The defendant certainly does not deny that Continental was interested in the question of beer being sold in bottles rather than in cans.

They do not deny that, do they, Mr. Hughes?

Mr. Hughes: They do not, no.

Mr. McManus: Do they deny that they were concerned about the competition that they were getting?

The Court: Don't go into conclusory statements. You have got all you need to get on this.

Mr. McManus: Well, your Honor, I would like to at least offer these documents——

The Court: You can offer them, but I will tell you right now, Mr. McManus, that the odds against my reading them are simply enormous.

Mr. McManus: Even though, I will offer them at an appropriate time, your Honor.

The Court: Do you want to ask the witness anything about these?

Mr. Hughes: Your Honor, I would just like to have it [fol. 1438] clear on the record what the purpose of these documents are.

The Court: I think in each case, Mr. McManus, it would be helpful if you would state for the record, and very succinctly, the purpose of these documents.

Mr. McManus: As to 590, 591, 592 and 592, with which this witness is concerned, your Honor, we offer these documents for the truth of the matter contained therein, and also we offer them as evidence of the fact that Continental was concerned with the percentage of glass containers for beer, the percentage which they had, and the percentage of the over-all industry.

The Court: You are not offering them at this point?

Mr. McManus: No, sir. Your Honor asked me——

The Court: That is the purpose of it?

Mr. McManus: Yes.

The Court: Now we have, some other documents here, have we?

Mr. McManus: Yes, sir.

The Court: All right.

Mr. McManus: 607 and 608—these are not being offered at this time, your Honor, but I would just like to ask the [fol. 1439] witness if he received them and what use he put of them.

The Court: All right, let us ask him about those.

Mr. McManus: 607, 608, 610 and 615.

Q. Do you recognize this one?

A. I have no recollection of having received this.

Q. And of course, you do not recollect what you did with it if you don't know whether you received it?

A. I am sure I did nothing with it. It is not information that functionally would have any value to me for any purpose.

Q. That is your name on this?

A. That is my name. Why I was on this list I do not know.

Q. You do not deny that you received it, do you?

A. Well——

Q. You don't know?

A. I don't know, my secretary may have received it.

Q. Would that be true of 608?

A. Yes.

Q. 610?

[fol. 1440] A. Yes.

Q. 615?

A. Yes.

Q. You don't recall receiving any of these?

A. No.

Mr. McManus: That is all I have of this witness, your Honor.

Mr. Greenberg: Your Honor, the next witness——

The Court: Wait a minute. We haven't had these offered yet.

Mr. McManus: They are not being offered. We are finished with the witness.

The Court: I take it, Mr. Hughes, that you have no questions at this point?

Mr. Hughes: No, sir, I do not.

The Court: Thank you, Mr. Johnson, you may step down.

(Witness excused.)

The Court: Now the next witness.

Mr. Greenberg: The next witness is Mr. Muth.

[fol. 1441] George H. Muth, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. Greenberg: Mr. Hughes has requested that we wait a moment until he gets his copies of the exhibits.

The Court: All right, and I have got to get mine, too.

(Pause.)

Mr. Greenberg: Your Honor, before I commence with the examination of Mr. Muth, there are a number of documents involved here, and they break down into two groups, one group where he was the author or signed the documents, and the other where he received a copy.

Direct examination.

By Mr. Greenberg:

Q. Sir, where do you reside?

A. New York City.

Q. And what is your present position?

A. Assistant to the executive vice-president of the Metals Division.

Q. Of what company?

A. Continental Can Company.

Q. How long have you held that position?

A. About 12 years, I would say.

Q. And what are your duties and responsibilities?

[fol. 1442] A. Well, I have a staff job and I usually handle special assignments given to me by the executive vice-president.

Q. You say you have a staff job. What does that mean?

A. The executive vice-president has a number of assistants, and some people handle accounting matters, some handle manufacturing matters, and some handle sales matters. And I handle a sort of variety of types of matters.

Q. Do you have any liaison with other departments in the organization?

A. Well, indirectly.

Q. Well, what do you mean?

A. Well, what other departments? Do you mean within the metal division or——

Q. First in the metal division and then any others outside of that.

A. On the outside, no, that is, with other container groups, but with something that happens to come up that has to do with one of the metal groups, I would.

Q. I show you Government's Exhibit 415-C and ask you if you recognize it?

[fol. 1443] Mr. Hughes: Your Honor, just one moment. 415-C was not on the list and I have got to find it.

(Short pause.)

Q. Do you recognize that?

A. Yes, I do.

Q. You were the author of this document?

A. Well, I either was or someone in the department was and I signed it.

Q. Do you know what distribution was made of this?

A. I would say very limited, just to those people who are shown there.

Q. In 1947, at the time this document was written, what was your position with the company?

A. I was manager of what we called the commercial research department, which prior to that Mr. Frame had been the manager of that department.

Q. Did that department have the same functions as Mr. Frame described?

A. Yes.

Q. Can you identify the persons who received copies of this document?

A. Mr. Pierson, I think at that time did quite a little of our development work; and Mr. Fogarty——

[fol. 1444] Q. What do you mean by development work?

A. Well, they developed the equipment and also new packages. Mr. Fogarty I think at that time was one of our top sales people. And I think Mr. Brachle was either in charge of general line can sales or he was a products sales manager handling baby foods.

Mr. Greenberg: Your Honor, may I proceed to cover all of the——

The Court: Before you do that, I would like to know what the purpose of these is. I take it that these documents all relate pretty much to one subject, do they or not? What is the purpose, let us say, of 415-C?

Mr. Greenberg: Your Honor, again we of course offer the document on general grounds. We offer it for the truth of the facts stated therein, but I believe the document also shows the concern by Continental with competition from glass containers in the baby food field. It shows the liaison of the departments and I believe that this, with other documents, shows that this was the context within which Continenal Can operated.

Mr. Hughes: Your Honor, we object to it.

[fol. 1445] Mr. Greenberg: I have not offered it yet?

The Court: He is not offering it yet.

Mr. Hughes: Oh, I beg your pardon.

Mr. Greenberg: I wanted to ask your Honor, do you want me to offer these documents one at a time or go through the list where the witness has authored or signed the document and then——

The Court: I think that is the way to do it unless Mr. Hughes would prefer to do it the other way.

Do you want to make the offer now?

Mr. Greenberg: I don't care.

The Court: Which would you prefer, Mr. Hughes?

Mr. Hughes: It makes no difference.

The Court: All right, this has been offered.

Mr. Hughes: It has been offered?

The Court: Is that right, it is being offered?

Mr. Greenberg: Yes, the Government offers this document, G-415-C.

Mr. Hughes: Well, your Honor, I would like to ask Mr. Muth some questions.

The Court: You may.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. Muth, you are the author of this document, is [fol. 1446] that correct?

A. Yes, sir.

Q. And do you recall the sources of the information contained in this document?

A. Well, I don't know specifically but——

Mr. Greenberg: Have you read the document through?

The Witness: I scanned it; I just saw it.

Mr. Greenberg: Why don't you read it through?

The Court: Not at this point.

The Witness: I have a rather good idea as to why it was prepared. The market for baby foods is rather large, and this was in the metals division. I think we felt that there was a place in that market for the metal can, but due to a very strong, I wouldn't say consumer, but the retail buyer preference, for another type of container, we were trying to develop a can that would overcome some of the objections that they had to the metal can.

The Court: That is, the consumer appeal——

The Witness: The consumer appeal——

The Court: —that the glass jar was supposed to have?

[fol. 1447] The Witness: That is right. And these people for a number of reasons preferred the glass jar, and we were trying to develop a metal can that would overcome some of those objections, and this article here I think you will find listed what the objections are and then what we did to try to overcome them.

Mr. Greenberg: In the document there is a reference here——

The Court: Wait a minute. Mr. Hughes is examining and is in the middle of his voir dire.

Mr. Greenberg: I am sorry.

The Court: Maybe it would be as well, Mr. Greenberg, if you would sit down while Mr. Hughes is conducting his voir dire.

Mr. Greenberg: All right, your Honor.

By Mr. Hughes:

Q. Does that represent your explanation of the purpose of the document?

A. Yes, sir. We were trying to develop a package that would overcome these consumer objections and which they had a great deal of trouble in overcoming.

Q. Would you tell us the source of the information that went into this document?

[fol. 1448] A. Well, I think part of it would come from salesmen who called on baby food packers, and I think some of it would come from the type of survey that Mr. Frame mentioned here previously, where someone would ask a mother why did she prefer one container as against the other.

Q. Would you say that this information was picked up from random sources?

A. I would say over a period of time we developed that information.

Q. Did this document receive any circulation outside of the company, so far as you know?

A. No, it just went to a very limited group.

Q. At the time that this document was prepared, were you an officer or director of the corporation?

A. No, I wasn't.
Q. Did you have power to bind the corporation?
A. No.
Q. Did you make policy decisions for the corporation?
A. No, I didn't.

[fol. 1449] Mr. Hughes: I object to this, your Honor, in so far as it is offered for the truth of the facts that are purported to be stated. I understood there were two purposes of the offer, one, to show this awareness, and the other, as proof of the fact or alleged facts in the document. It is a document that contains merely opinion, conjecture, and it seems——

The Court: Well, it is the opinion, such as it is, of employees of Continental. I will overrule your objection.

Mr. Hughes: All right.

(Government's Exhibit 415-C for identification received in evidence.)

The Court: The next is 434, is it, Mr. Greenberg?

Mr. Greenberg: Yes, your Honor. I think perhaps we may be able——

Mr. Hughes: Your Honor, do I understand you are taking that document on both grounds on which it was offered? In other words, as I understand it, it was offered——

The Court: Mr. Hughes, I am going to take the document.

[fol. 1450] Mr. Hughes: Yes, sir.

The Court: If there are limitations to be placed upon it, there is no use my going into highly technical distinctions at this point when the document may be merely one in a long chain in which we are never going to refer to these facts of the survey. Maybe we are and maybe we aren't. I will determine what the document is to be used for when I get to whatever practical use it is to be put.

By Mr. Greenberg:

Q. I show you G-434 marked for identification and ask you if you recognize it?
A. Yes, I do.
Q. And you read this document?
A. Well, that was an abstract which I made from an article that appeared in one of the magazines, and it was a

serial article, and in order to save time, and so various people might be interested to get a copy of the information, why, I just abstracted that out of the magazine.

Q. What was your position at that time, June 4, 1947?

A. Manager of this commercial research department.

Q. And what distribution was made of this document?

[fol. 1451] A. Well, I don't know offhand.

The Court: Isn't there a stipulation as to the distribution of this, or not?

Mr. Hughes: Just a minute.

The Court: There is no distribution stipulated?

Mr. Johnson: No, there is no distribution stipulated.

The Court: What is that?

Mr. Johnson: There is no distribution stipulated.

Mr. Greenberg: The only stipulation we have, your Honor, is that it was made in the course of his work.

Q. Do you recall distribution of this document?

A. No, I don't.

Q. You do not recall?

A. No.

Q. I show you G-435.

Mr. Hughes: Excuse me. Are you offering it?

The Court: What is the purpose of this?

Mr. Greenberg: Your Honor, the other two documents are intermittently connected with this. We can save some [fol. 1452] time.

The Court: All right, let's have it.

Q. I show you G-435; do you recognize it?

A. That is a continuance of the same article.

Q. And do you recall the distribution?

A. No, I don't.

By the Court:

Q. Have you got the same answers with respect to that as with respect to the previous one?

A. Yes, sir.

Q. Is 436 a continuation of the same article? Take a look at 436.

A. No, that is a different article.

Q. That is a different article?
A. That is a different article, yes, sir.

Mr. Greenberg: I now offer G-434 and G-435 into evidence.

The Court: All right.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. Muth, do I understand that G-434 is merely your summary of an article that appeared in a magazine?
A. Yes, it is.
Q. And G-435 is a further summary of that same article?
[fol. 1453] A. As I remember it, there were two—I don't recollect.

Mr. Greenberg: Better look at it again.

A. Yes, both. This one is sort of a continuation of the same article.

Mr. Hughes: Well, your Honor, I object to this. I don't see what possible probative value there is in Mr. Muth's summary of a magazine article.

Mr. Greenberg: I have one further question, your Honor.

The Court: Let's have the further question.

By Mr. Greenberg:

Q. Referring to 435, which you said was connected with 434, I direct your attention to page 4, which contains a reference to copies having been sent to Mr. Rosenbauer and Mr. Wojtul. Who was Mr. Wojtul at that time, that was June 10, 1947, around that time?

A. I am not sure what Mr. Wojtul's job was at that particular time. I think he was in the—I think he was in one—he was one of our sales managers.

Q. What is Mr. Wojtul's position at the present time?
[fol. 1454] A. Vice-president, fiber drum division.

Q. And Mr. Rosenbauer, do you recall what position he was in in that period of time?

A. I think he was one of our products sales managers, about that time.

Mr. Greenberg: Well, I offer the document.

The Court: For what purpose?

Mr. Greenberg: I offer it generally for the truth of the facts contained in it.

The Court: No, this I will not take for the truth of the facts contained therein. I will take this merely to show—though frankly, it seems to me to be cluttering up the record to a very marked degree, I will take it merely for the purpose of showing that Mr. Muth made an abstract of an article, to which this refers, and gave it to two other people in the mills.

Mr. Greenberg: Your Honor, may I have just a moment? G-435 has a series of opening paragraphs which discuss various reasons why they did this. We offer the document for the truth of the facts stated therein, to the extent that this was said and done by this individual.

[fol. 1455] The Court: No.

Mr. Hughes: I don't follow that.

The Court: As I understand it, he has testified that this whole thing is merely a summary of an article in a magazine.

Mr. Greenberg: Right, but G-435 indicates to some extent what he reviewed and "The entire report is covered in a special abstract dated June 4th, compiled by this department We have, in addition, prepared the following data from the report, which we believe will give you the most important comparative figures between cans and bottles."

So apparently they thought these figures were accurate, your Honor.

Mr. Hughes: Well, now, your Honor, I object to testimony from Mr. Greenberg.

The Court: Well, I don't understand, if this is all an abstract of an article in the American Brewer, what you say can possibly be true.

Mr. Greenberg: Well, perhaps, your Honor—

The Court: It is either an abstract of an article or it isn't.

Mr. Greenberg: Well, we think it fits into the picture and we think that the American Brewer is a reliable journal, [fol. 1456] and even if it were not, the fact that they relied upon their statistics has some weight here.

The Court: Well, I don't see any indication on this document and on the evidence that has been given that anybody relied on anything. The only evidence is that there is an article in the American Brewer, digested by Mr. Muth and sent to two other people. If you want that in evidence, you can have it.

Mr. Hughes: Your Honor, I don't suppose that the statement of Government counsel that the Government's record is reliable has any weight.

The Court: No, we are not taking testimony of counsel. We haven't gotten to that point yet.

(Government's Exhibits 434 and 435 for identification received in evidence.)

By Mr. Greenberg:

Q. I show you G-436 and ask you to identify it. What is it?

A. Well, at that time I believe there were two different types of metal cans made, one called the flat top can one called a cone top can. And then there was—and those were one-trip containers. Then there was a one-trip bottle. And [fol. 1457] we frequently made comparisons between the cost of the three containers to keep in our records, because being head of the commercial researcir department I was supposed to know all about materials and packages and products that went into packages, and we liked to have something like that for reference purposes.

The Court: So you made this estimate.

The Witness: That's right.

The Court: All right, is there any objection?

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. Muth, did anybody tell you to do this?
A. Oh, no.
Q. You just did it on your own?

The Court: He did it on his own initiative.

A. That's right; I had that authority.

The Court: As a good commercial research man.

Q. And having done it, what did you do with the document?

A. Oh, just put it in the file and used it for reference purpose, in case someone would ask me a question, I could pull it out and show it to him.

Q. You don't recall giving it any circulation at all?

[fol. 1458] A. No.

Q. In or out of the company?
A. No.

The Court: What is the purpose of this?

Mr. Greenberg: Your Honor, I can just repeat our formula. We offer it for the truth of the facts stated therein, and also, it is part of the general overall background. It will fit into the framework once the document——

The Court: You will have an objection, Mr. Hughes, and I will take it on the theory that it is an estimate prepared, as it states, it is an estimate prepared by Mr. Muth of the research department as of that date.

Mr. Hughes: But not for the truth of anything that is in there.

The Court: No, it is an estimate he prepared. That is what it says, "Estimated delivered cost." It can't be more than an estimate. That is all it purports to be.

(Government's Exhibit 436 received in evidence.)

By Mr. Greenberg:

Q. For what period of time were you in charge of the com-

[fol. 1459] mercial research department?

A. Well, I was in about two or three years.

Q. Well, what time period, from when to when?

A. From 1947 some time to maybe around 1949 or '50, something like that. I would say two or three years.

Q. I show you Government's Exhibit 592 and ask you if you can identify it?

A. Yes, I recognize this.

Q. What?

A. Yes, that's right. It was a bulletin issued regularly by my department.

The Court: The same is true of 593, is it, and 594 and 595? Is that true also?

Mr. Greenberg: Right through 597, your Honor.

The Court: Yes, through 597. They are all bulletins issued by your department on the dates that are shown there; is that right?

The Witness: Yes, sir.

The Court: And they have to deal with beer sales and treasury figures on beer sales; is that right?

The Witness: Well, they were taken either from the Gov-
[fol. 1460] ernment figures or the Container Association, but they were taken from public figures and consolidated.

The Court: All right.

Mr. Greenberg: Now, your Honor, we have a long line of recipients of each of these documents.

The Court: Is there a stipulation about distribution of these documents?

Mr. Johnson: Which numbers are they?

The Court: 592 through 597, inclusive.

Mr. Johnson: Yes, sir; with respect to each of them there is a stipulation that they were distributed to the persons named.

The Court: All right.

Mr. Greenberg: Your Honor, may I very respectfully make a suggestion at this point?

The Court: Yes.

Mr. Greenberg: They have stipulated that these people received copies of these exhibits. However, at that time, or going back to that time, there is no stipulation as to what positions these people held. Now surely Continental Can knows that, and if we can get an identification of——

The Court: Well, I will instruct Continental Can to have

[fol. 1461] available a list of appropriate people, so they can state what position they held at any given time between this period.

Mr. Johnson: Over what period of time?

The Court: Well, I don't know, Mr. Johnson. You have the dates. I haven't got the complete set of dates. But when you refer to a distribution list of a document, to a lot of names, I think I will require you to supply at some point the positions that the people on that distribution list held on that particular date.

Mr. Johnson: We will be glad to do that, your Honor, to the extent that it is available. Many of these documents are old, and in the course of preparing the stipulation which, as you realize, is a terrific document, we have spent a great amount of time working over old reorganization tables and old organization charts, in an effort to find who occupied what position back in 1945, and this document is '48, and in many cases it is literally impossible to do more than ascertain that they were employees.

The Court: Well, do the best you can. It doesn't seem to me that it is of enormous significance here. For instance, [fol. 1462] here is a distribution that I figured of about 25 names. I don't think it is necessary to identify each one of those 25. If you identify five names and say all the rest of them were employees, it seems to me quite sufficient. Otherwise we are getting into irrelevant minutiae that doesn't mean anything.

Mr. Johnson: With respect to this particular group, I believe that in each case it is indicated that they were distributed to, amongst others, defendant's district sales managers and district credit managers.

The Court: Yes.

Mr. Greenberg: Well, at the bottom is a list of the parties who received this document.

The Court: I am talking about identification of names. Well, now, is it of any significance to you? It may be to you, but I doubt very seriously that it would be to me, to identify who all these thirty people were.

Mr. McManus: Your Honor, I think it would be helpful if maybe we knew, as you say, perhaps four or five of the top names on the list, just so we will know it wasn't distributed to a janitor or something.

The Court: Was this distributed to any janitors?

[fol. 1463] The Witness: I hope not.

The Court: I presume that it was distributed to a variety of employees.

Mr. McManus: Or officers.

The Court: Employees of the company, having to do with sales or sales promotion.

Is that right, sir?

The Witness: Well, looking at this, your Honor, there are a number of people on the list. Frankly, I don't know why they are on here, because I see Mr. Schrader was a purchasing agent; a Mr. Niederhauser and Mr. Lacke were industrial relations people; this Mr. Alexander was another purchasing agent. Mr. Barry was a comptroller. Frankly, if we did it over again, I am sure the list would be smaller.

Mr. Greenberg: Your Honor, I could think of another way of doing this. If they can interview or talk to these various witnesses, who obviously can identify the recipients of these documents, and as to those they cannot determine from their records, get his recollection, that might help.

The Court: No, no.

[fol. 1464] Now, Mr. Greenberg, it seems to me that we have all the evidence that anybody can conceivably need with respect to the distribution of this document. What more you can need than this and what possible effect it should have on this case if you prove that Mr. Eggers held position A rather than position B, is just beyond me.

Mr. Greenberg: Well, I think before we have completed this case——

The Court: Well, I am going to say, you offer this with the evidence you have got. I am not going to take any more about it on the distribution. We have got more than we need.

Mr. Greenberg: Do I understand, your Honor——

The Court: The rest, I am ruling now, is irrelevant minutiae which I am not going to take.

Mr. Greenberg: I just want to understand your Honor's ruling. You do not want me to inquire as to what positions these various people held?

The Court: No, I won't take it; I won't permit you to inquire.

Mr. Greenberg: All right.

The Court: Now, you offer these?

Mr. Greenberg: We offer 592, 593, 594, 595, 596 and 597 [fol. 1465] into evidence.

The Court: Have you got any objection?

Mr. Hughes: No objection.

The Court: All right, they may go in.

(Government's Exhibits 592 through 597, inclusive, received in evidence.)

Mr. Greenberg: Your Honor, the remaining documents are copies which refer to copies having been received by the witness.

The Court: Well, do they show that he is on the distribution list or not?

Mr. Greenberg: We believe it does, your Honor.

The Court: Well, if it shows he is on the distribution list, haven't they stipulated that the people on the distribution list got the copies?

Mr. Greenberg: Let me check that, your Honor: We have had so many stipulations and answers to request to admit, I am not certain. I would like to check it for a moment.

Mr. Hughes: What is the number?

Mr. Greenberg: 400-A, 438, 439, 489, 490 and 491.

The Court: This is addressed to Mr. G. H. Muth. Isn't [fol. 1466] it stipulated that where a memorandum is addressed to somebody, he got it?

Mr. Hughes: Yes, sir.

Mr. Johnson: In 400-A it is. I will check the rest of it in a moment.

Mr. Greenberg: Your Honor, the purpose for going through the documents which the witness received, and to identify the persons who received the documents was to show the liaison, the connection between these various departments. Now, it may be Mr. Wojtul was head of a particular department which had not been mentioned heretofore.

The Court: Let me ask this witness a couple of questions.

By the Court:

Q. Now, your principal work had to do with various aspects of sales and research concerning sales; is that right?

A. Yes, I would say so.

Q. That has happened since 1947, when you presumably were on the list to receive this memorandum on competition, glass versus tin; is that right?

A. Yes.

Q. Now, isn't it the fact that the various departments [fol. 1467] or divisions or bureaus of Continental, concerned with metal sales, maintain liaison with one another in exchange information?

A. I would say so, yes, sir.

Q. That would be the way that any normal business would run under those circumstances, wouldn't it?

A. Yes, your Honor.

The Court: What more do you want?

Mr. Greenberg: Your Honor, that is fine, but I would ask just this one question:

That we still have Continental Can make its best efforts to identify the recipients of each of these documents.

The Court: No, I don't see any purpose to that. I am not going to make that direction at this time.

Mr. Greenberg: All right.

The Court: Now, what do you want to do about 400-A? Do you offer it?

Mr. Greenberg: No, your Honor.

The Court: You are not offering it?

Mr. Greenberg: No.

The Court: What about the other ones we have here? 438 is next.

[fol. 1468] Mr. Greenberg: We are not offering any of the documents which were received as copies by the witness, and that encompasses 400-A, 438, 439, 589, 590 and 591, although we wish to point out again that the answers to the requests to admit, admit that the writer or author made this document in the course of his work.

The Court: All right. Well, I see Mr. Muth's name is on 438, the distribution list. Doesn't appear to be on 439.

Show him 439 and ask him if he remembers getting the memorandum to all district sales managers.

Mr. Greenberg: It is at the bottom, your Honor, the first column, underneath.

The Court: All right, 439.

Mr. Greenberg: 589 is the next one. Yes, his name is mentioned.

590, his name was on.

The Court: 590, is he on?

Mr. Greenberg: Yes, he was on that list for distribution.

The Court: 591?

Mr. Greenberg: He was on that list as well, your Honor.

[fols. 1469-1476] The Court: So that he was on all the lists, and the stipulation already admits that he got them.

Anything further from Mr. Muth?

Mr. Greenberg: I have no further questions.

Mr. Hughes: These haven't been offered, as I understand it.

The Court: No.

Mr. Hughes: No questions.

The Court: You may step down, sir. Thank you.

(Witness excused.)

[fol. 1477] Samuel B. De Merell, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. By whom are you employed, Mr. DeMerell?

A. Anchor Hocking Glass Corporation.

Q. And in what capacity are you with that company?

A. I am a vice-president in charge of our so-called package division.

Q. For how long a period of time have you had that position?

The Court: Incidentally, before you go ahead, I take it that Mr. Jacobs' appearance on behalf of Anchor Hocking will be renoted; is that correct?

Mr. Jacobs: Correct, sir.

[fol. 1478] The Court: Or let's say, on behalf of the witness.

A. In that exact position since 1947.

Q. And how long have you been employed by Anchor Hocking or its predecessor company?

A. About 35 years.

Q. And could you tell us what are your duties as vice-president in charge of the packaging division?

A. Chiefly and broadly, to oversee the various elements having to do with distribution of our products, containers included.

Q. Is it limited to glass containers and closures or closing machinery?

A. Yes.

Q. Does it cover your pressed glass part, pressed-ware?

A. No.

By the Court:

Q. Let me ask you this, sir: what relation does your function bear to the general sales function of the company?

A. I think you would say I am in supervisory charge of all the sales functions of the package end of our business.

The Court: I see.

[fol. 1479] By Mr. McManus:

Q. Now, in your capacity, have you become familiar with the vacuum-type machines for capping glass containers with vacuum closures?

A. In a general way, yes.

The Court: You are not an engineer, I take it?

The Witness: I am not.

Q. Are you familiar with the line speeds at which these machines are able to operate?

A. Not in detail. I am familiar, again, in sort of a general way.

The Court: Just a moment, again, Mr. DeMerell.

By the Court:

Q. Did I understand you to say that the Anchor Hocking sells packaging machines, capping, capping machinery?

A. For the most part, leases it.

Q. Leases it.

A. Yes.

Q. Now, does your function have anything to do with packaging machinery, that is, the leasing of the packaging machinery and the efforts to obtain such leases?

[fol. 1480] A. Yes, because on our sales end the same personnel in general would be promoting the sale of both glass containers and closures.

Q. And machinery, also?

A. And machinery to accompany them.

The Court: All right.

By Mr. McManus:

Q. And in this sales capacity have you become familiar with the maximum speeds at which your machinery will operate?

A. Again in a general or approximate manner.

Q. What is your largest machine?

A. It is machinery referred to as a 16-head rotary.

Q. And at what speeds is that machine designed to operate?

A. I can tell you it has operated at speeds up to in the vicinity of 700, 750 a minute.

The Court: When you say "750 a minute," you mean, I take it, turning out 750 containers?

The Witness: Yes.

The Court: I mean glass containers?

The Witness: Yes, that's right.

Q. Now, could you tell me, this 16-head rotary type ma-

[fol. 1481] chine, does that cap 16 jars at one time or more?

A. Yes. That is the minimum. In the case of some small jars we run dual heads and accommodate 32 at a time.

Q. And when you are talking about the machine running at 700 a minute or 750, it is when it is operated in a dual-head capacity?

A. Yes.

Q. If you run your machine—well, would a pint jar be able to fit under the dual heads?

A. I can't answer that positively, but I think it is a little beyond the limit for the machine as it is now constructed.

Q. So in running it for pints or larger, what would be the speed of the machine, approximately?

A. Well, to use a figure relative to the 750, previously referred to, I would estimate 350 or 400 a minute.

[fol. 1482] Q. Now, in your sales capacity you are familiar, of course, with the prices that your company sells its glass containers for?

A. In general.

Q. And do you necessarily also become in a general way familiar with what others are selling glass containers?

A. Yes.

Q. Since 1955 have there been any increases in the price of glass containers?

A. Yes.

Q. And these increases, in effect, have been general increases?

A. I wouldn't say that. I don't know as I can say that they have been general. I don't know for sure whether they are 100 per cent general, but more or less general.

Q. I see. They are not just one item but they cover quite a number of items, is that right?

A. That is right.

Q. Since 1955 to date, would you be able to estimate the approximate percentage of increase of the cost of glass containers today than what it was in 1955?

A. I wouldn't try to give you that from memory, Mr. [fol. 1483] McManus.

Q. Would you be able to approximate the percentage of increase that would have taken place?

Mr. Hughes: I understood him to say that he could not do so.

The Court: That was my understanding.

Have you anything with you from which you could refresh your recollection, Mr. DeMerell, on that subject?

The Witness: No, I haven't. I don't know whether it would help, but I should add that there haven't been many

instances at all that I can think of in the past year and a half.

The Court: Then increases since 1955 were prior to that?

The Witness: Yes.

The Court: Has there been any softening in prices in that year and a half, would you say?

The Witness: I am afraid there has been some.

Q. Have there been any cost increases during that year and a half?

A. Yes, particularly labor.

Q. Primarily the labor cost?

[fol. 1484] A. That certainly is the broadest of cost increases that have taken place in the past year and a half. You are talking about the last year and a half?

Q. Yes, that is what we are talking about.

A. Yes.

Q. Your company, as testimony before has brought out, is a member of the Glass Container Manufacturers Institute, is that correct?

A. That is right.

Q. Do you normally attend any of these meetings as the representative of your company?

A. I do.

Q. Does Mr. Fisher, the president, attend these meetings?

A. Occasionally.

Q. But you normally attend much more than Mr. Fisher does?

A. Yes.

Q. For how long a period have you been attending these meetings?

A. Ever since it started.

Q. Are you a member of the board of trustees?

A. I am a member of the board of trustees.

[fol. 1485] Q. For how long a period have you been a member of the board of trustees?

A. About five years.

Q. And as such are you familiar with the way that dues are assessed to members?

A. Yes, maybe not in every detail but I am generally familiar.

Q. And what is the basis on which dues are assessed to members of the Institute?

A. Dues are based on a percentage, a rather small percentage of net dollar sales of the members.

Q. And the members report their dollar sales periodically?

A. Quarterly; in other words, we would report officially to the Institute the same dollar sales that we publish.

Q. Then your dues are assessed on a percentage of the dollar sales?

A. Yes.

Q. Are you presently a member of any of the committees of GCMI?

A. Oh, I can think of at least two offhand.

Q. What are they——

A. I believe that is all.

[fol. 1486] Q. What are these committees?

A. One that I serve on is the Government-Industry Relations Committee, and I serve on the Marketing Committee —Market Research and Development is the full name of it.

Q. How long have you been on the Market Research and Development Committee?

A. Oh, I think I have been sitting in on those meetings for something like six or seven years.

Q. Are you familiar with the various activities of that committee in so far as research, surveys and things of that nature?

A. Generally so.

Q. And for how long a period has GCMI been carrying out these types of programs?

A. I believe they started, oh, roughly about seven years ago. These have to do specifically with the committee we are talking about now?

Q. That is right.

A. They undoubtedly have been carrying on various surveys and so on.

Q. Are you familiar with how the program developed, that is, who initiated the program of this committee?

A. I have a general impression of it.

[fol. 1487] Mr. Hughes: Your Honor, I don't know what "impression" means, but it seems to me if it is just a general impression, that I will object to it.

The Court: Yes, I think that is right.

Q. Well, I asked you if you are familiar, but do you know of your own knowledge how the activities of research and promotion started in that committee?

A. I am trying again to answer that. The program was decided upon by a vote of the membership. I would say that the subject had been debated pro and con for several years prior to its adoption. In other words, it was no overnight inception.

Q. What was the purpose of initiating this program of surveys and research?

A. To promote the cause of the glass containers.

Q. And when the surveys were completed what use was made of them?

A. I would say the surveys were conducted for the purpose of collecting intelligence to better guide the campaign.

Mr. Hughes: I move to strike that out as not responsive.

The Court: I will let it stand.

Q. And the other word in the title is "development." [fol. 1488] What does that entail?

A. I would say that the word "development" refers to follow through on the research and the promotion and furthering the use of the glass package.

Q. And how would that be carried out?

The Court: I think this is what you are after:

If you know, Mr. DeMerell, what is done in general terms?

The Witness: There is considerable advertising.

The Court: In the first place, is there a staff that operates this program, a paid staff?

The Witness: Yes.

The Court: How big generally is the staff, five people, ten people, two people?

The Witness: I would say about six.

The Court: What does the staff do in general terms? I presume, incidentally, that what they do they do under the general egis of the committee which blocks out the policy lines for them to follow, is that right?

The Witness: That is right. They try to administer the activities and the policy laid down by the committee.

[fol. 1489] The Court: What do they do?

The Witness: For example, they work with the selected advertising agency in guiding the work, the copy.

The Court: That is, copy of a campaign to promote the greater use of glass containers?

The Witness: Yes.

The Court: Sort of what we would call institutional advertising, is that right, or industry advertising?

The Witness: Well, I think both would be right.

The Court: Both would be?

The Witness: Yes. I might say, supplemented by additional advertising, additional bulletinizing of the retail trade and the packers—packers or bottlers—to tie them in with the consumer advertising.

[fol. 1490] Q. So the development is twofold, both to the ultimate user of the product that goes into glass containers, and to the packer or processor who will be using the glass container; is that correct?

A. Well, the effort is to tie it all together.

Q. I see. Now, you have an annual budget to carry out this campaign?

A. Yes.

Q. Do you ever have supplemental campaigns that do not come under your annual budget?

A. We have had certain other efforts. I was trying to think whether we call them "supplemental" or "adjunctive" or some other word. I think that I would like to suggest that the head of our staff on that particular work could fit that together for you a little better than is possible for me to do.

Q. All right, sir. Now, you have told us generally about the GCMI Committee, how it operates. Referring specifically to your company, does your company receive copies of any of these research activities, copies of these research activities?

Mr. Hughes: Wait a minute. What is the form of that question?

Mr. McManus: I will withdraw that question.

[fol. 1491] Q. You explained to us the use that the company puts the research activities of the committee. You say they use it to guide their advertising. Does your company,

as such, or are these studies, research studies, available to them?

A. I believe they all are. I don't think of any exceptions.

The Court: Are the results of research, research projects, published in some sort of a bulletin or report?

The Witness: Yes, that is particularly true in connection with reports to the main committee.

The Court: Yes.

Q. And has your company ever had occasion, you or your company, ever had occasion to use these surveys?

The Court: Well, now, what are we talking about? Let's not use these terms, Mr. McManus. A survey is one thing, a report is another. Let's call them "reports" at this point.

Mr. McManus: All right, sir.

The Court: Then we will see what they consist of perhaps at some future time.

Q. Has your company ever had occasion to use these reports, or have you?

[fol. 1492] Mr. Hughes: Your Honor, I think it would be helpful if we could identify what he is talking about. Is he talking about a report by the staff to a committee? Is that the piece of paper?

The Court: That is as I understand it.

Mr. McManus: That is what we are referring to, yes.

The Court: Unless the committee, after getting the report from the staff, then proceeds to make a report of its own to the body as a whole.

Is that what happens?

The Witness: Yes, at least twice a year, formally, complete reports are given to the membership as a whole.

The Court: In other words, the reports of this special committee are distributed to the whole membership.

The Witness: Yes.

Q. And have you in your capacity of vice-president in charge of the packaging divisjon made use of these reports?

The Court: Well, now, I don't know what "made use of" means. First of all, has he gotten the reports? The answer is, I take it, yes, you get the reports.

[fol. 1493] The Witness: Yes.

The Court: What do you do with them?

The Witness: We try to take advantage of the intelligence collected in guiding our actions. I find it a little difficult to tell you specifically just what we did with each piece of information.

The Court: In other words, you find the information of interest.

The Witness: Yes.

The Court: And at times helpful. Is that a fair summary?

The Witness: Yes.

Mr. McManus: That is all I have.

The Court: Mr. Hughes.

Cross-examination.

By Mr. Hughes:

Q. Mr. DeMerell, would you say that virtually all of your activities with the company and the predecessor company have been in the sales end of the business?

A. Largely.

Q. Would you say that that has occupied the greater percentage of your time through the years?

A. Yes, that's right.

Q. Now, you have referred to these machines, which you have described as 16-head machines. These machines are the machines that put the cap on the container; is that [fol. 1494] correct?

A. Yes, sir.

Q. That is the kind of a machine you were talking about?

A. Correct.

Q. Now, you also make single-head machines, do you not?

A. Yes, for what we would call hand——

Q. For hand operation?

A. —hand operation.

Q. Yes, for commercial hand operation; is that right?

A. Well, you could call it that. That is a little debatable.

Q. Well, I call it that because I am thinking that the person to whom you sell it or lease it uses it for the purpose of selling his pack commercially; is that correct?

A. Well, to a limited extent it is.

Q. Yes. And it would naturally be a limited extent with a single-head operation; right?

A. Yes, sir.

Q. And those are the machines that cost about $500, according to Mr. Fisher; is that correct?

A. Yes. I couldn't give you a better estimate.

[fol. 1495] Q. Now, between a single-head and a 16-head do you make any intermediate machines that have a different number of heads?

A. We have made and operated quite a number of 4-head machines.

Q. And——

A. (Continuing) We have had an 8-head machine but have not supplied it to any particular extent.

Q. And is there anything between the 8-head and the 16-head?

A. Well, there has been, experimentally, but not in use.

The Court: Would you say your principal machine leased was a 16-head machine? That would be the bulk of the machinery?

The Witness: Yes, in that type of machinery.

Q. Well, in number of units, that is, in number of machines, the 16-head isn't the greater number of machines that you make, are they?

A. Well, we have had, Mr. Hughes, over a period of years a variety of machines that we have operated.

Q. But don't you have many more 4-headed machines out in the field than you have 16-head machines?

[fol. 1496] A. At one time we did. I don't think that is true today.

Q. Well, will you tell me about how many 16-headed machines you have out in the field today?

The Court: Yes, Mr. Jacobs?

Mr. Jacobs: Well, now, your Honor, again I wonder whether that would be getting into an area of internal operations which the company doesn't generally publish?

The Witness: It is not published information.

Mr. Jacobs: And I wonder if for present purposes it is really necessary to inquire into that phase in that manner?

Mr. Hughes: Well, I do want to find out what the wit-

ness's knowledge is as to whether at the present time they have more 4-headed machines out in the field than 16-headed machines.

Mr. McManus: Your Honor, he already answered that.

The Court: He said he didn't know.

Mr. McManus: No, my recollection is——

The Court: All right, let's find out.

Can you answer that question, Mr. Witness?

The Witness: My last comment was that there was a time when we had more 4-head machines than 16-head, but [fol. 1497] I did not believe that was true today.

The Court: I see.

Q. Well, are you saying that today there are more 16-head machines in the field than there are 4-heads?

A. Yes. I believe that is the case.

Q. When you say you believe that is the case, I mean, what is the basis for your statement?

A. Well, I would like to put that another way, that I am not in possession of exact figures on the subject.

Q. Well, then, if I may summarize it, you really don't know whether at the present time you have more 16-headed machines in the field than 4-headed machines; is that correct?

A. I don't object to its being put that way.

Q. And isn't it a fact that you simply don't know?

A. I believe what I have said amounts to that, yes.

Q. Now, what types of container are the 4-headed machines used for, wide-mouth, narrow-neck?

A. Wide-mouth.

Q. And will you tell me the approximate speed of the 4-head machine?

[fol. 1498] A. I'd say roughly from 125 to maybe as high as 200 a minute, depending upon the circumstances.

Q. And what is the approximate cost of a 4-headed machine?

A. I will estimate in the vicinity of $750.

Q. Now, isn't it a fact that your 16-headed machines are used for the packaging or packing or closing of baby food containers?

A. They are used for the packing of baby foods.

Q. And isn't it a fact that that is the only present use of those 16-head machines?

A. It's the only present substantial use.

Q. Well, when you say "substantial," that indicates to me that there are other uses, and I ask you, can you presently think of any use to which a 16-head machine is being put other than to close baby food containers?

A. Well, you are not concerned with trials and experimentation and so forth, are you, Mr. Hughes?

Q. No, sir; I am talking about commercial use.

A. Well, again, this is—the baby foods covers the important commercial use.

Q. But I want to be sure that—I believe it covers the [fol. 1499] only commercial use, does it not?

A. Well, I think I should probably say here the questioning at this point is a little difficult, because it is confined to area. The rotary machine is not the only machine that we made, as I tried to indicate a few minutes ago. Over a period of years we have had a variety of machines.

Q. Yes, I understand that.

A. (Continuing) Now, we have a lot of machines in circulation other than the type you have been inquiring about.

Q. Yes, I'll come to that.

A. (Continuing) So I don't want the impression to stand that we only have one machine of any importance and used in only one line of any importance.

Q. And I don't want that impression to occur any more than you do if it shouldn't occur. But I am presently concentrating my questions on the 16-head machine, and my question is, isn't it a fact that the only present commercial use of the 16-head machine is for the closing of baby food jars?

A. I want to modify that a little, but I am willing to let that stand on that basis.

Q. Now, will you tell us what these other machines——

[fol. 1500] The Court: Let me ask you how much the 16-head machine cost?

Mr. Hughes: I think that is in the record, your Honor. Mr. Fisher testified to that.

The Witness: It is in the record. I believe it is about $25,000.

The Court: All right.

Q. Now, you tell us that there are machines other than the single-head, the 4-head and the 16-head in the field; will you tell me what kinds of machines are in the field that we haven't alluded to, either in your direct or cross-examination, up to this point?

A. Well, the conversation up to this point had been confined to so-called rotary type machines.

Q. Yes.

A. We have had and still do have a number of so-called straight-line machines.

[fol. 1501] Q. Of your own design?

A. Yes.

Q. Are they of varying speeds?

A. Yes.

Q. Are you making that type of machine currently?

A. As I said, there have been several, but we are making a straight line machine currently.

Q. And can you give me the approximate speeds of that machine?

A. Well, the speeds will vary according to the sizes and circumstances and lines set up. I think I will estimate an average of 350 a minute.

Q. And will you give me the cost or approximate cost of that kind of a machine?

A. I think in the vicinity of $10,000.

Q. Now referring again to the 16-head machine, is that machine run for the pint sizes in actual commercial operation?

A. Well, it could be, Mr. Hughes, but we have already set it up so that the machine is pretty much confined to the baby food field, and the largest size there is eight ounces.

Q. Mr. DeMerell, do you sell your containers and closures to packers or users of containers who market their [fol. 1502] own products nationally, that is, through the United States?

A. Yes.

Q. Do you in practice sell to some of the plants of a national operator without selling to all of them?

A. Do you mean do we sell to some of the plants of a national operator without selling to all of the plants of the same operation?

Q. Yes, that's right.

A. No.

Mr. Hughes: I think that is all.

The Court: Is there anything further, Mr. McManus?

Mr. McManus: Yes, sir.

Redirect examination.

By Mr. McManus:

Q. Mr. DeMerell, you testified that your in-line capping machine speed was 350 a minute, is that correct?

A. I gave that as an average.

Q. And are these in-line machines sold for glass containers which would contain products other than baby foods?

A. Yes, they are offered for any number of products.

[fol. 1503] Q. Would they be able to cap a pint jar?

A. Yes.

Q. And would they be able to cap jars larger than a pint?

A. Yes.

Q. Approximately, if you can tell us, how big a jar could they cap?

A. The machines can be adjusted, I would say, to go up as high as a quart.

Q. And they may be adjusted to go down to eight ounces also?

A. Yes.

Q. Now I think there was one machine in which no line speed was given. You say that you had an eight-head rotary machine?

Mr. Hughes: I understood him to say that that was experimental.

The Court: He said that was experimental only; is that right?

The Witness: Well, yes, I think so but we proved it out and have not found any particular use for it.

The Court: There was no sales?

The Witness: That's right.

[fol. 1504] Mr. McManus: That is all I have.

Recross examination.

By Mr. Hughes:

Q. Referring back to the straight machines, you gave us an average speed, I think, of 350 a minute. Isn't that the gist of what you said to me?

A. Yes.

Q. And for certain containers the speeds would be faster and for certain containers the speeds would be slower, isn't that correct? In other words, you were giving me an average.

A. It would vary according to the sizes and lines set up.

Q. Would it be correct to say that, generally speaking, the bigger the size of the container the slower the speed?

A. Yes, that would be true.

Q. One final question: There was a reference made to GMCI surveys in your testimony. Do you remember that?

A. Yes.

Q. You did not either devise or execute or commit to writing any of the material in those surveys, did you?

A. You mean——

Q. You didn't conduct the surveys?

[fol. 1505] A. Whether I was the author or the company was the author?

Q. No; you personally had nothing to do with the devising or executing or carrying out of those surveys, is that right?

A. That's right.

Q. All you got was the report after it was completed?

A. That is right.

Mr. Hughes: That is all.

Mr. McManus: That is all.

The Court: Thank you, Mr. DeMerell, you may step down.

(Witness excused.)

The Court: Yes, Mr. Greenberg?

Mr. Greenberg: Your Honor, the Government's next witness is Mr. Harmon who we expect will lay a foundation for the introduction of a document which comes from a third party, namely, the Tariff Commission.

With your permission, your Honor, I will call Mr. Harmon.

The Court: All right, call Mr. Harmon.

Is this a document that the defendants have and which [fol. 1506] has been marked already?

Mr. Greenberg: It has not been marked, your Honor. It will be marked as a Government's exhibit.

The Government provided the defendants with the document last week and they have had a chance to peruse it and consider it.

The Court: Is there any objection to this document, before we start with the witness?

Mr. Handler: If your Honor please, we are going to operate under somewhat of a handicap. Mr. Greenberg gave us the document on Friday. We did not have a copy. We have had an opportunity of having one of our technical people study the document over the weekend——

The Court: Let me ask you this, before we put this witness on, is there any question of the authenticity of the document?

Mr. Handler: Well, it bears the imprint of the Tariff Commission.

The Court: There is no doubt that it was put out by the Tariff Commission?

Mr. Handler: We have no doubt about that.

The Court: What is the purpose of the witness?

[fol. 1507] Mr. Handler: But we have considerable doubt as to its competency, your Honor. There will be voir dire on competency.

The Court: Do both of you want to examine the witness on the voir dire?

Mr. Greenberg: Well, your Honor, I have just a few questions.

The Court: All right. All I was trying to get at is what the purpose of the witness was.

Very good, call Mr. Harmon.

Mr. Greenberg: Mr. Harmon, will you take the stand.

WILLIAM B. HARMON, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Mr. Greenberg: Would you please mark this a Government's Exhibit.

(Marked Government's Exhibit 365-A for identification.)

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. Annapolis, Maryland.

Q. What is your present employment?

[fol. 1508] A. I am chief of the division of cargo data, Maritime Administration.

Q. Would you try to raise your voice?

The Court: United States Maritime Commission.

The Witness: Maritime Administration.

Q. Bringing you back to 1937, what was your position at that time?

A. I was distribution traffic analyst for the Tariff Commission.

Q. And just briefly what were your duties and responsibilities in that position?

A. In the assessment of—I mean, the compilation of tariff rates, import tariff rates, it was necessary to analyze the distribution of imports as compared with domestic production and to determine the principal points of competition.

Q. Sir, I show you Government's Exhibit 365 for identification and ask you if you recognize it.

A. I do.

Q. Were you in charge of compiling this document?

A. I was.

Q. Will you tell us how you compiled it?

A. We went to the principal producers of commodities in [fol. 1509] the United States and to the principal importers of quantities here in the United States. We asked them to report to the Tariff Commission on the packaging characteristics of the goods delivered. Upon receipt of such reports they were sent to Richmond, and under a WPA project

were tabulated, and then the tabulated data were returned to Washington where it was printed.

Mr. Greenberg: I have no further questions at this point, your Honor. I will offer the document, or if Mr. Hughes wishes to examine on the voir dire——

The Court: Offer the document, and before I pass on the offer I will hear Mr. Hughes.

I am going to take a brief recess at this point because I would like to look at the document so that I can follow the questions and know what this is about.

Mr. Greenberg: May I just say, your Honor, that we are merely going to offer two parts of the document.

The Court: Make the offer of the parts of the document that you intend to offer.

Mr. Greenberg: All right.

The Court: So that everybody knows and the record is [fol. 1510] clear on it.

Mr. Greenberg: Your Honor, the Government offers Exhibit 365 for identification into evidence, specifically that part of the document which is entitled "Chemicals, Oils and Paints," commencing at page 1 and terminating, I believe, at page 32, and the section entitled "Agricultural and Fishery, Commodities, Manufacturers Thereof, and Beverages," mentioned at page 97 and I believe terminating at page 134.

The Court: All right. We will take a brief recess. I want to look at this.

(Short recess.)

The Court: Mr. Harmon may resume the stand.

William B. Harmon resumed.

Colloquy Between Court and Counsel Re Document

Mr. Handler: If your Honor pleases——

The Court: Before we go ahead on this, Mr. Handler, suppose Mr. Greenberg tells us the purpose of this testimony or of this exhibit, what you intend to establish by it.

Mr. Greenberg: Your Honor, we believe that this exhibit

identifies the products and the types of containers which were being used in 1937, and both prior to that time, and certainly in the period following 1937, the glass container [fols. 1511-1512] manufacturers vigor, competitive vigor increased, and this exhibit indicates certain products which were serviced only by cans and certain products which were serviced only by glass containers during that period.

The Court: In the first place, as I read the document that is not what it purports to do. I reviewed this document briefly during the recess, and it does not appear to me to indicate that at all. As I understand it, it indicates that certain products were packaged in a certain way. It is not all inclusive in any sense of the word, and I don't think it purports to be and you do not claim it is, do you?

Mr. Greenberg: We do not deny, your Honor, that the Tariff Commission, although we have not questioned the witness along that line, did not or did interview every single packer in the country at that time, but the witness has testified that the principal packers were interviewed and that the containers that they used were noted in the data received and compiled in the exhibit.

[fol. 1513] The Court: Well, all right, I understand the purpose of it, but I want to be careful about these all-embracing claims, because as I read the introduction to the document itself it does not claim to be either complete or to be exclusive.

Mr. Greenberg: Your Honor, I think I did mislead you along that line. I don't think there has ever been a survey which has been exhaustive and complete, nor do I think it is possible for the Government to do so.

The Court: All right, go ahead, Mr. Handler?

Mr. Handler: If your Honor please, there are two preliminary points on which I should like clarification from Mr. Greenberg. In his proffer he said that he offered Exhibit 365 for identification and specifically, certain pages, pages 1 to 32 and 97 to 134. Now, do I understand the proffer is being limited to the pages specified, or is he endeavoring to offer the entire document in evidence?

Mr. Greenberg: Your Honor, as I told Mr. Handler last week, I am offering just two sections of the document, the one section which deals with packaging for chemicals, oils

[fol. 1514] and paints, and the other section which deals with food products.

The Court: Well, it seems to me, Mr. Greenberg, this is dependent on the view perhaps that the defendant takes, that without the introduction by way of qualification what this purports to do, the two tables are virtually meaningless.

Mr. Greenberg: Your Honor, we modify our proffer and offer the introduction as well.

The Court: Very well. But it is the introduction and the two tables that you referred to, pages 1 to 32, that is, arabic 1 to 32 as distinguished from Roman, and pages 97 to 134, arabic.

Mr. Greenberg: Chemicals, oils and paints, that section goes from page 1 to 131——

The Court: 131?

Mr. Greenberg: Through 31.

The Court: 31.

Mr. Greenberg: Right. And the other one runs from page 99 through and inclusive of page 134.

The Court: All right.

Mr. Handler: Now, I gather, your Honor, that by "introduction," Mr. Greenberg means Roman numerals I through XV?

[fol. 1515] Mr. Greenberg: That is correct, Mr. Handler.

Mr. Handler: Now, your Honor, this document was given to us on Friday. It was never listed in any of the documents at any time; it was not referred to in the amended witness list, and consequently we haven't had a chance to propound interrogatories to the Government.

Now, in the two sections that have been offered in evidence, we have a listing of several thousands of products. Manifestly, not all of these products are being relied upon by the Government, and I should like, therefore, to ask counsel to state on the record specifically which products in these two categories he is relying upon in support of his proffer which, as I understood it, is to show the changes that have occurred in packaging from 1937 down to date.

Mr. Greenberg: Your Honor, most respectfully, the Government will endeavor to do so. However, the voir dire on this occasion deals with either the competency of the witness or the document, and we say it is unrelated to the number of products that——

The Court: That entirely depends on what questions Mr. Handler desires to ask the witness. In other words, if Mr. Handler wants to pick out baked beans, for instance, to ask about, or iron filings to ask about, he wants to know whether this is something on which you rely.

[fol. 1516] Mr. Greenberg: Your Honor, we rely on both sections in their entirety.

Mr. Handler: Your Honor appreciates that that kind of a response could prolong the cross-examination for days, and we are dealing with thousands of products.

The Court: Let's get down to this: plainly, as far as I am concerned, so there will be no doubt about this, anything that isn't packaged in either glass containers or cans I have no interest in.

Mr. Greenberg: Your Honor, then we will agree——

The Court: Have you any interest in anything that isn't packaged in either glass containers or cans?

Mr. Greenberg: No, your Honor.

The Court: Of course there was no plastic at that time, I take it?

Mr. Greenberg: No, there was not.

The Court: All right.

Mr. Greenberg: We will agree then to offer only those products which have indications that they were packaged in either cans or glass containers, or both.

Mr. Handler: Your Honor, our interest may be of a wider [fol. 1517] dimension.

The Court: Well, all right, that is your privilege.

Preliminary Cross-examination.

By Mr. Handler:

Q. Mr. Harmon, you referred on your direct examination to an inquiry that you made of various principal domestic producers and importers, did you not?

A. Yes, sir.

Q. Would you name the domestic producers and the domestic importers to whom your inquiry went?

A. No, sir. It is 23 years ago.

The Court: Now wait until he finishes his question.

A. Can I name them?

Q. That's right.

A. Not now I can't, no. I destroyed that list ten years ago.

Q. As of the moment you are unable to supply us with the names of the persons who were interrogated?

A. No, sir.

Q. Were your inquiries to these persons in writing or were they oral?

A. I don't understand you.

Q. Were the inquiries that you made of these persons in [fol. 1518] writing, or were they oral?

A. Personal visit.

Q. Did you make the personal visits?

A. I did.

Q. To all the hundreds of importers and manufacturers?

A. I spent about six months doing it, yes, sir.

Q. And what questions did you propound?

A. I asked them as to how they packaged their products. I asked them to give me the type of container: I asked for the weight, gross, net and tare.

The Court: What is tare?

The Witness: Tare, sir?

The Court: Yes.

The Witness: That is the weight of the package.

The Court: The way they are packaged?

The Witness: Yes, sir, of the container it is in.

The Court: I see.

A. (Continuing) I asked for the dimensions of the outer container, and I got very good response.

[fol. 1519] Q. Now, how did you go about selecting the manufacturers that you were going to visit?

A. Well, that was done largely through the commodity experts of the Tariff Commission, who are continuously in touch with the industry, both the importers and the manufacturers. The Tariff Commission has what is known as a commodity division, and specific commodities are assigned to specific men who spend their lives following them, and it was in conjunction with them that we selected the persons to whom we spoke.

Q. How did you go about getting the list of products from each of the persons whom you interviewed?

A. Well, if you go to the Heinz Company, for example, they manufacture a wide range of products, so we let them decide.

Q. Now, did you take notes?

A. Yes.

Q. What happened to those notes?

A. Oh, they have been destroyed years ago. The response was in writing, as I testified in my direct testimony; was sent into the Tariff Commission; was reviewed for anything obvious that wasn't right and then was sent on down to Richmond.

Q. Now, did you take notes of your interviews as they progressed?

[fol. 1520] A. Yes, I did.

Q. And the companies, in addition, sent a communication to the Tariff Commission?

A. That's right.

Q. And those communications are destroyed, also?

A. That's right.

Q. And who examined these responses?

A. Robert C. King, Chief of the Division, Walter Jones and myself.

Q. And after you made this examination you sent the raw data down to——

A. Richmond.

Q. —Richmond, Virginia?

A. That's right.

Q. And you say it was processed there?

A. Yes, sir.

Q. By employees of the WPA?

A. That's right.

Q. Can you give us their names?

A. No, I can't.

Q. Do you know how many?

A. No.

[fol. 1521] Q. Do you know how they proceeded to——

The Court: Have you got an approximation of how many people were engaged in the project?

The Witness: No, I do not know. The project was in charge of a woman by the name of Myrtle Robbins.

The Court: Who was she, one of the employees of the Commission?

The Witness: She was one—she was a Tariff Commission employee.

The Court: That is what I mean, an employee of the Commission?

The Witness: Yes, and she was in charge of this project.

The Court: What function did she perform for the Tariff Commission?

The Witness: She was in the statistical division when she was on duty in Washington.

By Mr. Handler:

Q. Do you have any knowledge of how this material was processed by the WPA?

A. No. I told her what I wanted and she did it.

Mr. Handler: May that be repeated, your Honor?

[fol. 1522] The Witness: I said no, I can't tell you how it was done, because I told Mrs. Robbins what I wanted and she supervised it.

Q. Were you the only one who conducted the interviews?

A. Largely, yes.

Q. When you say "largely," was anyone else engaged in the interviewing process?

A. Well, let's put it this way: if people came into the office, somebody else did it, but I did all the travelling.

Q. What is the name of the person in the office who did the interviewing?

A. He is retired now. The name would be Robert C. King.

The Court: He was head of that division?

The Witness: That's right.

Q. And who prepared the questions that were to be submitted to the persons interviewed?

A. There were no questionnaires sent out. We merely went out and asked people how they packaged their products and to give us the detail of it.

Q. Now, did you personally verify the tabulations that were made?

[fol. 1523] A. No.

Q. You didn't compare the raw material against the text of Exhibit 365 for identification?

A. Not personally, no, sir.

Q. What is that?

A. Not personally.

Q. And therefore, you cannot personally vouch for its accuracy?

A. I know it was verified, but I didn't do it.

Q. You personally didn't verify it?

A. I personally did not verify it.

The Court: Who did verify it?

The Witness: That was done down in Richmond.

Q. By whom?

A. Under Mrs. Robbins' guidance.

Q. Did she do it herself?

A. I would assume that she did not do it herself.

Q. You don't know then who verified the tabulations?

A. In a tabulation of that size, no one person can do it.

Q. Many people?

A. Many people, yes.

Q. And can you give us their names?

[fol. 1524] A. No, I can't give you their names because I never even saw them.

Q. Now, in your direct testimony you referred to packaging characteristics of various products; what did you mean by those words?

A. I mean that certain products are packaged so much to a pack; the package weighs so much; the tare weight is so much; the gross weight is so much and the net weight is so much. You see, let me digress a little bit here. The reason that this job was done was because back in the old days the Tariff Act was administered much differently than it is now. Now it is done by negotiations under trade groups. But back in the old days, as I said initially, the point of principal competition was calculated and the difference between imports and domestic production at that point determined the rate of duty.

When I first went with Tariff, there was no means of

converting weight space relationship of imports as reported by the Census Bureau, because they spoke principally in terms of units—so many cases of this, so many hundred of that—so we had to come up with something to convert these units into weight space in order to arrive at official freight [fol. 1525] rates. So that was the purpose of commodity packaging.

Q. And that was your main interest in this study, wasn't it?

A. That's right.

Q. How did you go about selecting the packaging materials that you were going to study?

A. I didn't select anything.

Q. Can you tell his Honor that this compilation would list all of the packaging materials in which the many thousands of items moved in 1937?

A. No, I won't make that statement.

Q. You don't know, as a matter of fact, whether the compilation of packaging materials was exhaustive or not?

A. No, it was not. It doesn't purport to be.

Q. In other words——

The Court: As a matter of fact, your introduction to the thing says it isn't exhaustive; isn't that right?

The Witness: That's right; never intended to be that.

Q. Do I correctly understand that the main focus of your inquiry was to ascertain the varying weights of the packag- [fol. 1526] ing materials in which these commodities moved?

A. No, no. We were interested in arriving at a conversion factor. Well, for example, official freight rates largely move on terms of weight or measurement, whichever is the most beneficial to the ship. Land rates largely are on a weight basis. So in order to arrive at a cost of ocean transportation, we had to have this weight space relationship, which we have here.

Q. But that was a primary purpose of your study?

A. That is why it was done.

Q. You didn't go out to find out in what packaging materials these various products——

A. No.

Q. —moved——

A. No, we needed——

Q. —in order to determine how these products were being packaged?

A. We needed an internal tool, and when we got finished we decided it was worth releasing, so we published it.

Q. Now, did you make any quantitative study of the number of products moving in one packaging material as contrasted with the same product moving in another packaging [fol. 1527] material?

A. No, sir; we were not interested in packaging material. We were interested in a conversion factor, and we went, as I said in my direct testimony, we went to principal producers in the United States and principal importers, and asked them not what are you packaging, but how do you package what you market?

Mr. Handler: Your Honor, we object to the proffer. It violates the rules appertaining to surveys in virtually as many aspects as there are rules. We don't have the original [fol. 1528] questions; we don't have the names of the persons interviewed; we don't have the names of the people who carried on the survey; we don't have the raw material; we don't have the supervisors. There is no way to determine the accuracy of the tabulation, and it is perfectly clear that the object of the study was for a purpose totally unrelated to that for which the document is being tendered in evidence. And the inference that the Government is trying to have your Honor draw, that there have been changes in packaging media, couldn't possibly be drawn from this document in light of the way in which it was compiled. From all your Honor knows and from all we know, when they list a packaging medium, there may have been a dozen that they didn't list. And the change, if there has been a change, may have occurred in 1938, a year after this study was made, not in 1955, '56 or 1960.

For these reasons, your Honor, we object to the document.

Mr. Greenberg: Your Honor, I would like to bring to your attention a letter from Mr. Donn N. Bent, Secretary of the United States Tariff Commission.

The Court: Now wait a minute.

[fol. 1529] Mr. Greenberg: Pardon?

The Court: Is this letter in evidence?

Mr. Greenberg: It is not in evidence. I wanted to approach the Bench with opposing counsel, have them read the letter and ask them if they will stipulate that——

The Court: Has Mr. Handler seen the letter?

Mr. Greenberg: Yes, he has, your Honor.

—and ask them if they will stipulate to avoiding the appearance of Mr. Bent, who is Secretary of the United States Tariff Commission.

The Court: Let me see the letter.

(After reading) You don't want Mr. Bent, do you?

Mr. Handler: Your Honor, the only thing I want is to have the document excluded.

The Court: I understand that.

Now, this merely confirms what this witness said, that none of the underlying data is available.

Mr. Handler: Which is completely beside the case. The destruction of documents might be of relevance with respect to the admissibility of secondary evidence, but the destruction of the underlying data of a survey makes the survey inadmissible, because it interferes with possible verification [fol. 1530] of the reliability of the investigation.

The Court: I want to tell you, Mr. Handler, it seems to me that this is not a survey in either a quantitative or qualitative sense. Since it is not a survey either in a qualitative or quantitative sense, I am going to admit it and take into account all that has been said here in evaluating any weight that might be given to it.

Mr. Handler: Your Honor, then I shall continue with the cross-examination of the witness.

The Court: All right.

Now apropos of that, what about the letter from Mr. Bent? Do you want that put in evidence?

Mr. Handler: I don't care, your Honor. The witness has stated that the data has been destroyed.

The Court: I don't think it adds anything to what the witness said.

Mr. Handler: Not in the slightest.

The Court: And he has testified that the basic data is all destroyed, so that I don't think this adds anything in particular.

The Witness: May I say, your Honor, that it is the policy of the Federal Government to destroy old data.

[fol. 1531] The Court: Eventually.

The Witness: Yes.

The Court: We understand that, and on the whole, I don't think we would quarrel with the policy.

I will withhold the actual admission of the document until Mr. Handler has completed his cross-examination, in case something else should develop.

Mr. Handler: Now, your Honor, I am going to ask your tolerance in my doing something that may not be strictly in accordance with the rules, but you will bear in mind that I have been given a document which I presently haven't had a chance to study, and since I have been unable to get from Mr. Greenberg the products that he is interested in, I want to be sure that my reading is accurate. So may I have your indulgence for a minute or two?

The Court: Yes.

Mr. Greenberg: I just want to remind Mr. Handler that we are concerning ourselves with the products in cans or glass containers or both.

Mr. Handler: That is precisely the point.

Mr. Greenberg: Okay.

[fol. 1532] By Mr. Handler:

Q. Since you are familiar with this document, will you look at page 3, which is the first page on chemicals, oils and paints, and tell us whether there is any product listed there which is packaged in glass or a tin container?

A. I don't see it offhand, no, sir.

Q. Now I turn to page 4 and ask you the same question?

Mr. Greenberg: Your Honor, I am going to object.

The Court: Your objection is overruled.

Mr. Greenberg: On the ground of the best evidence rule.

The Court: Your objection is overruled. I am going to allow very wide latitude in the cross-examination of this document, with all the basic data lacking, and containing masses of material which appear to me has no relation to this case at all.

Mr. Greenberg: Very well, your Honor.

A. There are several things that are in cans there.

Q. Are you sure about the first page? were you looking at the right column?

[fol. 1533] A. I am sorry. There is here on bottles, can, one gallon, cans, one gallon each.

Q. Let's take the first item, bottles, and you probably can pronounce these chemical terms better than I.

A. Acetic anhydride.

Q. And you have that in a bottle for what size?

A. No, it was in wooden boxes and two aluminum cans within it.

Q. No, you are not looking at the same place that I am.

A. I am sorry. My eyes are not too good.

Q. The first place where you see bottles?

A. Yes. All right. Here is bottles. That is acetic anhydride. It is in a wooden box with four bottles in it.

Q. And the size of those bottles?

A. It doesn't say here.

Q. Now, do you know——

A. They can't be too large, because the whole package is only 1.2 cubic feet.

Q. Now, have you any idea what other packaging materials, if any, this product was packaged in, in 1937?

[fol. 1534] A. As I told you, sir, we did not approach this thing from a packaging standpoint.

Q. The answer is that you do not know?

A. No.

Q. And do you know whether any change in the packaging of this product has occurred since 1937 down to date?

A. No, I haven't been associated with this problem since 1945.

Q. Was there any change in the packaging from 1937 to 1945?

A. That I can't say. This was a one-time job that was only done once by anyone.

Q. And do you know in what materials this item is being packaged in today?

A. No.

Q. If I were to go down page by page, under chemicals, oils and paints, and ask you the same questions, you would give me the same answer?

A. Generally.

Q. Yes. And if I were to do the same with respect to the

material that appears under the heading "Agricultural and Fishery Commodities, Manufacturers Thereof, and Beverages," and go through it page by page——

A. I made no attempt to keep up. My present job is with [fol. 1535] Ocean Shipping, and we deal in tons, not packages.

Q. And you would not know even as of 1937 whether the packaging materials listed here were correct or incorrect?

A. I only have——

The Court: I don't understand that question. What do you mean by "correct or incorrect"?

Mr. Handler: I will withdraw the question and rephrase it.

Q. You wouldn't know whether in point of fact the materials moved in the packaging materials that are listed in this tabulation, as of 1937?

A. Not by inspection, no, sir.

Mr. Greenberg: Your Honor, may I *respect* Mr. Handler to step back just a few feet so that the witness may collect his thoughts?

The Court: No. Mr. Handler is trying to work with a document he only had over the weekend. He has only one copy of it.

Mr. Greenberg: I would like to make a statement for the record: the attorney for the Willkie firm who was down in our office a few months back, and we identified that document for him and told him that the Tariff Commission had [fol. 1536] copies of it.

The Court: But, Mr. Greenberg, you did not expect, because you identified a document, which you did not mark for identification, that the Willkie firm or Mr. Handler or anybody else was going into that document.

Mr. Greenberg: Maybe so, your Honor. I merely wanted to note for the record that they had been informed that this document existed a few months back.

The Court: There was a procedure, Mr. Greenberg, whereby the Government was marking for identification all the documents that it expected to offer. I am going to allow Mr. Handler to do pretty nearly anything he wants to do with the document.

Mr. Handler: Could I have the last question and answer before Mr. Greenberg's objection?

(Question and answer read.)

[fol. 1537] Q. Of course, you don't know what has happened with respect to packaging materials that have been used for the thousands of items under "Agricultural and Fishery Commodities" since 1937?

A. As I say, I haven't followed packaging since 1945.

Q. What is the extent of your knowledge from 1937 to 1945?

A. Well, I followed it pretty thoroughly.

Q. And you studied the changes in that period?

A. Yes. I attended all the conventions and I spent a lot of time in the field, but since 1945 I have not followed it at all.

The Court: Mr. Harmon, at that time, in 1937, when this survey was conducted, what was your general background and what were your qualifications with respect to your position?

The Witness: Well, I started all this back in 1932, when I worked with Joseph P. Eastman, Coordinator of Transportation.

The Court: In what capacity did you work for him?

The Witness: I was a supervisor in the analysis of cost of operations.

[fol. 1538] The Court: Are you an accountant?

The Witness: I was, years ago.

The Court: Are you a CPA?

The Witness: No.

The Court: How long had you done accounting work up to 1937?

The Witness: Well, I started back in 1926.

The Court: Was that with the Government?

The Witness: No, a private concern.

The Court: And when did you first start with the Government?

The Witness: I started with the Government in 1932. I took a job with Mr. Eastman in analyzing rail costs. I worked with him until 1937 when I went to the Tariff Commission. I left the Tariff Commission in 1945 and then I took my present job.

By Mr. Handler:

Q. Do I understand that your answers to questions concerning Agricultural and Fishery Commodities would be the same as your answers with respect to Chemicals, Oils and Paints?

A. I am fairly familiar with the method of packaging for ocean shipping but not in small containers.

Q. And therefore your answer about your lack of knowl-
[fol. 1539] edge would be the same?

A. I told you, sir, from 1945 I haven't followed it.

Mr. Handler: Your Honor, in order not to waste the time of the Court, I have concluded my cross-examination now. We will study this document with care, and if we find it necessary to recall Mr. Harmon——

The Court: All right, Mr. Harmon will be subject to recall in case it becomes necessary, although I do not anticipate that that eventuality will occur.

Mr. Handler: Neither do I, your Honor.

The Witness: I would like to avoid it, if you don't mind.

The Court: We will avoid if we can.

The document will be admitted, as I say, but, of course, in considering what weight is to be given to it, everything brought out today will be taken into consideration.

(Government's Exhibit 365 for identification received in evidence.)

Mr. Greenberg: The Government's next witness, your Honor, is Mr. Williams.

[fol. 1540] Earle T. Williams, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Mr. Greenberg: Your Honor, the Government will attempt to lay a foundation for document G-773 through this witness.

The Court: What is the purpose of document G-773?

Mr. Greenberg: Your Honor, this is a document which was obtained from the files of Hazel-Atlas Glass Company in 1954 or 1955 pursuant to a Federal Bureau of Investiga-

tion search for documents which would indicate price leadership.

The Court: I am asking you what the purpose of the document is.

Mr. Greenberg: I wanted to preface my remarks, your Honor, because it is not a document out of the files or produced pursuant to our motion to produce, and hence is not covered by a stipulation.

This document, your Honor, purports to show the competition between can and glass containers as noted by Hazel-Atlas employees.

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

[fol. 1541] A. Boston, Massachusetts.

Q. What is your present position?

A. District sales manager.

Q. For whom?

A. Continental Can Company.

Q. Pardon?

A. Continental Can Company.

Q. Is that the glass division?

A. That is right.

Q. How long have you held that position?

A. As district sales manager since 1937.

Q. And you were with the Hazel-Atlas Glass Company in 1953, is that correct?

A. Yes, sir.

Q. I show you Government's Exhibit 773 for identification and ask you if you recognize it?

A. Yes, I do.

Q. And would you tell us what it is?

A. It is a letter reporting to our company a conversation held in Portland, Maine, regarding——

Mr. Hughes: Will you keep your voice up.

Q. Just speak a little higher.

A. It is a letter to the company reporting a conversation held in Portland, Maine.

[fol. 1542] Q. A conversation with whom, sir?

A. A buyer for a packager in Portland.

Q. What is the name of the packer?

A. Burnham & Morrill.

Q. Did you engage in this conversation with this representative?

A. Yes.

Q. Did you report the facts of that conversation in this fashion?

A. I did.

Q. And what happened with the document after it was executed or written?

A. Nothing further happened.

Q. Didn't you then go——

A. It was sent to the company.

Q. It was sent to Mr. Neuhart?

A. Yes.

The Court: Who was Mr. Neuhart?

Q. Who was Mr. Neuhart at that time?

A. I believe he was vice-president.

Mr. Greenberg: The Government offers 773.

Mr. Hughes: I object to it as incompetent, irrelevant and immaterial. It is the rankest sort of hearsay, and there is no possible probative value to the document.

[fol. 1543] Here is a letter which reports a hearsay conversation with a man somewheres in Maine, your Honor, and I just don't see that it has any possible probative value.

The Court: Do you want to examine him?

Mr. Hughes: Yes, I will examine him.

The Court: Go ahead.

Cross-examination.

By Mr. Hughes:

Q. Now, Mr. Williams, at the time you wrote this letter you were employed by the Hazel-Atlas Company, is that correct?

A. Yes, sir.

Q. In what capacity?

A. New England sales representative.

Q. And during the course of your duties you ran into a Mr. Thayer, is that correct?

A. Yes, sir.

Q. Of Burnham & Morrill?

A. Yes, sir.

The Court: Mr. Greenberg, see that the witness has before him a copy of this letter.

Mr. Greenberg: Yes, your Honor.

(Document handed to the witness.)

[fol. 1544] By Mr. Hughes:

Q. And who was Mr. Thayer?

A. Purchasing agent of Burnham & Morrill.

Q. Who are Burnham & Morrill?

A. Packers of vegetable products.

Q. And this letter then reports a conversation which you had with Mr. Thayer, is that correct?

A. That is correct.

Q. And in that conversation Mr. Thayer purported to tell you something that someone from Anchor Hocking had told him, is that right?

A. Yes, sir.

Q. And you do not know and cannot tell his Honor whether what purportedly was stated by the Anchor Hocking man was in fact stated by the Anchor Hocking man, can you?

A. I do not know.

Q. And you have never checked with anybody in Anchor Hocking to verify the correctness of the report to you by Mr. Thayer of Burnham & Morrill, of this conversation which he reports he had with the man from Anchor Hocking, is that right?

A. The statement was never checked with anybody.

Q. And you don't know whether in fact Burnham & Morrill gave any advice of any kind to Anchor Hocking and [fol. 1545] Armstrong with respect to price increases, is that correct?

A. I do not.

Q. And you cannot say whether as a result of any conversations between Mr. Thayer and anybody in Anchor

Hocking or otherwise that Anchor Hocking changed its prices, is that correct?

A. I do not know.

The Court: I take it the conversation was in the course of your efforts to sell glass jars to Burnham & Morrill, is that right?

The Witness: That is right.

The Court: That was part of your sales activities?

The Witness: That is right.

The Court: And this is what they told you?

The Witness: That is right.

Q. And beyond that you have no way of verifying in any way, shape or form whether the conversations ever took place or whether they were accurately reported, is that correct?

A. That is right.

Q. Now, how did Burnham & Morrill pack their products at that time?

[fol. 1546] A. They packed them in glass and metal containers.

Q. And has there been any change of any kind in the way they pack their products?

A. Not that I am aware of.

Q. What products did they pack in glass?

A. Beans and corn, relish.

Q. What products do they pack in cans?

A. They pack beans in cans.

The Court: Is that baked beans?

The Witness: Baked beans and they also packed other vegetables like corn.

Q. In what type of container did they pack its vegetables?

A. In cans.

Q. And was that true back in 1953, so far as you know?

A. Yes.

Q. And it is true today?

A. Yes.

Q. Now in the last paragraph on page 1 of this letter there is the statement:

> "This will probably not affect us until that time, but we are splitting this business with Owens-Illinois, and

[fol. 1547] somewheres along the line, an adjustment in prices will undoubtedly have to be made."

Do you recall that quotation from the letter?

A. Yes, sir.

Q. Were you there referring to an adjustment in the price of glass?

A. Oh, no.

Q. You were not in any respect referring there to cans?

A. No, sir.

Q. Was there in fact an adjustment in price made?

A. No, sir.

Q. So that the sum total of this letter was that Burnham & Morrill were trying to give you a hard time with reference to your then current prices, is that correct?

A. That is correct.

Q. And you held your ground and the price remained the same, is that right?

A. That's right.

Mr. Hughes: Your Honor, in the light of the cross-examination, I move to strike the exhibit. It seems to me——

The Court: I have not admitted it yet.

[fol. 1548] Mr. Hughes: Oh, I beg your pardon. I press the objection.

Mr. Greenberg: Your Honor, we have no further questions and the Government offers Government's Exhibit 773.

The Court: Well, let me ask you this, Mr. Greenberg:

You certainly do not offer them as any evidence of what either Anchor Hocking or Armstrong Glass said to Thayer of Burnham & Morrill, do you?

Mr. Greenberg: That is correct, your Honor.

Mr. Hughes: Is it correct that you are or are not offering it for that?

Mr. Greenberg: It is correct your Honor, that we admit that this party was reporting a conversation of Thayer which he allegedly had with representatives of Anchor Hocking at which the witness was not present.

The Court: Well, to me this is no evidence of anything except what Thayer told the witness.

Mr. Greenberg: Very good.

The Court: It isn't the slightest indication to me that Anchor Hocking ever discussed the price question with the witness Thayer, and I am not taking it for that purpose.

[fol. 1549] Mr. Greenberg: Very well.

The Court: There is no evidence in the record that that ever occurred. I will take it for the limited purpose of reporting a conversation that this witness had in the course of his selling with Thayer of Burnham & Morrill, and for that limited purpose only, which conversation was reported to the sales manager of the company.

(Government's Exhibit 773 for identification received in evidence.)

The Court: You may step down, Mr. Witness. Thank you.

(Witness excused.)

Mr. Greenberg: Your Honor, may I make one comment at this juncture?

Of course, the letter in its terms in other paragraphs indicates something else as well, and I assume——

The Court: Well, it indicates what Williams said to his superior in the way of comment. If that is of any value to you, it is in there.

Mr. Greenberg: I think it also indicates, your Honor, that Burnham & Morrill was using the can-glass relationship as a wedge.

[fol. 1550] Mr. Hughes: Your Honor——

The Court: That is a conclusion that you draw from the letter. You can argue until the cows come home about that if you want to, but that is not an evidentiary question at all.

Mr. Greenberg: The Government's next witness is Mr. Menair.——

The Court: How long is Mr. Menair going to be?

Mr. Greenberg: He will be very short as far as direct examination is concerned.

Mr. Hughes: There may be some cross, your Honor.

The Court: If Mr. Menair is likely to take any time, I think we will take him directly after lunch.

Have you gentlemen had enough time for lunch?

Mr. Hughes: Yes, sir, we have.

Mr. Greenberg: Yes, sir.

The Court: We will start here at two o'clock.

(Recess to 2:00 p.m.)

[fol. 1551] AFTERNOON SESSION

The Court: Good afternoon, gentlemen.

All right, sir, let's have the next witness.

Mr. Greenberg: Your Honor, the Government's next witness is Mr. Menair.

Will Mr. Menair take the stand?

Your Honor, I will make reference to G-775 during this examination.

The Court: All right.

FRANK C. MENAIR, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. In Jenkinstown, Pennsylvania.

Q. What is your present position?

A. Sales representative for Continental Can, the Hazel-Atlas Division, Philadelphia.

Q. How long have you held your position?

A. 34 years.

Q. And you were with the Hazel-Atlas Glass Company in 1954; correct, sir?

A. I was.

Q. What was your position then?

[fol. 1552] A. Same as I am now, sales representative.

Q. I show you Government's Exhibit 775, which has been marked for identification, and ask you if you recognize it?

A. Yes, I do.

Q. Would you tell us what it is, sir?

A. It is a letter written to our vice-president and general sales manager at the time, Mr. John S. Algeo. Do you want the subject of the matter?

The Court: Well, no—well, all right, tell us generally what it is.

The Witness: It is a report on economic and competitive conditions as they existed at that time.

Q. And, sir, will you tell us whether the facts contained in that document were personally observed by you?

A. Yes, they were.

Mr. Hughes: Wait a minute. I object.

Mr. Greenberg: You may cross.

The Court: I will sustain the objection. Strike the answer out.

Q. Sir, will you tell us how you learned of the facts contained in that document?

A. By visits to the people involved.

[fol. 1553] Mr. Greenberg: You may conduct your voir dire.

I offer Government's Exhibit 775 into evidence.

Mr. Hughes: Your Honor, without any voir dire I object to the document because it is apparent on its face that it is pure hearsay, and it would seem to me that voir dire would be unnecessary to indicate that it was inadmissible and lacking in any probative value. The witness is here——

The Court: Mr. Hughes, this is a report by a sales representative to the head of the sales force of Hazel-Atlas, making certain statements to him as to his observations. It seems to me to be perfectly admissible in evidence at this stage in the absence of some voir dire.

Mr. Hughes: Well, your Honor——

The Court: He is reporting as to his own observations in the course of his work, and there doesn't seem to me to be any question of its admissibility. What it is intended to prove is another matter.

Mr. Hughes: Well, the witness is here, and it seems to me that rather than just having him identify a piece of paper the witness can testify to whatever facts he knows. This is [fol. 1554] just, it seems to me, a short-cutting of the witness's testimony.

The Court: This is something from the files of the company, addressed to Mr. Algeo. It presumably came to Mr.

Algeo's attention. I will permit you to cross-examine on the voir dire.

Mr. Hughes: Your Honor, it is a kind of a fine line to draw sometimes between the voir dire and what is strictly cross-examination.

The Court: I understand, Mr. Hughes.

Mr. Hughes: Yes, sir.

Preliminary cross-examination.

By Mr. Hughes:

Q. Mr. Menair, do you have a copy of that exhibit in front of you?

A. Yes, sir.

Q. Will you look at the third paragraph, which is your reference to the Fountain Topping account; do you see that reference?

A. Yes.

Q. And you were there referring to a man who packed supplies for these soda fountains and places like that; is that right?

A. That is correct.

Q. And in that paragraph were you dealing with institu-
[fol. 1555] tional sizes?

A. Yes.

Q. Now, it says, "This manufacturer packs marshmallow, chocolate syrup, walnuts in syrup, cherries and pineapple"; you see that, don't you?

A. Yes.

Q. What kind of a container was he using for packing marshmallows and chocolate syrup?

A. He was using a No. 10 tin at that time and had been for some time.

Q. And what kind of a container was he using for walnuts in syrup and cherries and pineapple?

A. Half-gallon glass jar.

Q. Now, the price you were referring to went into effect, did it not?

A. That is correct.

Q. And it stayed in effect, did it not?

A. That is correct.

Q. And this packer stayed in tin for marshmallows and syrup and he stayed in glass for walnuts in syrup, cherries and pineapple; is that right?

A. He stayed in the respective packages for those products, yes.

Q. There was no change or switch of any kind?

[fol. 1556] A. That is correct.

Q. Now, in the next paragraph you refer to a pickle packer; do you see that?

A. Yes.

Q. And is the burden of what you were reporting there that this pickle packer was threatening to go to another glass supplier?

A. Yes, that is correct.

Q. There wasn't any talk about switching to the tin container, was there?

A. No.

Q. Now, the next paragraph deals with a concern which packs seafood in private molds; do you see that?

A. Yes.

Q. And there is a reference there to some sort of a substitute material for the product; do you see that?

A. Yes.

Q. And what was the substitute material that he was talking about?

A. Well, there were two thoughts, one, that it might be switched into a paper container, and the second was a sty-

[fol. 1557] rene plastic container.

Q. Now, what was this seafood product that was referred to?

A. It was a shrimp in a cocktail sauce which was sold under refrigeration in a glass jar.

Q. Would you call that a specialty item?

A. Yes.

Q. And was it an item that had a limited shelf life?

A. Yes, a shelf life of about two weeks.

Q. And did this customer continue to package shrimp cocktail in your glass containers?

A. Yes, he did continue to stay in glass.

Q. And did he stay with you?

A. Well, he stayed with us for a while, but then he

switched to a competitor who offered a lower price, and about 18 months ago the business came back to us.

Q. And when you say he switched to a competitor, you are referring to another supplier of glass containers?

A. That is correct.

[fol. 1558] Q. So far as you know, Mr. Menair, were there any switches to other types of packing materials as a result of this price increase that you testified about?

A. I don't recall any, Mr. Hughes.

Q. Do you remember in response to Mr. Greenberg's question you said it was a report of the comparative situation? Do you recall using those words in response to Mr. Greenberg's question?

A. I didn't get that question.

Q. I say, do you remember that in response to Mr. Greenberg's question you described the letter as a report of the competitive situation?

A. That's right.

Q. Were you referring to the competitive situation among glass container manufacturers?

A. Primarily, yes.

Mr. Hughes: I have no further questions.

The Court: All right, Mr. Greenberg.

Mr. Greenberg: Your Honor, the Government has no further questions.

The Court: All right.

I take it your renew your objection, Mr. Hughes, on the basis of your examination of the voir dire?

Mr. Hughes: I do, your Honor, yes, sir.

[fol. 1559] The Court: The same ruling to this as with respect to previous documents. It will be admitted and considered against the background of the testimony with relation to it.

Mr. Hughes: I wonder if we might have, as in the other instances, the purpose of the offer.

The Court: Yes, I think so.

Mr. Greenberg: I would like to have the document before me, your Honor.

The Court: Yes.

Mr. Greenberg: Your Honor, once again, the Government urges upon the Court, very respectfully, that this document

shows the wedge mechanism that results from can and glass competition. That is the purpose that we put this in for.

Mr. Hughes: No further questions.

(Government's Exhibit 775 for identification received in evidence.)

The Court: All right, you may step down. Thank you.

(Witness excused.)

The Court: Next witness.

Mr. McManus: Mr. Lobred, please.

[fol. 1560] LEONARD K. LOBRED, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

The Court: Mr. McManus, before you proceed, we are now going to go to Exhibit 133?

Mr. McManus: Yes, sir.

The Court: Has there been any previous testimony given with respect to this exhibit?

Mr. McManus: No, sir.

The Court: I think if you would be good enough at the outset to tell me whether there has been any previous background or testimony, because I cannot always identify these things by number, and this is the first time we have heard about this, is that correct?

Mr. McManus: Yes, sir, that is right.

The Court: Very good.

Direct examination.

By Mr. McManus:

Q. Mr. Lobred, by whom are you employed?

The Court: Let me ask this:

First of all, what is the purpose of this exhibit?

Mr. McManus: Yes, your Honor. This exhibit, your Honor, we believe, first explains the purpose of the canning industry, the size of the industry, and gives information on

[fol. 1561] the methods in which foods are canned. It also shows that glass containers and metal cans are the two types of containers that this association considers to be a part of the canning industry and describes the methods that cans and glass both are used in packaging products.

The Court: Mr. Hughes, I take it that you respectfully object to this document, do you?

Mr. Hughes: Yes, we do.

The Court: All right, go ahead.

By Mr. McManus:

Q. By whom are you employed, Mr. Lobred?

A. National Canners Association.

Q. Where are your headquarters?

A. In Washington, D.C.

Q. And, for the record, could you tell us who are members of the National Canners Association?

A. Canners of food for human consumption.

Q. And do you know approximately how many members there are?

A. Approximately 700.

Q. How many did you say?

A. Approximately 700.

Q. What is your position with the Association?

[fol. 1562] A. I am editor of the Weekly Membership News Letter.

Q. Are you engaged in any other publications?

A. Yes.

Q. Of the Association?

A. Yes.

Q. Are there many?

A. Well, there are a few regularly issued publications, and some from time to time.

Q. And is one of those documents The Canning Industry?

A. Yes.

Q. 1957?

A. Yes.

Q. Is that an annual publication?

A. No.

Q. How often is that published?

A. It was first issued in its present form in 1952. The second edition was issued in 1954, and the third, I believe, 1957.

Q. Was that the last one?

A. There has been a fourth edition in 1959.

Q. Directing your attention to Government's Exhibit 133 for identification, could you tell me the purpose of that [fol. 1563] document?

A. It is a general information booklet to give what we consider in factual terms general information about the canning industry so as to reflect correctly on the industry and its products.

Q. And are you familiar with the distribution of that document?

A. I don't know where every copy went, but generally.

Q. How is it distributed normally?

A. The initial distribution is one to each member, and it is used to respond to requests for information from the public.

Q. I show you Government's Exhibit 133 for identification. Do you recognize that document?

A. Yes.

Q. Is that your 1957 edition of The Canning Industry?

A. Yes.

Q. Was this prepared under your direction?

A. Yes.

Mr. McManus: Your Honor, the Government offers Government's Exhibit 133.

[fol. 1564] The Court: All right, Mr. Hughes, Mr. Kuhn.

Cross-examination.

By Mr. Kuhn:

Q. Mr. Lobred, was there an earlier edition of this publication entitled The Canning Industry prior to 1952?

A. Yes.

Q. How far back did that go?

A. The last printing that I know of was dated 1939.

Q. Did it come out before that?

A. I believe that it did some time in the early 30's.

Q. Were you involved in that?

A. No.

Q. You did not come to National Canners Association until when?

A. 1947.

Q. Were you involved in getting out the edition that came out in 1952?

A. Yes.

Q. Did you rely primarily for the information contained in the 1952 edition on the material in the 1939 edition?

[fol. 1565] A. Yes.

Q. You might tell us, if you know, who prepared the 1939 edition?

A. I believe it was prepared by a man named J. Fitzgerald.

Q. Is he still with the Association?

A. He retired and he is deceased. He was then a director of information.

Q. Do you know anything about the nature of the preparation of the 1939 edition?

A. No.

Q. Now, G-133, I take it, is a later edition of the 1952 edition, which was the first one you worked on?

A. Yes.

Q. And periodically, I take it, it has been updated in some respects to reach the 1957 edition, which is the one that the Government is offering?

A. Yes.

Q. Would it be true that the sources upon which you relied in preparing the 1952 and the 1957 edition are primarily classifiable as secondary sources?

A. Yes.

Q. Other than the 1939 edition, which one of the sources, does it rely on advertising brochures of various companies?

[fol. 1566] A. Yes, sir.

Q. Does it rely on such things as press releases of a company?

A. Yes, sir.

Q. Does it rely on publications of the American Glassware Association?

A. Yes, sir.

Q. Does it contain a certain amount of opinion of the editor?

A. We have sought to make it factual——

The Court: That was not the question. The question was, does it contain a certain amount of opinions of the editor?

The Witness: Yes.

Q. Did others work on this document than yourself, Mr. Lobred?

A. Yes, sir.

Q. About how many people?

A. About ten.

Q. About ten people in addition to yourself?

A. Yes.

Q. Did you actually write any of this document?

A. Not originally.

[fol. 1567] Mr. Kuhn: We object to the document, your Honor.

The Court: What do you say, Mr. McManus?

Mr. McManus: We still offer it, your Honor.

I would like to ask just a few more questions.

The Court: All right.

Redirect examination.

By Mr. McManus:

Q. In each year that you published these documents, in 1952 and 1957, did you attempt to bring the publication up to date?

A. Yes, sir.

Q. In other words, the 1957 edition is not the 1952 edition but it has been brought up to date to the best of your ability?

A. Yes.

Q. Now I would like to show you the document and in the back it says, "Canning industry references."

Do you recall that section?

A. Yes.

Q. Are these some of the publications upon which you relied to write the document?

A. Yes.

The Court: Where is that, Mr. McManus?

Mr. McManus: that is on page 39.

[fol. 1568] The Court: Mr. Lobred, will you give us your background?

The Witness: Well, I have a degree in journalism from the University of North Carolina, I went into the Navy, and in 1947 joined the staff of National Canners Association.

Q. And you have been with them ever since?
A. Yes.

Mr. Kuhn: Your Honor, if I may ask a few more questions.
The Court: Yes.

Recross-examination.

By Mr. Kuhn:

Q. Do you consider yourself an expert in food technology?
A. No, sir.
Q. How about canning machinery, do you consider yourself an expert on canning machinery?
A. No, sir.
Q. There is a chapter here on canning machinery?
A. Yes.
Q. Have you ever been in a canning plant?
A. Yes.
Q. How often?
A. Two canning plants.
[fol. 1569] Q. Was that on the same day?
A. On the same day.
Q. Do you consider yourself an expert on some of these other subject matters that are listed in the contents of the document at the beginning? How about, "Economic importance of the canning industry"?
A. No, sir.
Q. How about "Scientific research in the canning industry"?
A. No, sir.
Q. How about "High quality raw products for canning"?
A. No, sir.

By the Court:

Q. Let us start, for example, on page 9.

Where did that come from?

A. That was prepared by the Division of Statistics.

Q. Of what division?

A. Of the National Canners Association.

Q. How did they get their statistics to make that up, do you know?

A. The Association initiated a statistical program in the mid 30's, and this chart, I believe, would incorporate NCA statistics as well as any others that would be considered [fol. 1570] reliable.

Q. Is the same thing true of these annual charts on page 10, the production of various canned products on page 10?

A. Yes.

Q. Is the same thing true of the table on page 11 and the charts on page 12?

A. Yes.

The Court: Suppose you state the basis for your objection a little more fully, Mr. Kuhn.

Mr. Kuhn: Well, your Honor, it seems to me that Mr. Lobred as the editor of the information letter of the National Canners Association is not at all concerned in his day to day work with the technical subject matter which is the greater part of this document.

Additionally, it seems to me that the document was largely prepared by persons other than Mr. Lobred, going back over a period of many, many years, and that his primary task with respect to it has been that in the strictest sense of an editor, pulling things together and giving them to the printer.

The Court: What do you say to that, Mr. McManus?

Mr. McManus: Your Honor, I am not saying that that is [fol. 1571] not so but that there are approximately ten people, as I understand it, on the staff who are responsible for the various statements in this document. I have the names here and, of course, we could subpoena all ten of those people so that they could be cross-examined.

We do not hold Mr. Lobred out to be an expert in the scientific aspects of canning foods.

The Court: If Mr. Lobred had written what is contained

in this document or if it was done by his staff under his direction, that is one thing, but here is a document which contains a variety of statistics and all kinds of statements of facts on which I take it the Government intends to rely.

Mr. McManus: Yes, sir.

The Court: Such as evidence of certain percentages and all the rest. I don't think any basis has been laid on which this document can presently be admitted in evidence in its entirety.

Mr. McManus: Your Honor, this is a document which, for many years, as it has been brought out here, has been conceded and relied upon by the largest associations in the country of canned foods.

[fol. 1572] The Court: The testimony is that this was a promotion job, primarily.

Mr. Kuhn: There was no suggestion it was relied upon, as far as I know.

The Court: And this publication's object is to sell in one way or another or promote the sale of package goods, canned goods.

Now, it would be one thing to take this as a publication put out by the canning industry to its members without taking it as proof of any of the facts stated in it. That is one thing. It might very well be that on such a basis the defendant would have little if any objection to it. But to take it on the basis of attempting to prove the basic facts here which may be of some significance, some considerable significance, in this litigation, I just don't see it.

I will sustain the objection to the document.

Mr. McManus: All right, your Honor, in that case we will attempt to call the specific people who did write and edit each one of these sections, who do happen to be specialists in their field.

The Court: Is there anything further you wish to ask Mr. Lobred?

[fol. 1573] Mr. McManus: No, sir, your Honor.

The Court: Thank you, Mr. Lobred. You may step down.

(Witness excused.)

Mr. McManus: Your Honor, we would like to now call Dr. Steier, of the National Canners Association.

The Court: Dr. Steier. All right, go ahead.

HOWARD L. STEIER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Dr. Steier, you are an employee of the National Canners Association; is that correct?

A. Yes, sir.

Q. And for how long have you been employed in that capacity? For how long have you been employed in that Association?

A. Since October of 1951.

Q. And in what capacity?

A. As director of the Division of Statistics.

Q. And were you formerly employed by some other group? Were you formerly employed?

A. By the University of Maryland.

Q. And in what capacity?

[fol. 1574] A. As professor and head of marketing in the College of Agriculture.

Q. And could you tell me what is your background? Were you graduated from Maryland?

A. Yes, sir. I took my graduate work at the University of Maryland. After graduating from the University of Maryland I worked two years for the Agricultural Field Station of the United States Department of Agriculture.

Q. And what were your duties in that capacity? What were you doing at that time?

A. At Beltsville?

Q. Yes, that's right.

A. I served as agent in charge of breeding investigations.

Q. And what was your doctorate at the University of Maryland? What did you get your doctorate in?

A. My doctorate?

Q. Yes.

A. Horticulture and plant physiology.

Q. And since October of 1951 you indicated that you have been head of the Division of Statistics for National Canners Association?

A. That is right.

[fol. 1575] Q. And do you have employees under you?

A. Yes.

Q. Approximately how many?

A. Six.

Q. And generally speaking, what are their duties?

A. They are statistical clerks who compile and compare the reports on statistics concerning the production and stocks and shipments of canned foods and other related types of industry statistics.

Q. And they have been doing that—and you have been doing this for the period 1951 to date?

A. Yes, sir.

Q. Now, Dr. Steier, I show you Government's Exhibit 133, marked for identification, and could you look through here and—first tell me if you recognize that document?

A. Yes, sir.

Q. Are you familiar with the statistical charts and tables in this document?

A. Yes, sir; I am.

Q. And who prepared those charts and tables?

A. The charts were prepared under my direction by a statistical draftsman, and the data and tables were assem-

[fol. 1576] bled in our division.

Mr. Hughes: I am sorry. Your voice falls.

A. The data and tables are assembled and prepared in our division and the charts were prepared by a statistical draftsman.

Q. Now, for example, taking the first chart on page 8, are you familiar with that chart?

A. Yes, sir; I am.

Q. And on what did you—what was the basis of this chart?

A. These bars here represent the percentage of the total raw product production of each of these crops listed here that are canned, and the figures come from the records of the U.S. Department of Agriculture.

Q. Going now to page 9, are you familiar with that chart?

A. Yes, sir.

Q. And where was the basic data obtained for that chart?

A. In the early years it was obtained from the census of manufacturers for the canning and preserving industry,

and for the later years, from the National Canners Association figures.

Q. And going to page 10, looking at annual packs of [fol. 1577] canned fruits and vegetables, 1870 to 1937, did your group prepare that?

A. Most of those figures are from the census of manufacturers.

Q. I see. Now going down to the section, production of various canned foods 1938 to '56, what was the basis for that?

A. Now this will vary. In these columns that you see here the figures in columns 1, 2 and 3, the canned fruits, juices and vegetables were prepared from the National Canners Association figures, with the exception of part of the canned juices total, which are industry estimates. Now, the canned specialties are industry estimates. The canned milk figures in the next column are from the Department of Agriculture. The canned fish are assembled by the Department of Interior, Division of Fish and Wild Life Service. The canned meat figures are converted to standard cases from the U.S. Department of Agriculture data.

Q. Now going to page 11, apparent annual survey and per capita consumption of various canned foods, what was the basis of that?

A. These figures for the most part are directly from the U.S. Department of Agriculture.

[fol. 1578] Q. And going to——

The Court: Excuse me.

When you say, Mr. Witness, they are figures from the National Canners Association, what does that mean?

The Witness: That means that—and I was referring there to the figures on the bottom table on page 10—that the figures showing production of canned vegetables and canned juices and canned fruits were those that were assembled by our statistical division from reports that we received from canners.

The Court: All right, go ahead.

Q. Now going to the chart on page 12, Dr. Steier, would you tell us the basis of the first chart, canned fruits?

A. Well, this again is per capita consumption. You will notice that the title under the chart is essentially the same

as the table on the preceding page, on which these charts are based. It is U.S. Department of Agriculture figures on per capita consumption on canned fruits.

Q. If I asked you the same question for canned vegetables, canned juices and other canned foods, would your [fol. 1579] answer be the same?

A. Yes, sir.

Q. All right. Now going to what might be called the flyleaf, if we could, your Honor, that would probably be the third page, we have certain statistical data here on the production of the canning industry, and then the canning industry comprises so many canneries; would you have furnished that type of information?

A. Yes, sir; part of it.

Q. Which have you furnished?

A. The production figures, you will see that those are identical if you compare the figures in the economic importance chapter, the one we were just referring to. These figures were taken from there, and also the figures down here, under "Value of Raw Products Paid Producers Annually For the Raw Product."

Q. And where was the basic data for that obtained?

A. The total production figures are the combination of the National Canners Association and these other agencies I mentioned. The figures on dollar value paid farmers is partially from the Department of Agriculture, and the Divi- [fol. 1580] sion of Wildlife Service on the value of the fish products and others.

Q. The part under "Workers" there, would you furnish those figures, also?

A. Yes. That would have come from the Bureau of Labor Statistics data.

Q. In fact, any of the statistical data that in this publication, would that have been furnished by you or your statistical unit?

Mr. Hughes: Will you speak a little louder, please?

(Question read.)

A. I am not sure that there are not statistical data in some of the other sections or chapters here. The only ones

that we did supply would be those contained in the "economic importance" chapter, and the ones in front here.

Mr. McManus: I see, thank you, Dr. Steier.

By the Court:

Q. Now, it is the fact, Dr. Steier, that in the so-called "economic importance" chapter, any statements, figures, were supplied by your division?

A. Yes, sir; that is correct.

Q. And were those figures checked by your division?

[fol. 1581] A. Yes, sir; insofar as you can check secondary sources, those that come from the Department of Agriculture, Fish and Wildlife.

Q. Yes.

A. Those that we assembled ourselves, of course, were checked and edited in our own division for completeness and reasonableness by our own clerks.

Q. And when you say "checked," what did you check them against?

A. Well, we assembled not only figures on production, which are included here——

Q. You assembled those from your members by reports from your members?

A. Yes, sir. But not only do we get production figures, that is, quantity produced or canned, we also get from them quantities that they have in their warehouses, stocks, and their monthly shipments on minor or major products. Now, if the figures that they give us for production, which is what we are concerned with here, are not correct, we are likely before the end of the year to find that stocks and shipments are not in line, and we try to match them up, get corrected figures. Sometimes this happens. The completeness of the figures are checked on the basis of the total number of [fol. 1582] canners that we know are packing that individual product, and we get reports not only from members, but from non-members of the Association, all who canned products.

Q. When you say you get reports from non-members of the Association, I notice there was a statement in here somewhere that there were some 2700 canners throughout the United States; where do you get that figure from?

A. That figure is based upon an account of the number that are listed in the Canners directory, that the Association compiles and did compile annually up to 1957.

Q. How did the Association compile the data in that directory?

A. They submitted their questionnaire to the—here again, it wasn't part of the Statistics Division. I am only able to give you what I know of the Division's procedure here. The questionnaire was sent to all known canners and food packers. They completed it and returned it to the Association, and the Association just used it as a basis for the directory.

Q. Is that canners directory, can you tell me, used throughout the industry as a standard work of reference?

[fol. 1583] A. Yes, sir; it is, and by Government agencies, too.

Q. And then with respect to the production figures of non-members, how do you get those? Do you submit them questionnaires?

A. Yes, sir. There is no difference in the kind of report form that we ask members or non-members to send us data on.

Q. And what proportion of returns do you get from non-members?

A. It is very good. We, as a matter of fact, don't issue a report on pack or stocks or shipments of a given commodity unless we have at least 95 per cent of the total number of canners that are known to pack the product, and we make estimates for the remaining that we can't find figures for.

The Court: Do you wish to examine this witness?

Mr. Kuhn: Yes, sir.

Cross-examination.

By Mr. Kuhn:

Q. Dr. Steier, as I understand your testimony, certain of the charts and graphs on pages 8, 10, 11 and 12 are based on sources other than your own information gathering [fol. 1584] sources?

A. That is true.

Q. Such as the U.S. Department of Agriculture, the Census and the like?

A. Yes, sir.

Q. Isn't it true that the data prepared by an organization such as the Census is revised from time to time?

A. Yes, sir: it is.

Q. And might it not be true that some of the material in here, taken from Census data, may have been revised since this was prepared?

A. Yes. That was particularly true of the 1954 Census though, of canning and preserving.

Mr. Handler: Will the witness talk a little louder, please?

A. (Continuing) That was true of the 1954 Census of the canning and preserving industry. There were revisions.

The Court: I take it, this bulletin, published for the year 1957, does not represent any information going beyond that year?

The Witness: That is true.

Mr. Kuhn: But, your Honor, since that year there may [fol. 1585] have been revisions of the data, so that the data relied upon was no longer accurate for that year.

The Court: I see.

Q. Is the U.S. Department of Agriculture data also revised from time to time?

A. Yes, yes, it is.

By the Court:

Q. You mean this data is revised retroactively?

A. Yes, sir. Sometimes they will be revised going back three, four, five years.

Q. So that if you produced the current data of the Department of Agriculture, and anyone sought to introduce here current data, a report issued by the Department of Agriculture, he could look forward to five years of revision?

A. There may be. Not always.

Q. There may be?

A. There may be.

By Mr. Kuhn:

Q. The table on page 10, headed "Production of Various Canned Foods," which I think you probably recall, Dr. Steier, but I will show it to you, is based in part upon [fol. 1586] material gathered by the National Canners Association?

A. Yes, that is principally true for fruits and vegetables and juices.

Q. Now which of the other material in these pages between 8 and 12 are based on your material, that is, as gathered by the NCA?

A. Only the production of the canned fruits and the canned vegetables and most of the canned juices.

Q. And none of the other tables or graphs are so based?

A. No.

Q. Now, I see that the material which relies upon your own data goes back as far as 1938; is that true?

A. That is right, yes, sir.

Q. And goes up to and includes the year 1956, preliminarily.

A. Yes, sir.

Q. Is the underlying data maintained for all of those years, going back to 1938, by the NCA?

A. Yes, sir.

[fol. 1587] Q. It is maintained——

A. When you say "underlying data," what do you mean?

Q. When I say "underlying data," I mean the data which you drew from the packers who made reports to your Association?

A. The individual company reports are not available, if that is what you mean.

Q. The reports are not available?

A. No, sir.

Q. They are destroyed periodically, are they?

A. Yes, sir.

Q. Are they available to any extent?

A. The individual reports are not available to anyone except those of us on the statistic division staff.

Q. I see. But are they in existence to any extent, the reports from the packers?

A. No, sir.

Q. Not even the current ones?

A. In one year.

Q. One year, I see. And from those reports you then make compilations?

A. That is right.

[fol. 1588] Q. And those compilations are the only things that would be in existence, other than the current reports from the packers?

A. Plus the work sheets, the summary sheets.

Q. Plus the work sheets and the summary sheets, and those summary sheets and work sheets made from the summary would be in existence going back to 1938?

A. I am not sure that all of those years would be there. I think they are.

Q. Dr. Steier, during the direct examination you referred to industry estimates as being involved in some of these graphs and tables; would you tell us specifically which ones of the industry the estimates involved?

A. Canned juice is part of the total here.

Q. On page 10.

A. There is a table at the bottom of page 10.

Q. Canned juices involved estimates?

A. And the canned specialties is almost completely estimates. We assembled those statistically ourselves on the canned specialties. This includes the baked beans and canned soups, baby foods, Chinese foods and that kind of things. So that all of that is based upon industry estimates.

[fol. 1589] Q. And how are these estimates gotten?

A. These are based upon census reports, which provide us a bench mark, and then for the intervening year, that is every five years census of manufacturers, and for the intervening years we simply use estimates that we can pick up that are made by any other agency, company, in the industry, that might have published this sort *or* publication.

Q. Such as?

A. The Western Canner and Packer, for example, which is another canner-packer magazine, that publishes a series of these, annually, or any other basis that we can find.

Q. Do you have any opportunity to check on their estimates?

A. Only reasonableness with respect to the trend that we

think is likely to have occurred in connection with the census there.

Q. And would it not be true that your own material, that is, the material gathered by the NCA, contains estimates?

A. For those canners who don't file a report to us; yes, sir.

Q. Did any other divisions furnish statistics for the mate-
[fol. 1590] rial on pages 8 through 12 of this exhibit, any other divisions of the NCA?

A. The only exception, I think, would be the estimate of the number of canners and canneries which we talked about a moment ago, based upon a directory.

Q. Yes.

A. That is all. The rest of it are furnished by us.

Q. Now, with respect to the 2700 canners, you indicated that that is based on the canners directory of the NCA.

A. Yes, in part. I am not certain of the true origin of that figure. In the census of manufacturers for the canning-preserving figure, they also contain a figure on number of establishments. But the definition there is not the same, does not have the same coverage as those seven product groups in that table. So there are some differences here of definition. But that plus the directory could have been used.

Q. Well, does the current directory of the NCA carry as many as 2700 canneries?

A. Well, when you say "canneries," I assume you mean canning plants?

Q. Well, I am using the phrase as it appears here.
[fol. 1591] It says, "The canning industry comprises about 2700 canneries in 47 states."

A. The directory simply lists companies.

Q. Yes.

A. And the '57 edition shows the location of plants in various states.

Q. Now, would that account for as many as 2700 canneries, do you know?

A. I think that it might have in 1957.

Q. But the current edition?

A. I am not sure. I wouldn't know, no, sir.

Q. Have you any idea how many canneries the current edition might account for?

A. It would be many less. The 1959 edition was abbrevi-

ated edition, and even if it were complete there would be many less.

Q. Do you try to keep track of entries and withdrawals as you compile these directories?

A. I am not close enough to that operation to answer the question. This is compiled by the information division. I am not sure.

Q. You are not responsible for compiling these lists?

A. No, sir.

[fol. 1592] Q. You have used the term "canners"; would you tell me what you mean by that term?

A. Canners?

Q. Yes.

A. When I use the term I am referring to the number of individual companies, separate entities.

Q. Companies doing what, Mr. Steier?

A. Canning the seven major types of canned foods that are listed on that table on page 10.

By the Court:

Q. When you say "canning," you mean under your definition of "canning," as stated in the flyleaf of this publication here, "Canning is a method of preserving food by good cooking done in airtight containers"?

A. Yes, sir. That is, we have a little more technical definition in the Association.

Q. Can you give us the technical definition?

A. We say food that is hermitically—that is heat-sterilized and hermetically sealed and used for human consumption.

By Mr. Kuhn:

Q. Would these foods include jams?

A. No, sir; we do not include jams.

[fol. 1593] Q. Let me ask you about a few. Would they include jellies?

A. No, sir.

Q. Preserves?

A. No, sir.

Q. Beer?

A. No, sir.

Q. Soft drinks?

A. No, sir.
Q. Coffee?
A. No, sir.
Q. Either ground or soluble?
A. No, sir.
Q. Shortening?
A. No, sir.
Q. Chilli sauce?
A. Yes, sir.
Q. Catsup?
A. Yes, sir.
Q. Nuts?
A. No, sir.
Q. Pickles?
A. No, sir.
Q. Condiments?
[fol. 1594] A. No, sir.
Q. Mayonnaise?
A. No, sir.

By the Court:

Q. What is the difference between pickles and nuts, in terms of this definition you used?
A. Neither of these are heat sterilized.
Q. I see. Pickles, you said pickles were in or out?
A. They are out.
Q. They are not canned goods, according to your definition?
A. No, not according to our definition.
Q. Because they are not sterilized?
A. They are not heat sterilized.
Q. Not heat sterilized. Nothing that is not heat sterilized is considered by you to be part of the canning industry as you define it; is that right?
A. Heat sterilized and hermitically sealed and used for human consumption.
Q. Dog food and cat food, for instance, are all out?
A. That's right.

[fol. 1595] By Mr. Kuhn:

Q. Well, would it or would it not be true that some pickles are heat sterilized?

A. Yes, some of them may be.

The Court: But you wouldn't let those pickles in on the ground floor.

The Witness: Our Association does not, in order to keep this.

The Court: You wouldn't even let the good pickles in.

Q. And are those pickles which are heat sterilized sealed in hermetically sealed containers?

A. Yes, sir; they are.

By the Court:

Q. Do you have available a list of products that are on either side of this magic line, or at least are on the canners' side of this magic line? Is there such a list in existence?

A. No, sir; we don't have a complete list of all the products that would be in here, except in so far as they are represented by those seven major groups in the headings and in those captions on the columns in that table on page 10 therein, and they are pretty clear, I think, with the exception of the specialties, which are different.

[fol. 1596] Q. Let me ask you this:

You have got an item called canned fish and canned meat; for instance, there is such a thing, as I recall it, as dried chipped beef, that goes in a glass jar; is that canned food?

A. Yes, sir. I think that is included in the canned meat total there.

Q. That is included.

A. Yes, sir.

Q. Now let's take canned fish. There are certain types of herring that are put up in glass jars; pickled herring. Is pickled herring on the canning side or non-canning side?

A. I think they are in there, too, but here again I am not certain, because the fish figures are assembled by the Bureau of Interior, Fish and Wild Life Service, and I am not sure of that specific type of product that you are raising here, or the canned, or the pickled herring in jars. I don't

know. I would have to check the Department of Interior's inclusion in there.

By Mr. Kuhn:

Q. You have canned fish in this table on the bottom of page 10; would that include cat food?

[fol. 1597] A. Some of the pet food.

The Court: What was that?

Q. Would it include cat food?

A. The Department of Interior does, I know, include in their canned fish figures those pet foods that contain fish. So to that extent canned pet food would be in these figures. But these are the only pet canned food that is in there.

By the Court:

Q. What about canned meat? What about horse meat? Is that in the canned meat category?

A. No, sir; that should not be in there. Presumably, this would not be used for human consumption.

By Mr. Kuhn:

Q. Well, is it, Dr. Steier, or not?

A. Here again it is the Department of Agriculture that makes this definition, and I don't think it is, but——

The Court: So the Department of Agriculture puts canned meat in there or keeps canned meat out, but if you have got canned fish in another department, it goes in; is that right?

The Witness: The pet foods.

The Court: All right.

[fol. 1598] Q. Going ahead with these products I was listing, Dr. Steier, did I reach mayonnaise?

A. Yes.

Q. Frozen juice concentrates?

A. No, sir; none of those are in there.

Q. Frozen vegetables?

A. No, sir.

Q. Frozen fruits?

A. No, sir.
Q. Ripe olives?
A. Yes, they are in there.
Q. Ripe olives are included?
A. Yes.

By the Court:

Q. What about ordinary olives, non-ripe olives?
A. The so-called Spanish olives?
Q. Yes.
A. No, sir, they are pickled, not sterilized.

By Mr. Kuhn:

Q. Vinegar?
A. No, sir.
Q. Prune juice?
A. Yes.
Q. How about food which is preserved by home canning?
[fol. 1599] A. No, sir.
Q. Would it be true that there are many other foods packed in cans and packed in glass containers that are not included in the list of canners that make up this 2700?
A. Yes, there are probably products that are consumed. There are a number of exotic foods that wouldn't be in there.
Q. Are they necessarily all exotic, Dr. Steier?
A. Well, this again depends on the definition.
Q. Well, mayonnaise is a category that is not included; would you call that exotic?
A. No, no. I mean the types of fruits or vegetables, this kind of thing like canned rattle snake meat and canned grasshoppers, they are not in there.

The Court: They are not in there.
The Witness: No, sir.

Q. So in addition to these other things we have been listing, there might be many more, some of which might fall in the exotic classification?
A. That is right.
Q. Is condensed or evaporated milk included?

[fol. 1600] A. That is all included under canned milk category, condensed and evaporated.

Q. That is, on the table on page 10, at the bottom, that is all that is?

A. That is all evaporated and condensed milk?

Q. Now, are the producers of condensed and evaporated milk members of the National Canners Association?

A. No, sir; they are not. Those figures come from the Department of Agriculture.

Q. Now, are there producers of canned meat who are not members of the National Canners Association?

A. Yes, and there are producers who are, too.

Q. Some who are and some who aren't?

A. Yes.

Q. How about canned juices, would that be the same situation?

A. Yes, sir.

Q. Some who are and some who aren't?

A. Right.

Q. And canned specialties, would a similar thing hold true?

A. That's right.

Q. And canned fish, needless to say?

[fol. 1601] A. That's right.

Q. Do you know what products, what end products, the census includes in its listing?

A. Yes. In the census of canning and preserving, these are listed, the major ones are listed individually in the report. However, they have a group that they call "Vegetables not elsewhere classified," which I don't know and which they don't list, which is included in this miscellaneous category.

Q. Could you tell whether or not the miscellaneous category would be a substantial category?

A. In some instances it is fairly substantial, yes, sir.

Q. Do you know what products the Department of Agriculture includes in its listing for end use products?

A. No. They have two kinds of listing that we are talking about here. Are you talking about the canned or the raw product?

Q. Well, take the canned first.

A. No, I am not sure. All the canned meat, for example.

Q. Are there any others?

A. Some of the fish items, about which question has been [fol. 1602] raised here. Again I am not certain of some of those because it is the Department of Interior.

Q. They also list raw products, do they?

A. No—well, the Interior Departments lists the landings of the raw fish, yes, as well as canned fish products.

Q. And do you know what products the Interior Department does list in its data?

A. You can tell them by looking at the bulletin. They are more specifically outlined than even the census reports.

Q. Turning for a second to the graph on page 8, Dr. Steier, we have a number of general end uses listed on the left-hand side, can you tell me what "tomatoes" encompasses as they are used?

A. The bar that is in here represents a proportion of the tomatoes that are grown in the United States, that are canned, that go into cans.

Q. Does this include catsup?

A. Yes, sir. That includes not only whole tomatoes but all tomato products, including juice.

By the Court:

Q. Tomato paste, juice?

[fol. 1603] A. Yes, sir.

Q. Catsup?

A. Tomato sauce.

Q. Tomato sauce, chilli sauce?

A. Chilli sauce.

Tomato and tomato products, and its use of tomatoes, the raw product, for canning, tomatoes in any form.

Q. And these figures, I think you told us, all came from the Department of Agriculture?

A. Yes, that's right. The percentage there is based upon the figures of the Department of Agriculture.

Q. This is merely a transference into chart form of percentages from the bulletins officially issued by the Department of Agriculture; is that right?

A. It is a computation of a percentage. They show the tons that are canned, and they also show the total tons produced. We compute the percentage and it is the bar.

By Mr. Kuhn:

Q. Can you tell what tomato products are not included, that is, that account for the difference between 75 or 80 per cent and a hundred per cent?

A. That is the fresh use, the remainder would be fresh, used in fresh form.

[fol. 1604] Q. Coming down to the bottom of that list, grapefruit is listed; what form of grapefruit are taken into consideration there?

A. Just the hot pack single strength grapefruit juice, that which goes into the blended juice, grapefruit and orange, and the grapefruit sections, grapefruit sections or segments.

The Court: That would include frozen grapefruit?

The Witness: No, it is just the hot pack single strength juice.

Q. It would not include, would it, chilled grapefruit sections?

A. No. Again, it is heat sterilized. It is not the frozen.

By the Court:

Q. Now, is it true that under this per cent of "canned" all the way down here, all frozen foods are eliminated?

A. That is correct.

By Mr. Kuhn:

Q. Do you know, Dr. Steier, how the Department of Agriculture compiles the figures upon which your charts and graphs in here are based?

[fol. 1605] A. They are compiled by the crop reporting service from reports that they get from canners of the total tonnage that they can each year. The fresh tonnage and acreage is based upon reports that they get from individual farmers who produce, and estimates are made in individual states and sent to Washington and summarized.

Q. So some of this information is based on estimates sent by individual states?

A. Most of them are, as a matter of fact.

Q. Most of them are based on estimates; is that correct?

A. Yes, sir. They have field offices in the various states.

Q. Do you have any idea, Dr. Steier, how complete the coverage of canners is by the Department of Agriculture?

A. No, not direct knowledge. We think that it is pretty complete. There is some years in which we disagree with them on some of the figures that don't look reasonable, and sometimes our questioning raises further checking on their part and revision sometimes of figures. But it is reasonably complete, considered accurate.

[fol. 1606] The Court: Let's say you have a year in which you disagreed with the Department of Agriculture and the Department of Agriculture disagrees with you, how wide variances do you find?

The Witness: They won't usually be any greater than 5 to 10 per cent.

The Court: That is the maximum variance?

The Witness: Yes, sir.

By Mr. Kuhn:

Q. Now, could you tell me, Dr. Steier, if you know, how the Department of——

The Court: I am sorry, Mr. Kuhn.

How frequently do you find such variance?

The Witness: Oh, there would usually be one or two products each year which we will question the figures. Sometimes after further checking these will be revised. Sometimes they will stand by the figure they have.

[fol. 1607] The Court: Do you notify them when you disagree?

The Witness: Yes, sir.

The Court: Then what will they do, make a recheck?

The Witness: Yes, they will check again with the State officers and ask them to verify the figures that they originally submitted, and go back and recheck them a little more carefully.

By Mr. Kuhn:

Q. Do you know, Dr. Steier, how the Department of the Interior compiles the figures that it compiles and that you rely upon in this Government's exhibit?

A. I am not quite as familiar with that as I am with the Department of Agriculture, but here again they get it from the individual canners in each state. They ask them to report to them the quantities canned.

Q. Does this material come directly from canners or does it come through intermediate sources?

A. I think it comes directly from the canners to the Washington office of the Fish & Wild Life Survey of the Department of the Interior.

The Court: Would sardines be included in that?

[fol. 1608] The Witness: Yes. The major ones in that are sardines, tuna——

The Court: And salmon?

The Witness: And salmon, yes, sir. Those are the three major ones.

Q. Dr. Steier, you have indicated some reservation about whether or not this was actually the way they compiled this material. Do you know as a fact that this is the way in which it was compiled?

A. No, sir, I am not as familiar with that.

Mr. Kuhn: Your Honor, I wonder if we might have a few minutes to discuss this?

The Court: All right, we will take a brief recess at this point.

(Short recess.)

(The following took place in the robing room:)

(Also present: H. Thomas Austern, Esq., representing National Canners Association.)

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Yes, Mr. Handler.

Mr. Handler: Your Honor, this is the first time on this trial that we have encountered the problem of statistics, and we thought that before we get much further it might be useful if we had a conference with your Honor in chambers.

[fol. 1609] The Court: Yes.

Mr. Handler: We are very much concerned with the way in which the statistical material that is now before the Court has been compiled.

The witness testified that he obtained a great deal of material from three governmental agencies. We think that if statistics are worth anything in this case, they ought to be adduced from the governmental agencies, particularly the gentlemen who compiled the statistics, so that we could have adequate cross-examination to find out just what went into the statistical part of the document.

As it now stands these statistics are offered through a gentleman who, on the stand, indicated a lack of direct knowledge of the way in which the statistics were compiled. Your Honor must appreciate that we have a very significant problem here before you, not only with respect to the statistics, but with respect eventually to their appraisal.

We are not at all concerned in this case with broad generalities and broad classifications. An issue in this case specifically is whether Hazel-Atlas competed with Continental Can. That is an ultimate proposition of fact that is [fol. 1610] being disputed here.

Your Honor, has been told at pretrial that this acquisition has resulted in the elimination of a substantial factor of competition. We do not conceive of competition here as competition between a jar of mayonnaise and a can of salmon. We conceive of competition as competition that exists in the packaging of the identical product in the various packaging materials.

Consequently, it is essential that we have an opportunity to find out the components of these broad categories and what is is included in each and every one of them.

Now your Honor has been regaled, partially regaled, this afternoon by the witness' inability to state whether a particular product is or is not included in canning, and then you have the rather bizarre situation where a food item is a canned item and another item is not a canned item. In other words, we must have it specifically stated.

Our first proposition, therefore, is that you do not prove statistics secondhand. The man who compiled the statistics [fol. 1611] ought to be proffered as a witness.

Secondly, with respect to the compilations that this Association itself made, we are unable at this time to determine whether or not any of the statistical items that are before the Court are the sole and exclusive products of the National Canners Association. It is not by any means clear

to what extent there has been reliance here upon what was compiled by others. Hence, much as we dislike it, we think that is necessary, in order for the statistics to be properly appraised and for cross-examination to proceed on a rational basis, for us to know more about the basic raw material from which the statistics were prepared.

That, of course, raises a problem as to the protection of material that normally is regarded as secret. Your Honor knows that our position throughout this case is that we are agreeable to reasonable efforts to preserve secrecy, subject, however, to our right to know what stands behind any of the summaries of statistical compilations that are offered in evidence.

We thought that, since this is the first occasion that we have encountered this problem, and it is going to come up [fol. 1612] many times in this trial, we should have an informal discussion with your Honor to exchange ideas. Not that this is the occasion, perhaps at this moment, to get any definitive ruling, but we do think it would be fruitful to have a discussion.

The Court: Now, what have you to say, Mr. McManus?

Mr. McManus: Your Honor, I am happy to do anything that is necessary here. The only thing is, if Mr. Handler could very succinctly tell me what he wants. He says that he wants two things.

Would you tell me what those two things would be?

The Court: Before we go into that, let me ask you this: Addressing myself now to the first part of Mr. Handler's argument on the statistics that are plainly secondhand in the sense that they come from other sources, is it your intention to call, let us say, the Department of Agriculture or the Census Bureau or the Department of the Interior, as the case may be, because I am frank to say to you, Mr. McManus, that in the absence of those departments and some appraisal by those departments, these figures of the National Canners Association introduced in evidence are abso-[fol. 1613] lutely meaningless.

And I am not prepared at this time to admit any evidence, particularly in the state of the record this afternoon, in response to the question that I myself asked the witness—I am not satisfied that these are meaningful figures that can be of any assistance to the Court here. And if I did admit

them, frankly, I would be inclined to say that I would admit them with such qualifications as to their weight as to make them of little if any practical value to the Government.

I am frank to say to you, gentlemen, that really when you come right down to it, the question is not to the admissibility of the figures here, but it is primarily the weight and reliability that can be given to them.

These figures, as they presently stand, are just in a state of such confusion that they mean practically nothing to the Court.

This witness, and I am not impugning his competence or integrity in any way, you understand, Mr. Austern, is unable to tell us a whole lot of things about the figures of these various departments to make them meaningful, and yet he says that at least half or a substantial portion of these [fol. 1613a] tables are based upon such things.

Mr. McManus: Perhaps, your Honor, it would be better to call the people from the agencies and the people referred to——

[fol. 1614] The Court: In other words, I might be inclined, without making any definitive ruling, if people from those agencies were called, to let in their figures and let in these figures as some summary of the other figures or bearing some relation to them.

I am not talking now about the second phase—we will go to that in a minute—but unless we have some better idea than we have now of the reliability of these figures, and not only the reliability but what the figures cover, I am in a state of confusion.

Mr. McManus: I see, your Honor.

Mr. Handler: Your Honor, in view of what you have just said, it may well be that we can defer going into this second phase until we see what the first produces, because once we get to the testimony of the other witnesses, we will have a much clearer idea of what is the work product of the National Canners Association per se.

The Court: Now it seems to me that the longer we can defer this delicate question of going into confidential details, the better off we are, because thus far in this trial it has been the experience of all of us that while you do not usually solve problems by mere postponement, thus far we have, and it could be that the same thing would follow.

[fol. 1615] Mr. Handler: I think that it would be wise, your Honor, if we did defer until we saw the other figures.

Mr. Austern: May I be heard, your Honor?

The Court: Yes, Mr. Austern.

Mr. Austern: With your Honor's permission, I would like to address myself to two points.

The statistics collected by the National Canners Association are governed by the definition of "canning" as contained in its by-laws.

Now having been at it a long time, I must add to what has been said here that the coverage or jurisdiction, if you please, of the various trade associations and the statistics that they collect, is a function of their own peculiar history.

There are other associations, canning associations, and what their definitions mean——

The Court: Would those definitions be likely to overlap in certain cases?

Mr. Austern: I was about to suggest that you will discover that there is an American Meat Institute and their statistics may overlap. There is an Evaporated Milk Institute—I think they are called Institute—they are far more [fol. 1616] learned——

The Court: And do the condensed milk people get into the Evaporated Milk Institute?

Mr. Austern: This is only the Evaporated Milk. Then there are several fish associations. Then on the state levels these things are sometimes called canners of fruits, and the reason that this witness in reporting to your Honor as he did what might happen——

The Court: I was frankly very impressed by the witness as a very competent fellow.

Mr. Austern: He knows what he is talking about, but what he is covering is a 50-year-old history of the National Canners Association.

Addressing myself to the point that I think Professor Handler meant to cover, but he did it rather lightly, is that these figures of the National Canners Association and their coverage are well understood in the trade. They are confidential, they are collected, and, as he testified, he alone sees them and no one else sees them.

The Court: You are talking about the individual figures?

Mr. Austern: The individual canner's numbers, his packs, his shipments.

The Court: Yes.

[fol. 1617] Mr. Austern: The entire integrity of this Association and that whole statistical operation rests on the very simple fact that the canners of the country trust the National Canners Association, that none of their packs, comprised of products and grades, if you will, will ever be revealed, even to the secretary of the Association, and he is the only man who could see the segregated material.

Consequently, if it should become necessary to serve the Court and parties in this case, if they wished to do any checking of the raw data, I should be very happy if at that time we might ask for a protective order——.

The Court: You will surely have a protective order under those circumstances. I can give you that assurance now.

Mr. Austern: Thank you.

The Court: And I think that you will find in working out the details of that protective order that counsel for both the Government and the defendant will be most cooperative. I would doubt whether my own interposition would be necessary in any substantial degree, because I think you can work that out among yourselves. If it is necessary, I will be glad to decide whether an issue still remains between you.

[fol. 1618] Mr. Austern: Thank you, your Honor.

The Court: Then I think the procedure is this, gentlemen—let us go off the record.

(Discussion off the record.)

The Court: We are now back on the record.

In the light of our discussion here and my statement, that I would consider that I am taking under advisement the question of admitting all but the statistical portions of this exhibit, merely for the purpose of being general background material, indicating to the Court in general terms how the industry, or how canning operates, and the general procedures and the types of machinery used and type of containers used and the general history of the industry, again in general terms—if that is what you are offering it for it is one thing, and I want to know if that is what you are offering it for, or are you offering it for the truth of the specific statements in this document?

Mr. McManus: Well, we are offering it as a truthful statement of the history and evolution of the canning industry and of these various subsections in the document.

[fol. 1619] The Court: How about this material about what happened during the Directoire in France? Plainly you cannot offer any direct testimony on that subject.

Mr. Johnson: And there is a statement in that document about Nicolas Appert.

The Court: Yes.

Mr. Greenberg: That particular statement, for example, if you want to adduce facts to indicate what Nicolas Appert did, there is a book down in the library at Washington which dates back many, many years, and obviously you would have to wade through it, but this is a summary of it.

Mr. Johnson: Are we interested in or should we be interested in what Nocolas Appert did?

Mr. Greenberg: Well, this is historic insofar as glass containers are concerned.

Mr. Johnson: We realize that, but I am interested in the question as to why you should be interested in that.

The Court: I still come back to the question that I asked Mr. McManus that I don't think he answered fully.

Mr. McManus: Your Honor, you asked me to describe [fol. 1620] the purpose of this document. I cannot remember all of the sub-sections, but this is what we believe to be a truthful statement of the history and evolution of the canning industry, together with certain sections on how machinery operates—excuse me, could I look through it and go through the other sections?

The Court: Yes.

Mr. McManus: The scientific research in the canning industry, the products used in the canning industry, the containers for canned foods, how the canning industry operates, and explanation of the canning procedures, and how canned foods are distributed and marketed, and some information for the buyer, and the nutritive values of canned foods, and then a description of the National Canners Association—we believe the statements in there to be true, and we offer them for the truth of the statements, your Honor. However——

[fol. 1621] The Court: Now, if you are going to go along that line you are going to end up with that stuff being ex-

cluded, because I am not convinced that a very nice young man who is a graduate of the North Carolina School of Journalism, and who is a gentleman, and who writes a promotion piece for the Canners Association, is qualified to produce material that has evidentiary stature for the truth of the material contained therein.

I have received no evidence on this record to that effect which substantiates that claim. I would be prepared to admit this as a piece of promotional material put out by the Canners Association, which is their version of what the history of the canning industry is.

To that limited extent I can think it is unobjectionable as an expression by a leading association of how they believe this thing operates, but beyond that I would not be prepared to take it at this time.

Mr. McManus: Now, your Honor, could we offer it to that extent as of right now. If there should be a paragraph or a subsection in there that we would like to get into the truth of the matter, we obviously would have to call someone [fol. 1622] who has written that or who is familiar with that section and then they would have their chance to cross-examine him.

This was pulled together, according to my understanding, by people who happened to be specialists in the various subsections.

Now if we deem that it is necessary to go beyond your description of what you are admitting it for, we would then be required to call those people that were directly involved with that subsection and give the defendants an opportunity to cross-examine.

Is that satisfactory, your Honor?

The Court: I think that a piece of promotional material put out by the Canners Association, indicating the point of view of the Association to its membership of 700, which in this limited field I think, as far as I am able to ascertain at this moment, is the leading but is not the only national association in this limited field, can be taken in a case of this character for the limited purpose of saying that it is a piece of promotional material put out by such an Association, period.

But I am not taking it for the truth of the facts contained therein at this point.

[fol. 1623] Mr. Handler: Your Honor, we don't want to be burdening you with respect to the truth of a document every time a document is offered in evidence, and I wonder whether it would be agreeable to your Honor and to the Government, when it does offer any part of a voluminous document for the truth of the facts receited therein that they so state on the record and we can then be apprised of what their position is.

The Court: I think that is a fair request.

Mr. Greenberg: Your Honor, may I make just one comment at this point?

The Court: Yes, Mr. Greenberg.

Mr. Greenberg: There is a great deal of information contained in trade journals, in various publications and books, and the Government has photostated or reproduced a good deal of this material. I would think that your Honor might want to look at this material, for whatever aid it can give him, and I believe it does give insights into the various industries involved here and that it would help explain what the testimony is.

The Court: The point is that any material with respect to an industry put out by an authoritative source with regard to that industry is certainly, in my view, admissible [fol. 1624] for the limited purpose of showing what the industry said about itself. But going beyond that, when you are seeking to build a record predicated on, let us say, isolated segments of those documents, it seems to me with respect to any such facts there must be sufficient foundation laid on which the Court had predicate a finding as to whether they are admissible as facts or merely what somebody says about themselves.

Thus far, I am prepared now, with the exception of the statistical section of this document, to admit it for the limited purpose of showing that this is what National Canners Association, a leading or the leading national association within the canning industry, has defined here, and I think it was defined by the witness as dealing with hermetically sealed heat-treated food products——

Mr. Greenberg: Heat sterilized, your Honor.

The Court: Heat sterilized food products; that this is what the National Canners Association says about the canning industry, period.

Mr. Austern: Your Honor, while you are on this particular witness, may I inquire of counsel for the Government whether you plan to do anything with the annual pack sta-
[fol. 1625] tistics? Are they likewise involved in this?

Mr. McManus: I don't think that we will have any problem there. I don't think that we will probably use them, and if we don't use them——

The Court: If they do not use them, fine, there is no problem.

Mr. McManus: If we should, we will notify you in plenty of time.

The Court: Before you go, gentlemen, so that everybody will be apprised of where we go from here, Dr. Steier is technically still on the stand. Is there to be further cross-examination of him or further direct of him?

Mr. McManus: We have no further direct.

Mr. Johnson: Do you have any more questions?

Mr. Kuhn: No.

The Court: I am presently reserving on the statistical material, reserving on the offer, pending further proof with respect to the foundation of those statistics.

Mr. Kuhn: Your Honor, does that include the entire chapter?

The Court: It includes the entire chapter which is called, [fol. 1626] I think, the economic importance of the canning industry.

Mr. Johnson: And the other statistical references to which the witness referred?

The Court: I think he referred to those in the beginning, but frankly, whether the canning industry amounts to 22 billion pounds or 25 billion pounds or 40 billion pounds, does not seem to me of any great significance, and whether they have a retail value and whether they represent 8½ per cent or 9 per cent or 7½ per cent or 10 per cent, is of no particular significance.

In other words, the generalized figures in that page of things do not seem to me to be of any great importance. I am going to let those in too, and if you disagree with any of those overall figures, you can introduce figures to contest them. I am now simply excluding the economic importance of the canning industry, that whole chapter, because it

seems to me that the considerations I previously mentioned apply to that.

The Court: All right, gentlemen, I am going to rise at 4.30 this afternoon.

What is your next witness?

Mr. McManus: We have a witness with one document, [fol. 1627] your Honor, Mr. Hatfield.

The Court: All right, let us get through with Mr. Hatfield.

(Short recess.)

HOWARD L. STEIER, resumed.

The Court: Is there anything further from Dr. Steier?

Mr. Kuhn: Nothing from the defendant.

The Court: All right, you may be excused. Thank you.

(Witness excused.)

The Court: Next witness.

Mr. McManus: The Government calls Mr. Hatfield.

The Court: What document is Mr. Hatfield going to testify about?

Mr. McManus: 400-A.

The Court: Very well.

ROBERT S. HATFIELD, called as a witness in behalf of the Government, being first duly sworn, testified as follows: [fol. 1628] Direct examination.

By Mr. McManus:

Q. Mr. Hatfield, by whom are you presently employed?

A. The Continental Can Company.

Q. And what is your position with that Company?

A. I am assistant general manager of the Metal Can Division.

Q. How long have you been with Continental Can?

A. 24 years.

Q. Could you go briefly through the positions that you have held with that company?

A. Well, I started in the sales training program and then went through sales offices in the capacity of order clerk, then was assistant to general line sales manager, assistant to packers can sales manager, district sales manager—excuse me, salesman, district sales manager in Milwaukee, district general manager in Chicago, general sales manager in New York, and now assistant general manager of the Metal Can Division.

Q. In November 1947 what was your position with the company?

A. I had no job title at the time.

Q. What were you doing at that time?

A. I was in the New York office, having just finished an [fol. 1629] assignment out on the Pacific Coast and was awaiting a further assignment.

Q. Who was your immediate superior at that time, do you recall?

A. Well, I suspect you would have to say that the vice-president in charge of sales was my immediate superior, because I reported to no one at that moment.

Q. Who would that gentleman be?

A. Mr. Thomas Fogarty.

[fol. 1630] Q. Mr. Hatfield, I show you Government's Exhibit 400-A; is that your signature?

A. That is my signature.

Q. Do you recall preparing this letter?

A. Well, frankly, no. It was 13 years ago. Having seen it, I have a recollection of its having been prepared.

Q. And who is Mr. G. H. Muth, M-u-t-h?

A. Yes. Mr. George Muth is still with the company. At that time, my recollection is, that he was in what we might call market research capacity. I am not positive of that.

Q. And who is this gentleman, Paul Brachle, and what was his position with the company at that time?

A. I believe at that time he was director of packaging and sales.

Q. And you explained before that Mr. T. C. Fogarty was vice-president in charge of sales?

A. He was, sir.

Q. And Mr. Rosenbauer?

A. I am not sure what capacity Mr. Rosenbauer was in at that time. I don't know. It can be checked.

[fol. 1631] Q. You say you recall having prepared the document?

A. Now that I see it, I mean, when it was called to my attention, I recall having prepared it. The content of it being 13 years ago, I just don't recall it completely.

Q. Do you know who asked you to prepare the document?

A. I do not, no.

Q. Do you know what distribution was given other than to Mr. Muth?

A. Well, the copies indicate it.

Q. Other than the carbon copy, was there other distribution?

A. No, I do not know.

Q. Do you recall that along with the document the attachment here of six pages, were they prepared by you?

A. When you say "prepared," I don't exactly know what you mean. As is indicated in the first paragraph of that letter, I would judge that this was a report that was based on information that came into us from the divisions, in other words, from the field.

[fol. 1632] Q. Yes?

A. And I believe that my purpose in this program was to take that data that came in from the field and compile it into a report, and that would be where these figures came from for the most part.

Q. And you in turn sent these on to the people indicated?

A. I did.

Mr. McManus: Your Honor, the Government offers 400-A, G-400-A.

Mr. Hughes: Your Honor, there may be some preliminary examination.

The Court: Yes.

Mr. Hughes: And again I think the distinction between voir-dire and cross-examination tends to merge.

The Court: I think so, Mr. Hughes, but we are not going to be overly technical on that.

Mr. Hughes: Yes, sir.

Cross-examination.

By Mr. Hughes:

Q. Mr. Hatfield, did this document get any circulation outside of the company?

A. To the best of my knowledge, it did not.

Q. Now, at the time when you prepared this document, were you an officer of the corporation?

[fol. 1633] A. I was not.

Q. Were you a director?

A. I was not.

Q. Did you have any power or authority to commit the company?

A. I did not.

Q. Did you formulate policy for the company at that time?

A. I did not.

The Court: There is no doubt about the fact, is there, Mr. Hatfield, that you prepared this document in the course of your duties?

The Witness: No, sir; no doubt.

Q. And that this was not a routine document, was it?

A. I wonder if you could explain "routine"?

Q. Well, how many reports have you ever made during your association with the company?

A. Well, I have made a good many reports. If you are speaking of this subject, Mr. Hughes, then I believe this is the only one I ever did prepare and compile.

Q. Is this the only report on this subject matter that you ever prepared during——

[fol. 1634] A. To the best of my knowledge, that is true.

Q. Now, at the time that you prepared this report, you did not profess to be an expert on marketing, did you?

A. No, sir.

Q. Or an expert on the subject of consumer preference?

A. No, sir.

The Court: How long had you been with the company by then?

The Witness: I had been with the company approximately ten years, your Honor.

Q. And about how old were you at that time?

A. 31.

Q. And you were in between assignments when you prepared this document?

A. Yes, I was.

Q. Now, can you recall what the purpose of this report was as you look back on it?

A. Well, not specifically, Mr. Hughes. Of course, we are always interested as a packaging company in compiling information of interest generally about packages, and I would say that such a report as this would be prepared for information purposes.

[fol. 1635] Q. And am I correct that the first paragraph of your memorandum accurately describes your function, namely, that of summarizing material that came to you from other sources; is that correct?

A. Yes, it came to us from the field sales organization.

Q. And do you have any present recollection of what was contained in that field material?

A. No, sir.

Q. And you don't know whether any of that material is in existence, or its whereabouts; is that correct?

A. I do not; correct.

Q. Now, do you recall whether any action of any kind whatever was taken on this document?

A. I do not recall any action that was taken as a result of that document.

Q. Do you remember what befell the document?

A. No, sir; I do not.

Q. And were the prices of cans in any way affected by this study of yours?

A. To the best of my knowledge, no.

Mr. Hughes: Well, your Honor, that completes my examination.

[fol. 1636] Is there any offer of the document?

Mr. McManus: Yes, there has been an offer, your Honor.

The Court: Yes, it has been offered.

Mr. Hughes: For what purpose?

The Court: I think that is a fair question.

Mr. McManus: Your Honor, we think that this document, along with the others, shows the concern that this company has of competition from glass containers.

Now, we are not saying that every piece of information in this document is true, because obviously this gentleman doesn't know, or at least he says he doesn't know the price per thousand of glass containers for raviola or something of that nature. But it does indicate that this company was at least concerned with the price of glass containers to have Mr. Hatfield assemble this data and to send it to the vice-president in charge of sales, and to Mr. Muth, who, did you say, was in commercial research?

The Witness: Market research.

Mr. McManus: Market research.

The Witness: I think that was his capacity at the time. I wasn't quite clear, Mr. McManus, what his assignment was.

[fol. 1637] Mr. McManus: And we think, your Honor, it does show the concern of the can companies for competition that they are presently having or have had from glass containers.

Mr. Hughes: Well, your Honor, it seems to me that first, as I understand it, it is not being offered for the truth of any facts or purported facts stated therein.

The Court: That is as I understand it.

Mr. McManus: That is correct.

Mr. Hughes: And I object to it for the purpose for which it is being offered, on the ground that no proper foundation has been laid and that it is not admissible either as an admission or as a business record under Section 1732.

The Court: Your objection is overruled. It will be admitted for the limited purposes for which it is being offered.

(Government's Exhibit 400-A for identification received in evidence.)

The Court: Anything further with this witness?

Mr. McManus: No, your Honor.

[fol. 1637a] The Court: All right, you may step down, Mr. Hatfield. Thank you.

(Witness excused.)

The Court: We will now take a recess and adjourn until 10.30 tomorrow morning.

(Adjourned to June 28, 1960, at 10.30 a.m.)

[fol. 1638] New York, June 28, 1960; 10.30 o'clock a.m.

Trial resumed

The Court: All right, Mr. Greenberg.

Mr. Greenberg: Your Honor, the Government's next witness is Mr. White.

The Court: All right, have Mr. White take the stand, please.

Mr. Greenberg: Your Honor, Mr. White's testimony will relate to a series of documents.

The Court: I think I have the numbers noted here.

Mr. Greenberg: Yes, you do.

The Court: The clerk will get them before me, but first swear the witness.

H. Ferris White, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Court: Now, before you start, what is your procedure here? Are you going to take these in numerical [fol. 1639] order?

Mr. Greenberg: No, your Honor. We will first refer to the minutes of meetings which commence with Government's Exhibit 139 for identification.

The Court: Running through to what?

Mr. Greenberg: Running through 170, your Honor, the balance of the book.

The Court: These are all minutes of meetings, are they?

Mr. Greenberg: Minutes of meetings or documents which have been appended or attached to minutes of meetings.

The Court: All right.

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. Pardon me?

Q. Where do you reside, sir?

A. Mr. Greenberg, I am a little bit hard of hearing, so will you please speak a little louder. The office is at 821

15th Street Northwest, Washington, and I reside in Alexandria, Virginia.

Q. You are employed by the Can Manufacturers Institute?

A. That is correct.

[fol. 1640] Q. How long have you been employed by it?

A. Since the inception, which was the beginning of 1939.

Q. What positions have you held with the Can Manufacturers Institute?

A. The positions have all been the same with three different titles. First I was vice-president, then executive vice-president, now called executive director.

Q. Sir, what in general have been the activities of the Can Manufacturers Institute during your experience with it?

The Court: How long have you been with the Institute, Mr. White?

The Witness: Since inception, your Honor; that is 1939 it was started.

The Can Manufacturers Institute has a very small staff of three people. As a consequence it has to operate through a series of committees drawn from its membership. Those committees deal with different items, for example, a traffic committee, industrial relations, safety, research, promotion, food additives recently. That in general are the main committees.

Q. When you say promotion committee, what do you mean [fol. 1641] by that?

A. Over the years there have been promotional efforts carried on by a separate committee set aside from the CMI proper, but nevertheless functioning and reporting to the CMI.

Q. Was Dr. Miller McClintock employed by your organization from February 1, 1941 through December 31, 1942?

A. Yes, he headed our research division.

Q. And he passed away just recently, is that correct?

A. Yes.

Q. What was his position during his employment with the Can Manufacturers Institute?

A. Director of what was called the research division.

Q. What did the research division do during his tenure?

A. During his tenure the research division was initially set up to explore and determine whether or not it would be to the advantage of the can manufacturers, the tinplate manufacturers, to spend monies in promotion of cans and therefore tinplate. That was part of that function. It was interrupted by the defense period, when the research divi-
[fol. 1642] sion was turned to developing facts and figures supporting our position in Washington.

Q. Sir, was such money expended for promotional activities after the termination of Dr. McClintock's services?

A. After the termination of his services an advertising division occupying the same physical space but with an advertising director carried on advertising activities.

Q. And that began in 1943, is that correct, approximately?

A. I think that is correct.

[fol. 1643] Q. And what was their function? What was their work?

A. The promotion of cans, and therefore tinplate.

Q. Through what media?

A. Through what media?

Q. Yes.

A. Benton & Bowles was retained, so they used the usual advertising media of magazines, plus activities to determine vitamins in canned food—the usual advertising agency routine.

By the Court:

Q. Let me ask you this, Mr. White:

Who comprises the membership of the Can Manufacturers Institute?

A. The Can Manufacturers Institute, currently, your Honor, we have 49 members, all accredited can manufacturers.

Q. Does that include most of the leading American, Continental, National, and so forth?

A. It would represent, sir, better than 90 per cent of the production of the industry.

Q. And in connection with this, are any of the tinplate manufacturers members?

[fol. 1644] A. No, sir.

Q. But they agreed to cooperate on the campaign that you spoke of?

A. Yes, your Honor.

Q. Did they supply some financing for the campaign, too?

A. Yes, sir.

Q. It was a jointly financed enterprise?

A. At one point it was solely financed by the tinplate manufacturers. Then later on it was joint.

The Court: Thank you.

By Mr. Greenberg:

Q. Sir, does the Can Manufacturers Institute have a board of directors?

A. Oh, yes.

Q. And how are the members of the board of directors selected by the Can Institute?

A. Well, it is a rather complicated method, but I can't tell you out of memory. It is in the by-laws, it is set forth in the by-laws. At one time it was based on a number of plants, and I think we changed that, and I am sorry, but I cannot tell you right now.

Q. Is it the number of employees, sir?

A. What?

[fol. 1645] Q. Number of employees?

A. The dues are based on number of employees engaged in can manufacture.

Q. Now, in June of 1949, or thereabouts, did a marketing bureau succeed to the duties and responsibilities and functions of the advertising division?

A. I can't quite accept that statement, Mr. Greenberg. They succeeded the advertising division, but it was an entirely different philosophy of promotion.

Q. What did they do, generally?

A. Operating on a much smaller budget, the can manufacturer always has difficulty in trying to aid any of his customers, because the man with the largest pack always wants that aid. The philosophy behind the marketing bureau was that they would help guide anybody who was willing to help themselves to some degree, so that they could get behind the pimento packers and some small ones and not necessarily just the big ones.

Q. Sir, I am going to refer now to the minutes of your Association, and I show you Government's Exhibit 139 for identification and ask you if you recognize it.

A. Yes.

[fol. 1646] Q. Would you tell us what it is?

A. Well, those are the minutes of a special meeting of the administrative committee for the Research Division of the Can Manufacturers Institute, Monday, March 10, '41.

Q. Sir, there is indication that certain individuals were present.

A. Correct.

Q. Would you identify what positions they held?

The Court: Well, now, in the first place let's ask Mr. Hughes, with respect to these minutes, what is your position with respect to them, so that we know the extent to which we have to take proof on them?

Mr. Hughes: Perhaps I can answer that, your Honor, by just asking a couple of questions with respect to this particular document, and then not burden the record with similar questions.

The Court: That would be fine, I think. Do you want to do that now?

Mr. Hughes: Yes.

The Court: Let's do that now and clear whatever underbrush away we can clear away.

Mr. Greenberg: We are agreeable to that, your Honor.

[fol. 1647] The Court: Now try and keep your voice up for Mr. White, will you, please?

Mr. Hughes: Yes.

Preliminat*ion* Cross-examination.

By Mr. Hughes:

Q. Mr. White, you did not prepare these minutes, of which G-139, I take it, is typical; is that correct?

A. That is correct.

Q. By whom were they prepared?

A. By one Clifford E. Sifton, who was secretary at that time.

Q. And did Mr. Sifton have working notes of the meetings from which he drew to prepare these minutes?

A. That is correct.

Q. And are those working notes in existence today, so far as you know?

A. No, sir.

Q. Did you attend the meetings of the administrative committee, as I see it is called, administrative committee for the Research Division? Did you attend those meetings?

A. Yes, sir; in an observer's capacity.

Q. That is to say, the membership itself was made up of members of the board, and you attended in an ex officio capacity; is that correct?

[fol. 1648] A. Well, if "ex officio," sir, means sort of observer's capacity, yes, sir.

Q. You were an observer to see and observe what was happening and to be abreast of what was happening and to be in a position to implement any decisions that might be made where it was necessary for you to do the implementation; is that correct?

A. That is correct.

By the Court:

Q. Now, are these minutes, Mr. White, kept in the files of the Can Manufacturers Institute?

A. Yes, your Honor.

Q. They are kept regularly in those files? Is that a complete record of these minutes, is it, as far as you are aware?

A. As far as I am aware, yes, sir.

By Mr. Hughes:

Q. Now, at the time of the existence of the administrative committee for the Research Division, at the time when that was in existence, did it hold its meetings at a place separate and apart from the regular offices of the Can Manufacturers Institute?

A. The Research Division and the Advertising Division, which subsequently became the Marketing Division, had [fol. 1649] offices on the same floor, but separate and apart from the CMI offices.

Q. Well, your main offices were in Washington, were they not, the offices of the Institute were in Washington; is that correct?

A. We had two offices, Mr. Hughes, our office in Washington, where I was resident, and an office in the Lincoln Building.

Q. And the committee to which we have been referring made its headquarters up here in New York; is that correct?

A. That's right.

Mr. Hughes: Now, your Honor, before I indicate whether I object or don't, I would like to know the purpose of the offer.

The Court: I think that is a perfectly fair question, and, Mr. Greenberg, will you tell us what the purpose of these minutes are?

Mr. Greenberg: Your Honor, this minute of the meeting on the day held, as well as the subsequent minutes of meetings, report the events as they occurred during the meetings of the administrative committee. But they also indicate, your Honor, the Can Manufacturers Institute concern with competition from other forms of packaging material, includ-
[fol. 1650] ing glass containers, and in some instances mainly glass containers. They authorized Dr. Miller McClintock and his staff to conduct various surveys to determine what their advertising approach, if any, would be in the future.

The Court: Of course, this first one authorizes the retainer apparently on its face of something called the Psychological Corporation, at $600 a month. Now, is that merely part of a chain of events that you seek to establish?

Mr. Greenberg: Exactly, your Honor. When read together with——

The Court: Because by itself this is of no significance.

Mr. Greenberg: I fully agree with you, your Honor. But all of the minutes of meetings taken together with the other exhibits which have been marked, surveys of various types, we think indicate what I just asserted.

The Court: They show various activities of the Canners Institute with respect, you say, to the subject, among others, of competition with glass.

Mr. Greenberg: That is correct, your Honor.

Mr. Hughes: Well, do I understand that one of the pur-
[fol. 1651] poses of the offer is to show activities of the Institute? Is that one of the purposes?

Mr. Greenberg: Now, the purpose of the entire offer, of all the documents, the minutes of meetings and the surveys, which I will inquire into, will be put into that purpose.

Mr. Hughes: Well, I object to it for any such purpose on the ground that it is irrelevant and immaterial.

The Court: Overruled.

Mr. Greenberg: I have just one question at this point with respect to this minute.

By Mr. Greenberg:

Q. Sir, have you ever had any inquiries questioning the accuracy of this minute?

A. No.

Q. And would the same be true——

Mr. Greenberg: Withdrawn.

The Court: All right.

Mr. Hughes: Now, your Honor, I think I can save time and say that as these documents are offered, the line of questions that I would propound would be substantially the same as to each of them.

The Court: And you would raise the same objection as to [fol. 1652] each of them.

Mr. Hughes: I would.

By the Court:

Q. Have you examined the various minutes that are referred to here by the Government, Mr. White?

A. In most cursory fashion, your Honor. They were desired by counsel and we delivered them.

Q. Well, you think you see enough of them to be able to say that your answers to the questions asked you by Mr. Hughes with respect to this first minute would be the same with respect to the others, substantially?

A. I am not sure that it is clear in my mind just what you are asking me about.

Q. Well, Mr. Hughes asked you a series of questions directed at the minutes of March 10, 1941, that we have just been discussing. Would your answer, if the same questions

were asked you, with respect to the minutes of May 12, '41, of June 9, '41——

A. I'd say virtually, yes, sir.

Q. —of July 14, '41; of October 14, '41?

A. Yes, sir.

Q. Of November 10, '41; November 17, '41, would your answer to those questions be substantially the same?

[fol. 1653] A. Yes, your Honor.

The Court: Very good.

Now that doesn't preclude you from asking any questions as you go along.

Mr. Hughes: Yes.

The Court: As to the subject matter of the minute, Mr. Hughes?

Mr. Hughes: Yes, sir; I understand that, and I just want to ask one more preliminary question.

By Mr. Hughes:

Q. Mr. White, did you personally have anything to do with the activities of this marketing research committee, or whatever its name was?

A. No, sir; other than to attend as an observer the meetings that were held.

[fol. 1654] The Court: Did the marketing research committee or the administrative committee, whichever it was, keep you informed of what it was doing?

The Witness: Sir, I attended the meetings when they had them, but they were under, in each case, a director and it was his responsibility. I was busy in Washington with war conditions and——

The Court: Did the director report to you or not?

The Witness: He reported only in committee meetings.

The Court: Only in committee meetings?

The Witness: That's right.

The Court: Very good.

By Mr. Hughes:

Q. This director was the Dr. Miller McClintock to whom allusion has been made, is that right?

A. Pardon me?

Q. The director was Dr. McClintock?

A. He was director of the research division.

Q. And it was not part of his duties to report to you but it was his duty to report to the committee, is that correct?

A. That is right.

[fol. 1655] Direct examination Continued.

By Mr. Greenberg:

Q. And the committee we are referring to is the administrative committee, is that correct?

A. The committee over the research division, that is correct.

Q. At any rate, the minutes of meetings here reflect the reports of Dr. McClintock's committee?

A. That is right.

Mr. Greenberg: Your Honor, so that I fully understand the procedure now, am I going to show the witness each of these documents?

The Court: No, I have already referred by date to Exhibits 139 through 150, inclusive. As a matter of fact, I did not refer to 150.

I will ask you, Mr. White, about this exhibit. Exhibit 150 is the minutes of meeting of the special committee of the administrative committee for research on January 19, 1942, and I assume that your answers with respect to questions similar to those asked by Mr. Hughes would be the same for this document?

The Witness: That is right, your Honor.

The Court: So that we have covered, as I understand it——

Mr. Greenberg: This goes to 170, your Honor.

[fol. 1656] The Court: I am only talking now about minutes, and the last minutes that I see here is December 14, 1942, which is 166. Am I correct in that?

Mr. Greenberg: Your Honor, the minutes you referred to refers to the report which we have marked G-167, and that is really an attachment to it and a part of the minutes of meeting.

The Court: I see. And then 168, 169 and 170 are exhibits attached to that report, are they?

Mr. Greenberg: We believe that to be so, your Honor.

The Court: Well, perhaps we better first then take the minutes through 166.

Do any of the other minutes have exhibits attached to them?

Mr. Greenberg: Yes, your Honor. There is at least one other exhibit which has an attachment.

The Court: Mr. Hughes, may I ask you, have you any questions about the exhibits attached to the minutes?

Mr. Hughes: Well, I think I may have some questions which have reference to those exhibits.

[fol. 1657] The Court: What I am getting at is this: do you raise the question as to whether the exhibits were actually attached to the minutes or not?

Mr. Hughes: I would just like to have the witness's answer. I just do not know, your Honor——

The Court: All right.

Mr. Hughes: And I would like to have the witness's answer.

The Court: Then let us try and take all the ones without exhibits, up to the one where there is an exhibit, and that goes to 157, I think.

Mr. Greenberg: No, your Honor. There is an exhibit attached after G-146 and this is entitled "Digest of Recommendations Presented to the Administrative Committee of the Research Division by Dr. Miller McClintock."

The Court: Then 139 to 145 will be admitted.

Mr. Hughes: Could I just add an additional ground of objection, the ground of hearsay?

The Court: Overruled.

(Government's Exhibits 139 through 145 for identification received in evidence.)

Mr. Greenberg: Your Honor, may I just ask the witness if his answers to my questions equally apply to all the [fol. 1658] minutes of meetings enclosed within this exhibit book?

The Court: You have got it and you don't have to ask any more questions when the exhibits are in.

Mr. Hughes: Your Honor, I do want to be sure that I understand the basis on which your Honor is taking these documents.

For example, in G-147 there is a statement, a sort of an opinion statement, a recommendation by Mr. McClintock, and the minutes state, if your Honor will turn to paragraph 2, where there appears a conclusory observation.

The Court: You are talking about 147 now?

Mr. Hughes: Exhibit 147.

The Court: "It is further concluded" and so forth?

Mr. Hughes: Yes, sir, your Honor.

Now there are used there the words "competitive types of containers," and again you get into this whole subject matter of the whole basis of this lawsuit. We are saying that that is something that your Honor has to decide and nobody can decide it for you, and we do not want a document to [fol. 1659] come in on the theory that it gives the whole picture of the can manufacturers and is later to be used as evidence that somebody, either the Institute or some of its constituent members regarded certain containers as having been of a competitive type within the meaning of competition as we feel it has to be interpreted by your Honor. So we do not want——

The Court: Let us understand one thing, Mr. Hughes. The decision in this case is not going to be made by the Can Manufacturers Institute, it is going to be made by me.

Mr. Hughes: Yes, sir.

The Court: That is No. 1.

Mr. Hughes: Yes, sir.

The Court: No. 2, as I view it, this evidence is coming in to show what the Can Manufacturers Institute, representing, as Mr. White testified, 90 per cent of the can manufacturing industry, did through one of its official committees.

Now, insofar as it goes beyond what the Can Manufacturers Institute did, or indeed as to any points of view that it expressed, which may be relevant here, insofar as it goes beyond that, I am not taking it for any other purpose, and [fol. 1660] I don't think Mr. Greenberg is offering it for any other purpose.

Is that correct, Mr. Greenberg?

Mr. Greenberg: That is correct.

The Court: Is that clear now?

Mr. Hughes: I think it is, your Honor, yes.

Mr. Greenberg: What stage are we at now, your Honor?

The Court: Well, I understood that you had offered 139 through 145, inclusive, and that I have ruled.

Mr. Hughes: Same objection.

The Court: Same objection, Mr. Hughes. All of Mr. Hughes' objections apply to all of the exhibits and they are all overruled.

Mr. Hughes: That brings us to——

The Court: That brings us to 146. Mr. Clerk, you can make notes and actually mark these physically later.

The reason that I have permitted further discussion with respect to 146 is because 146 has an exhibit which purports to be annexed, and if you wish to ask any questions about it, you may. If not, I will permit Mr. Hughes to question Mr. [fol. 1661] White about that.

Mr. Greenberg: I did want to correct one error at this juncture. Through overzealous tabbing, your Honor, we simply tabbed the second page of the minutes of the meeting of November 17, 1941, as G-146, but G-146 is really part of 145, and the attachment is G-147.

The Court: Then we will eliminate G-146 entirely.

Mr. Greenberg: Yes, sir.

The Court: Because it is only an extra page of 145.

Mr. Greenberg: Yes, sir.—

The Court: Which brings us to G-147.

Mr. Greenberg: Yes, your Honor.

By Mr. Greenberg:

Q. Mr. White, I show you Government's Exhibit 147 for identification and ask you if you recognize it?

A. Yes.

Q. What is it?

A. A digest of recommendations presented to the administrative committee, the research division of the Institute, but Dr. Miller McClintock.

Q. And did this come out of your file?

[fol. 1662] A. I believe it did.

Q. And, sir, is it part of Exhibit G-145 for identification which constitutes the minutes of meeting for November 17, 1941?

A. Is this document that you are asking me to identify part of another document?

Q. That is correct.

A. It appears to be, from the context of the minutes.

The Court: All right, Mr. Hughes.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. White, did you have anything to do with the preparation of this Digest of Recommendations which is Exhibit G-147?

A. Nothing whatsoever.

Q. And you are not in a position to tell us what Dr. McClintock did or anyone on his staff did that led him to prepare this Digest of Recommendations, is that correct?

A. That is correct.

Q. Now while we are about it, at the time when this research bureau was set up, wasn't there some concern among the can manufacturers because of the growth of frozen foods?

[fol. 1663] A. There was concern of competition with frozen foods and lockers which were growing up around the country, and fresh foods—all competition, that was the promotion of cans per se.

Q. And this program that we are talking about was not aimed at the glass container as such, was it?

A. Aimed at promoting cans, sir.

Q. And aimed at promoting and setting forth to the public the advantages of the can as a container, is that correct?

A. Correct.

Q. And at the time, at this time of which we are speaking, was there also concern about the growth of the so-called fresh foods industry?

A. Well, in the promotion of cans, Mr. Hughes, we conducted studies as to the vitamin content of canned foods compared with so-called fresh to the advantage of canned foods.

The Court: What do you mean by "so-called fresh"?

The Witness: So-called fresh, your Honor, is when they come from the Coast or some place, long distances, and they are held overnight, and finally they appear in your retail [fol. 1664] market. We don't think they are very fresh by the time it gets there.

Q. And if I may summarize the whole purpose of the project, it was to focus the attention of users upon the advantages of the can as a container as distinguished from any other type of packaging material; is that a fair statement of it?

A. That is a fair statement.

Mr. Hughes: Well, your Honor, I object to this.

The Court: On what ground?

Mr. Hughes: Irrelevant and immaterial and hearsay and no proper foundation laid.

The Court: Well, I call your attention to the fact that the minutes are dated November 17, 1941, and this document is dated November 25, 1941. That is why I asked what the basis of your objection is.

Mr. Hughes: That is an additional ground of objection, your Honor.

Mr. Greenberg: Your Honor, the body of the document or the title "Digest of Recommendations," indicates that they apparently contemplated submitting it on November 17, 1941, but it was executed at a later time, and I would assume that the officials of the Can Manufacturers Institute [fol. 1665] merely appended it to this exhibit.

At any rate, when we acquired the minutes of meetings of this Can Manufacturers Institute, we did not in any way, or at least did not intend, to plagiarize or upset the numbering system that they used and so we just put the document in as it was.

The Court: Well, being technical about this, I don't see any reference to this document per se in the minutes, or any statement in the minutes that appended thereto is a document entitled "Digest of Recommendations" et cetera.

Now, if at some future meeting the minutes of this meeting with the document appended were approved or something of that nature, then it goes in as part of the minutes.

Mr. Greenberg: Your Honor, most respectfully, there is

a reference to these recommendations in the fourth paragraph down, which reads:

> "In view of the unavoidable absence of several members from the Board of Governors meeting on Monday, November 10th, Dr. Miller McClintock repeated in shorter form his comprehensive preliminary report on the work of the research division covering the past [fol. 1666] nine months, outlined his conclusions, and made specific recommendations for the future program of the research division."

The Court: That is perfectly true.

Mr. Greenberg: And in the last paragraph of the Digest of Recommendations, which is G-147, which is signed by Dr. Miller McClintock, he says, "The above is a true and accurate digest of the conclusions and recommendations which in principle were approved by the administrative committee of the research division at a meeting held on November 17, 1941."

And, as I said, your Honor, we received the minutes of meetings in that form, and, of course, we did not want to change the order.

Mr. Hughes: Your Honor, it seems to me that this points up the whole problem of what we are confronted with when there is a mass offer of documents of this kind.

Mr. White acknowledges that he does not really have any knowledge about this document and we are powerless to cross-examine the document itself.

I also urge, your Honor, that all of these minutes are so [fol. 1667] remote to any time that we are now dealing with that——

The Court: That may be, Mr. Hughes, but that is a matter of argument.

Mr. Hughes: Well, your Honor——

The Court: That is a matter of argument and weight.

Mr. Hughes: Well, I press it as an additional reason why the document should be excluded. It seems to me that we are put in the position where these documents come in in this broad fashion, and while it is true that your Honor has carefully indicated some limitations, we are in the perilous position where there has crept into these minutes some

statements of fact or some things that might be a mixed question of fact and opinion, and there is always the danger that we have not had the opportunity either to explain that fact or to disprove it as a fact.

So that I can only repeat that it does seem to me that the taking of these documents in this wholesale manner does effectively deprive us of the opportunity of cross-examination in many respects.

The Court: That may be, but the difficulty lies, Mr. Hughes, in the rules of evidence, I think, and not in anything [fol. 1668] else.

The only question now is 147.

With respect to 147, are you familiar with Mr. McClintock's signature? Do you recognize it, Mr. White?

The Witness: Your Honor, that was back in 1941. That looks, as I remember it, and I would think that that was his signature, but I can't at that distance swear to it.

By the Court:

Q. Can you tell us where this came from, this document?

A. Well, from our files.

Q. Do you know which files?

A. No, sir, I don't.

Direct examination Continued.

By Mr. Greenberg:

Q. Sir, don't you have bound minute books?

A. Pardon me?

Q. Don't you have bound minute books which you showed me?

A. That's right.

Q. Doesn't that document come out of those bound minutes books?

A. I don't know. I presume it might have; I can't tell you.

[fol. 1669] The Court: I am not going to let it in if you cannot tell me where it came from, because, Mr. Greenberg, let it be quite clear, that because Dr. McClintock made some oral recommendations to a meeting and perhaps later made

a memorandum of it, does not mean that they were part of the minutes of the meeting.

Mr. Greenberg: Your Honor, we reproduced or photostated the originals of the minutes of meetings. We thought that we had a stipulation from Mr. Hughes that the reproductions or photostats would be equally admissible with the originals. We could have subpoenaed the books and records of the Association, but we assumed that since we had this stipulation that that would not be necessary.

I would like to approach the Bench, your Honor.

The Court: Well, you don't have to approach the Bench.

Mr. Greenberg: This is on another point.

The Court: On another point?

Mr. Greenberg: Yes. Would you join me, Mr. Hughes?

[fol. 1670] (The following took place at the Bench.)

Mr. Greenberg: Your Honor, the law firm which represents the Can Manufacturers Institute is Mr. Hughes' firm. Mr. Garvey, who is mentioned as being present at this meeting, was the man who apparently had reviewed all of those matters, and we can, of course, subpoena him——

The Court: That is something that is a tempest in a teapot about this particular document. If this was appended to the minutes of the meeting and included in the minute book and there is a minute book, I am going to let it in.

Mr. Hughes: Your Honor, I just don't know what the fact is.

The Court: Then check it and let me know and apprise me as to whether it is appended or not. The Government represents, I take it, that it was appended?

Mr. Greenberg: Yes, we do.

The Court: I am going to let it in subject to a motion to strike.

Mr. Hughes: Your Honor, as long as this subject has been presented to you, I think your Honor should know that Mr. White is being separately represented by counsel.

[fol. 1671] The Court: He is?

Mr. Hughes: Yes, of his own choosing, and Mr. Edward J. Bennett is here in the courtroom. He has been quiescent but he is here.

The Court: If Mr. Bennett wants to be heard at any time I hope he understands that I will hear him.

Mr. Hughes: We have told him that, your Honor.
The Court: Very good.

(The following took place in open court.)

The Court: 147 is admitted subject to a motion to strike.

(Government's Exhibit 147 for identification received in evidence.)

Mr. Greenberg: Your Honor, I understand that we are now to go through these minutes one at a time, is that correct?

The Court: Well, only in the sense if they have exhibits, Mr. Greenberg. Let us take them as I have them here.

148 has none, and that will be admitted subject to Mr. Hughes' objections which I have overruled.

[fol. 1672] 149, the same thing.

150, the same thing.

151 appears to be a second page of 150. That is eliminated and there will be no 151.

152, the same thing.

153 is the second page of 152 and is out of the record.

154, the same thing.

155 is the second page of 154 and it is out of the record.

156, the same thing. 157 is the second page of 156 and is eliminated.

158 has some exhibits.

By Mr. Greenberg:

Q. I show you Government's Exhibit 158 and ask you to identify it.

The Court: 158, Mr. White, is another set of the minutes, is it not, that we have been talking about?

The Witness: Yes, sir.

Q. That is Mr. Siffron's signature, is it not?

A. That is right.

Q. And he was secretary of the Association?

A. That is correct.

[fol. 1673] Q. And his signature appears on other minutes of meetings, isn't that correct?

A. I believe on most of them, it does.

The Court: 159 is the second page of 158 and that is out. What about 160, what does that purport to be and where did it come from?

The Witness: The body of the minutes, your Honor, seems to state that Dr. McClintock submitted two financial reports.

The Court: And those would be statements of expenditures for May?

The Witness: For May, and an itemized list of carryover expenditures deductible.

Mr. Greenberg: The Government has said, your Honor, that G-160 and G-161 are attachments to G-158 and are referred to in the body of Government's Exhibit 158.

The Court: They appear to be the exhibits referred to in the minutes. Do you want to question about that?

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. White, do you know whether Exhibits 160 and 161 that the Court referred to are referred to in G-158?

[fol. 1674] A. Whether they are the ones referred to in 158, Mr. Hughes? In the minutes of 158 it says statement of expenditures of a certain date. The first one would seem to be so labelled. The second one I can't find as being labelled in quite the way it is referred to and I don't know.

Mr. Greenberg: This has a reference to the 1941-1942 operations here.

The Court: Subject to a motion to strike in the event that you discover they are not in the minute book, I am going to admit them.

Mr. Hughes: Your Honor, may I inquire what the purpose of the offer of Exhibits 160 and 161 is?

Mr. Greenberg: Your Honor, we offer them for the same purpose as was described for the prior minutes of meetings.

The Court: You mean merely as part of the activities of the Can Manufacturers Institute?

Mr. Greenberg: That is correct.

The Court: All right.

Mr. Hughes: The same objection.

The Court: Overruled.

Now 162 seems to be minutes without any exhibits. The

minutes of July 13, 162, will be admitted on the same con-
[fol. 1675] ditions and under the same rulings as the previous minutes.

163 is out since it is the second page of 162.

164 appears to be the minutes of November 7th and that will be admitted on the same conditions and under the same rulings as the previous minutes.

165 is the second page of 164 and that is out.

166 has various exhibits attached to it. Let us proceed to 166.

Direct examination continued.

By Mr. Greenberg:

Q. Now I show you G-166 for identification. Can you identify this as a minute of the meeting of the administrative committee of the research division?

A. It appears to be unsigned but it has a regular format of minutes.

Q. Sir, I direct your attention to the No. 47 at the top of this sheet.

A. Yes.

Q. What does that indicate?

A. I don't know what No. 47 indicates.

Q. Do you number your minute books?

A. Pardon me?

Q. Do you number the pages of your minute books?

[fol. 1676] A. I don't know whether we do or not. This is not my job.

Q. Have you seen the minute books?

A. Yes, indeed; of course I have.

Q. And there are numbers at the top, are there not?

A. I don't know whether there are numbers at the top.

Mr. Greenberg: At any rate, your Honor, G-167, which the Government asserts is an attachment, is referred to on the first page of 166, and the fourth paragraph, where it is stated that "Mr. Heekin read the attached report and the Research Division's technical committee composed of Mr. J. J. Vertrees and Mr. H. A. Goodwin."

[fol. 1677] The Court: What about 168?

Mr. Greenberg: Your Honor, I would like to have a moment to discuss this with my associate.

The Court: All right, we will take a brief recess and let you do it.

You might want to look through those, Mr. Hughes, so as to be familiar with them.

(Short recess.)

The Court: All right, where do we stand with respect to 166 and the exhibits appended thereto?

Mr. Greenberg: Your Honor, the Government offers and believes it has offered G-166 and G-167. G-167, we respectfully suggest, your Honor, is clearly referred to in G-166 as an attachment.

The Court: What about 168, 169 and 170?

Mr. Greenberg: Your Honor, we have discussed these three exhibits and we have concluded quite frankly that they may not be attachments to minutes.

The Court: You are not offering them at this time.

Mr. Greenberg: And we are not offering them at this time for that reason. However, we do say they came out of the files of this Association, but we will reserve questioning to a future date.

[fol. 1678] The Court: All right.

Now anything on 166 and 167, Mr. Hughes?

Mr. Hughes: No, your Honor, just the same objection.

The Court: Same rulings. They will both be admitted.

(Government's Exhibits 166 and 167 received in evidence.)

By Mr. Greenberg:

Q. Mr. White, I show you Government's Exhibit 136 and ask you to identify it?

A. That was a document prepared by the Research Division.

Q. And that was Dr. Miller McClintock's division?

A. That is right.

Mr. Greenberg: I offer G-136.

The Court: Now tell us what the purpose of 136 is.

The Witness: The purpose, your Honor——

The Court: Excuse me, Mr. White, I am addressing that question to Mr. Greenberg.

Mr. Greenberg: Your Honor, G-136 purports to be a breakdown of the various kinds of products which utilize or which did utilize tin cans in 1940, and we believe it is the [fol. 1679] product of a questionnaire which reported base boxes and then was converted into tonnage. There is another section of that document which is a 1942——

The Court: For what purpose do you offer this information?

Mr. Greenberg: Well, we offer it for the truth of the facts stated therein, and we also offer it to show the various——

The Court: On what basis do you offer it for the truth of the facts stated therein? There is no foundation or base of any kind to find out how this was made up or where it came from.

Mr. Greenberg: I will ask further questions about it.

By Mr. Greenberg:

Q. Do you know how this document was compiled?

A. Well, I can best describe it as being a crash compilation to determine the amounts of steel consumed by the various products that go into cans. It was compiled by interrogating in different fashion the members of the Can manufacturers industry.

Q. What was the purpose of compilation of this document?

[fol. 1680] A. This, Mr. Greenberg, was during the defense period and we were trying to determine just—the Government didn't know just how much each product took, and we were called into a meeting and told to cut out tennis balls in cans because it was told it would save the nation. This would be a guide to show what went into cans and in what amount.

Mr. Greenberg: All right, your Honor, the Government offers G-136.

Mr. Hughes: I object to it on the ground that no proper foundation has been laid.

The Court: You may examine.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. White, did you personally have anything to do with the preparation of this document?

A. No, sir.

Q. Who prepared the document?

A. This was done by Dr. Miller McClintock and his staff.

Q. In other words, he took time out from these other duties that you have described to get this document up; is that right?

A. Dr. Miller McClintock's organization, sir, switched over. As the economy and the threat to the nation, and as [fol. 1681] we went into the defense period, his staff was devoted to trying to get figures which would be helpful to the Government in the prosecuting of the war.

Q. And you say it was a crash program; is that how you described it?

A. I described it that way, yes, sir.

Q. And isn't it a fact that this document, consisting of 120-odd pages, was gotten up in the space of about a week's time?

A. At this late period I couldn't tell. A very short time. We have never—there were only about three copies, and we have never offered the figures anywhere for other purposes.

By the Court:

Q. What was done with the document?

A. It was used by the governmental agencies, your Honor, to try and show them the distribution of steel and tin and the consumption of steel and tin. We were then being—it was our view that, for example, beer was non-essential and should not be permitted in cans, and other products of that nature. This was an attempt to break down our industry, the first attempt ever made.

[fol. 1682] Q. What was this in the nature of a brief, would you say?

A. Well, it is in the nature of a statistical, hurriedly gotten together statistical compilation, which is, I am afraid, not too dependable.

By Mr. Greenberg:

Q. Did you use this, sir——

Mr. Hughes: Well, now——

The Court: No, Mr. Hughes is examining.

Mr. Greenberg: I thought he had finished.

By Mr. Hughes:

Q. And do I understand you have never considered this document to be a reliable compilation of statistics?

A. I just said to his Honor I was afraid it was not too dependable.

Q. And did the Can Manufacturers Institute ever do anything like this before this document?

A. No, sir.

Q. And has it ever done anything like it since?

A. No, sir.

Q. Does the Can Manufacturers Institute, as part of its activities, collect and collate statistics as an ordinary practice?

A. No, sir; not of this nature.

[fol. 1683] Q. You don't keep any such statistics as this?

A. The only figures we collect are those that are collected by the Government, plus a wage rate survey.

Q. But you don't attempt to get figures from your members or from the industry generally; is that correct?

A. Not of this nature.

Mr. Hughes: No.

By the Court:

Q. I take it from what you say, Mr. White, you don't know really how Dr. McClintock went about assembling this data, do you?

A. No, except that it was in a very offhand manner. We tried to get as rapidly as possible——

Q. Some rough figures?

A. That's right.

Mr. Hughes: I press the objection, your Honor.

By Mr. Greenberg:

Q. Sir, would you say that the figures that were received were estimates of what was being packed in these various end use categories, or what were being produced in these various end use categories?

[fol. 1684] A. In part I would say they would be very definitely estimates.

Q. You say "In part"; what do you mean?

A. You see, in certain things you pack, Mr. Greenberg—we have some 2500 different items that go into cans, and so this is not known, the amount that is consumed.

Q. In other words, this study was the best estimate at that time; is that correct?

A. That is correct.

Mr. Hughes: And the best was none too good; is that right?

The Witness: That's right, too.

Mr. Greenberg: At any rate, your Honor, we offer G-136 into evidence.

Mr. Hughes: I press the objection, your Honor.

Mr. Greenberg: As the best effort possible at the time.

The Court: Oh, no such evidence, no such indication.

Mr. Greenberg: As an estimate, your Honor.

The Court: I will exclude it.

Mr. Greenberg: May I ask further questions, your Honor?

[fol. 1685] The Court: Yes.

By Mr. Greenberg:

Q. Sir, at that time did Dr. McClintock compile any underlying data for this report?

A. I don't think I quite understand what—this was the complete report, as far as I have any recollection of it, being just a set of figures hastily gathered.

Q. You say "hastily gathered," sir; will you tell us precisely how he gathered these statistics?

A. He gathered some by questionnaire, some by telephone, some by telegram. This, as I have said, is a crash program to try and get before the Government as soon as possible. So any means of getting this information was used, and all means.

Q. Now, after this was compiled, you say you wanted to present it to the Government; was it so presented?

A. Pardon me.

Q. Was it so presented to the Government?

A. It was used with the Government agencies. Whether presented in that form, I cannot tell you. The facts that we gained in there are the estimates, or the estimates we gained [fol. 1686] were used with the Government agencies.

Q. What Government agencies are you referring to?

A. Well, Mr. Greenberg, you remember that alphabetical thing. Whether it was the WPB at that time or just what, it was the defense agencies that were concerned.

By the Court:

Q. Were these the agencies, Mr. White, that were engaged, among other things, in the allocation of raw materials?

A. Correct, sir.

Q. And basic materials of one kind or another?

A. Correct, sir.

Q. The War Production Board and the various agencies that operated in affiliation with them?

A. Yes, your Honor.

By Mr. Greenberg:

Q. And, sir, based on the presentation of this study, did these agencies make certain decisions?

Mr. Hughes: I object to the form of that question.

The Court: Sustained. The witness testified that as far as he knew it had never been presented to any agency.

[fol. 1687] Q. Had the information contained in the study been presented to any agencies, sir?

A. I said the facts taken——

The Court: No, I won't permit that question. First of all, let's find out whether the study was presented to any agency.

Q. Was the study presented to any agency, as far as you know?

A. No, sir.

Q. Were the facts contained——

Mr. Hughes: Well, now, I object to the form of that question, as to the facts. If anything is clear it is——

By the Court:

Q. Was the material in this document——

A. The material, your Honor, was used and was presented, was used with different defense agencies.

Q. How much of the material, do you know?

A. I do not, sir.

Q. In other words, some of the material was referred to and some of it was not, as far as you know?

A. Correct, sir.

Q. You don't know which material was referred to and [fol. 1688] which material wasn't; is that right?

A. Correct, sir.

By Mr. Greenberg:

Q. Sir, I direct your attention to the table of contents of this document, and with specific reference to the section on food and beverage containers.

The Court: What page are you referring to? The pages aren't numbered, are they?

Mr. Greenberg: Yes, they are, lower lefthand corner. That particular sections begins at page 7.

Mr. Hughes: Are you referring to the index now, or are you referring——

Mr. Greenberg: I am not referring to the index. I am referring to the table of contents.

Mr. Hughes: Table of contents, yes.

Q. Can you recall whether any part of this section was used with these Government agencies?

A. No, sir.

Q. You don't.

Sir, do you have any documents in your files which would indicate what use was made of this study?

A. No, sir.

Q. Have there ever been such documents in your file?

[fol. 1689] A. Not to my knowledge, Mr. Greenberg. This

was the time when you were dealing with the various agencies, and you presented whatever they seemed to need at the time for their education.

Q. Do you know who presented this material to the various agencies?

A. No.

Q. But you do know it was presented; is that correct?

A. That is correct; it was used, those estimated facts were used.

Q. Now, sir, the study really has a number of parts. Here is a listing of the products, as you can see, food and beverage containers listing of the products; in the lefthand corner, 1940 steel tonnage, and the righthand——

Mr. Hughes: Where are you reading from?

The Court: What are you referring to?

Mr. Greenberg: Any one of the pages, your Honor, of the study. I will refer to page 10, if he wishes.

The Court: Wait a minute, let's find that.

All right, sir, I have page 10. What do you want to ask about?

[fol. 1690] Q. Sir, how were the products, the various products, baked beans, green beans, et cetera, how were these determined for this study?

Mr. Hughes: I object. I don't understand the question.

The Court: I will allow it.

A. Mr. Greenberg, the whole intent, as I tried to point out, of this was to break down our entire industry for the 2500 products that go into there, to show the Government the steel and tin—tin came from outside the country; steel was in short supply, and we were trying to supply them with as much information as possible so that they could be guided by it.

Mr. Greenberg: Your Honor, the Government respectfully suggests that whether these were estimates or some other form of indication of how much tonnage was passed, that might very well go to the weight. But the witness has indicated that the material contained in this document was presented to Government agencies and was made by Dr. Miller McClintock, who was employed by the Research Division at that time.

The Court: Well, Mr. Greenberg, you offered this for the truth of the facts contained therein. I am not going to take it for any such purpose, sir. There is no indication that the [fol. 1691] facts are true and correct.

Mr. Greenberg: Your Honor, then we will offer the document for the purpose of showing the types of areas or types of markets that these can manufacturers operated in at that time.

Mr. Hughes: Well, now your Honor, that is just another guise of offering it for the truth of what it purports to assert, and I object to it for any such purpose, and I object to it on the ground that it hasn't been properly proved; that it is remote in time; that the circumstances of its production make it clear that it is not a reliable document, or trustworthy in the evidentiary sense, and that it is wholly inadmissible.

Mr. Greenberg: I would like to ask just a few more questions, your Honor, with respect to Dr. Miller McClintock.

The Court: All right.

By Mr. Greenberg:

Q. Sir, do you know what Dr. Miller McClintock's experience had been prior to his employment by the Association?

A. Prior to his taking on our job?

Q. That's right.

[fol. 1692] A. I don't believe I do, Mr. Greenberg.

He was recommended by one Archie Morse, who has since passed on, who was then with American Can Company. I don't recall what—I know that when he left us, I think he headed up the Mutual Broadcasting Company for a short time.

Q. And do you know what he did after that?

A. This you have got to verify. I think it was something out in Chicago, in connection with the Britannica Encyclopedia, or something like that.

Q. Now, he had a staff of assistants; is that correct?

A. That is correct.

Q. Can you describe these people for us?

A. Well, they were about varying in number, and used outside agencies, the psychological corporation was referred to. I can't describe them as being other than people

working for them, presumably he thought competent to do their job.

Q. Right. And how much was the budget, if you can recall? What was the budget for Dr. McClintock's Research Division?

Mr. Hughes: Your Honor, I object to this as all irrelevant and immaterial.

[fol. 1693] The Court: Are these questions directed at the admissibility of 136?

Mr. Greenberg: Yes, your Honor. They were compiled by Dr. Miller McClintock.

The Court: I understand that. I just asked you a question.

Mr. Greenberg: Yes.

The Court: I will overrule the objection.

By Mr. Greenberg:

Q. Sir, can you recall what Dr. Miller McClintock's budget was for studies of this type, and others as well?

Mr. Hughes: Now, I object to that.

The Court: I sustain the objection to that.

Q. Do you know what Dr. Miller McClintock's budget was in 1941, sir?

A. No.

Mr. Hughes: Your Honor, I think that question is obscure. Is he asking——

The Court: He said he didn't know.

Mr. Hughes: Oh, I see.

Q. Sir, was this document referred to in any other publication of the Can Institute?

A. We are still talking about this same——

Q. The same study.

[fol. 1694] A. In any other publication of the Can Institute?

Q. That is correct.

A. Not to my knowledge, no.

Q. Didn't you have a book which summarized the activities of the Can Manufacturers Institute over the years?

A. Dr. Miller McClintock's book, which summarized his

activities, but I don't think this was referred to, because his activities were split. This was defense activity; the other was promotional activity.

Q. In other words, this was not a promotional document; is that correct?

A. That is correct.

Q. And it had nothing to do with the advertising program of the Institute; is that correct?

A. That's right.

Q. And the motive or the desire of Dr. McClintock and the Association was to represent to the Government an accurate set of figures; is that correct?

Mr. Hughes: I object to that, your Honor.

The Court: Yes, I will sustain the objection.

Mr. Greenberg: May I have just a moment, your Honor? [fol. 1695] Your Honor, the Government again offers G-136 and respectfully suggests that this was a document which the Institute had no motive to misrepresent. It is not a consumer's survey; it is not advertising.

The Court: Nobody is questioning the desire or any indication that the Institute had any desire to misrepresent. The only question that is being raised here is are these figures in any way accurate? How were they gotten together?

Mr. Greenberg: Your Honor, I think the witness testified that Dr. McClintock had inquired of the various manufacturers, Can Institute manufacturers, as to what their tonnage was in base boxes in various areas; then he converted them. We think it was the best estimate of the Association at that time, and they must have thought so, because they presented material from the study to Government agencies, Government agencies who were concerned with the very serious matter of aligning tinplate for various end uses; and as I understand it, a good part of the activities of Mr. White and other manufacturers in this industry, including Continental Can, was directed to the question of just how much tinplate they were going to get for each of these end [fol. 1696] uses.

And there is a reference to a M-81 order on page 8-A of the exhibit, a War Production Board Order M-81.

The Court: If this was a War Production Board order,

certainly a War Production Board order might have some relevance and you might get it in.

Mr. Greenberg: Your Honor, at that time there was a great deal of excitement and concern by the can manufacturers as to what this War Production Board order would bring about with respect to tinplate consumption by these various companies, or tinplate production. I am quite certain that if the Can Manufacturers Institute used this material with Government agencies, they knew that this information was reliable.

Mr. Hughes: Well, your Honor, the testimony is precisely to the contrary, that it was gotten up in haste; that it was a crash program; that Mr. White does not consider it to be reliable. The extent to which it was used with any governmental agency is certainly obscure to say the least, and the method of gathering the data was so hasty and such a hodgepodge that it couldn't possibly have any trustworthi-
[fol. 1697] ness as a document to be taken for the truth of anything that is contained in it, and I press the objection.

The Court: I will sustain the objection.

Mr. Greenberg: Your Honor, we merely wanted to say that although we do not necessarily agree with what Mr. Hughes said to the Court at this moment, that his statement, or whatever victories he got, or whatever testimony he derived from the witness, merely goes to the weight of the document and not to its admissibility.

At any rate, we offer to prove, and we now make a formal offer of proof with respect to this document, that we believe this document is relevant and material to this action; that it is the best estimate under the existing conditions at that time by this trade association; that they used the information with Government agencies. It may not serve the same weight as an admission out of the files of the defendants, but we do believe it deserves some weight.

The Court: It is no admission of anything.

Mr. Greenberg: No, I didn't mean to state that this was an admission. I was merely trying to say it may not deserve the same weight as an admission out of the files of the defendant, but we believe it certainly has some materiality and
[fol. 1698] relevance to this lawsuit, and we so offer it.

The Court: I will sustain the objection.

Next document.

By Mr. Greenberg:

Q. Mr. White, I show you Government's Exhibit 137 for identification, and ask you if you can identify it?

A. Yes, sir.

Mr. Hughes: Could you bear with us a minute, Mr. Greenberg?

All right.

A. Well, this——

Mr. Greenberg: Just a minute. They are still looking around for their documents.

Mr. Hughes: We have it.

Q. All right. Will you identify that document for us, sir?

A. Yes, that is a defense memorandum prepared by the Research Division.

Q. Now, you say "defense memorandum"; what use was made of this document?

A. That I don't know. I have not looked through it. It would appear to have—to be for the same purpose as I have [fol. 1699] been trying to state before, to show the amount of tin and steel consumed.

Q. So in other words, sir, is this true:

Do you mean that Dr. McClintock, in this period of time, not only compiled the documents G-136, his functional classification, but G-137, for presentation; is that correct?

A. Figures were gathered by Dr. McClintock during this defense period relative to—I notice this happens to be on beer—relative to various products, to show how much steel and tin was consumed by those products.

Q. Now, you say the "defense period of time"; in what period of time did Dr. Miller McClintock compile these various studies?

A. Dr. Miller McClintock, my recollection is, joined the Institute in '41, and I think he bowed out the end of '42.

Q. But at any rate, during this period of time he was concerned with presentation of data with respect to utilization of tinplate?

A. Part time, Mr. Greenberg. The first part he was hired, his first job was to determine by research and survey

whether or not further money should be spent in the promotion of cans as such. Then when we got into the war, then [fol. 1700] his efforts were turned toward getting together figures on various products.

By the Court:

Q. Let me ask you this:

Did Dr. McClintock himself have any dealings, as far as you know, with the War Production Board or comparable agencies?

A. No, sir.

Q. Who did that on behalf of the Institute?

A. Members of the Institute themselves, and I did some of it.

Q. And, sir, was reference made to Government's Exhibit 136 and Government's Exhibit 137 when such negotiations or representations were made to Government boards?

A. No, no, not to my knowledge, not to my recollection. These——

Q. I didn't say—was the document, was this used as a source of information?

A. Mr. Greenberg, the figures were gathered together to inform the Government, also to let us know, who were dealing with the Government, as much knowledge as we could have.

Mr. Greenberg: Your Honor, the Government offers G-137 [fol. 1701] in evidence and G-136 once again into evidence on the ground that the witness has now testified that this was a program which encompassed some period of time, a program to compile information and data for presentation to Government agencies.

The Court: There is no evidence of presentation to Government agencies, Mr. Greenberg.

Mr. Hughes: Nor is there any testimony from the witness which changes his testimony that 136 was gotten up hastily. There is testimony that other things were done, but the document itself was a hasty job, and there has been no alteration of that testimony.

By the Court:

Q. Have you any idea how long it took to prepare 137, Mr. White?

A. No, sir; no, your Honor. We were under pressure on all of these things at that time.

Q. Do you know what was done with this actual memorandum?

A. No, sir.

Mr. Hughes: Your Honor, this was about one week after Pearl Harbor, as a matter of interest.

Mr. Greenberg: I could understand, your Honor, why Continental Can, American Can and all the other members [fol. 1702] of the Institute might be concerned about not being able to get tinplate under the circumstances, among other things, and I don't wish to reiterate, but we do say that this was not random job. This was done for a specific purpose, and it was done by a man retained by this organization who, as far as we could see from the documents, the formality of the documents, the instructions in the document, that they were done to gain the best possible estimates of the situation at that time, and that refers to both G-136 and G-137.

Mr. Hughes: Same objection to this document as to the other.

The Court: If you are offering either one of these for the truth of any of the facts contained therein, I don't see that you have established that they are any reliable indicia of anything.

Mr. Greenberg: Then, your Honor, we still offer it for that purpose, and we will offer it for the additional purpose to show that the Can Institute was concerned with tinplate shortage in raw material, and when tied in with other documents it will show that this necessitated investigations into possible use of glass containers by processors as a substi- [fol. 1703] tute, and fits into the background and the network.

Mr. Hughes: Well, now, your Honor, I object to it for any such purpose. What is the relevance of the fact that the can manufacturers were interested in allocations?

The Court: There is no doubt about that anyway.

Mr. Hughes: There is no doubt about it. But what possible relevance does it have?

Mr. Greenberg: Well, I think it is very relevant, your Honor.

Mr. Hughes: Well, your Honor, it shows—your Honor, we will stipulate that the can manufacturers in the United States were interested in the subject of allocations of metal.

The Court: And very vitally interested.

Mr. Hughes: Yes. Now, if that is all he wants, we will stipulate to that fact.

Mr. Greenberg: That isn't the only point, your Honor.

Mr. Hughes: That is what you said it was.

Mr. Greenberg: Just a moment, Mr. Hughes. We still think it fits into the background, which shows not only were they concerned with shortage of tinplate, but the use of [fol. 1704] substitutes which did not rely on the same raw materials, such as tinplate which were imported from foreign nations.

Mr. Hughes: I object to anything offered for background.

The Court: I will sustain the objection.

Mr. Greenberg: The Government, of course, additionally has offered these documents for the truth of the facts contained therein.

The Court: Well, yes.

By Mr. Greenberg:

Q. Mr. White, I show you Government's Exhibit 138 and ask you if you can identify it.

Mr. Hughes: Just one moment, please.

A. This was a consumer's survey prepared by the advertising agency, Benton & Bowles.

Q. Who was Benton & Bowles? At that time were they retained by your Association?

A. After Miller McClintock's time, the Institute hired a man by the name of Gordon Cole as advertising director and retained the services of Benton & Bowles as an advertising agency.

Q. What was their function to be and what was it after they were employed?

[fol. 1705] A. Promotion preparation of advertisements

and the promotion of cans in whatever manner they were able to convince the advertising director, and he convinced the committee it made sense.

Q. Right. And Government's Exhibit 138 is a survey conducted by Benton & Bowles for the Institute; is that correct?

A. For the Advertising Division—that's right; for the Institute.

Mr. Greenberg: Your Honor, the Government does not offer this document in for the truth of the facts stated therein. The document is a survey of consumer opinion, as to what mothers or fathers or sons or farmers, or what have you, prefer. We offer it to show an awareness of competition from other types of containers, namely and primarily glass containers.

The Court: What do you say, Mr. Hughes? Do you want to examine about it?

Mr. Hughes: No, your Honor, but I am prepared to stipulate—I am not stipulating really that it has any relevance or materiality, but I am prepared to stipulate that the Can Manufacturers Institute caused Benton & Bowles to make the survey.

The Court: And it was prepared and delivered to them [fol. 1706] by Benton & Bowles, and it was before them.

Mr. Hughes: Yes.

By the Court:

Q. Do you know what the circulation of this was?

A. No, sir; but usually, I would say that it did not go beyond the committee.

Q. It went to the committee of the Institute?

A. Correct, sir.

The Court: I will take it.

Mr. Hughes: Well, your Honor, as I understand it, it isn't even offered.

The Court: Well, yes, it is.

Mr. Greenberg: Well, if it is unclear to Mr. Hughes, I now offer that document.

Mr. Hughes: I understood him to say that he was not offering it.

Mr. Greenberg: No, I limited the offer, Mr. Hughes.

Mr. Hughes: Well, your Honor, I do object to it, because in view of the stipulation it is totally unnecessary to have this document in evidence. The whole purpose of the stipulation was to eliminate cluttering the record with a several [fol. 1707] hundred page document, the only purpose of which is to prove what we concede, that they had a survey.

The Court: Well, no, I will overrule the objection and take it for the limited purpose of showing that this was a survey presented to the Institute, and went before its administrative committee.

Mr. Hughes: Your Honor, may I be relieved of the stipulation then to ask a few questions?

The Court: Yes, you may be relieved of the stipulation. However, if you wish I will reserve ruling until you have examined, if you wish to examine, Mr. Hughes.

Mr. Hughes: Well, the questions that I was going to ask I am prepared to ask now.

The Court: All right.

By Mr. Hughes:

Q. Mr. White, the Institute itself had nothing whatever to do with the devising or execution of this survey, is that correct?

A. It was prepared by Benton & Bowles, Mr. Hughes.

Q. It was done by Benton & Bowles.

A. That is correct.

[fol. 1708] Q. And the only thing that you received from Benton & Bowles was the survey itself; that is, this document 138, is that correct?

A. Yes, they prepared this. This is a part of their Madison Avenue technique.

Q. You did not have given to you any of the data from which the survey, the written result of the survey, which is Exhibit 138, was prepared; is that correct?

Mr. Greenberg: Your Honor, I am going to object to the use of the term "you," unless it is defined. Does he mean the committee of the Association who supervised these activities, or does he mean the witness personally, in his question?

The Court: Let's find out what Mr. Hughes actually means.

Q. Mr. White, did the Association receive from Benton & Bowles any of the underlying data from which they compiled this exhibit?

A. Not to my knowledge, Mr. Hughes.

Q. Did you personally receive any such data?

A. Did what?

Q. Did you personally receive any such data from them?

[fol. 1709] A. No, sir.

Mr. Hughes: All right, I object to it on the ground that it is not properly proved.

Mr. Greenberg: I would just like to ask one or two questions, your Honor. There is an ambiguity, I think, on the record.

By Mr. Greenberg:

Q. Sir, Benton & Bowles, while they were employed by you, were supervised by some committee in the Association, were they?

A. As I stated before, Mr. Greenberg, we hired an advertising director, Gordon Cole, who had had great experience along that line. He in turn reported to an advertising committee. They in turn reported to the board.

Q. So in other words, Benton & Bowles weren't off on their own, practically; they were one of these——

A. Benton & Bowles took over for the most part and prepared these things.

Q. But they reported to Mr. Cole, who reported to the advertising committee.

A. That's right.

The Court: All right, the objection is overruled. The document, which is 138, is admitted for the limited pur-

[fol. 1710] pose indicated.

(Government's Exhibit 138 received in evidence.)

Mr. Greenberg: Your Honor, we have an exhibit, which is entitled G-135. Now, this is an exhibit which, very, very briefly, outlines some of the more or some of the well known facts.

The Court: Let's find out about it.

Is there any objection to this Exhibit 135?

Mr. Hughes: Your Honor, may I inquire the purpose for which this is being offered?

The Court: Yes, you may.

What is the purpose of it?

Mr. Greenberg: Your Honor, as you can see from the title, these are notes for advanced technical students.

The Court: You consider me an advanced technical student?

Mr. Greenberg: I most certainly do. I have been impressed by the knowledge you have acquired during this lawsuit.

It may be we don't need this document at this time. We marked it some months ago and turned it over to the defendants on the theory that we might offer it to you for [fol. 1711] background. It may very well be that it is not necessary at this point.

Mr. Hughes: Your Honor, I object to it as background.

Mr. Greenberg: There are references to various books in the back and reference to periodicals that you can read, for example page 4.

The Court: I am frank to say I don't see what purpose it serves at this point, Mr. Greenberg. I have heard a lot of testimony about it from the various technical people in the industry, and I am not concerned with the bibliography, particularly.

Mr. Greenberg: As I stated, your Honor, we marked this some time ago before we ever had testimony, and as I looked at this last night, I frankly said probably I shoudn't offer it.

The Court: It seems to me it is surplusage. I will sustain the objection.

Mr. Greenberg: I haven't offered it.

The Court: All right.

Mr. Greenberg: With that, your Honor, we have no further documents.

The Court: Anything further from Mr. White?

You may step down.

[fol. 1712] Mr. Hughes: Excuse me.

The Court: I am sorry.

Mr. Hughes: I had some questions. I didn't realize. I thought he was just finished on the documents.

The Court: All right.

Cross-examination.

By Mr. Hughes:

Q. Well, now, Mr. White, just to go back, the first of these groups having to do with promotion was called what? What was the first of these promotional groups that the Can Manufacturers Institute set up?

A. Research Division, sir.

Q. The Research Division?

A. That is correct.

Q. And that was the division in charge of this Dr. McClintock; is that correct?

A. That is correct.

Q. And do I understand that you really had nothing whatever to do with the activities of that group?

A. That is correct.

Q. They didn't report to you and you didn't report to them?

A. That is correct.

[fol. 1713] Q. It was his job to report to the members of the Institute, who were members of the committee; is that correct?

A. Right.

Q. And do you have sufficient knowledge to know whether one of the functions of Mr. McClintock was to make a study to determine whether it was worth while to have a promotional program at all?

A. I think, Mr. Hughes, that I stated that the initial idea was that the tinplate manufacturers were approached to put up money. They said that they would want to make a study and to spend certain moneys to determine that further expenditures would be worth while in the promotion of our cans and their tinplate. This was the initial purpose for which Dr. McClintock was hired.

Q. And he made a study to determine whether it would appear to be worth while to have a promotional program; is that right?

A. That is correct.

Q. And that was his first job?

A. That is correct.

Q. And the can manufacturers were endeavoring to interest the tinplate manufacturers in putting up the money; [fol. 1714] is that right?

A. That is correct.

Q. And did there come a time when Dr. McClintock did report that he thought that a program of promotion was desirable?

A. That is correct. That was in his final report.

Q. And could you tell us what happened? Was that followed by a promotion program?

A. That was followed by the advertising program, during which period Benton & Bowles were hired.

Q. Well, then, the sequence of it was that McClintock makes his report and recommendation, then the matter becomes quiescent during the wartime; is that it?

A. Well, Mr. Hughes, Dr. McClintock's organization in the latter days was used in the gathering of statistics which would be helpful to committees and to me in Washington to present to the Government. Nevertheless, based on his findings in the first part of his tenure, we did proceed to advertise and we did proceed to hire Benton & Bowles to carry on that advertising in that promotional work, the study of vitamin content in foods, and so forth.

[fol. 1715] Q. These things you have already told me about.

A. Correct.

Q. And about when did that program start?

A. Well, McClintock, I think, bowed out the latter part of '42, if I am correct, and was immediately or almost immediately followed by the advertising program, and that went on, I think, about five years. I would have to check that.

Q. And then, can you describe for us generally the nature of that advertising program, what media and so forth were used?

A. Well, I can't tell you the exact media, but my recollection was that it was Life, Saturday Evening Post—the usual ones, some medical magazines, pointing out this was

after a study had been made to determine vitamin content of canned foods, and the general run of advertising agency media which they thought were best.

By the Court:

Q. For example, you mean to tell us that the advertising program was directed at establishing that the vitamin content of canned foods was good or better than any other kind of food; is that right?

A. Not quite, your Honor. That was a part of it. We [fol. 1716] did conduct or had this study conducted to determine the vitamin content of canned foods. The ads themselves were directed at saying, "Look what a wonderful thing is the can," and nobody was very impressed.

By Mr. Hughes:

Q. And, Mr. White, about how long did this program continue?

A. About five years, or until the tinplate people began to get tired.

Q. And when they ceased, when they ceased to contribute towards it, the program was dropped; is that correct?

A. In the early, the early part of it, it was completely tinplate money. Later on it was shared with the can manufacturers.

Q. Now, before we leave the subject, are you generally familiar with the advertisements as they appeared? Did you see them from time to time as they appeared and before they appeared?

A. Oh, yes, I saw copies of them. I have only a vague recollection of what they said.

Q. And do you know and can you say that these ads did not run down glass containers?

[fol. 1717] A. I cannot remember any single ad that was ever aimed at glass. That would not make sense to us.

Q. And do you know and can you say that the burden of the advertising was to build up the can as a container, per se?

A. That's right; various types of can, general line and food.

Q. Now, following this program, what was the next promotional effort, if I may put it that way?

A. When the tinplate people withdrew their support, the Can Manufacturers Institute moved into what they called a marketing operation. This was on a substantially smaller budget, and was aimed at aiding in promotional fashion the packer of any product who was willing to help himself. This got away from the tomato boys and the bigger ones insisting they ought to get any support.

Q. And about how long did that program last?

A. That went on, Mr. Hughes, until 1957.

[fol. 1718] Q. And was that discontinued then?

A. That was discontinued then.

Q. And presently you aren't doing any advertising or promotional activities, are you?

A. We are not doing any advertising. We have a public relations outfit that is devoting its time since they have been retained to advancing all over the world the sesquicentennial of the tin can.

Q. And is that the only promotion you are doing presently?

A. That is correct.

The Court: When is the sesquicentennial?

The Witness: This is the same year, and I don't know whether it would be proper to give you a lighter with a seal on it. Nicolas Appert was followed by an Englishman by the name of Peter Durant 150 years ago. Nicolas Appert, as you probably know, did his first canning in the glass bottles and that was quickly followed by Peter Durant who got a patent and made cans.

The Court: All right, sir.

Mr. Hughes: No further questions, your Honor.

Mr. Greenberg: Your Honor, I have just a few questions.

[fol. 1719] Redirect examination.

By Mr. Greenberg:

Q. Since we have gone beyond the documents to some extent, do you recall the Can Manufacturers Institute cooperating with tinplate manufacturers in the promotion of soft drink cans?

A. Wait a minute now. Can Manufacturers cooperating with——

Q. Tinplate suppliers.

A. Yes.

Q. For the promotion of soft drink cans?

A. Promotion of what?

Q. Soft drink cans.

A. Soft drink cans?

Q. Yes.

A. Tinplate suppliers, no, no.

Q. Doesn't your Association send out or distribute——

A. Wait a minute. This is cooperation. I am talking about—when we were talking about the tinplate suppliers putting up money, the tinplate suppliers today are advertising soft drinks in cans, but that is their separate program.

Q. Don't you distribute their advertisements?

[fol. 1720] A. We ask for them; we sure do.

Q. And you distribute them, do you not?

A. We distribute them to our members to show what cooperation we are getting.

Q. Do you recall when you had ads promoting baby foods in cans?

A. We had what?

Q. Do you recall, sir, when your Association had ads promoting baby foods in cans?

A. This is the Benton & Bowles period you are speaking of?

Q. All right, we will start off with that period.

A. We promoted—I don't know whether we promoted baby foods—we promoted everything in that period.

Q. Didn't you advertise in institutional papers and trade journals——

A. I have so testified.

Q. I am talking about trade journals as contrasted with Life Magazine and the Saturday Evening Post.

A. That's right, medical journals and the whole gamut.

Q. Sir, do you recall when the Can Institute advertised [fol. 1721] an instant coffee can?

A. Advertised what?

Q. An instant coffee can.

A. No, I do not.

Q. You do not recall that?

A. No.

Q. In other words, you are not too sure about what the contents of your advertising has been, is that correct?

Mr. Hughes: I will object to that.

The Court: I will sustain the objection.

Mr. Greenberg: No further questions.

Mr. Hughes: Nothing further.

The Court: Thank you, Mr. White, you may step down.

(Witness excused.)

Mr. McManus: Mr. Neuhart, please.

J. C. NEUHART, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. McManus: Your Honor, the Government is going to refer to 777, 778 and 779 with this witness.

Direct examination.

By Mr. McManus:

Q. Mr. Neuhart, by whom are you presently employed? [fol. 1722] A. I am retired.

Q. What was your former employment and with what company?

A. The Continental Can Company Glass Division.

Q. And when did you retire?

A. Last November 1st.

Q. For how long were you with the—you say you were with Hazel-Atlas?

A. Hazel-Atlas.

Q. For how long a period have you been associated with the Hazel-Atlas Division of Continental Can or Hazel-Atlas Glass Company?

A. 43 years.

Q. During the period 1950 to 1956 what was your capacity with Hazel-Atlas?

A. Well, I was vice-president of the sales division at the time that Continental Can came into being, and prior to that I was a sales manager for different products, principally food container products and others.

Q. And in what period in that 1950 to 1955 period would you be associated with food products?

A. The entire period.

[fol. 1723] Q. Would you be associated with other products also?

A. Yes. The company's sales were divided into what we termed resale ware, that is, cups, saucers, tumblers, and so forth, cosmetics, fruit jars, and well, beer bottles, whiskey bottles and so forth. The latter two was a minor part of the business and I took that under my wing at the time.

Q. Do you know a Mr. C. F. Haberstick?

A. Yes, I do.

Q. Do you know what his position was with the company in 1953?

A. He was the Chicago sales manager.

Q. Do you know Mr. Ralph E. Dyer?

A. Yes.

Q. What was his position?

A. He was the Cincinnati sales representative.

Q. He was what?

A. Cincinnati sales representative.

Q. And have you known those gentlemen for a long period of time?

A. Yes, many, many years.

Q. I would like to show you Government's Exhibit 777. Do you recognize that document?

[fol. 1724] A. I don't remember it but it evidently crossed my desk at that time. I recognize that signature.

Q. Do you recognize Mr. Haberstick's signature?

A. Yes, I do.

Q. And who was Mr. Algee?

A. He was the general sales manager, I believe, at that time.

Q. Now going to document 778, do you recognize that signature?

A. Yes.

Q. And that is the signature of whom?

A. Carl Haberstick.

Q. This was addressed to you, of course?

A. That evidently passed over my desk.

Q. And 779, do you recognize that document?

A. Well, yes, that is the signature—it looks like Ed Porter's. I recognize that as his signature.

Q. And he would be signing for Mr. Dyer?

A. That is correct. This would be signed Ralph E. Dyer

as the representative and this would indicate Mr. Porter indicated that.

Q. What was Mr. Porter's position?

A. He was a salesman working with Mr. Dyer, Mr. Dyer [fol. 1725] being the head of the office.

Q. This is 778. Do you recall that communication?

A. No, I don't recall it.

Q. Would this be a normal type of communication to you?

A. Yes. That would be a salesman's routine call and what he did or heard or had seen.

The Court: In the normal way of a salesman reporting, is that correct?

The Witness: That is correct, reporting what he heard or what he had seen in his routine.

The Court: What is the purpose now?

Mr. McManus: We have a very limited purpose for those three documents and for the next two also, and that is, during this period of time——

The Court: "This period of time" meaning what?

Mr. McManus: During the period of 1953, that it appears that Hazel-Atlas Glass Company was keeping abreast of the price of glass containers for the beer industry.

The Court: Is there any objection to that? Is there any reason to suppose that they were not keeping abreast?

[fol. 1726] Mr. Johnson: Well, your Honor——

The Court: Do these documents establish that?

Mr. Johnson: We really do not know what is meant by "keeping abreast." Here we have one, two or three documents——

The Court: All right, if you want to know what he means by "keeping abreast," you may examine about these documents.

Mr. McManus: Your Honor, could I just say this: documents 782 and 783 are for the same purpose but on different products, and I would like if we could have Mr. Neuhart identify those first?

The Court: All right, let him identify them.

Mr. McManus: And that would be for the same purpose.

Q. Do you recognize 782?

A. Yes, I do.

Q. You would have written that letter?

A. Yes.

Q. You would have written that document?
A. Yes.
Q. Do you recognize the attachment?
A. That would be the list referred to in the letter, yes.
[fol. 1727] Q. Can you identify 783?
A. Yes, that is a document that I had written.

Mr. McManus: The purpose, your Honor, of 782 and 783——

Q. Well, Mr. Neuhart, what was your position again?
A. What was that?
Q. In 1954 what was your position, in March, 1954?
A. I would be working, as I stated, for Mr. John Algeo as a sales manager for those products.
Q. And you would be informing all of your agents of the prices at which you were selling baby food jars as shown on 782?
A. Yes.
Q. And in 783 keeping them advised of prices advantages——
A. Price advance.
Q. —advance, I am sorry, of soluble coffee?
A. That is correct.

Mr. McManus: That is the purpose of the offer of the documents, your Honor.
The Court: Do you wish to examine about these documents?
[fol. 1728] Mr. Johnson: We have some questions on them.
The Court: If you have a question, go ahead.

Preliminary Cross-examination.

By Mr. Johnson:

Q. Did you say, Mr. Neuhart, that in 1953 your job was food container sales?
A. Principally, that was our main business, food containers. I also looked after beer bottles and liquor bottles and those items also.

The Court: You were selling beer bottles at the time, were you?
The Witness: Well, not in great quantity.
The Court: You were selling some?

The Witness: I wouldn't know offhand whether we were actually at that particular moment selling some, but it was a very small amount.

Q. How about baby food jars, at that time were you selling many baby food jars?

A. At that time we sold some, but a small quantity of the total of the industry.

Mr. McManus: Your Honor, could we have a definition of what "some" is?

[fol. 1729] The Witness: Yes, I will put it this way: that when we spoke of beer bottles, I doubt whether we sold a percentage, 1 per cent of the total beer bottles sold in the industry. We were not beer bottle manufacturers. We did not have the facilities——

Mr. McManus: Now, your Honor, this is pretty far away from the documents——

The Court: No, I will allow it.

The Witness: (Continuing) We did not have the facilities for, say, beer bottles, but we may have sold some. We might get an order and ship some. We had a limited amount of production because beer bottles, I believe, at that time were principally made of what is termed amber glass or the dark glass. I think you understand the difference there.

The Court: Yes.

The Witness: Flint glass for beer was not used in great quantities. Our amber production used to fluctuate from one small tank or possibly two tanks of production, which was very limited. So that is the reason we were not a factor in the beer bottle business.

Q. How about baby food jars?

A. Baby foods—we made some baby food jars. There [fol. 1730] again we had a small quantity out of the total sold in the industry. That was because of our type of machine that we used which did not lend itself to that.

Mr. McManus: Your Honor, I would like to note that I have an objection to this testimony unless he is going to make him his witness. I do not think that the answer is at all responsive. He rambles on for four or five minutes,

and I wish we could have a few more succinct answers to the questions.

The Court: I will allow it. This furnishing the setting in which these letters are being received.

Q. Have you finished your answer?

A. Yes.

Q. Are the machines substantially the same with respect to soluble coffee as for baby food jars?

A. Not wholly, not the same degree.

Q. Was Hazel-Atlas selling containers for instant coffee?

A. We sold some instant coffee jars, I believe limited to one or two accounts.

Mr. Johnson: In view of the purpose of the offer of these documents and the testimony of the witness, I have no further questions at this time.

[fol. 1731] The Court: You still object to the document?

Mr. Johnson: Yes, sir, I do.

The Court: Overruled.

Mr. McManus: May I just ask one question?

The Court: Yes.

Direct Examination continued by Mr. McManus:

Q. During the period that you were with Hazel-Atlas were you in sales primarily?

A. Yes, my entire time with them I was in sales.

Q. You were not on the production end?

A. No.

Q. You are not an engineer?

A. No, sir.

Mr. McManus: That is all.

(Government's Exhibits 777, 778, 779, 782 and 783 for identification received in evidence.)

The Court: All right, thank you, you may step down.

(Witness excused.)

The Court: We will take a recess at this point until five minutes after two, gentlemen.

(Recess to 2.05 p.m.)

[fol. 1732] AFTERNOON SESSION

The Court: All right, Mr. McManus.

Mr. McManus: Mr. Hill, will you take the stand, please.

DANA M. HILL, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. McManus: Your Honor, I have given a list to the clerk of the documents that we intend to refer to with Mr. Hill. There are one or two that we will not refer to and I would like to give the clerk the exact numbers that we will refer to, and those are 400, 445, 607 and 608.

The Court: Are you going to refer to them in that order?

Mr. McManus: Yes, we are going to refer to them in that order.

The Court: All right. G-400 is first?

Mr. McManus: Yes, sir.

Direct examination.

By Mr. McManus:

Q. Mr. Hill, by whom are you presently employed?

A. The Silver Company in Cleveland.

Q. First, if we could get your background after you [fol. 1733] left college and started your employment, where were you first employed?

A. Corn Products Refining Company here in New York.

Q. And what was your position at that time?

A. I started as a trainee and for the last several years prior to 1954 I was the manager of the commercial research department.

Q. And what were the duties of the manager of the commercial research department generally?

A. We were involved primarily in establishing measures of movement relative to competitive products in both grocery items and industrial starch products.

Q. And then you say you left them in 1954?

A. I did.

Q. By whom were you employed then?

A. Continental Can.

Q. What was your position with Continental Can?

A. Manager of the commercial research department.

Q. For what period of time were you employed by Continental Can?

A. From September of 1954 until the end of March, 1958, [fol. 1734] Q. What was the business carried on and the duties of the commercial research department——

The Court: Let me understand this, Mr. Hill. I have a memorandum here, which is Exhibit G-400, which is dated January 10, 1954, and purportedly signed by you.

The Witness: That is erroneous.

The Court: It is erroneous. All right.

Q. Would you tell us in a general way what were the activities of the commercial research department of Continental Can?

A. Yes, sir. Under the director of economic research, Raymond Fisher, we were responsible, we being a group of about 15 people when it started, for economic analytical studies for the market research work that was done for the corporation, both within the company and by its people as well as working with a few outside agencies, and for the sales analytical function, using and analyzing the sales statistics as they were produced by the IBM group. That generally summarizes it.

Q. Where did you get these sales statistics that you referred to, where would they be procured from?

A. They originated with individual invoice than ran through the IBM and came out in the form of what are [fol. 1735] commonly called IBM reports.

Q. When you were referring to invoices, you were referring to invoices of your own customers?

A. Yes, strictly internal data.

Q. You say that you started out with 15 people. Approximately how many people were in the commercial research department when you left?

A. I am guessing, but the number was about twice that, I would say.

Q. About 30.

A. Yes.

Mr. McManus: I would like to show this document G-400 to the witness, your Honor, and I would like to explain first

that the Government is not relying on this document on any statistics that refer to Canada and the method in which the product is packed in Canada. We are only referring to the data with relation to the way the food is packed in the United States.

The Court: What is the purpose of this document?

Mr. McManus: Your Honor, we believe that this document shows the competition between the cans and glass in various end products in the United States, fruits and [fol. 1736] vegetables, baby foods and so forth, and I think that there are also catsup and certain other end products in the United States only.

The Court: All right.

Q. Mr. Hill, I show you Government's Exhibit 400. You indicated that you came with the company in September of 1954 and that that date might be erroneous, is that correct?

A. Yes, I believe so.

Q. Is there any question but that that would be your signature?

A. No, sir, I believe it is my signature.

Q. Do you recall this document?

A. I do not.

Q. Is this the type of document that you would normally prepare?

A. It is.

Q. And you would in turn send it on to Mr. Fisher?

A. Yes, sir.

Q. And do you know to what use this would be put after Mr. Fisher received it?

A. No, I do not.

The Court: Who was Mr. Fisher at that time?

[fol. 1737] Q. Would you tell us?

A. Mr. Fisher was my direct superior. His title at that point was Director of Economic Research.

The Court: And commercial research was a branch of economic research?

The Witness: Yes, sir.

Q. Could you tell us how commercial research would go about obtaining information for this type of study?

A. Primarily we would utilize public or published infor-

mation, either as it was made available by governmental groups or trade associations.

Q. And what would some of the governmental groups be?

A. The Census Bureau primarily.

Q. And would that be true for the cans?

A. Yes.

Q. Would that also be true for your glass information?

A. I am not certain of that but I believe it would.

Mr. McManus: Your Honor, the Government offers G-400.

Mr. Johnson: May I ask a few questions, please?

[fol. 1738] The Court: Yes, Mr. Johnson.

Preliminary Cross-examination.

By Mr. Johnson:

Q. Mr. Hill, how long had you been employed by Continental Can when you prepared this document which is Government's Exhibit 400?

A. I am not certain because I can't remember specifically but I would gather it would have been a very short time.

Q. One month?

A. I can't be certain.

Q. Was it prepared in 1954?

A. I believe it would have been.

Q. Where did you get the figures that compose table 1 of this document on page 4?

A. This is the same general——

Q. Where did you get those figures specifically?

A. I can't answer, sir, because I can't remember the general study.

Q. The source that is indicated is Western Canner & Packer?

A. Yes.

Q. Did you yourself take them out of Western Canner & Packer?

A. No, I did not.

[fol. 1739] Q. What is Western Canner & Packer?

A. It is a publication which compiles rather precise data on packs.

Q. Is it a magazine?
A. It is a periodical.
Q. It is a periodical?
A. Yes.
Q. Will you tell me what fruits and vegetables and juice packs are included within those figures?
A. I can't beyond what the footnote says because my memory is very, very vague.
Q. Do you know if juices, concentrated juices, prepared for freezing, would be included?
A. I don't know. I assume not but I am not certain.
Q. Do you know whether baked beans would be included?
A. No, I do not.
Q. Do you know whether these figures were taken directly from this periodical or whether any adjustments were made in them?
A. I don't know that either.
Q. Do you know whether these figures represent different sizes of containers?
[fol. 1740] A. No, I have no idea.
Q. And I think you said that you did not know what use had been made of this document?
A. That is correct.
Q. Will you look at chart 1 on page 3. Do you know where the data from which this chart was based came from?
A. Only as I have seen it in the footnotes in the table that was just in front of me.
Q. Does this chart reflect the figures that are in table 1 on the following page?
A. I don't know. I would assume that it does but I don't know that it does.
Q. Looking at the chart on page 7, do you know where the data came from which that chart was constructed?
A. No, I do not.
Q. Do you know what specific products were included in the term "fruits, vegetables and juice packs"?
A. At this time I do not.
Q. Do you know whether you ever knew what was included?
A. If my memory is correct, I don't think that—may I start again?
[fol. 1741] Q. Surely.

A. I suspect I did but I can't remember. That's the best way to answer it.

Q. Looking at the chart on page 8, do you know where the data from which those charts were constructed came from?

A. No, I do not at this time.

Q. Did you prepare this chart?

A. No, I did not.

Q. Do you know who did?

A. No, I do not.

Q. Was this chart that is headed "United States" on the lefthand side of page 8 constructed from the figures that are in table 3 on page 9?

A. I would have to look—I don't know, but I suspect probably it was. My memory doesn't tell me so, if that is pertinent.

Q. The table on page 9 indicates one source as National Canners Association. Do you know if those figures were obtained from National Canners Association?

A. Well, I can simply surmise they were.

Q. That is your surmise?

A. That is correct.

Q. Can you tell me what publication of the National [fol. 1742] Canners Association they were obtained from or whether or not they were obtained directly from the National Canners Association?

A. I can tell you neither.

Q. Did you prepare this table?

A. I did not.

Q. Do you know whether any adjustments were made from any figures that might have been obtained from National Canners Association?

A. At this time I can't say whether or not there were any adjustments.

Mr. Johnson: I object to this document, your Honor.

The Court: Is there anything further, Mr. McManus? [fol. 1743] Mr. McManus: Well, your Honor, I would like to hear how you are going to rule before I go any further.

The Court: Oh.

Mr. McManus: I had hoped I would not have to go any further.

The Court: I see. I wondered if you wanted any further opportunity to examine before I rule.

Mr. McManus: No, sir.

The Court: Now, suppose before I rule you define a little further what you offer this for? Do you offer this document for the truth of the facts contained in it, or not?

Mr. McManus: Maybe I ought to ask him one or two more questions.

The Court: May be.

Direct Examination Continued.

By Mr. McManus:

Q. Now, Mr. Hill, you of course had people in your employ who were compiling this information; is that correct?

A. That is correct, sir.

Q. And you acted in a supervisory capacity on matters of this type?

[fol. 1744] A. Yes, sir.

Q. And of course you as such, when they referred to a source, such as the National Canners Association, that would be obtained by one or more of the people working for you?

A. That is correct, sir.

Q. And at the time of your supervision was it your job to attempt to get the best information that was available?

A. I believe that is a fairway to put it, sir.

Q. And in this case do you recall if you made every attempt to get the best information available?

Mr. Johnson: I object to that question.

The Court: Objection sustained.

Mr. McManus: Your Honor, we offer this document on two grounds. First we offer it on the ground that this was the best source of information available, and to that extent, for the truth of what it contains.

The Court: Well, upon that ground I sustain the objection.

Mr. McManus: We also offer it to show the concern of Continental Can towards inroads that glass has made or may make.

[fol. 1745] The Court: As to the latter, I will admit it.

(Government's Exhibit 400 for identification received in evidence.)

Mr. McManus: Your Honor, the next document is Government's Exhibit 445.

Q. I show you Government's Exhibit 445; is that your typewritten name at the bottom, Mr. Hill?

A. That is correct, sir.

Q. And who is Mr. C. H. Buckley, or who was he at that day?

A. Mr. Buckley was the product manager for, I believe, beer and soft drink cans of Continental Can.

Q. And do you recognize this report, Mr. Hill?

A. I recognize it as one of the type reports we put out, yes.

Q. This would be the routine type of report that you would make on a product?

A. Perhaps the word "routine" wouldn't apply, but it is the type of report we made.

Q. Now, in compiling this report—well, the pages are unnumbered; it is the fourth page of the document, and it says, "Method of conducting survey." Would you take a look at that next one?

[fol. 1746] A. Yes.

Q. Do you recall would that be the method that you would conduct such a survey?

A. It would.

Q. And would these surveys be conducted by you or by outside companies?

A. Both, sir. In this case we did it ourselves.

Q. In this case you did it yourselves.

A. Yes.

By the Court:

Q. Who is Mr. Way, a member of your staff at that time?

A. Your Honor, Mr. Way was one of the analysts in my group at that time.

Q. Did you assign Mr. Way to make the study that is reported in this document?

A. Yes, sir; I did.

Mr. McManus: Now, your Honor, we offer this document for the conclusions found on page, what I would call the third page of the document.

The Court: You may examine if you wish, Mr. Johnson.

Mr. Johnson: In the light of the testimony with respect [fol. 1747] to this document by Mr. Buckley the other day, I have no objection to it.

The Court: All right, it may be received.

(Government's Exhibit 445 for identification received in evidence.)

Mr. McManus: Your Honor, we can take 607 and 608 together, I believe, sir.

Q. I show you Government's Exhibit 607, Mr. Hill; is that your signature on page 2?

A. Yes, sir.

Q. And is this the type of survey that would be made by the commercial research department?

A. It is one of the types, yes, sir.

The Court: Was this made by your staff?

The Witness: No, sir.

Q. Who would make the survey?

A. I believe this was conducted by the Hooper, I think it is C. E. Hooper organization.

Q. And was this a continuing type of survey? I mean, was this one of a series, do you know?

A. That is one of a series, or that is reporting on one of a series.

Q. And would 608 be—608, on page 3, is that your signature?

[fol. 1748] A. That is, yes, sir.

Q. And would this be another part of the series of 607, if you would like to take a look?

A. Yes, it would.

Q. And could you tell me, do you supervise these surveys? I mean, did you make the arrangements to have these surveys conducted?

A. This particular series, I believe, was started before I came on the scene, because that date there, September 17th, was just about the day that I first went to work.

Q. And the latter survey was in October, and you had been employed for approximately a month.

A. Right, sir.

Q. Now, did the C. E. Hooper report to you or to Continental Can?

A. Yes, they did.

Mr. Johnson: That is a double question.

The Court: Presumably, we are talking about did they report to you in your capacity as head of the commercial research department?

The Witness: Yes, sir. They didn't report directly to me, sir. They reported to a man who worked for me.

[fol. 1749] The Court: I see. Who in turn reported to you.

The Witness: Yes, sir.

Q. And from those surveys you made up these two documents to Mr. Buckley?

A. My group did, yes, sir.

Q. Your group did. And you sent them on with your covering letter?

A. I did.

Q. And do you know for what purpose or what use these documents were put?

A. I am afraid not, sir.

Q. And do you know how the C. E. Hooper conducted these surveys?

A. I can probably remember some of the details, yes, sir.

Q. Could you tell me how they were conducted?

A. The best of my recollection, they worked from general telephone lists; preselected names; called the given number of names with the said group of questions; asked those questions; and recorded the answers; tabulated the answers and gave them to us in tabulated form.

Q. Now, you have been head of commercial research [fol. 1750] departments for a number of years. Is that a standard type—in your experience, is that a standard way of conducting surveys?

Mr. Johnson: I object to the question.

The Court: Sustained.

Mr. McManus: Your Honor, the Government offers 607 and 608 on two grounds, the first being the fact that these surveys were conducted for the Continental Can Company and that they are truthful and accurate surveys; and sec-

ond, on the ground of showing the attempt by the company to enter the glass, enter the bottling of soft drinks through the use of metal cans.

The Court: Do you want to examine with respect to these documents, Mr. Johnson?

Mr. Johnson: Yes, sir.

Preliminary Cross-examination.

By Mr. Johnson:

Q. Mr. Hill, did you have anything to do with the selection of the people who were telephoned by the Hooper Agency?

A. None whatever, nothing, sir, no.

Q. Do you know how these people were selected?

A. I did at the time, I believe, but I cannot remember precisely now.

Q. Do you have any idea now from what groups they [fol. 1751] were selected?

A. No, I don't, sir.

Q. Do you know whether they were selected at random or not?

A. I am certain that there was a random factor. Whether parts of the population were excluded before the random selection occurred, I can't answer. My recollection just doesn't produce.

Q. With respect to the San Francisco survey, do you know what part of San Francisco the survey—do you know in what part of San Francisco the survey was made?

A. No, I do not.

Q. Do you know if it was made in a high income or low income area?

A. I am not certain, no, sir.

Q. If I were to ask you the same questions with respect to Los Angeles, Philadelphia, New York, Milwaukee——

A. My answer would be the same, sir.

Q. —Denver, Akron, your answer would be the same?

A. Yes.

Q. Did you have anything to do with the preparation of the questions which the Hooper Agency asked?

[fol. 1752] A. In the case of these questions, I doubt it

very much. I had only been on the scene, as I think, two days.

Q. Do you know what questions they asked?

A. I cannot remember what questions they asked, no, sir.

Q. Do you know whether the Hooper agency did any pre-testing of its questions?

A. I am not certain. I believe they did, but I am not certain.

Q. Do you know whether they used a bias factor?

A. No, I do not know. I can't remember, is a better way to answer, sir.

Q. Do you know how the scope of the sample was determined?

A. I am not sure I know what you mean by "the scope of the sample." I am not sure if I did, I could answer anyway.

Q. The document says that "In New York and Los Angeles the sample remained at 1500 calls, but was reduced to 1200 in the other five cities." Do you know how that sample was determined upon?

A. No, I do not, sir.

[fol. 1753] Q. Do you know if it had anything to do with the budget allocated to this project?

A. No, I do not.

Q. Do you know what the budget was for this project?

A. I cannot remember what the budget was.

Q. Do you know whether it was large or small?

A. Relatively small, sir.

Q. Were you ever an officer or director of Continental?

A. No, I have not been.

The Court: 607 and 608 are just, in essence, a continuation of one another, are they?

The Witness: I believe they are, sir.

The Court: Called the same?

The Witness: Continuing series of surveys.

Q. So my questions with respect to 607 would be the same with respect to 608; is that true?

A. My answers would be the same, sir?

Q. Yes.

A. Yes, they would be, and I would have known a bit

more, having been around about two or three more weeks when the second one was prepared, sir.

Q. Now, in your position you did not have power to [fol. 1754] commit Continental to action?

A. I did not, sir.

Q. And I think you said you didn't determine policy for the company?

A. Did not determine policy for the company.

Mr. Johnson: I object to the documents, your Honor.

The Court: Well, insofar as the Government offers the documents for the truth of the facts of the documents, I will reject them. Insofar as the Government offers the documents to show that the commercial research department of Continental Can had a survey made and drew certain conclusions as a result of the survey and circulated those among responsible officers of Continental Can, I will admit it.

Mr. Johnson: In that connection, your Honor, I am concerned with the problem of documents being admitted for limited purposes, and I would like again to revert to the suggestion Mr. Hughes made this morning, that I have no objection to stipulating, if that would be of any help, that surveys of this type were made. It seems to me that we are getting into a real problem as to just how much is [fol. 1755] going to be drawn from a record which has in it a great number of documents containing figures of all kinds which are admitted for a very limited purpose.

The Court: What do you say to that, Mr. McManus?

Mr. McManus: Your Honor, I would think you would admit it on my first ground, but I think it is obviously admissible on the second ground, and it goes a little further than just the fact that they made the survey. As you pointed out, they were distributed to responsible officers in Continental Can.

The Court: And certain conclusions were drawn from them.

Mr. McManus: That is correct. And on those grounds I think it is entirely admissible.

Mr. Johnson: Well, it is a question that Mr. McManus raised as to—he says they go further than that. My question is how much further, and where further do they go?

The Court: We can find how far they go, Mr. Johnson, but really, frankly, I don't know why under the circumstances Mr. McManus needs the summary of the soft drink surveys, why he can't be content with pages 1 and 2 of 607 for the limited purpose for which I am admitting [fol. 1756] this document?

Mr. McManus: Your Honor, if you are not admitting it for the truth of the matters contained therein, I agree with you that the pertinent part of his document in 607 is pages 1 and 2, and in 608, pages 1, 2 and 3.

The Court: Yes.

Well, I will limit the two documents to pages 1 and 2 of 607 and 1, 2, and 3 of 608.

Mr. Johnson: For purposes indicated, your Honor.

The Court: For the purposes indicated.

(Government's Exhibits 607 and 608 for identification received in evidence.)

Mr. Johnson: One further question.

By Mr. Johnson:

Q. These documents, Mr. Hill, indicated that they were distributed to various people in Continental Can. Do you know whether these people ever drew any conclusions from these documents or took any action based on them?

A. No, sir; I do not.

Mr. Johnson: That is all.

[fol. 1757] The Court: All right, Mr. Hill, you may step down.

(Witness excused.)

The Court: Next witness.

Mr. Greenberg: Your Honor, the Government's next witness is Mr. Smart.

Will Mr. Smart take the stand.

S. Bruce Smart, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?
A. Gibson Island, Maryland.
Q. Are you employed by Continental Can?
A. Yes, sir.
Q. How long have you been employed by this company?
A. Since May 1, 1953.
Q. In what position, sir?
A. Initially?
Q. Well, we will start with your employment on May 1, 1953. That is when you first became employed by the company; is that correct?
A. Assistant products sales manager for packers cans in the metal division.
Q. How long did you hold that position?
[fol. 1758] A. Approximately one year.
Q. And what were your duties and responsibilities as assistant products sales manager?
A. Well, I worked with the products sales manager in the obtaining and dissemination of sales information as it has been described earlier to the field sales force.
Q. To the field sales force, that is, the distribution.
A. Right.
Q. Now, were you employed as assistant products——

Mr. Greenberg: Withdrawn.

Q. What was your employment after June 1, 1964, with Continental Can?
A. I was assistant products sales manager for beer and soft drinks.
Q. How long did you hold that position?
A. About a year there, too.
Q. And what were your duties and responsibilities in that position?
A. Very, very similar, except with concern for different types of cans.

Q. When you say "similar," you disseminated the material in the same way?

[fol. 1759] A. Yes.

Q. What was your next position?

A. I was assistant to the general manager of sales.

Q. And in what period of time did that occur?

A. Till February of 1956.

Q. And what were your duties and responsibilities in that position?

A. Rather varied. Carrying out any assigned duties, including budgets, sales forecasts, answering certain amount of correspondence, certain amount of liaison with research and development department.

Q. And what was your employment after February of 1956?

A. I was assistant to the manager of new products.

Q. And what was the duration of that position?

A. About three or four months.

Q. And what were your duties in that position?

A. We were setting up a department for the investigation and coordination of work on new containers, and I assisted Mr. Newman in setting up that department, determining what its scope should be.

Q. Now I show you Government's Exhibit 421-A, which has been marked for identification, and ask you if you [fol. 1759a] recognize this document?

A. Yes, I do.

[fol. 1760] Q. What is it, sir?

A. Well, it is a write-up of a bright idea that I had considering the possibility of developing a can for tomato catsup.

Q. Sir, at the bottom we have the notation, "L. C. Dudley per S. B. Smart."

Who was Mr. Dudley?

A. Mr. Dudley was the products sales manager and as such was responsible for whether this document should leave his office and go to Mr. Neuman, and therefore his name appears on it and my name below it as the actual author of the document.

Q. In other words, after his name appeared above it, it went to Mr. Neuman?

A. That's right.

Q. And Mr. Neuman received it?

A. Yes, I presume he did.

Q. And what was Mr. Neuman's position at that time?

A. He was general manager of sales for the Metal Division.

Q. Who was Mr. Larson at that time?

A. Mr. Larson was in a department which I think was called New Products Development Department or [fol. 1761] some such name as that, and it was his job to consider proposals such as this and determine whether they were feasible or not.

Q. Sir, from the notation on the document, isn't it true that Mr. Larson received it?

A. The notation would indicate that Mr. Neuman sent the document to Mr. Larson.

Mr. Greenberg: The Government offers G-421-A into evidence.

The Court: For what purpose?

Mr. Greenberg: Your Honor, we offer it for the truth of the facts stated therein, but, in addition, it shows Continental Can's interest in new products which are being serviced by glass containers, in this instance, catsup, and those activities, your Honor, are still being carried on. This document, together with other documents, will show the competitive figure of Continental Can in glass containers.

The Court: All right.

Mr. Hughes: What was that, the truth of the facts——

The Court: That it goes to the truth of the matters contained therein and for the statements or conclusions [fol. 1762] or the suggestion that such a project was passed on.

Mr. Hughes: I object to it on the first ground, your Honor, that no proper foundation has been laid and no indication shown that it has any probative value, and I also object to it on the second ground.

The Court: Do you wish to examine?

Mr. Hughes: Yes.

Mr. Greenberg: Excuse me, I will put the Government's copy of the document before the witness.

The Court: Yes.

Preliminat*ion* examination.

By Mr. Hughes:

Q. Mr. Smart, how long had you been with the company when you prepared this document, Exhibit 421-A?

A. Approximately three months.

Q. Prior to coming to Continental Can Company what had you done?

A. Well, immediately prior I was with the Corps of Engineers of the United States Army, and prior to that for several years in the business of designing and selling industrial water conditioning equipment.

Q. And prior to that what was your business background?

A. No business background, just military.

[fol. 1763] Q. So that you had been connected with the can industry——

A. For about three months.

Q. —for about three months wh[redacted]is document was prepared?

A. Yes.

Q. Do you recall whether Mr. Neuman requested its preparation?

A. I couldn't answer that; I don't recall.

Q. Do you recall whether anybody requested its preparation?

A. I do not.

Q. Would you say that this was—I think you characterized it as a bright idea that you had, and that you just put down on paper?

A. It seemed so at the time.

Q. And what were the sources that you used in preparing this document?

A. I could only speculate on what they were; I don't remember.

Q. You don't recall what the sources were?

A. No.

The Court: For example, Mr. Smart, I notice on the first page of the document that there are figures [fol. 1764] about average annual packs of tomato catsup

for 1951, 1952 and 1953. You do not know where those figures came from, do you?

The Witness: I don't recall, sir, no.

By Mr. Hughes:

Q. Now there is a legend on the document, on the first page, which, if I read it correctly, says:

"R. Larson: I've sat on this too long already—what do you think!"

Are those the initials of Mr. Neuman?

A. Yes, they are.

Q. And you have told us who Mr. Larson was?

A. Yes.

Q. Do you know whether in fact Mr. Neuman referred this to Mr. Larson?

A. I only know what I read on that note.

Q. You were not an officer of the corporation at the time you prepared this document?

A. No, sir.

Q. And it did not receive any circulation outside the company?

A. Not to my knowledge.

Q. You had no power to commit or bind the corporation in any way?

[fol. 1765] A. No, sir.

Q. You did not make any policy for the corporation?

A. No, sir.

Mr. Hughes: I object to it, your Honor.

The Court: Let me ask you this:

As far as you know, was there ever such a project authorized?

The Witness: To my knowledge, no, sir.

Mr. Greenberg: I just wanted to ask a few more questions, your Honor.

By Mr. Greenberg:

Q. After July 1, 1956 what position did you hold with Continental Can?

A. I was assistant district sales manager in Milwaukee.

Q. And since that time what was your position?

A. Subsequent to that, district sales manager in Milwaukee and general manager for the mid-eastern district of the Metal Division.

Mr. Greenberg: I have no further questions.

The Court: I have your objection, Mr. Hughes.

Mr. Hughes: I renew the objection on the first ground.

[fol. 1766] The Court: As to the first ground on which this was offered, let me ask you this, Mr. Smart:

These figures on the second and the third pages with respect to comparative figures, where did you get those from? Are those your own calculations?

The Witness: No, sir. I don't recollect where I got them from now.

The Court: Well, I will exclude it on the first ground and permit it on the second ground.

(Government's Exhibit 421-A for identification received in evidence.)

The Court: Is there anything more from this witness?

Mr. Greenberg: Your Honor, we have no further questions and no further documents to take up with this witness.

The Court: Thank you, Mr. Smart, you may step down.

(Witness excused.)

Mr. Greenberg: Your Honor, the next witness is Mr. Cleaves.

[fol. 1767] Richard D. Cleaves, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. I reside in Louisville, Kentucky.

Q. And you were employed by Continental Can at one time?

A. Yes.

Q. When was that?

A. Approximately five and a half years, from January of 1953 to July of 1958.

Q. What positions did you hold with the company during that period of time?

A. After January 1953 or in the spring of 1953, after a short orientation course, I became a salesman in the New York district sales office of the Metal Division. Subsequently I was made assistant district sales manager of the New York district, and then became products sales manager in the Metal Division head office for commodities, meat, pet foods and non-processed foods, and subsequently was made vice-president and general manager of Cochran Continental Container Corporation of Louisville, Kentucky.

[fol. 1768] The Court: Is that a subsidiary of Continental Can?

The Witness: It was; it is no longer.

Q. Sir, is it true that you were products sales manager in the period April 1955 to September 1957?

A. Yes, that is right.

Q. Sir, would you tell us what your duties were as products sales manager in that period of time?

A. In connection with the commodities for which I was responsible and which I mentioned, it was securing and dissemination of sales information and sales aids to the field sales force of the metal division.

Q. I show you Government's Exhibit 404, which has been marked for identification, and ask you if you recognize it.

A. Yes, sir, I do.

Q. Tell us what it is?

A. This is a product sales bulletin, which is an information bulletin, to go to the field sales force, concerning, in this case, the so-called Savorlock cans.

The Court: Was the Savorlock can then being sold by the sales force on the market?

[fol. 1769] The Witness: It was available, sir, but was not being sold.

Q. Was it being market or test-marketed by J. H. Folger Company at that time?

A. Yes, that was the—you see, that is August of 1956 and

it is my—if I remember correctly, it was test marketed by Folger in 1955.

Q. I see.

The Court: In other words, you were prepared to offer this can for sale?

The Witness: Yes, your Honor.

Q. And what distribution did this have?

A. That had internal distribution in the Continental Can Company Metal Division to the sales force, that is, district sales managers, general manager or sales in that division, and to the salesmen themselves.

The Court: Is there any objection to this?

Mr. Hughes: No objection.

The Court: It may be received.

(Government's Exhibit 404 for identification received in evidence.)

The Court: What about the next document, which is 405, on the same subject?

Mr. Greenberg: Are you asking whether Mr. Hughes has [fol. 1770] any objection?

The Court: I am asking whether there is any objection to that.

Mr. Hughes: Well, your Honor, I would like to ask whether this document, 405, was merely a draft of some sort of a document.

The Court: Yes, I think that is a fair question.

Mr. Greenberg: Well, I think there are various parts to G-405, your Honor.

The Court: We will take it separately then, if you want to. I am just trying to save some time because we are going very slowly at this point.

Mr. Greenberg: What was Mr. Hughes' objection, your Honor? I don't fully understand.

The Court: He did not make any suggestion, as far as I know.

Mr. Hughes: I asked if it was a draft.

The Court: Yes. Ask the witness whether it was a draft, or I will ask him.

Was it a draft?

The Witness: From the date on it, sir, I believe it was, June 1956. I believe that was a draft. May I explain why? [fol. 1771] The Court: Yes.

The Witness: The reason that I think so is because the actual bulletin which went out on the Savorlock can was dated August 1956.

The Court: In other words, this was the predecessor of 404, was it, the products bulletin?

The Witness: Yes, it was part of the program, at least in draft form.

By Mr. Greenberg:

Q. Sir, 405, the first page of G-405 refers to a freight car allowance or freight allowance to be offered to these packers who would use this new coffee can. Do you know whether the sales force had permission and actually did offer this freight allowance?

A. I cannot remember whether that was approved or not.

Q. Now I show you the second part of G-405——

Mr. Hughes: Perhaps I should object at this point on the ground that it appears it is a draft and that it had no circulation of any kind.

The Court: Yes, this is merely a draft and I do not see that it has any probative value at all.

Mr. Greenberg: Your Honor, the Government now requests the defendant to produce any final copies, if such [fol. 1772] exists, of this document.

Mr. Hughes: That document is already in evidence, G-404.

Mr. Greenberg: All right. As I understand it, this document deals specifically with freight allowances only. If a special comminique, not in draft form, went from the company to its divisions——

The Court: No, Mr. Greenberg, it does not deal only with freight allowances.

Mr. Greenberg: The first page of 405.

The Court: Yes, the first page does.

Mr. Greenberg: That is what I am referring to, the first page of 405.

Mr. Hughes: May I answer that by saying, your Honor,

that in the pretrial we made an extensive search and pursuant to order we have produced and discovered to the Government everything that we have been able to find.

The Court: Well, I sustain the objection on the ground that it is a draft.

By Mr. Greenberg:

Q. I now show you the second part of G-405 which is entitled "Continental's new Savorlock can" from R. D. Cleaves dated June 1956, which is composed of five pages.

[fol. 1773] Mr. Greenberg: I am merely trying to identify this for the record, your Honor.

Now I ask you, sir, to look at this document --- ask you if you recognize it.

A. I do.

Q. Tell us what it is?

A. This is—this was a technique of trying to anticipate questions which the salesmen in the field might be asked by customers or prospects, and to answer those questions in a simple form which I hoped they would read.

Q. What distribution did this document have?

A. This had exactly, as I understand, the same distribution as for the other documents which you mentioned, which was for the field sales force.

Q. In other words, this was distributed to the sales force?

Mr. Greenberg: The Government offers the second part of G-405 as described in the record.

Mr. Hughes: Your Honor, there is some confusion in my mind, because this document was put together by us and apparently what you say is the second part appears [fol. 1774] to me to be the first part. You are talking about the questions?

Mr. Greenberg: Yes, the questions.

Mr. Hughes: May I ask a question or two on this, your Honor?

The Court: Yes.

Preliminat*ion* examination.

By Mr. Hughes:

Q. Referring now to the questions, were there questions in this form distributed to the sales force?

A. Mr. Hughes, I must say again that because of that date of June 1956 this may have been a draft. In this particular case, however, I can say that that document or a very similar document went to the field sales force.

Mr. Hughes: I have no objection to it.

The Court: It may be received.

Mr. Hughes: But it is just those five pages.

The Court: Wait a minute. The way I see it here, Mr. Hughes, it runs through——

Mr. Hughes: Five pages, your Honor, of questions.

The Court: Yes, five pages of questions. Now there is a third part to it.

Mr. Greenberg: Exactly, your Honor. G-405 encom- [fol. 1775] passes ten pages and it is entitled "Continental's new Savorlock can" from R. D. Cleaves, dated June 1956.

Q. I show you this document and ask you if you can identify it.

A. Well, now, there again this has to be a draft, because going back to the first exhibit, you have the picture of the can on there, and if you look at the first paragraph of this and the first paragraph of that, I think you will find that it says the same thing.

Q. All right. When you say a draft, you mean a draft of G-404?

A. A preliminary draft, yes, sir.

The Court: If we have 404, what do we need this one for?

Mr. Greenberg: Very well, your Honor.

Mr. Hughes: Your Honor, is the record clear as to what is being received?

The Court: The middle section of this entitled "Continental's new Savorlock can," consisting of five pages is received and all the rest of it is excluded.

Incidentally, gentlemen, I will expect you at the conclusion of the session to try to give some assistance to the clerk in following the marking of these documents, which [fol. 1776] is not too easy under all the circumstances.

By Mr. Greenberg:

Q. Now, Mr. Cleaves, I show you Government's Exhibit 408 for identification and ask you if you recognize it.

A. Yes, sir, I do.

Q. What is it?

A. This was a bulletin which was entitled "New Product Development," which was preliminary information to the field on a new product which was being introduced in the same line. It had, if I may say, the same field circulation as these other product bulletins.

The Court: Is there any objection to that, Mr. Hughes?

Mr. Hughes: No objection.

The Court: It may be received.

Q. I would just want to ask you, who was Mr. Brachle?

A. Mr. Brachle at that time was in the Central Division, the Chicago office, and had in the division the same commodities and the same functions within the division that I had in the head office; in other words, he was in non-proc- [fol. 1777] essed foods, meats and so forth.

Mr. Greenberg: G-408 is now in evidence, your Honor?

The Court: Yes.

(Government's Exhibit 408 for identification received in evidence.)

Q. I now show you Government's Exhibit 409 for identification and ask you if you recognize it.

A. Yes, sir, I do.

Q. What is it?

A. Let me just take another look at it. This is an information bulletin to the sales department. I cannot specifically say to whom it went except that I know it went only to the field sales force.

Q. Are you saying that it did go to the field sales force?

A. Yes, it did go to the field sales force.

Mr. Greenberg: I offer G-409 into evidence.

Mr. Hughes: What is the purpose of the offer, please?

The Court: Yes.

Mr. Greenberg: Well, your Honor, we think it shows that this company directed its sales force to documents such as this to compete with glass container manufacturers.

[fol. 1778] The Court: That is the conclusion you draw.

Mr. Greenberg: We are offering it——

The Court: You are offering it as evidence on that subject?

Mr. Greenberg: That is correct, your Honor.

Mr. Hughes: I object, your Honor, on that ground?

The Court: Overruled.

(Government's Exhibit 409 for identification received in evidence.)

By Mr. Greenberg:

Q. I now show you Government's Exhibit 410 for identification and ask you if you can identify it, sir.

A. Isn't that the same as the other, sir?

Q. It is addressed to a different person.

The Court: We are not going to have duplications of the same material just because they are addressed to two different people.

Q. Who was Mr. Hatfield?

A. Mr. Hatfield was general manager of sales at that time in that office, but he was on the regular list to re-

[fol. 1779] ceive it.

The Court: Let us eliminate 410.

Mr. Greenberg: Eliminate 410?

The Court: That is what we are dealing with. It is the same as 409, is it not?

Mr. Greenberg: Well, let us eliminate 409 instead, your Honor, because Mr. Hatfield at that time——

The Court: Well,——

Mr. Greenberg: All right, we will follow your order.

The Court: 409 is to be marked in evidence. Let the record show that Mr. Hatfield got it.

Mr. Greenberg: Very well, thank you.

We have no further documents to cover with this witness.

The Court: All right. Do you want to ask a few questions of this witness?

Mr. Hughes: Yes, your Honor.

Cross-examination.

By Mr. Hughes:

Q. Mr. Cleaves, these documents, 404, 408 and 409 relate to the so-called Savorlock can project, is that right?

A. Yes.

[fol. 1780] Q. Can you tell us when or about when the company embarked upon this Savorlock can project?

A. Well, I cannot tell you exactly because——

Q. Approximately?

A. I can't even tell you approximately, sir, because it was—the small can was a fait accompli at the time that I was made sales manager and I inherited it.

Q. And they made two sized cans, did they?

A. Yes, sir.

Q. What sizes?

A. A size to hold two ounces of soluble coffee and a size to hold six ounces of soluble coffee.

Q. And the idea was to use them and to sell soluble coffee to people who packaged soluble coffee, is that right?

A. Yes, sir.

Q. Now will you tell us what attempts were made to use the Savorlock cans commercially?

A. Attempts by packers?

Q. Well, attempts by Continental in cooperation with packers, let us put it that way.

A. Well, J. H. Folger Company with offices in Kansas City, the Central Division, made a so-called commercial test [fol. 1781] of their soluble coffee in the small cans.

Q. And with what results?

A. With the results that they lost all interest in it, sir.

Q. Actually they withdrew the can from the market, did they not?

A. They did.

Q. They discontinued their line?

A. They did.

Mr. Greenberg: I am going to object to that, your Honor, unless we have a time period.

The Witness: I can give it to you.

By Mr. Hughes:

Q. Give me the time period.

A. Well, Folger started packing cans in I believe July of 1955—in fact, I will say it was in July of 1955, and they ran their market test, to my recollection, starting in August of 1955 for about six or eight weeks.

Q. And following that they withdrew the line, as you have described?

A. They pulled it off the shelves, yes, sir.

The Court: Have you got any such line now?

The Witness: Do they have?

[fol. 1782] The Court: No, have you? You don't know because you are no longer with Continental.

Mr. Greenberg: He was with Continental until 1957, your Honor, and he would know about that in that period.

The Witness: Yes.

By Mr. Hughes:

Q. Did you still offer the can up to 1957?

A. Yes, sir.

Q. With what results?

A. Well, with very poor results. It was not accepted.

Q. Did anybody after this experience at Folger pack soluble coffee in Savorlock cans?

A. Yes, they did. The Pennco at Linden, New Jersey, which is a contract packer of soluble coffee, at the time that I was about to go to Louisville, they, for an export order, placed an order for a very small quantity of cans, I don't remember how many, but it wouldn't have been more than a few hours run on the line, and I do not believe they had taken delivery when they stopped part of it, but I understand that they did take the cans.

Q. And they shipped them to South Africa?

[fol. 1783] A. That is my understanding.

Q. And what happened then?

A. I have been told, sir——

Mr. Greenberg: I object to that.
The Court: Sustained.

Q. In any event——

The Court: We are not going to have this witness tell us what happened in South Africa.
Mr. Hughes: I think that is fair enough, your Honor.

Q. In any event, so far as you know, did Penneo ever come back for a repeat order?
A. Not to my knowledge.
Q. And do you know of anybody else who ever has used a Savorlock can for soluble coffee?
A. No, sir.
Q. Do you know whether Continental is now presently trying to——

Mr. Hughes: I withdraw that.
That is all.

Redirect examination.

By Mr. Greenberg:

Q. Sir, isn't it true that Sanborn has considered using the Savorlock can?
A. I would say that they definitely were interested in it, [fol. 1784] to my knowledge.
Q. Did they consider it, do you know?
A. I think, yes, they and others in the industry.

Recross examination.

By Mr. Hughes:

Q. And having considered it, they didn't use it, is that right?
A. That is correct.

Mr. Hughes: No further questions.
The Court: All right, thank you; you are excused.

(Witnessed excused.)

The Court: Now you are going to have Mr. Heinen's testimony.

Mr. McManus: Yes.

The Court: There is only a single document with him?

Mr. McManus: Two, your Honor.

The Court: Well, we will take a brief recess now before we get to Mr. Heinen.

[fol. 1785] The Court: Next witness.

Mr. McManus: Mr. Heinen.

JOHN M. HEINEN, called as a witness on behalf of the Government, bing first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Heinen, are you presently employed by Continental Can Company?

A. Yes.

Q. For how long a period have you been employed by that company?

A. Since September, 1937, except for a period when I was in the Navy, three years.

Q. What have your duties been with Continental Can?

A. Well, the first assignment was as research engineer in the research department, in the Chicago metal division. That assignment lasted through till I went into the Navy, and then when I came back, was research engineer from January, '46, till about '48, roughly. Then I was assistant manager of the packaging laboratory at that time, and became manager in about '52, and the name was changed, I think it was '54, to packaging engineering, and my pres-

[fol. 1786] ent assignment is manager of packaging and engineering in the metal division, research and development.

Q. I would like to show you Government's Exhibit 609, Mr. Heinen, and ask you if you recognize that document?

A. Yes.

Q. Could you tell me what this document is? Is it a speech that you made?

A. Well, as I recall, it was a talk that I prepared and

gave, I am not sure which. It could have been one. I believe it was given within Continental Can Company.

Q. Within Continental Can Company?

A. I believe so.

The Court: To whom did you give the talk? Who was present?

The Witness: Well, it isn't identified here. It is just entitled "Canned Carbonated Beverages." It may have been given to our technical field representatives. We have meetings, annual meetings, with them. I am not certain from this.

Q. Would this be normal, would this be the type of speech that you would make for your technical people? [fol. 1787] A. It might be, yes.

Q. Have you made speeches of this kind concerning carbonated beverage, which would contain subjects of this speech? Have you had a chance to look at this?

A. Well, I just glanced at it. It is 1954. It was apparently a more formal program. It could have been a talk that I made again with the company with our—meeting held with our foreign associates, I am not sure.

Q. Now, if I turn to page 5—excuse me. If I turn to page 4, and if you would look in the middle of page 4, starting with "In any container development," on page 4——

A. And what?

Q. —and if you would glance through there, and over here?

A. Yes.

Q. Now, could you tell me, in your position, would you know if the figures on page 5, the $200,000 per year, are you in a position to know that those figures are accurate? Would you be?

A. Well, I think they are accurate, yes.

[fol. 1788] Q. How would you obtain that information?

A. I obtained the information from members of our research and development department, who compiled it for me.

Mr. McManus: Now, your Honor, we offer this document only for page 4, starting with "In any container development," and down through the sentence on page 5, which

says, "For the past year and a half Continental has been spending money at a rate in excess of $200,000 a year to accomplish these objectives." We offer those for the truth of the statement contained therein, and that is the only purpose of the document.

The Court: Yes, Mr. Johnson.

Mr. Johnson: May I just glance at what he referred to?

The Court: Yes, sure.

Mr. Johnson: I have no objection to that portion. However, I do have a few questions to ask the witness.

The Court: You may ask the questions.

Mr. Johnson: Should I wait until he is through with the direct examination?

[fol. 1789] The Court: Well, I understand he is through with the direct examination.

Mr. McManus: That is correct, your Honor.

The Court: On 609, at least. So you may as well proceed, Mr. Johnson.

In the meantime, that portion which was offered will be admitted without objection.

(Government's Exhibit 609 for identification received in evidence.)

Cross-examination.

By Mr. Johnson:

Q. Do you know, Mr. Heinen, if Continental has continued to promote the development and sale of the soft drink containers since the date of this speech?

A. Since 19——

Q. 1954?

A. —54? Yes, we very definitely have continued development work on this container.

Q. And has it done so vigorously?

A. Very vigorously.

Q. Did the acquisition by Continental of the assets of Hazel-Atlas Glass Company have any effect on this program?

A. Had no effect on our research development program, to my knowledge.

[fol. 1790] Mr. Johnson: That is all.

The Court: Anything further, Mr. McManus?

Mr. McManus: No, sir, your Honor.

The Court: Do you have another exhibit?

Mr. McManus: Just one more document, your Honor, which is marked 806.

The Court: 886?

Mr. McManus: Yes, sir, for identification.

The Court: May I have that, Mr. Clerk?

Mr. McManus: This is it, your Honor. I have only one copy.

The Court: Has the other side seen it?

Mr. McManus: Yes, they have, your Honor.

The Court: Is there any objection to this?

Mr. Johnson: I would like to ask a few questions about it.

The Court: All right, ask him first if it is a speech that he made, and where he says he made it.

By Mr. McManus:

Q. Do you recall this speech, Mr. Heinen?

A. Yes, I do.

Q. Where did you make it?

A. It was made at the meeting of the Chemical Special-

[fol. 1791] ties Manufacturers Association in Chicago. The date is in there.

Q. At the date indicated?

A. Yes. I don't remember which of the two days it was.

Q. Either May 21, 1957, or May 22, 1957.

A. Yes.

The Court: All right, you may examine.

Mr. Johnson: May I have the purpose for which this document is offered?

Mr. McManus: We are offering this document, your Honor, for the truth of the matter contained herein. Mr. Heinen is a specialist with the company; he is in research development; has been in it for a number of years. He makes a speech here in which he tells about the uses of aerosol containers both in cans and glass, and the possibility also in plastic. He makes a speech and is listed apparently as a representative of the Continental Can Company when he made it.

Mr. Johnson: I object to it, your Honor. Mr. Heinen is

on the stand and I don't believe there is anything in this document that he can't be asked about on the stand.

The Court: Well, I think that may be so.

[fol. 1792] Do you want Mr. McManus to go ahead and go through all this material with him on the stand? Because if that is your desire, I will let McManus go right ahead.

Mr. Johnson: All right, I will withdraw the objection, but I would like to ask the witness some questions.

The Court: You may ask any questions you wish.

Cross-examination continued.

By Mr. Johnson:

Q. Before what organization was this speech made, Mr. Heinen?

A. It was the Chemical Specialties Manufacturers Association.

Q. Did that organization up until fairly recently have a different name?

A. Yes, sir; it did.

Q. Do you recall what it was?

A. It is quite a long name. I believe it was the National Association of Insecticides and Disinfectant Manufacturers.

Q. Now, you refer in the speech to packaging in aerosol [fol. 1793] containers. Is it true, Mr. Heinen, that products which are packed in aerosol containers normally have a different formulation than the same similar products packaged in other types of containers?

A. Yes, this is generally true.

Q. And some of the products that are packaged in aerosol are products which have never been made available before; is that true?

A. Yes, sir.

Q. And is hairspray one of those?

A. Hairspray or hair lacquer, as it is called, is one of those, yes, sir.

Q. You refer in this article, sir, to a figure of aerosol packages. You say, "Aerosol packages accounted for $320,000,000 last year in the United States alone." Do you know where that figure came from?

A. Not precisely, sir.

Q. What do you mean "not precisely"? Do you know where it came from?

A. Well, the figures were given to me by members of our organization, librarian, the librarian, I believe.

[fol. 1794] Q. Do you know whether the $320,000,000 refers to cost of containers or to the filled packages?

A. I don't recall now.

Q. You don't know whether it is the containers or the containers and the contents?

A. I am not sure which it was now. It was some time ago.

Q. You refer in this speech to pharmaceutical aerosols and you say, "We can look forward to tremendous gains in this field in the next few years." Have those gains developed as you anticipated they would in 1957?

A. Not yet they haven't, no, sir.

Q. You refer also to possible gains in pressurized dispensers in the food field. Have those gains materialized as you anticipated they would in 1957?

A. No, sir; they have not.

Q. As I understand it, this speech related to all kinds of aerosols, did it not?

A. Yes, it did.

Q. Not simply aerosols made out of any one particular type of material.

A. No, I covered the entire field of aerosols as it was [fol. 1794a] known at that time.

Mr. Johnson: That is all.

The Court: Anything further?

Mr. McManus: None further.

The Court: You may step down, sir.

(Witness excused.)

[fol. 1795] Mr. Greenberg: Will Mr. Neuman please take the stand?

He is our last witness, sir.

The Court: Before Mr. Heinen leaves, 609 and 806 will be admitted.

(Government's Exhibits 609 and 806 for identification received in evidence.)

The Court: Now you may swear the witness, Mr. Clerk.

W. K. NEUMAN, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside?

A. In Mamaroneck, New York.

Q. And you are presently employed by Continental Can?

A. Yes, sir.

Q. How long have you been employed by the company?

A. A little more than 20 years.

Q. In the period 1948 to 1952 what positions did you hold with the company?

[fol. 1796] A. In most of that time I was products sales manager and for the latter part of 1952 director of products sales in the Metal Division.

Q. When you held that position did you or did people under your supervision compile statistics which compared the cost of cans with glass containers?

A. Yes, sir.

Q. What other duties and responsibilities did you have?

A. Essentially it was a matter of disseminating information to our field sales force.

Q. Sir, how long had you been director of products sales?

A. One year.

Q. And you were responsible for disseminating material to the sales force?

A. Yes.

Q. What were your duties and responsibilities as director of products sales?

A. Supervising the products sales managers.

Q. And what did that involve, what did the products sales manager do?

A. The products sales managers were responsible for disseminating information to the field sales force.

[fol. 1797] Q. Sir, you had been manager of sales for the Metal Division of Continental Can?

A. Yes.

Q. When was that?

A. That was from January 1953 through January of 1956.

Q. And could you tell us, sir, what your duties and responsibilities have been in that position?

A. As general manager of sales on a staff basis to advise the executive head of the Metal Division on sales matters.

Q. Since 1956 what was your position with the company?

A. Manager of new products for the Metal Division.

Q. And you hold that position currently?

A. Yes, sir.

Q. What are your duties and responsibilities in that position?

A. Essentially the coordination of technical developments and subsequent commercialization of new products.

Q. Sir, I show you page 7 of Government's Exhibit 401 for identification and ask you if you recognize this [fol. 1798] page.

A. I don't recall it specifically. I see my name down here as having provided the information. I don't recall it specifically.

Q. But it is your testimony that you made studies of that type at that time?

A. Collecting information of that type.

Mr. Greenberg: Your Honor, the witness who apparently compiled all of this material, Mr. Walker, will testify tomorrow, and, frankly, I am just wondering whether I should offer this page or wait until Mr. Walker testifies.

The Court: It seems to me that the thing to do is to establish what you want to about this page and then when Mr. Walker testifies tomorrow offer the whole document.

Mr. Greenberg: Very well, I have no further documents with this witness.

Cross-examination

By Mr. Hughes:

Q. Mr. Neuman, can you tell me the source from which you derived the material on page 7 of Exhibit 401?

A. Well, I cannot precisely because I do not recall that specific instance. Normally I would obtain information of that type from our field sales force.

[fols. 1799-1847] Q. And that is the best you can do for us on that subject?

A. Yes.

Mr. Hughes: That is all.

The Court: All right.

Next document.

Mr. McManus: That is all for this witness.

The Court: That is the only document you have?

Mr. Greenberg: I would like to advise your Honor that the Government has not shown the witness documents which he allegedly received copies of because we have a stipulation——

The Court: All right, then that is not necessary.

Mr. Greenberg: And we have identified what his position was at that time.

The Court: I guess that disposes of you, Mr. Neuman, rather rapidly.

The Witness: Thank you.

(Witness excused.)

* * * * * * *

[fol. 1848] T. L. Sanders, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Sanders, by whom are you presently employed?

A. Eugene Dietzgen & Company.

Q. Were you at one time employed by Continental Can Company?

A. I was.

Q. And in what capacity?

A. Supervisor of metal container analysis.

Q. And for what period of time were you employed in that capacity?

A. October 1953 to April 1956.

Q. And who was your immediate superior?
A. At the time I left it was Mr. Dana Hill.
Q. Who is Mr. C. H. Buckley?
A. Mr. Buckley was the product manager of carbonated [fol. 1849] beverage containers.
Q. I show you Government's Exhibit 610, Mr. Sanders. Is that your signature?
A. It is.
Q. Do you recall preparing this document?
A. I recall signing it.
The Court: Am I wrong, didn't we go into 609 and 610 yesterday?

Mr. McManus: Not 610.
The Court: Was it 608 and 609?
Mr. McManus: I believe it was 608 and 609.
The Court: All right.

Q. Do you know the position of the first two men on the list under "cc" here?
A. Yes, I do.
Q. What was Mr. Fogarty's position?
A. If I recall correctly, at that time Mr. Fogarty was the vice-president of the Metal Can Division.
Q. And Mr. Wojtul, what was his position?
A. He was vice-president for sales.
Q. Was it under your direction that this survey of soft drink purchases in Los Angeles was made?
A. I am sorry, would you say that again?
Q. Was it under your direction that the survey of soft [fol. 1850] drink purchases, the study, was made?
A. No, it was not.
Q. How did it come to you, Mr. Sanders?
A. It came to me pretty much substantially prepared in rough final form just for my supervisory reading and editing.
Q. Was this attachment to 610 written by you and prepared by you?
A. The covering memorandum?
Q. No, the attachment?
A. No, it was not.

Mr. McManus: In that case, your Honor, the Government offers the covering letter of Exhibit 610 only, and we offer

it to show the awareness of Continental Can of competition between cans and glass in the Los Angeles market for soft drinks.

The Court: Is there any objection to the first two pages of 610?

Mr. Johnson: It is not offered for any other purpose?

The Court: No.

Mr. Johnson: No objection.

The Court: Do you want to ask any questions about it while the witness is on the stand?

[fol. 1851] Mr. Johnson: One moment, your Honor.

(Pause.)

Mr. Johnson: No questions.

The Court: All right, thank you, Mr. Sanders.

(Witnessed excused.)

The Court: 610 will be received.

(Government's Exhibit 610 for identification received in evidence.)

Mr. McManus: The Government calls R. A. Larson.

Ralph A. Larson, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Larson, by whom are you presently employed?

A. By Continental Can Company.

Q. And for how long a period have you been employed by that company?

A. Since 1936.

Q. And what have been your duties in the last ten years?

A. I was employed in the Metal Division Research De-

[fol. 1852] partment until 1953, and then from 1953 to 1954 in the Metal Division Sales Department, and from 1954 to the present time in the sales department.

Q. Would you know whether on July 15, 1953, you had been in sales or research?

A. Sales.

Q. I show you Government's Exhibit 417, Mr. Larson, and ask you whether "R. A. L." are your initials?

A. Yes, sir.

The Court: Where does that appear?

Mr. McManus: Excuse me, your Honor. That is on page 5, at the bottom of the page.

The Court: Yes.

Q. Would you take a look at this and tell me if you are familiar with this document?

A. Yes.

Q. Did you prepare that document?

A. Yes, sir.

Q. And what distribution did you give to that docume

Mr. Johnson: I did not hear that.

The Court: Both you and the witness try to keep your voices up so that these gentlemen can hear you.

[fol. 1853] Mr. McManus: Yes, your Honor.

A. I don't recall what the distribution of this was.

Q. Do you recall if you did distribute it at least through the organization?

A. Well, certainly to my superior.

Q. Who was your superior at that time?

A. Mr. Neuman.

The Court: And what was his capacity?

The Witness: He was the general manager of sales, Metal Division.

Q. Have you studied the basic material here about white enamel lining of cans?

A. I have made no study of it, no.

The Court: What did you do in preparing this paper? How did you go about preparing it?

The Witness: This, I would say, is the summary of information which I had gathered from a large number of sources, mostly through discussions.

The Court: Let us take white enamel lining of cans, where would you have gotten that information from?

The Witness: This I am afraid was a conjecture on my part.

[fol. 1854] By Mr. McManus:

Q. Take B, where would you get that type of information from?

A. With reference to the glass jars, this would have been as a result of discussions with people who had received these reactions from customers, I suppose.

Q. Would that discussion be within or without Continental Can?

A. Mine would be strictly within Continental.

Q. And would that be true with paragraph D?

A. Yes.

Q. And would that also be true with the rest of this document or did you make these studies yourself?

A. The are accumulations. These are my interpretations of information from a number of sources.

The Court: Can you hear, Mr. Johnson?

Mr. Johnson: It is very difficult back here, your Honor.

Mr. McManus: I am sorry, I will lift my head a little bit.

Q. Do you know why you made this document or who asked you to make this document?

A. No.

[fol. 1855] Q. But you do recall that you made it and sent it on to your superior?

A. Yes.

The Court: Was the document prepared in the course of the duties which you were then performing for Continental Can?

The Witness: Yes, sir.

The Court: And in the course of those duties you passed the document on to your superior, did you?

The Witness: Yes, sir.

The Court: You do not know what use your superior made of it?

The Witness: No, sir.

The Court: Do you know if it went to any other person besides your superior?

The Witness: I don't know.

The Court: You don't know?

The Witness: No, I don't know.

The Court: All right.

Mr. McManus: Your Honor, we are going to offer Government's Exhibit 417, but while I am here I would like to ask the witness if he also prepared 417-A, if I may.

[fol. 1856] The Court: Yes, you may.

By Mr. McManus:

Q. Would you look at 417-A and see if it was prepared by you?

A. No, sir.

Q. Have you ever seen this document before?

A. I don't recall this page.

Q. Would you take a look at the document and would you tell me if you are familiar with it?

A. I have seen something like this.

Q. What group were you with at the time you made the other document, 417?

A. With the sales group.

Q. And would this sales group have made this document or would this have been the type of document that your sales group would have made?

A. That I would not know.

Q. You say that you recall you might have seen this?

A. I might have.

Q. Do you have any idea as to who would have prepared this in your company?

A. I have an idea—I don't recollect, I really don't.

[fol. 1857] Q. I am just asking you, do you know?

A. No, I don't.

Mr. McManus: Your Honor, the Government offers at this time Government's Exhibit 417 only.

The Court: All right. You better state the purpose of it before Mr. Johnson examines on it.

Mr. McManus: Your Honor, the Government offers this document to show that Continental Can was very much concerned with staying in or getting back into the market for

baby foods, and also to show the competition between cans and glass for the baby food market.

Mr. Johnson: Well, your Honor, I take it that it is understood that Mr. McManus' statement as to his purpose for offering it——

The Court: I understand. He said what the purpose was, but it does not necessarily follow from the statement that he made accomplishes the purpose or does not accomplish the purpose.

Cross-examination.

By Mr. Johnson:

Q. Mr. Larson, did I understand you to say that you did not recall the sources from which you got the information to put in here, that is, Exhibit 417?

A. Not the exact sources.

[fol. 1858] Q. And you were speculating when you said that it might have come from discussions with others in the company?

A. Yes.

Q. You assumed that simply because you got the information from some place but you don't know now where you got it?

A. Not specifically.

The Court: Mr. Larson, do you recall whether in the preparation of this document you engaged in discussions with your colleagues in the company with respect to various aspects of this subject matter?

The Witness: Yes.

The Court: You did?

The Witness: Yes.

The Court: And I take it that you also did some reading?

The Witness: Yes.

The Court: You read material that was available on this subject?

The Witness: Yes.

The Court: Presumably from files of Continental Can, is that right, or from trade journals or from such other sources?

[fol. 1859] The Witness: Certainly.

By Mr. Johnson:

Q. Did you discuss this document with your superior?

A. I believe—I would assume that I did at this time.

Q. You assume you did but you don't know now, is that correct?

A. I don't recall a definite specific discussion.

Q. Do you recall any specific discussion with respect to this document?

A. Not specifically.

Q. Do you recall how much time you spent on this document?

A. Not accurately, no, sir.

The Court: Can you approximate the time you spent on it?

The Witness: Well, I imagine the writing would have been——

The Court: In terms of hours, the basic study, if you want to call it that, or research which you did in order to obtain the information that you have put in there, how long would that have taken?

The Witness: It would have represented information [fol. 1860] gathered over a period of months.

The Court: Not a continuous period of months.

The Witness: No.

The Court: But sporadically over a period of months?

The Witness: Yes, sporadically.

By Mr. Johnson:

Q. Would you regard this as a major project?

A. No, sir.

Q. At the time that you prepared this, Mr. Larson, were you an officer or director of the Continental Can Company?

A. No, sir.

Q. Were you responsible for policy determinations?

A. No, sir.

Q. Do you know what use was made of this document?

A. No, sir.

Q. Do you know whether Continental Can ever made lithographed baby food cans?

The Court: Ever made what?

Mr. Johnson: Lithographed baby food cans.

The Court: Somebody tell me what that means.

Q. Will you tell his Honor what lithographed baby food [fol. 1861] cans means that is referred to on this page?

The Court: Oh, this merely has to do with the labeling of it?

The Witness: The printing.

The Court: The printing, I see. In other words, lithographing directly on the can rather than pasted on or a wrap-around label?

The Witness: Yes, sir.

By Mr. Johnson:

Q. Do you recall my question?

A. Yes. I just don't know that I have ever seen one.

Q. Do you know whether Continental Can ever used a Trutite closure on baby food cans?

A. No, sir.

Q. Did Continental ever use conoseal closures on baby food cans?

A. No, sir.

Q. Did it ever use screw cap closures for baby food cans?

A. No, sir.

Mr. Johnson: I object to this document, your Honor.

The Court: Overruled.

[fol. 1862] (Government's Exhibit 417 for identification received in evidence.)

The Court: Is there anything further from Mr. Larson?

Mr. McManus: No, sir.

The Court: Thank you, Mr. Larson, you may step down.

(Witnessed excused.)

The Court: Next witness.

Mr. Greenberg: Your Honor, the Government calls Mr. Whittier to the stand.

ALLEN L. WHITTIER, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?
A. Merrick, New York.
Q. Are you employed by Continental Can at the present time?
A. I am.
Q. How long have you been employed by Continental Can?
A. 25 years.
[fol. 1863] Q. Will you tell us in what positions?
A. It was a long haul, but generally I have been with the marketing or commercial research.

Mr. Johnson: I have been informed that this witness was going to be examined with respect to documents 589 to 599. 592 to 597 are already in evidence. If the purpose of calling this witness is to introduce the remaining documents which are of a similar nature, I have no objection to them.

The Court: Well, that seems to simplify that.

What documents do you offer?

Mr. Greenberg: I thought we informed a representative of Continental Can, and if we had not, we now inform them, that we are now going to offer G-589, 590, 591, 592, 598 and 599 only.

The Court: Isn't 592 in evidence?

Mr. Greenberg: Yes, it is in evidence.

The Court: So that is out.

Is 591 in evidence?

Mr. Greenberg: No, sir. 592 and 593 are in evidence.

The Court: All right. 598 is not in evidence?

[fol. 1864] Mr. Greenberg: That is correct, your Honor.

The Court: Let me ask, just for the purpose of clarification here, is there presently any objection to 589, Mr. Johnson?

Mr. Johnson: No.

The Court: That may be admitted.

(Government's Exhibit 589 for identification received in evidence.)

The Court: Is there any objection as to 590?
Mr. Johnson: No.
The Court: That may be admitted.

(Government's Exhibit 590 for identification received in evidence.)

The Court: As to 591?
Mr. Johnson: No.
The Court: That may be admitted.

(Government's Exhibit 591 for identification received in evidence.)

The Court: As to 598?
Mr. Johnson: No.
The Court: That may be admitted.

(Government's Exhibit 598 for identification received in [fol. 1865] evidence.)

The Court: As to 599?
Mr. Johnson: No.
The Court: That may be admitted.

(Government's Exhibit 599 for identification received in evidence.)

The Court: All right, thank you, Mr. Whittier.
Mr. McManus: May I just ask one of two questions dealing with what positions he held at the time these documents were executed?
The Court: All right, I will give you two questions.
Mr. Greenberg: All right.

By Mr. Greenberg:

Q. In 1947 and 1948 what position or positions, if more than one, did you hold with Continental Can?

A. I can't recall the title but it had to do with commercial research, however.

Q. The second question is, can you recall your duties and responsibilities in the positions you held in 1947 and 1948?

A. Specifically, no, they were varied.

Q. You can't recall?
A. No.

[folo. 1866-1867] The Court: Thank you, Mr. Whittier.

Mr. Johnson: May I ask——

The Court: I am sorry, do you have any objection to these exhibits?

Mr. Johnson: While I have no objection to these documents, we would like to have a statement as to purpose for which they are being offered.

The Court: Yes, I think that is a fair request.

Mr. Greenberg: Your Honor, these documents are grouped together into a series, and the series involve reports on beer packed in glass containers. There is a long line of distribution of these documents to officers and other executive personnel of the company, who received this material.

Succinctly, your Honor, these documents show the awareness of competition between cans and glass containers and a desire to keep abreast of the market.

The Court: All right.

Next witness.

(Witness excused.)

* * * * * * *

[fol. 1868] D. H. Walker, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

The Court: Before we proceed, what documents are you going to question Mr. Walker about?

Mr. McManus: 429, your Honor, and——

The Court: Are any of these in evidence?

Mr. McManus: I checked with the clerk and I believe they are not, your Honor.

The Court: Let me first ask, before you go into this, is there any objection to 429?

Mr. Hughes: Yes, sir.

The Court: 440-A?

Mr. Hughes: Yes.

The Court: 440?

Mr. Hughes: Yes.
[fol. 1869] The Court: 441?
Mr. Hughes: Yes.
The Court: 600-B?
Mr. Hughes: Yes, your Honor.
The Court: 601?
Mr. Hughes: Yes, your Honor.
The Court: 602?
Mr. Hughes: Yes, sir.
The Court: 604?
Mr. Hughes: Yes, sir.
The Court: And 605?
Mr. Hughes: Yes, sir.
The Court: All right, go ahead.

Direct examination.

By Mr. McManus:

Q. What is your present employment, Mr. Walker?
A. I am in the management consulting field with Cresap, McCormack & Paget.
Q. How long have you been employed in the management consulting field?
A. Six years.
Q. And prior to that by whom were you employed?
A. By Continental Can.
Q. What year did you terminate your employment with Continental Can?
[fol. 1870] A. In the year 1954.
Q. How long were you employed by Continental Can?
A. From 1948 to 1954.
Q. Did you have different jobs over that period of time or did you just have one job?
A. The entire time was in the commercial research department, and from 1950 to 1954 I was manager of that department.
Q. Prior to 1950, from 1948 to 1950, what was your position?
A. I was a supervisor in that department.
Q. And to whom did you report as head of the commercial research department?
A. To different people at different times.

Q. And to what group would you report?

A. It was a part of the sales department and under the general direction of the vice-president for sales, but there were intermediate superiors at various times.

Q. And during the whole time as head of the commercial research department was there one vice-president for sales or several?

A. No, there were several.

[fol. 1871] Q. I show you Government's Exhibit 429 and ask you if you recognize that document? Take a look at it.

A. Yes, I recognize it.

Q. Who prepared the letter? Is that your signature?

A. That is my signature. I believe I prepared the letter.

Q. And who did you send that to?

A. Mr. Mackelden.

Q. Who was Mr. Mackelden?

A. Mr. Mackelden at that time was the products sales manager for non-food metal cans.

Q. Could you identify these three gentlemen on the list here?

The Court: We have had Wojtul identified and Neuman identified—in fact, he has been on the stand. I think we have had Fisher identified several times, if I am not mistaken.

Q. Was the attachment here prepared—would you take a look at that and tell me, was it prepared by the commercial research department?

A. Yes, it was prepared by that department.

The Court: Under your supervision and direction?

[fol. 1872] The Witness. Under my direction, yes.

The Court: How big a staff did you have?

The Witness: I believe it was about 15 at that time.

The Court: How did you go about preparing this document? What did you do in preparation of it?

The Witness: Well, I did not prepare it.

The Court: What did your staff do under your direction and supervision, in substance?

The Witness: In substance, reviewed information available in our files, information available to personnel within the company, interviewed people in the company who knew,

containers, and reviewed trade literature, trade information.

The Court: So that as a result they prepared this document, is that right, and submitted it to you?

The Witness: That is correct.

The Court: And you reviewed it, I suppose?

The Witness: That is correct.

The Court: And then you prepared this memorandum and sent it to the list of people here?

The Witness: Yes, sir.

The Court: Is there anything further you want on this, Mr. McManus?

[fol. 1873] Mr. McManus: Your Honor, the Government offers document 429. We offer this for the truth of the matter contained therein.

The Court: Is that the only purpose, that you just offer it for the truth and you offer it for no other purpose?

Mr. McManus: Yes, sir.

The Court: All right, now you may examine, Mr. Hughes.

Cross-examination.

By Mr. Hughes:

Q. Mr. Walker, do you know whether this document had any circulation outside of the company?

A. No, I did not. I am fairly sure it did not go outside the company.

Q. Do you know whether it had any circulation beyond Mr. Mackelden and the three gentlemen named at the bottom of the transmitting letter?

A. No, I do not.

Q. You told us that you did not prepare the document yourself, is that correct?

A. I don't believe I did.

Q. Now, do you know whether any action of any kind was taken on this document?

[fol. 1874] A. No, I do not.

Q. Do you know what happened to the document after you transmitted it?

A. Only that it was read.

Q. And at that time were you an officer or director of the company?

A. No, I was not.

Q. Did you have the power to commit the company in any way?

A. No.

Q. Did you make policy for the company at that time?

A. No, I did not.

Q. At page III there is a reference to a recent consumer survey conducted by Lever Bros. Do you recall whether you ever saw that survey that is referred to at the bottom of that page?

A. No, I did not see it.

The Court? Where is that reference, Mr. Hughes?

Mr. Hughes: Page III, the last sentence on that page.

The Court: Yes, I see.

Q. And on what would be page IV you observed the concluding paragraph on that page?

[fol. 1875] A. Yes.

Q. Can you tell us whether the research department ever investigated the possibilities therein alluded to?

A. No, I do not know.

Q. You don't know whether they did anything about that?

A. No, I don't know whether they did or not.

Q. And the language of that recommendation, that was the language of somebody other than yourself, you did not write that paragraph is that correct?

A. I am almost sure I didn't.

Q. Who was Jack Carter?

A. Mr. Carter was a market research analyst in the commercial research department.

Q. Do you see the tables and figures on page III?

A. Yes.

Q. Did you prepare them?

A. No, I did not.

Q. Do you know who did prepare them?

A. I would assume Mr. Carter did.

Q. And there is an indicated source of the figures as the Association of American Soap and Glycerin Producers, Inc., and the Chemical and Engineering News.

[fol. 1876] Do you see that?

A. Yes.

Q. Who was this Association, American Soap & Glycerin Producers? Do you know anything about them?

A. No, I do not personally.

Q. And you don't know what the data or material was in that Association's publication that Mr. Carter drew on to reach these conclusions, is that right?

A. That is correct.

Q. And similarly you don't about the Chemical and Engineering News of September 1, 1952?

A. No.

Q. Whether he drew on that?

A. No.

Q. Did you prepare the chart on page III?

A. No, I did not.

The Court: Just ask him the general question, did he prepare any of the charts.

Q. Did you prepare any of the charts or any of the figures?

A. No.

[fol. 1877] Mr. Hughes: Your Honor, I object to it as irrelevant and immaterial, and on the ground that no proper foundation has been laid for its reception.

The Court: Overruled.

Mr. Hughes: Now, your Honor, is this being taken for the truth of the matters?

The Court: It is being taken for all purposes.

(Government's Exhibit 429 for identification received in evidence.)

Mr. McManus: We are now referring, your Honor, to 440-A.

The Court: All right.

By Mr. McManus:

Q. Mr. Walker, I show you Government's Exhibit 440-A; is this your signature on page 3?

A. Yes, it is.

Q. And in January of 1952, what were your duties at that time?

A. I was manager of the commercial research department.

Q. You were manager at that time?
A. Yes.
Q. And in this case you were reporting—you made this [fol. 1878] report to Mr. Dukehart?
A. Yes.
Q. And what was his position at that time?
A. He is product sales manager for beer cans.
Q. And the document here in the lead sentence says that "At Mr. Dake's request I am submitting a summary."
A. Yes.
Q. Who was Mr. Dake?
A. Mr. Dake was my superior.
Q. And what position did he hold?
A. I believe his title was director of sales planning.

The Court: Director of what?
The Witness: Director of sales planning.
The Court: Try and keep your voice up, Mr. Walker. I am sure these gentlemen can scarcely hear you.
The Witness: Yes.

Q. And did he normally make requests of this type on your organization?
A. Yes, he normally did.
Q. And it was normal for you to make these reports to Mr. Dukehart; is that correct?
[fol. 1879] A. Yes.

The Court: I think you better ask him not if it is normal, but did he make these reports in the course of his duties, in the regular course of his duties.

Q. Did you make these reports in the regular course of your duties?
A. Yes, I did.
Q. And do you recall this particular report? If you would like to look at it?
A. Well, I don't recall preparing it, specifically.

The Court: But do you recognize it as a report you prepared?
The Witness: I recognize it, yes.
The Court: All right.
Mr. McManus: Your Honor, we offer this document for all purposes.

Preliminary cross-examination.

By Mr. Hughes:

Q. Mr. Walker, on page 2, in the middle paragraph, this document refers to interviews with retailers. Did you personally conduct those interviews?

A. No, I believe not.

Q. Do you know who did?

[fol. 1880] A. Not specifically.

Q. Now, at the time when this document was prepared, were there some sort of restrictions in effect on the use of metal?

A. What was the date on that document?

Q. January 29, 1952.

The Court: Well, now, somebody let the witness have the document before him.

Mr. Hughes: Your Honor, if I may stay here?

The Court: Yes, that is all right. In each case, please, when the witness is testifying, let the witness have the document so that he knows what he is talking about.

A. Yes, I believe there were use restrictions on metal, for metal cans.

The Court: What was this, the Korean War?

The Witness: Yes.

Q. And at the time when it was prepared, were you—when I say "you," I mean you and the company—looking forward to the time when these restrictions were going to be lifted?

A. Yes.

Q. And was the purpose of this a prognostication of what the requirements would be for metal containers for [fol. 1881] beer once the restrictions had been lifted?

A. I would say that is the basic purpose, yes.

Q. Now, would you say in your experience, Mr. Walker, that the customer has a tendency to confuse the one-way bottle and the returnable bottle?

A. Yes, in my experience, that is true.

Mr. Hughes: Your Honor, the same objection.

The Court: Yes, overruled.

Mr. Hughes: Is it being taken for all purposes?

The Court: Yes. As I understand it, of course, it is largely expressions of opinion.

Mr. Hughes: Yes, sir.

The Court: And expressions of opinion will not be taken as statements of fact, necessarily.

(Government's Exhibit 440-A for identification received in evidence.)

Direct examination continued.

By Mr. McManus:

Q. Mr. Walker, I show you Government's Exhibit 440, which immediately followed 440-A in our book.

A. I believe I recognize it.

Q. And your position was the same as you indicated [fol. 1882] when answering questions to 440-A?

A. Yes, that is right.

Q. And Mr. Dukehart had the same position, also?

A. Yes, he did.

Q. Now, did Mr. Dake ask you to make this document?

A. This was probably requested by Mr. Dukehart.

Q. Probably requested by Mr. Dukehart.

A. Yes.

Q. Will you take a look at the document and see if you can recall it, generally?

A. Yes, I recall the subject matter.

By the Court:

Q. Let me ask one question: do you know whatever happened to the proposed beer for women that is referred to on one of the pages here?

A. It never did establish a place on the market, to my knowledge.

Q. And could you tell me what was the difference between the proposed beer for women and the beer that one ordinarily obtained?

A. I think that was a marketing image.

[fol. 1883] Q. This was a gimmick?

A. This was a gimmick.

Mr. McManus: If we could go off the record a second?

(Discussion off the record.)

By Mr. McManus:

Q. Now, was this document prepared in the regular course of your duties?

A. Yes, it was.

Mr. McManus: Your Honor, the Government offers Government's Exhibit 440 for all purposes.

Preliminary cross-examination.

By Mr. Hughes:

Q. Mr. Walker, this wasn't prepared for circulation outside the company, was it?

A. No, it was not.

Q. And so far as you know, it didn't circulate outside the company?

A. As far as I know.

Q. The initials GB appear on the letter; do you know who GB is?

A. Yes, that is George Bliss.

Q. Does that mean that he wrote the first page of this document?

[fol. 1884] A. Yes.

Q. And that is your typed signature; is that right?

A. That is right.

Q. Now, at the time when this document was written, had American Can come out with an 8-ounce can?

A. I believe they had.

Q. And actually, this document was stimulated by the fact that they had come out with that can and you were considering the pros and cons of cans for beer in sizes less than 12 ounces; is that correct?

A. Yes, that is correct.

Q. And it was really to that problem that you were directing your attention when this memorandum was prepared?

A. Yes.

Q. And the report actually was not prepared by you, was it?

A. No, it was not.

Q. Do you know by whom it was prepared?

A. Well, I believe it was prepared by George Bliss, since his initials appear.

Q. And in your experience did the 12-ounce can for beer, less than 12-ounce can for beer, ever get any-

[fol. 1885] where?

A. Never amounted to anything.

The Court: Just let me understand: the ordinary beer can—I was going to say that I would buy—let's say that one would buy in the store, one would buy a can of beer or come back with several cans of beer, what is that, a 12-ounce can?

Mr. Hughes: That is a 12-ounce can.

The Court: And the 8-ounce can would be smaller than that.

Mr. Hughes: Yes, sir.

By Mr. Hughes:

Q. So far as you know, has Continental ever put out an 8-ounce can for beer?

The Court: In other words, that would be only two-thirds of what would be in a 12-ounce can.

All right.

Q. Do you have my question?

A. Not to my knowledge.

Mr. Hughes: I object to it, your Honor.

The Court: Mr. McManus, I wonder if you could tell me what purpose this is expected to serve?

Mr. McManus: Your Honor, on page 3 it indicates that the smaller bottle is marketed in glass, and it is our [fol. 1886] position that the purpose of the smaller can was to compete with the smaller glass bottle.

The Court: All right, the objection is overruled.

(Government's Exhibit 440 for identification received in evidence.)

Mr. Hughes: Your Honor, is this being taken for the alleged facts that are in it?

The Court: I think so. It is not being taken for Mr. McManus's statement. It is being taken for whatever it says in here.

Mr. Hughes: Yes.

The Court: In other words, I will give you my view, frankly, that unless you can show me that the commercial research department, under the various gentlemen you have seen here, which was established by Continental Can for the purpose of assembling data for what use Continental Can chose to make of it, was incompetent or unable to perform its function given to it by the company, I am going to admit without complete generalization, in general, I am going to admit anything prepared as reports by the commercial research department.

[fol. 1887] Mr. Hughes: Well, your Honor, of course we are not conceding that our research department was incompetent, nor do we ever expect to attempt to prove that. But I think it is evident that from the examination of these witnesses, they do get their information that goes into these documents from many, many hearsay——

The Court: I have no doubt.

Mr. Hughes: —many, many hearsay sources.

The Court: That might well be.

Mr. Hughes: And when they spoke about the Goebel Brewing Company being something in the nature of a hybrid, I would assume that that is not a fact that we have to come to grips with in this case.

The Court: I don't know what that means, anyway.

Mr. Hughes: I have some doubt as to what it means.

But running through all these documents are these factual statements, many of which, as I say, are sometimes triple or quadruple hearsay, and of course there are many of these studies. They range——

The Court: Well, any study made by a group like this is bound to be based on a great deal of hearsay, and I [fol. 1888] don't think that is necessarily a vice, but I think plainly the evidence has to be viewed in the light of the sources and evaluated in the light of the sources.

Mr. Hughes: Of course, many of these surveys, your Honor, I think it is apparent, are quite—studies—are quite casual in nature. Some of them, obviously, had more effort put into them than others.

The Court: That goes to the question of their weight, it seems to me.

All right, now, what is the next document?

Mr. McManus: 441, your Honor.

The Court: Now, is there any basic difference between 441 and the previous exhibit, except in terms of general subject matter?

Mr. McManus: No, your Honor.

The Court: Well, take a look at 441, Mr. Walker; was that prepared by your department, under your supervision, in the same manner as the other one?

The Witness: Yes.

The Court: The previous exhibit?

The Witness: Yes.

The Court: All right, offer it, Mr. McManus.

Mr. McManus: The Government offers G-441 for all [fol. 1889] purposes.

The Court: You want to question about it, Mr. Hughes?

Mr. Hughes: A few questions, yes.

By Mr. Hughes:

Q. This wasn't prepared for circulation outside of the company, was it?

A. No, it was not.

The Court: Would the questions that Mr. Hughes asked you with respect to 440, the general questions Mr. Hughes asked you with regard to the circulation and matters of that nature, apply also to 441?

The Witness: Yes, as I remember it.

Q. Now this document 441 refers to a study of the beer situation in Baltimore; do you recall that?

A. Yes.

Q. And who was it that participated in that effort?

A. I can't recall.

Q. Do you recall whether you personally participated in it?

A. I believe I did.

Q. Anybody else?

[fol. 1890] A. I am sure I was assisted in it, but I don't recall who it was.

Q. You don't recall whom you interviewed; is that correct?

A. Not precisely.

Q. And do you recall whether you were assisted by an analyst?

A. It would have been an analyst from the commercial research department.

Q. And do you know whom he called on?

A. No.

Q. Did you preserve any working notes of your visits?

A. No.

Q. Now, would the data on page 4, would that have been data that was prepared by you, or would that have been prepared by the analyst, the data on page 4?

A. It is probably prepared by the analyst.

Q. You don't recall having prepared it?

A. No, I do not.

Q. And you don't know where he got his information from?

A. No.

[fol. 1891] Q. Would that be also true of the data on pages 3 and 5?

A. It is true of page 3 and true of page 5.

Q. Now, in your experience, Mr. Walker, do brewers offer all three types of container for beer, that is to say, cans, returnable bottles and one-way bottles?

A. Yes, I believe most leading brands are offered in all three.

Q. And he leaves it up to the consumer to take his or her pick; is that right?

A. Consumer has the choice.

Mr. Hughes: I object to the document.

The Court: Overruled.

(Government's Exhibit 441 for identification received in evidence.)

The Court: Now, we have a number of other documents here. I think we had better rise for lunch at this point.

Mr. McManus: Yes, sir.

The Court: Before we do, however, let me ask you this:

By the Court:

Q. When you were manager of the commercial research [fol. 1892] department, Mr. Walker, what did your staff of, generally, what sort of people? What was their training and background for the job that they did, and what was your job?

A. The staff comprised about half—about half, I would say, were trained market research analysts. These were people who had some skills, some education, to qualify them to gather and assess and evaluate market information. There were others in the department. There was a chartist; there were statistical analysts and typing or stenographic help. I believe there were about from six to eight analysts, each of whom was engaged in one or more research projects at any one time.

In my capacity I was directing the efforts of the department and reviewing the work.

Q. What had been your general experience in that field before you took on that assignment, Mr. Walker?

A. I had been a market research analyst.

Q. What does it take to make a market research analyst?

A. That is an interesting question. I would say I could answer it this way, in kind of specifications which were established in hiring people.

[fol. 1893] Q. Yes, that is what I want to know.

A. We prefer at least a college education, principally in graduate study in marketing, statistics, and similar kind of subjects. Also some practical business experience. These are the raw materials that can make a good market analyst.

Q. And your market analysts in your department, commercial research department, I take it, met these specifications that you spoke of, or the job qualifications that you have just been talking about?

A. I would say they did.

The Court: Very good.

Now, we will take a recess until five minutes after two, gentlemen.

(Recess to 2:05 p.m.)

[fol. 1894] AFTERNOON SESSION

The Court: Mr. Walker, will you resume the stand.

D. H. WALKER, resumed.

Mr. McManus: The document we will refer to, your Honor, is 600-B.

Direct examination continued.

By Mr. McManus:

Q. Mr. Walker, I show you Government's Exhibit 600-B; is that your signature on page 3?

A. Yes, it is.

Q. And do you recognize that document?

A. Yes, I do.

Q. And was this prepared in the regular course of your employment?

A. Yes, it was.

Q. And it was distributed to Mr. Dukehart?

A. It was distributed to Mr. Dukehart.

Mr. McManus: The Government offers 600-B, your Honor, for all purposes.

Mr. Hughes: May I ask some questions on it?

The Court: Yes.

Preliminary cross-examination.

By Mr. Hughes:

Q. Mr. Walker, this received no circulation outside the company, did it?

[fol. 1895] A. No, it did not.

Q. Do you regard the metal can for soft drinks as a supplemental container which would enlarge the overall soft drink market?

A. I would think by and large it would and has. You have a larger variety of packages to satisfy a larger part of the market.

Q. In your view, will the can ever replace the glass container in the marketing of soft drinks?

A. I certainly don't think so.

Q. And in 1953 and 1954, thereabouts, when this memorandum was prepared, will you tell us about what per cent of the total packaged soft drinks moved in metal cans?

A. Well, it was a very small percentage—probably 1 per cent or less.

Q. Now on page 1 of this document, you refer to the total bottled soft drink carbonated beverage consumption in the United States as about 23 to 25 million bottles, all sizes; do you recall the source of that information?

A. No, I do not.

Q. And on page 2, you make certain estimates. Do you see the estimates of penetration on page 2?

[fol. 1896] A. Yes.

Q. Is that strictly a judgment figure?

A. Yes, strictly.

Q. And you left the company when?

A. In 1954, in August.

Mr. Hughes: August of 1954.

Same objection, your Honor.

The Court: Overruled.

Mr. Hughes: Was this offered for all purposes?

Mr. McManus: It was, your Honor.

The Court: I understood so.

Mr. Hughes: All right.

The Court: Objection overruled.

Mr. McManus: Your Honor, may I ask the witness just two questions?

The Court: Yes.

By Mr. McManus:

Q. You made the statement that you believed that the soft drink can would enlarge the market for soft drinks; upon what do you base that conclusion?

A. It is just an opinion based on——

Q. Personal opinion?

A. —personal opinion.

[fol. 1897] Q. Would your answer be the same if I asked you about your statement that the metal can would not

replace, totally replace, the glass container? Is that your personal opinion, also?

A. It is personal opinion based on a long period of study.

Mr. McManus: That is all I have, your Honor, on that.

Mr. Hughes: No further questions on that exhibit.

The Court: All right, thank you, Mr. Hughes.

(Government's Exhibit 600-B for identification received in evidence.)

Direct examination continued.

By Mr. McManus:

Q. I show you Government's Exhibit 601, Mr. Walker.

A. This one?

Q. Yes. Is that your signature?

A. Yes.

The Court: Is that document prepared along the same lines as the other documents previously offered?

The Witness: Yes, substantially.

The Court: For the same general purpose?

[fol. 1898] The Witness: Same purpose.

The Court: By your division?

The Witness: That's right.

The Court: And distributed as indicated thereon?

The Witness: Right.

The Court: All right.

Mr. McManus: Government offers 601 for all purposes.

By Mr. Hughes:

Q. Mr. Walker, you see that this document purports to record a call made on the Ted Bates Advertising Agency on the preceding day.

A. Yes.

Q. Was that a call that you made?

A. It was.

Q. And who was the Ted Bates Advertising Agency?

A. They were the agency employed by Cantrell & Cochran.

Q. And who is Cantrell & Cochran?

A. Cantrell & Cochran was a new entry in the soft drink field, and a customer of Continental Can for cans.

Q. And the Ted Bates Advertising Agency at that time [fol. 1899] was not under any contract or retainer by Continental Can?

A. No relationship to Continental Can.

Q. And you called and asked them for certain information?

A. That is right.

Q. They gave it to you, and you put it into memorandum form; is that correct?

A. That is right.

Mr. Hughes: I object to it as irrelevant and immaterial; hearsay.

The Court: Overruled.

Mr. Hughes: Could I have the purpose of this offer?

Mr. McManus: It was offered for all purposes, your Honor.

The Court: Well, I don't quite think you can take figures—no, I will admit it for all purposes.

Mr. Hughes: Very well, your Honor.

(Government's Exhibit 601 for identification received in evidence.)

By Mr. McManus:

Q. I show you Government's Exhibit 604, Mr. Walker; [fol. 1900] is that your signature on page 1

A. Yes.

Q. And this was made either by you or by commercial research department in the regular course of your duties?

A. It was prepared in the department, [illegible] in the normal course of our work.

The Court: This is 602?

Mr. McManus: 604, your Honor.

The Court: 604. You are not offering 602, I take it, at this point?

Mr. McManus: Excuse me, your Honor. I am sorry. I skipped 602, your Honor.

Could I go back to 602, if I may?

The Court: Yes.

[fol. 1901] Q. I show you Government's Exhibit 602, Mr. Walker. Is that your signature on page 2?

A. Yes, it is.

Q. And was it made in the regular course of the duties of the commercial research department?

A. That is right.

Q. And it was distributed as indicated?

A. Yes.

Mr. McManus: The Government offers G-602, your Honor, for all purposes.

The Court: All right.

Preliminary cross-examination.

By Mr. Hughes:

Q. Mr. Walker, this was not circulated outside of the company, so far as you know, was it?

A. No, it was not.

Q. You state in this document:

"The attached tabulations summarize the results of a quick survey of the dealers and consumers of Can-A-Pop soft drinks in Cheyenne, Wyoming."

Do you recall who made that quick survey, as you have described it?

A. As I recall, we commissioned the A. J. Wood market research organization to do the field survey [fol. 1902] work.

Q. And they did that and reported it to you?

A. They reported that to us.

Q. What appears on pages 3, 4 and 5 of this document are the summaries of you or of your department of what was reported to you?

A. That is right.

Q. And you have no personal knowledge as to how they conducted it?

A. No, no personal knowledge.

Q. And you say in this document:

"This brief survey was conducted at the request of you and Mr. Neuman in order to obtain very quickly

some measure of the response to Can-A-Pop beverages in flat-top cans. This could not be termed a scientific survey by any stretch of the imagination, and the results, although interesting and informative, cannot be considered a valid test of the acceptance by the consumer of a flat-top can for soft drinks."

Does that represent your judgment as to the kind of survey that was?

A. Yes, sir, it did.

[fol. 1903] Q. While we are at it, Can-A-Pop was the name of some corporation, was it not?

A. I believe it was, yes.

Q. They went into the business of marketing soft drinks in metal cans, isn't that right?

A. Yes.

Q. The idea being that they would use that as the only vehicle for marketing their soft drinks?

A. That is right.

Q. And what happened to the Can-A-Pop Corporation?

A. It is now extinct. I don't think it lasted longer than a year.

Mr. Hughes: I object to it, your Honor.

The Court: Overruled.

(Government's Exhibit 602 for identification received in evidence.)

Mr. McManus: The next document is 604, your Honor.

Q. As I asked you previously, Mr. Walker, is that your signature on page 1 of Government's Exhibit 604?

A. Yes.

Q. Was this document prepared by the commercial research department in the regular course of its business?

[fol. 1904] A. Yes, it was.

Q. And it was distributed as indicated there?

A. Yes.

Mr. McManus: The Government offers G-604, your Honor, for all purposes.

Preliminary examination.

By Mr. Hughes:

Q. This was not circulated outside of the company, so far as you know?

A. No, it was not.

Q. And this is a summary of somebody else's survey, is that correct?

A. Yes.

Q. Who made the survey?

A. The Hooper organization made a sampling.

Q. You did not participate in the survey?

A. No, I did not.

Q. Or any of your men?

A. No.

Q. So this simply records a summary of someone in your office of a survey made by somebody else, is that right?

A. That is right.

Mr. Hughes: I object to it.

The Court: Overruled.

[fol. 1905] Mr. Hughes: May we have the purpose of this?

The Court: Yes.

Mr. McManus: For all purposes, your Honor.

Mr. Hughes: This is received as an exhibit for all purposes?

The Court: Yes, received.

(Government's Exhibit 604 for identification received in evidence.)

By Mr. McManus:

Q. Now, I show you——

The Court: 605 is simply a continuation of this 604 business applied to other cities and for other periods, is it not?

Mr. Hughes: I would stipulate that if questioned this witness' testimony on direct and cross-examination would be the same.

The Court: And the same objection?

Mr. Hughes: The same objection, yes.

The Court: Same ruling.

(Government's Exhibit 605 for identification received in evidence.)

Mr. McManus: Your Honor, Mr. Walker testified that he was head of the commercial research department [fol. 1906] for the period 1948 to 1954. We have certain documents which we believe were prepared by that department during that period of time which are not signed by Mr. Walker, and we would like to inquire of Mr. Walker if they were prepared by him or under his supervision.

The Court: All right.

Mr. McManus: 402 will be the first one.

By Mr. McManus:

Q. I show you Government's Exhibit 402, entitled "The Market for Peanut Butter in Cans," and on page 7 that bears the notation, "Commercial Research Department, November 25, 1952."

A. Yes.

Q. Were you manager of the Commercial Research Department at that time?

A. I was.

Q. Do you recognize that document?

A. Yes, I do.

Q. Was that prepared by the Commercial Research Department?

A. Yes.

Q. In the regular course of its duties?

A. That is right.

[fol. 1907] Q. And do you know the distribution of that document?

A. No. If it is not indicated here I don't know what the distribution was.

Q. Do you know if it was sent to officials of the Continental Can Company?

A. I don't know for sure. I would be reasonably sure that it went to the products sales manager.

Q. This would be the type of thing that would go to the products sales manager?

A. Yes.

Mr. McManus: The Government offers 402 for all purposes.

Preliminary examination.

By Mr. Hughes:

Q. This was not circulated outside the company, so far as you know?

A. No, it was not.

Q. Do you recall anything about the circumstances of the preparation of this document?

A. No, I don't—it is too far back.

Q. This concludes on page 7 with certain recommendations.

Do you know whether those recommendations were in fact carried out?

[fol. 1908] A. No, I would have no way of knowing.

Mr. Hughes: I object to this on the same ground, your Honor.

The Court: Overruled.

(Government's Exhibit 402 for identification received in evidence.)

Mr. Hughes: Could I have the purpose?

Mr. McManus: For all purposes.

The Court: As you start with a new document let us make it a standard procedure that you state the purpose for which you are offering the document or expect to offer it.

Mr. McManus: Your Honor, this document was prepared by the Commercial Research Department and Mr. Walker is going to identify it. This is 407 and we would offer it for all purposes.

The Court: This is G-407 now?

Mr. McManus: Yes, sir.

The Court: What about 402, was that for all purposes?

Mr. McManus: Yes, sir.

The Court: All right, what about G-407 now?

Q. Mr. Walker, I show you Government's Exhibit [fol. 1909] G-407. Would you take a look at that and see if you recognize that document?

A. No, I do not.

The Court: As far as you know, you never saw it?

The Witness: I never saw it.

The Court: All right, next.

Mr. McManus: The next document, your Honor, is G-430.

Your Honor, I will withdraw my request to have him identify G-430.

The Court: All right.

Mr. McManus: Next is G-437.

The Court: I notice this is a very lengthy document. I would like to know what purpose this is being offered for. First let us see whether he has ever seen it or not.

By Mr. McManus:

Q. I show you Government's Exhibit G-437, which is identified at the bottom as being prepared by the Commercial Research Department, August 20, 1948 and revised on 10/1/48.

Are you familiar with that?

A. This was before my employment.

[fol. 1910] The Court: All right, next.

Mr. McManus: 439-A, your Honor.

Q. I show you Government's Exhibit G-439-A, Mr. Walker. Would you tell me if you recognize that document?

A. Well, I don't recognize it. I don't believe it was prepared in the Commercial Research Department. I don't recognize it.

The Court: All right, next.

Mr. McManus: Exhibit G-600, your Honor.

Q. Would you take a look at Government's Exhibit 600, Mr. Walker, and tell me if that was prepared either by you or in the Commercial Research Department?

A. No, it was not.

Mr. McManus: 603 will be the next document, your Honor.

Q. I show you 603, entitled "Survey of Soft Drink Purchases." Do you recognize that document?

A. I do.

Q. Was that prepared by the Commercial Research Department in the regular course of their duties?

A. Yes, it was. This is one of those series that we had before.

[fol. 1911] Mr. McManus: Your Honor, could I ask him about 606? They seem to be quite similar.

The Court: All right.

Q. I show you Government's Exhibit 606. Do you recognize that document?

A. I see the date September 1954 which is after my time.

Mr. McManus: Your Honor, the Government would offer 603 for all purposes as it has the previous surveys which are quite similar.

The Court: 603?

Mr. McManus: Yes. Would you rather I try to identify the next few or do you want me to go document by document?

The Court: It all depends. If they are part of a series, let us have them all.

Mr. McManus: Did you want to examine, Mr. Hughes?

Mr. Hughes: I have a few questions and I might as well put them now.

The Court: All right, I think so.

Preliminary examination.

By Mr. Hughes:

Q. That was not circulated outside the company, was it, this Exhibit 603?

[fol. 1912] A. No, it was not.

Q. And the survey itself was handled by C. E. Hooper Company, Inc., is that correct?

A. That is right.

Q. And this is a mere summary of what the C. E. Hooper Company reported?

A. Yes, it is a summary and interpretation of the results.

Q. And you or your department had nothing to do with conducting the survey itself?

A. No.

Mr. Hughes: Same objection.

The Court: Overruled.

(Government's Exhibit 603 for identification received in evidence.)

Mr. McManus: The next document, your Honor, is G-621.

By Mr. McManus:

Q. I show you Government's Exhibit 621 entitled "Consumer and Dealer Plan for Promotion of Soft Drinks in Cans, Continental Can Company, December 1954."

Do you recognize that?

A. No, I don't. It was after my time.

Q. That was after your time?

[fol. 1913] A. Yes.

Mr. McManus: The last document, your Honor, is G-784.

Q. I show you Government's Exhibit G-784. Would you take a look at that and see if you recognize that document?

A. No, I don't recognize this.

Q. You don't recognize it?

A. I do not recognize it.

Mr. McManus: That is all we have with Mr. Walker.

The Court: Is there anything further from Mr. Walker?

Mr. Hughes: No further questions.

The Court: All right, Mr. Walker, you may step down, thank you.

(Witness excused.)

Mr. Greenberg: Your Honor, the Government now makes reference to Government's Exhibit 785 through 788. It seems that these are documents——

The Court: Wait a minute. Let me get them. 785 through 788, yes.

Mr. Greenberg: These are documents which were sub-
[fol. 1914] mitted to us either by the Willkie firm, Continental Can or the Hazel-Atlas Glass Company in response to letters by the Department of Justice.

The Government requests at this time a stipulation with respect to these documents to avoid the necessity of calling either lawyers connected with the firm or other officials.

The Court: You request a stipulation. What is the nature of the stipulation that you want?

Mr. Greenberg: We request a stipulation to the admissibility of these documents.

Mr. Handler: A stipulation as to what?

[fol. 1915] The Court: I presume that there is no objection to the admission in evidence of these documents?

Mr. Greenberg: That is correct, your Honor.

Mr. Handler: If your Honor please——

The Court: Sit down for a minute, Mr. Greenberg, so I can see Mr. Handler back there.

Mr. Handler: Mr. Greenberg mentioned a lot of numbers, but he did show us a document, which I wonder if I might borrow from him, I presume that he is referring only to one exhibit that was shown, G-786.

Are you referring to something else?

Mr. Greenberg: No, Mr. Handler, I refer to G-786, as well as G-785, G-787 and 788.

Now, the record will show that I supplied Mr. Hughes with these exhibits prior to the opening of the afternoon session.

Mr. Handler: May I refer just to the first one, your Honor, which I examined, and I will want to examine the others in a moment?

The Court: Now, the first one is what number, Mr. Handler?

Mr. Handler: G-786.

[fol. 1916] Mr. Greenberg: 785 is the first item.

The Court: No, Mr. Handler has examined 786.

Mr. Handler: That is all I have examined so far, your Honor, and I am going to ask——

The Court: Look, let us defer this business if you hadn't had an opportunity, or for some reason haven't recently examined these documents. There is no use going into a discussion of them now until you have a chance to examine them.

Mr. Handler: Thank you, your Honor. But could I make just a statement which might expedite the consideration of this exhibit?

The Court: All right.

Mr. Handler: This exhibit, G-786, has to do with the subject of prior acquisitions that was considered from time to time in the pretrial. We have two memoranda of law that are being typed, and we would hope that this matter would be deferred until we have an opportunity to present the memoranda of law to your Honor; and we would like, after your Honor has had a chance to examine the memoranda to be afforded an opportunity of oral argument on the admissibility of prior acquisitions.

[fol. 1917] The Court: Well, I presume that we will consider these—all these exhibits deal with the same subject matter?

Mr. Handler: I don't know about the others.

Mr. Greenberg: No, your Honor, they do not. I believe two of the exhibits deal with two acquisitions. One of the exhibits is a minute of meeting of, I believe, the directors of Continental Can, whereby they express a desire to acquire a few leading glass companies.

The Court: In other words, they deal with acquisitions in one way or another.

Mr. Greenberg: That is correct, your Honor. I stand corrected.

The Court: Either past or prospective.

Mr. Greenberg: Yes.

The Court: And certainly would be embodied within the ambit of Mr. Handler's memorandum.

All right, we will consider these four documents are offered in connection with what acquisitions, past, present, future or prospective, or potential or possible.

Mr. Handler: Thank you, your Honor.

[fol. 1918] The Court: And that being so, I will defer my ruling on them until I have had a chance to hear from the defendants.

Mr. Greenberg: I did want to point out for the clarity of the record that as I recall one of the documents, it was a letter from the Hazel-Atlas Glass Company which gave various information requested by the Department of Justice, and that I suppose is not directly related to the contemplated acquisition, past or present, only insofar *insofar* as it relates to the proposed Hazel-Atlas acquisition.

The Court: In any event, I will assume that there is no objection to the competence of these documents, since they were supplied by the defendants in response to a request from the Attorney General.

Mr. Handler: There will be no problem of authenticity.

The Court: Yes. This is all addressed to relevance and materiality.

788 is in.

Mr. Johnson: That is included under the stipulation.

The Court: Yes.

[fol. 1919] This is simply a statement that the chairman of the board of Continental indicated that he was about to acquire a glass company, which he did.

Mr. McManus: Your Honor, I think closer reading will show——

The Court: Yes, I know.

Mr. McManus: —that he was authorized to acquire more than one.

The Court: Yes, one or more glass companies, and he acquired one.

Now, what is next?

Mr. McManus: Will Mr. Koehrman take the stand, please?

The Court: Have we dispensed with Mr. Everett, or are you still holding him?

Mr. McManus: We dispensed with him.

The Court: Dispensed with him this morning.

Mr. McManus: Excuse me. I will have to check.

I am sorry, your Honor. I stand corrected. I think Mr. Everett is still here.

The Court: All right, you may swear the witness.

[fol. 1920] ROBERT M. KOEHRMAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Koehrman, by whom are you employed?
A. Owens-Illinois Glass Company.
Q. For what period of time have you been employed by that company?
A. Since July 8, 1941.
Q. And in what capacity?
A. Currently, or——
Q. What is your present position?
A. Administrative sales analyst for the glass container division.
Q. And in the early part—well, in the year 1954, what was your position with the company?
A. That same position.
Q. I show you Government's Exhibit 235-C, which refers to a sales policy meeting, July 20-30, 1954, at Catawba Cliffs Beach Club, the last page of which bears your typewritten name; is that correct?
A. That is right, sir.
Q. Do you recognize this document?
[fol. 1921] A. Yes; I do.
Q. And did you prepare this document?
A. Yes.
Q. And would you tell me the circumstances surrounding your preparation of this document?
The Court: Before we do that, let's find out who met, was it a sales policy meeting with whom?
Q. Could you tell me was it a sales policy meeting of whom?
A. It was of the glass container division of Owens-Illinois Glass Company.
The Court: I see.
Q. Without going name by name, could you tell me the people that were there? They would be the sales people of that company?

A. Sales for various reasons, and particular divisions, sales divisions.

Q. Could you tell me the circumstances surrounding your preparing this document?

A. Well, I was in attendance at the meeting primarily to take notes and prepare the minutes, as well as to handle some of the arrangements that were needed right at [fol. 1922] the time of the meetings' sessions, facilities, projection equipment, things of that nature.

Mr. McManus: Your Honor, the Government offers G-235-C for the purpose generally of showing the concern of this company for competition with plastic containers. That basically is the purpose of offering 235-C.

Mr. Hughes: Is that the only purpose?

The Court: I presume that it is.

Mr. McManus: Yes, sir.

The Court: I take it that is what Mr. McManus refers to when he makes that statement.

Mr. Hughes: Yes.

Your Honor, we are getting into third-party documents now.

The Court: Yes, I understand.

Mr. Hughes: Could Mr. McManus specify any particular portion of this document on which he relies for this purpose? Or does he rely on the entire document?

Mr. McManus: I rely on the entire document, but I would be glad to point out a specific in this document if Mr. Hughes would like.

Mr. Hughes: I would like, yes.

[fol. 1923] Mr. McManus: I say this refers to competition from plastic and also from other containers, if I may add that.

Now, if we look at the top of page 5, the discussion there of Mr. A. C. White, and there he mentions specifically the canned beverage situation.

Also, if we will drop down to the Nashville branch, it refers to the canned beverage campaign, and then on beverage and industry on the next page, it refers to canned beverage, and then on the next page, the closure and plastic plans, if we will drop down to the middle of that paragraph

The Court: That is page 7?

Mr. McManus: Yes, your Honor. I refer specifically to the part where it say, "Mr. Rudy also commented on the possibility of plastic containers as substitutes for opal-ware."

The Court: Yes.

Mr. McManus: And therefore we offer it for the purpose of showing competition with other containers, your Honor.

The Court: Not for purposes of showing competition. [fol. 1924] Mr. McManus: Excuse me. Showing concern this company had for competition.

The Court: Showing that certain things happened at a meeting which indicate what you claim to be some state of mind of Owens-Illinois Glass Company; is that correct?

Mr. McManus: Yes, sir; in regard to metal cans and plastic containers.

The Court: All right.

By Mr. Hughes:

Q. Mr. Koehrman, you made notes when you attended this meeting?

A. Yes, sir; I did.

Q. Did you preserve those notes?

A. No. After they had served their purpose they were destroyed, I assume.

Q. Can you tell us about how long after the meeting occurred that you prepared the minutes?

A. A week, ten days, two weeks, I would guess. Yes, this one is dated the 13th of August. The meeting took place the 29th, end of July.

Q. And would you say that you prepared this exhibit on or about the date it bears, August 13th?

A. Yes, sir.

Mr. Hughes: If your Honor will bear with me, [fol. 1925] there are a lot of these documents and I have to resort to my notes.

The Court: Yes.

Q. Now, at page 2 of this document you will see a reference in the first paragraph on that page to the sentence, "At this point Mr. Hellrung presented charts and discussed in detail the subjects of profit objectives and performance against these objectives, gross sold vs. forecast,

sales and earnings, industry position by lines, sales vs. quotas, and budget efficiency."

Do you see that sentence?

A. Yes, sir.

The Court: What page is that on?

Mr. Hughes: Page 2, your Honor. It was in the paragraph that begins on the preceding page. It is the next to the last sentence of that paragraph.

The Court: Oh, yes, I see it.

Q. And when he referred there to "industrial position," he was there referring to the glass container industry, was he not?

A. That is right, sir.

[fol. 1926] Q. And in the next paragraph, where there is a discussion of production and manufacturing program, was that discussion all about the glass container end of your business?

A. Yes.

Q. Now, at page 6, Mr. Koehrman, there is a reference here in the second full paragraph, in approximately the middle of that paragraph, to the statement, as follows:

> "Mr. Delaplane reported that our sales to beverage and Coca-Cola accounts are down because of heavy purchases in the fourth quarter of last year, poor weather, the trend toward paper cup dispensers, and heavy inventory by competitors."

Do you see that?

A. Yes.

Q. Was there a discussion of the trend toward paper cup dispensers?

A. Not that I recall. There apparently was some mention of it, or I wouldn't have worked it into this report.

The Court: What do you understand "paper cup dispenser" to mean?

The Witness: Me, sir?

The Court: Yes.

[fol. 1927] The Witness: The vending machine type, your Honor.

The Court: I see, where you put a——

The Witness: Nickel in.

The Court: —a coin in the slot and Coca-Cola doesn't come out in bottles, but just pours in.

The Witness: Just drops out.

The Court: Or whatever the result is.

Mr. Hughes: Your Honor, I object to the document on the ground that it is irrelevant and immaterial; that it is hearsay; that it is remote in time to the facts which it purports to record.

The Court: Overruled.

Mr. Hughes: Your Honor, may I call attention to one of the problems that confronts us in connection with these third party documents?

On page 2, in the last paragraph, the last sentence, there is a reference to Mr. Babcock, and it says, "Mr. Babcock also emphasized the importance of bottle salesmen selling closures, thus providing one source of responsibility for a complete packaging service."

I don't know to what extent the Government plans to [fol. 1928] make use of that kind of sentence, either in its context or torn out of its context. I do call your Honor's attention to the fact that Mr. Babcock was a witness here, called by the Government, I believe the very first witness in the case. They have had the opportunity to examine Mr. Babcock about something like this, and they didn't do so, and I have a concern lest in the posture of things weight be given to that sort of statement under the circumstances under which it is admitted in evidence.

The Court: I don't quite see how it can be, Mr. Hughes, considering the purpose that Mr. McManus indicated he wished to offer this document for.

Mr. Hughes: Very well.

The Court: The limited purpose of showing a state of mind or an awareness, if you will, of Owens-Illinois of certain problems concerning bottles, cans and plastic.

All right, next.

(Government's Exhibit 235-C for identification received in evidence.)

The Court: What is the next document?

Mr. McManus: 235-D.

The Court: Are these similar minutes?

[fol. 1929] Mr. McManus: Yes, sir; these are similar minutes, except for a sales policy meeting. This one was held on February 23rd and February 24th of 1954, whereas 235-C was July 29th and 30th of 1954.

By the Court:

Q. Well, now, were these minutes taken by you under the same circumstances as the previous minutes?

A. Yes, your Honor.

Q. They were?

A. They were.

Q. From notes that you took?

A. Yes, sir.

Q. And you attended the meeting in the same general capacity?

A. That's correct, your Honor.

Q. And it was a meeting of the same general group; is that right?

A. Yes, sir.

The Court: Very good.

All right, you offer it?

Mr. McManus: Yes, your Honor, I offer it.

The Court: Do you offer it for the same limited purpose?

Mr. McManus: For the same purpose as 235-C, [fol. 1930] your Honor.

The Court: I think you ought to at this point, before Mr. Hughes examines, point to the specific portions on which you rely.

Mr. McManus: Well, specifically, your Honor, if we will turn to page 2, and the sections on beverage industry plans, and it will start with the second paragraph of that section, and we would include the whole paragraph, with particular emphasis on the sentence starting at the bottom of the page, in which it says, "The most active sort of solicitation seems indicated if they are to keep abreast of the activities on cans vs. bottles for beverage." That would be the paragraph that we rely on for that, your Honor.

Then if we go to page 3, drug industry plans, and we go down to the paragraph, the last paragraph under the drug industry plans, which says, "The Household & Chem-

ical Division expects their '54 sales to run at least 10 per cent ahead of 1953. They currently are market-testing detergents packed in tin vs. glass. Mr. Robertson stated that the greatest H & C potential for new glass business lies in the chemical field."

[fol. 1931] We would rely on that paragraph for those specific statements, your Honor.

Then going over to page 5, if you will, sir, we would rely specifically on the part which deals with the New York branch, in which Mr. J. W. Thayer states in the second sentence, "He felt that a price increase may result in some loss of volume to the Glass Container Industry in glass-tin competitive lines."

Those would be the specifics that we refer to, your Honor.

The Court: All right, do you wish to examine about this, Mr. Hughes?

Mr. Hughes: Yes.

By Mr. Hughes:

Q. Mr. Koehrman, you don't recall what Mr. Thayer was referring to when he used the expression "in certain glass-tin competitive lines," that Mr. McManus just read into the record, do you?

A. Not definitely, sir, no.

Q. Now, do you recall when, with reference to the meeting, these minutes were prepared?

A. I would assume within ten days or two weeks.

Q. Were your working notes destroyed?

[fol. 1932] A. Yes, sir.

Q. And this again was a sales policy committee meeting of the glass container division; is that correct?

A. Yes.

Mr. Hughes: Same objection, your Honor.

The Court: Same ruling.

(Government's Exhibit 235-D for identification received in evidence.)

Mr. McManus: That is all we have of Mr. Koehrman, your Honor.

The Court: Thank you, Mr. Koehrman. You may step down.

(Witness excused.)

The Court: Next witness.

Mr. Greenberg: Mr. Everett, will you please take the stand.

RICHARD EVERETT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. Chautauqua, New York.

Q. And are you employed by Continental Can?

[fol. 1933] A. Yes, I am.

Q. How long have you been employed by this company?

A. Five years.

Q. What have your positions been in this five-year period?

A. Throughout the period?

Q. That is correct.

A. I started out as an economic analyst in 1955, then became supervisor, something or other supervisor, and now I am an assistant manager of sales control.

Q. Have you been in sales control this five-year period?

A. Sales control is most of the department that used to be commercial research, and I have been in that.

Q. Would you tell us, sir, what the function of this department has been since you have been affiliated with it?

A. The department does economic forecasting, market forecasting, market analysis, sales analysis and a certain amount of sales budgeting work. Those are the major functions.

Q. Have you completed your answer?

A. Well, there are some other things that I [fol. 1933a] really don't know anything about, about sales compensation arrangements, sales quotas, and so forth.

Q. Is the information obtained by this group disseminated to other groups in your company?

A. Oh, yes, practically all of it.

Q. When you say "all of it," that includes the sales force; is that correct?

A. No, I mean all the information is passed on to someone.

[fol. 1934] Q. Can you identify in a general way the persons or groups that have received this information?

Mr. Hughes: Your Honor, haven't we received all this?

The Court: If this took over the functions of the Commercial Research Division in large measure, I don't think we have to go through dissemination. The point is, you are concerned now with a particular document, aren't you?

Mr. Greenberg: That is correct, your Honor.

The Court: G-614, signed by Mr. Everett.

Well, let's go to that, find about it and then go on from that.

Mr. Greenberg: Very well, in the light of Mr. Hughes' statements, I will commence to cover the documents specifically.

Q. I show you Government's Exhibit 614 and ask you if you recognize it?

A. Yes, I do.

Q. Tell us what it is, sir?

A. Well, it appears to be—it is a report of the results of a survey, of some kind of survey of soft drink sales in 1955.

Q. And you executed this document; is that [fol. 1935] correct, sir?

A. Yes, I wrote the material out and I signed it.

Q. And this was done only in a——

A. Not really. I took this over the telephone because I was using the desk of the person who usually does it, and I didn't know anything about it.

Q. At any rate you took down the words as carefully as you could and reported them in this memo; is that correct, sir?

A. I took down the data and wrote the words based on conversation.

The Court: Who called you? Who was this mysterious gentleman?

The Witness: Well, it was a young lady, I believe, who worked with the organization that made the survey, and I don't remember what organization it was.

The Court: Let me get this: Where did all these charts come from that are annexed to this document? You didn't take those over the telephone, too, did you?

The Witness: No. Well, my memory of this is necessarily vague since it was an accident that I got involved in it, but I believe that the material was either left by the [fol. 1936] fellow who ordinarily did it, that is the fact material was, and the charts were set up by him, and I filled in the actual figures, or someone else in the department may have made them up, or I may have been given large numbers of pieces of material, put them together. I can't recall.

By Mr. Greenberg:

Q. Sir, was this memorandum sent by you to Mr. Buckley?

A. It was sent by the department to Mr. Buckley.

The Court: You didn't deliver it yourself?

The Witness: I did not know Mr. Buckley and I didn't take it to him.

Q. Did you, when you executed this memorandum, send copies to Mr. Wojtul, Mr. Neuman and Mr. Fisher?

A. I am sure copies were sent to them.

Mr. Greenberg: Government offers G-614 into evidence.

The Court: For what purpose?

Mr. Greenberg: For the limited purpose, your Honor, to show the awareness of this company of compe-tion—withdrawn.

We offer this document to show the awareness of Continental Can of competition from glass containers seeking to enter the can soft drink market.

[fol. 1937] Mr. Hughes: What was that last?

Mr. Greenberg: As it sought to enter the can soft drink market.

Preliminary examination.

By Mr. Hughes:

Q. Mr. Everett, how long had you been with the company when you prepared this document, G-614?

A. Five weeks.

Q. Prior to that where had you been?

A. I had been at the McGraw-Hill Publishing Company.

Q. And what was the nature of your work there?

A. I was an economist.

Q. They are a publishing house, are they not?

A. That is right.

Q. Prior to that where had you been?

A. That is where I started.

Q. So that your acquaintance with the can manufacturing industry at the time you wrote this memorandum was approximately five weeks?

A. Yes; it was entirely five weeks.

Q. And as I understand it, you were sitting at somebody's desk and you sat down together and worked on this?

A. That's right.

[fol. 1938] Q. In this document in the second paragraph you said:

> "Results of these surveys should be taken with a liberal supply of salt, because any survey of this kind has a pretty substantial margin of error."

Do you recall what prompted you to make that observation?

A. No, I don't recall specifically but I had a little experience with surveys, and I had been told a little about this survey.

Q. You knew enough to be a little leery of surveys, is that right?

A. Yes, I did.

Mr. Hughes: Same objection.

The Court: Overruled.

(Government's Exhibit 614 for identification received in evidence.)

The Court: Is there anything further?

Mr. Greenberg: We have no further questions from Mr. Everett nor do we have any further documents to show him.

The Court: All right, thank, you, you may step down. [fols. 1939-1942] The Witness: Thank you.

The Court: All right.

(Witness excused.)

Mr. McManus: Your Honor, at this time we would like to offer, if the defendant has no objection, 349, 349-A and 349-B.

They are the price comparison charts which were prepared by Owens-Illinois Glass Company and they relate to price comparisons between metal cans, glass containers and plastic containers. 348 was admitted without objection and the defendant indicated they might do the same with 349.

Mr. Hughes: No objection.

The Court: All right, they may be received.

(Government's Exhibits 349, 349-A and 349-B for identification received in evidence.)

* * * * * * *

[fol. 1943] Colloquy Between Court and Counsel

Mr. Johnson: May I be heard briefly, your Honor?

The Court: Yes.

Mr. Johnson: In an effort, your Honor, to eliminate as much non-controversial matter as possible, I voluntarily submitted a list of documents to which we did not propose to object. Included with that list was No. G-788, which we now discover should not have been included in that list. That was one of the documents that was referred to here today.

If the Court pleases, I would request that we be relieved of my stipulation with respect to that document in order that it may be considered along with other documents relating to this matter.

The Court: In other words, what you are saying is that [fols. 1944-1948] so far as 788 is concerned you question its relevance and materiality but not its competence.

Mr. Johnson: Not its competence.

The Court: Very well.

We will relieve you of the stipulation to that extent.

[fol. 1949] SMITH L. RAIRDON, called as a witness on behalf of the Government, was duly sworn.

Mr. Greenberg: Will you please mark these as Government's Exhibits for identification.

(Marked Government's Exhibits 366 and 367 for identification.)

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. Toledo, Ohio

Q. And you are now employed by the Owens-Illinois Glass Company?

A. Yes.

Mr. Greenberg: The Government offers Exhibit 366 for identification into evidence.

Mr. Johnson: No objection.

Mr. Greenberg: The Government offers Exhibit 367 for identification into evidence.

Mr. Johnson: No objection.

The Court: They will be received pursuant to stipulation.

(Government's Exhibits 366 and 367 received in evidence.)

Q. Were you employed by the Owens-Illinois Glass
[fol. 1950] Company during the period 1950 to 1953?

A. Yes, sir.

Q. What was your position or positions, if more than one, during that period of time?

A. As of 1941 I was elected a vice-president of the company.

Q. I am talking about the period 1950 to 1953.

Sir, what was your position or positions, if more than one, with the company?

A. (Continuing) And I was general—as of 1950 I was general sales manager of the Glass Container Division of Owens-Illinois until early in 1953.

Q. And what were your duties and responsibilities in this position?

A. The general duties of a sales administrative management job.

The Court: It was your job to sell the glass; is that right?

The Witness: I was the general sales manager; that's right.

Q. Did Owens-Illinois have a research and development policy committee for plastic containers in 1950?

A. Owens-Illinois had a research and development policy committee for any type of container or product [fol. 1951] in which we were interested, or might be.

Q. Did this group inquire into the subject of plastic containers in 1950?

A. In that period, yes, sir.

Q. And by "that period" do you mean the period 1950 to 1953?

A. And continuing.

Q. And were you on this committee?

A. Yes, sir.

Q. And were you on this committee from 1950 to 1953?

A. Yes, sir.

Q. And who else was on the committee, sir?

A. Mr. Burch, of research; Mr. Wade, the general manager of the division.

Q. By "division" you mean the glass division?

A. Glass Container Division. Representatives of general manufacturing, production, and there may have been others, sir.

The Court: In other words, this was a committee representing the various segments of the company.

The Witness: Yes, your Honor.

The Court: Combined together for research and development activities.

[fol. 1952] The Witness: Yes, sir.

Q. Now, with respect to research and development activities in the plastic container field, can you tell us what this group or committee did in the period 1950 to 1953?

The Court: This in quite general terms, Mr. Rairdon.

A. Well, the committee, sir, largely considered the work that was done by its different members. Physical research would have been the responsibility of Mr. Burch, and any determination of opportunities in the market was generally looked to, to sales people. Any production or engineering problem that would come before the committee would probably largely be commented upon by that representative.

Q. Sir, during the period 1950 to 1953, did this committee coordinate a survey of Owens' customers to determine whether they were using plastic containers?

Mr. Johnson: I object to the question.

The Court: On what ground?

Mr. Johnson: A leading question.

The Court: Well, I will overrule the objection.

Q. Would you answer the question, sir?

A. Would you let me be sure I understand the [fol. 1952a] question?

Mr. Greenberg: May I have the question read back, your Honor?

(Question read.)

A. As an outgrowth of the considerations of the committee, studies or searches were made as to potentialities of plastic containers.

[fol. 1953] Q. Sir, I show you Government's Exhibit 239 for identification and ask you if you recognize this document?

A. I am sure that I wrote this letter.

Q. Was this the type of letter or document which you would ordinarily execute in the course of your business at that time?

A. It would be perfectly normal.

The Court: Why don't you ask him, Mr. Greenberg: did you prepare this letter in the regular course of the duties of your position with the company, and was it the regular course of your duties to prepare letters of this character, including this one?

Q. Sir, did you prepare this letter——

The Court: You heard my question, Mr. Rairdon. Will you answer that?

The Witness: I would consider it part of my responsibilities, your Honor.

Mr. Greenberg: The Government offers Exhibit G-239 into evidence.

Mr. Johnson: May I examine?

The Court: I think before you examine, Mr. Johnson, we will hear Mr. Greenberg as to the purpose of this offer.

[fol. 1954] Mr. Greenberg: Your Honor, we offer G-239 for all purposes.

Preliminary cross-examination.

By Mr. Johnson:

Q. Mr. Rairdon, as of now, do you have any independent present recollection of preparing this document, G-239?

A. Sir, I feel quite certain that I prepared this document.

Q. You so testified, but do you have any present independent recollection of having prepared it?

A. I am sorry, sir, the distinction isn't clear to me. I recall that I prepared this document. It is in my words.

Q. So you say you now know that you prepared it; is that your testimony?

A. I have every feeling that I prepared it.

Q. But you are not prepared to say that you now know you prepared it?

A. It seems to me that we are saying the same thing.

Q. The difference, I believe, it seems to me, is that you assumed you prepared it?

Mr. Greenberg: I am going to object to the argumentative nature of Mr. Johnson's question.

[fol. 1955] The Court: I think we will permit it. We will

allow a fair amount of latitude both with respect to leading, Mr. Greenberg, and with respect to argumentative questions.

And I can also say to you that nobody should be under any misapprehension that any questions of this character, no matter how they are asked, will affect me in the slightest degree one way or the other.

By Mr. Johnson:

Q. Mr. Rairdon, with respect to this research and development policy committee, can you tell me how many projects it had underway at this time in February, 1950?

A. No, sir.

Q. Did it have several projects underway?

A. Yes, I am sure it did, but I couldn't tell you how many.

Q. The project referred to in this document was not the sole one?

A. No, sir.

Q. Can you give me any idea of how many projects you had underway at that time?

A. No, sir, I couldn't. Some might be smaller or larger [fol. 1956] than others and I couldn't give you an estimate of how many.

The Court: Would it be as many as ten projects?

The Witness: It could be, your Honor, or more.

The Court: Or more?

The Witness: Yes.

Q. What general fields did these projects cover?

A. Projects relating to the development of opportunities to sell more containers broadly. Obviously part of them would relate to research and development projects relating to glass containers. That particular one relates to the consideration of plastic containers.

The Court: In other words, is it a fair statement, Mr. Rairdon, that your company is constantly engaged and has been for a good many years in research and development of all phases of your activities in order to improve your techniques, to improve your product, to cut your costs, to increase service to your customers, to open new

markets and to promote the sale of your products generally? Is that a fair statement?

[fol. 1957] The Witness: That is a fine statement, your Honor.

Q. In 1950 was Owens-Illinois in the plastics business, any phase of the plastics business?

A. We made plastic closures, but if you want to have the question in its totality of plastics, we had been for a number of years working with plastic materials. As I recall it, at that time closures out of plastic were the only product, although I believe immediately I would have to make some exceptions. There were several custom-made products and I believe—of this I am not certain as to the timing—we had done some experimental work with plastic vials and jars, and during World War II we had made what I suggest to you would be called a plastic, a plastic bottle that was filled with atabrin tablets that was used by the Armed Forces. That was more or less of a single project and I don't know that I can say that was a business. These other operations were commercial.

Q. Were you making pillboxes at that time?

A. I can't be certain as to the timing, as to whether we were in 1950.

The Court: Let me ask you this: in the period of 1950 to [fol. 1958] 1953 did your company have a separate plastics division?

The Witness: Our plastics operation combined what we termed closures and plastics.

Q. Looking at this document, G-239 for identification, in the second paragraph there is a reference to Modern Packaging. Can you tell me what that reference is to?

A. That refers to Modern Packaging Magazine, and that would be the ordinary way of referring to it.

Q. Was the information that is contained in that paragraph obtained from that magazine?

A. Yes, that is what the letter indicates.

Q. Do you recall that it came from that magazine?

A. I must have read the magazine, otherwise I wouldn't be so stating it here.

Q. Looking at the third paragraph, there is a reference to Hines Honey & Almond Cream. Did Owens-Illinois sell

products for Hines Honey & Almond Cream at that time?

A. As I recall it, we did not. I believe we did to Mennen's.

Q. You say you believe you did to Mennen's?

A. Yes, sir.

[fol. 1959] Q. Do you know whether Hines Honey & Almond Cream is today packed in plastic containers or not?

A. No, sir.

Mr. Johnson: Your Honor, I object to the document. It is remote in time. It has no possible relevance to any of the issues in this lawsuit. It is filled with hearsay and the usual business chatter.

There is no possible foundation, I believe, for this document under Section 1732 of the United States Code. This document illustrates various things that Section 1732 was designed not to accommodate. There is here none of the protection, afforded by the formal routine such as one finds in making entries in ships' logs or hospital records. The fact that it may have been made or that it was made by this witness in the regular course of his duties, I submit, is not sufficient for making it admissible under Section 1732. There are a great many documents which are made by any businessman in the ordinary course of his business and in the scope of his employment but which by no stretch of the imagination come within the safeguards that are intended to be set up and by the formalities provided by Section 1732, and I submit that the document is not admissible.

[fol. 1960] The Court: Have you anything to say, Mr. Greenberg?

Mr. Greenberg: Your Honor, we have submitted a brief which we believe fairly outlines the state of the law, but I would like to make this one comment, and it is more factual than it is legal. This document is one of a series of documents designed to show, or designed to indicate to Owens-Illinois what effect sales of plastic containers has had on their business. It was against their interest at that time for plastic containers, obviously, to be sold to their customers. They had no motive to misrepresent what the intrusions of plastic containers were in their customers' accounts. These records are the type of records which large corporations compile and use. It is a

document which was a result of a research and policy committee, which had been set up for the purpose of scanning the plastic field to determine what Owens-Illinois' position was to be.

The Court: Well, I think there may be some doubt as to whether specific details of fact in this document have any important probative value, or perhaps any probative value at all. However, I will overrule the objection and [fol. 1961] take the document for what it purports to be on its face.

Mr. Johnson: I call your Honor's attention to the fact that this is being offered for the truth of the statements in it, and your Honor's ruling, if adhered to, will mean that material, taken at some unknown date from some unknown magazine, stating that in 1950 there were over a hundred products going to market in these containers, and that as of last September over 160,000 gross of them have been sold, will be taken for the truth of that statement. I believe that that is going considerably beyond any admission of documents that I have been able to find in the books so far, taken under these circumstances.

The Court: Do you still offer this for all purposes?

Mr. Greenberg: Your Honor, the Government——

The Court: For instance, what do you say to Mr. Johnson's statement about something lifted from a magazine called Modern Packaging?

Mr. Greenberg: I was going to answer that very point, your Honor. The Government does not maintain that every single statement of fact in this particular document deserves the highest possible weight. As far as Modern [fol. 1962] Packaging is concerned, that is a well recognized trade journal.

The Court: Mr. Greenberg, as far as I am concerned, until this moment I never heard of Modern Packaging in my life.

Mr. Greenberg: May I ask the witness?

The Court: To me Modern Packaging might be a slip sheet with a circulation of 500. It might be a promotional advertising gimmick that was utterly unreliable. Modern Packaging means absolutely nothing to me. And this illustrates precisely the vice that Mr. Johnson pointed out. I will not take this as evidence of the truth of the facts

stated therein. I will take it merely as evidence of information and suggestions that were being made within the corporate organization of Owens-Illinois Glass Company at that time.

Mr. Greenberg: Your Honor, there are statements perhaps in this document and other documents to come which are based upon the activities of the Owens-Illinois Glass Company in survey. It is not based on hearsay or the magazine.

The Court: Mr. Greenberg, you are talking about an entirely different matter. If Owens-Illinois made a survey [fol. 1963] and the survey can be shown to have some solid basis, some foundation, that is another matter entirely. But this does not.

Let me ask you this by way of illustration, Mr. Rairdon:

By the Court:

Q. Am I correct in assuming that this information here was miscellaneous information that came to you in the course of your duties here and there?

A. Yes, sir.

Q. It was information you picked up here and there?

A. That's right.

Q. You didn't attempt to verify the reliability of this, did you?

A. Your Honor, now you are referring to the Modern Packaging?

Q. I am referring now to the third paragraph more than I am to Modern Packaging.

A. No, sir; I didn't, personally.

The Court: No, I will take it for the limited purposes that I indicated.

Mr. Greenberg: We are talking now in the context of Modern Packaging statements and things of that nature, are we?

The Court: No, I am taking it for the purpose [fol. 1964] that I stated quite clearly on the record I took it for, Mr. Greenberg.

By Mr. Greenberg:

Q. Mr. Rairdon, will you tell us what Modern Packaging is?

A. Modern Packaging magazine is——

The Court: For instance, I don't think anybody questions the fact probably that Modern Packaging contains such a statement at some point.

Q. Sir, will you tell us what Modern Packaging is?

A. I would consider it a well recognized, well established magazine, covering the usages of packaging materials and the opportunities for them. It has been in existence possibly 30 years, I imagine, and is a trade magazine.

Mr. Greenberg: Now, the Government begs your Honor's pardon in not adducing testimony of that type prior to the witness' appearance.

(Government's Exhibit 239 for identification received in evidence.)

By Mr. Greenberg:

Q. I now show you Government's Exh[illegible] 241, Mr. Rairdon, marked for identification, and ask you to [fol. 1965] identify it.

A. I believe this is as I wrote it.

Q. Was this document made by you in the course of your duties and responsibilities at that time?

A. Yes, sir.

Mr. Greenberg: The Government offers 241 into evidence.

Mr. Johnson: The same objection.

The Court: Same ruling.

(Government's Exhibit 241 received in evidence.)

Mr. Johnson: Your Honor, there are a number of these documents, and I have a few general questions. I suggest that we go through them all before I ask my questions.

The Court: Why don't we go through the documents, then you will get an opportunity to ask general questions if you wish.

Mr. Johnson: Very well.

The Court: If you prefer me to withhold my rulings until you have examined, I will do so.

Mr. Johnson: No, sir. If I have particular objections, I will so indicate.

The Court: Very good.

[fol. 1966] Q. I now show you Government's Exhibit 259, which has been marked for identification, and ask you to identify it.

A. I believe that is my letter.

The Court: Was this made under the same general circumstances and conditions as the other letters?

The Witness: Your Honor, I would so consider it.

The Court: You offer it?

Mr. Greenberg: I offer G-259 into evidence.

The Court: Same objection?

Mr. Johnson: Same objection.

The Court: Same ruling.

Mr. Johnson: I understand that unless other wise indicated, they are admitted for that limited purpose?

The Court: That is correct.

(Government's Exhibit 259 for identification received in evidence.)

Q. I now show you Government's Exhibit 263, which has been marked for identification, and I ask you to identify it.

[fol. 1967] The Court: As you see these, Mr. Rairdon, as we refer to them, will you tell us, considering this as an overall question from the Court, whether the document was made by you under similar circumstances as the other documents that have been shown to you? We will save a good deal of time that way.

The Witness: This document, again, is one which I would consider prepared in the same manner, under the same——

The Court: In the same general content.

The Witness: In the same general content.

The Court: All right, you offer it, Mr. Greenberg?

Mr. Greenberg: I offer it.

The Court: Objection from Mr. Johnson. Objection overruled. Same ruling.

(Government's Exhibit 263 for identification received in evidence.)

By Mr. Greenberg:

Q. I show you Government's Exhibit 266 for identification and ask you to identify it?

The Court: All right, you make the same statement with respect to 266, if you recognize it, sir? Wait a minute. That has something attached to it.

The Witness: I can make the same statement [fol. 1968] within the same context, with respect to my memorandum of February 11, as has been made.

Mr. Greenberg: Thank you.

The Court: All right, Mr. Greenberg offers it?

Mr. Greenberg: I offer it.

Mr. Johnson: Objection.

The Court: Same objection; same ruling.

(Government's Exhibit 266 for identification received in evidence.)

Mr. Greenberg: Your Honor, I wish to preface my question with the statement, that the reference now is to G-285. However, there was some confusion in tabbing, so that more than one memorandum is included under G-285, and I wish to draw your Honor's attention to the last memorandum.

The Court: What is the date of the last one?

Mr. Greenberg: Which is included under this tab number, dated April 28, 1953.

The Court: I have it.

By Mr. Greenberg:

Q. I show you this exhibit, sir, and ask you if you can identify it?

The Court: Can you answer the same questions [fol. 1969] about it, please, Mr. Rairdon?

A. I recall this letter, and it was written in the same context of understanding of responsibility.

The Court: Fine.

Mr. Greenberg: Your Honor, the next series of documents——

The Court: All right.

Now, you offer it?

Mr. Greenberg: I offer it.

Mr. Johnson: Same objection.

The Court: Mr. Johnson objects. Objection overruled. Same ruling.

(Government's Exhibit 285 for identification received in evidence.)

Mr. Greenberg: Did Mr. Johnson want to proceed with the examination of the witness at this juncture? Because the next series of documents were addressed to and we believed were received by the witness, but were not written by him.

Do you wish me to proceed, Mr. Johnson?

Mr. Johnson: I think you can proceed, Mr. Greenberg.

Mr. Greenberg: Yes.

Turning back now to G-247.

[fol. 1970] By Mr. Greenberg:

Q. I show you Government's Exhibit 247 for identification and ask you if you can identify it.

A. This appears to be a letter that I received in 1950 from Mr. Wade.

Q. And directing your attention to the period of time covered by the letter, did you receive other memoranda of that type?

Mr. Johnson: Objection.

The Court: I sustain the objection.

Who is Mr. Wade, Mr. Rairdon?

The Witness: I was responsible to him, and he was at that time the general manager of the glass container and enclosure—the overall.

The Court: I see.

Q. And, sir, did memoranda or other writings pass between you and Mr. Wade during that period of time?

A. I would presume so in the normal relationship that we had.

Q. And is this letter or memoranda the type that would pass between you and Mr. Wade in the ordinary course of your duties and responsibilities?

A. I would so consider.

Mr. Greenberg: Government offers 247 into evidence.

[fol. 1971] Mr. Johnson: Same objection.

The Court: Same ruling.

(Government's Exhibit 247 for identification received in evidence.)

Mr. Handler: I thought the objection was sustained.

The Court: No, I said, "Same objection, same ruling.

Mr. Handler: I'm sorry.

Q. I now show you Government's Exhibit 252 for identification and ask you if you can identify it.

A. I have no doubt that I received this letter at that time.

The Court: Who is Mr. Carr?

The Witness: He was Closure and Plastics Division manager, sir.

Q. And did you receive memoranda or writings of this type during that period of time?

A. It would have been normal, sir, for me to have received them.

Q. And did documents pass between you and Mr. Carr in the regular course of your duties and responsibilities at that time?

[fol. 1972] A. They would.

Mr. Greenberg: Government offers 252.

Mr. Johnson: Same objection.

The Court: Same ruling.

(Government's Exhibit 252 for identification received in evidence.)

Q. I show you Government's Exhibit 262 for identification and ask you if you recognize it.

The Court: Will you consider the same questions asked about 262?

Mr. Greenberg: Excuse me. I missed one.

The Court: All right.

Q. I refer you to Government's Exhibit 261, and ask you if you can identify it.

A. This appears to be a letter I received in June in answer to previous correspondence.

Q. Would your answers with respect to this document be the same for Government's Exhibit 252?

A. My answer would be that this document, like the others that we have talked about, I was in the context of my understanding as part of the job, if that is what is asked.

The Court: Who is Mr. Ryan?

The Witness: He was a salesman in New York [fol. 1973] at that time, sir.

The Court: Was this, in essence, a report from one of your New York salesmen to you?

The Witness: It would be in the process, your Honor, of collecting information, because this particular salesman called upon industries where containers of this kind could potentially be used.

The Court: And he transmitted that information to you as part of what you might call sales intelligence; is that right?

The Witness: That's right.

By Mr. Greenberg:

Q. I call your attention to Government's Exhibit 262, and ask you to identify it.

The Court: Have you offered 261?

Mr. Greenberg: I offered 261.

Mr. Johnson: Same objection.

The Court: Same ruling.

(Government's Exhibit 261 for identification received in evidence.)

The Court: With respect to 261, has the Government anything further to say with respect to 261, or do they consider it to be in the same category as all the other docu- [fol. 1974] ments from Owens-Illinois that were received by Mr. Rairdon thus far?

Mr. Greenberg: Your Honor, the Government intends with respect to all the Owens-Illinois documents, and does

so, to offer them in for all purposes subject to your Honor's ruling.

The Court: Well, if you intend to offer this for all purposes, and contend that there is a distinction between it and the other documents on which I have ruled and on which I have limited the purpose for which they were received, it seems to me that there is an obligation on the Government to do more about laying a foundation than they have done. If they are merely offering it generally, I will hear the objection and make the same ruling.

Mr. Johnson: I have the same objection.

The Court: Yes, same ruling.

Mr. Greenberg: Are we talking now with respect to 261, your Honor?

The Court: Yes, that is what you just offered.

By Mr. Greenberg:

Q. Sir, can you turn your mind back to 1950 and tell us whether Mr. Ryan, or do you know whether Mr. Ryn was [fol. 1975] collecting statistics with respect to Plax Corporation at that time?

Mr. Greenberg: Withdraw the question.

Q. Sir, is this the type of memoranda which was executed at that time in the regular course of business of Mr. Ryan? Do you know that?

The Court: Well, I thought all the testimony is that this was a report made by a salesman in the regular course of his business. That is all right. You don't have to go into that.

Mr. Greenberg: If the Court please, the Government respectfully urges that under the case law in the Second Circuit, the Pekelis case and other cases clustering around that case, we have made out an adequate foundation for this document as a business record. Now, we do not argue that statements, all statements, must be given equal weight. We agree with your Honor that a perusal of the document would indicate that certain statements are worth less weight than others. However, we respectfully assert that an adequate foundation has been laid for the introduction of this document as a business record.

The Court: Well, I have admitted it as a business record in the limited sense that I have admitted these other documents.

[fol. 1976] What do you say, for instance, to the statement, "Plax Corporation were quite dissatisfied with the four or five salesmen operating in this territory and they have discharged them within the last week or ten days?"

Suppose that fact should become relevant here—I am not saying it would or it wouldn't, but let's assume it would—how would you expect the Court to treat that fact or that statement if I admitted this document for all purposes?

Mr. Greenberg: I would think, your Honor, that unless Government produced Mr. Ryan, that it would not deserve as much weight as other statements in the exhibit.

The Court: What other statements, for example? Let's get this comparative statements business squared away.

Mr. Greenberg: For example, in the second full paragraph of the statement that "Attached hereto is a complete price list put out by Plax Corporation on Plax bottles," and a statement that he had started a file several months ago, which has been attributed to Mr. Ryan. We should think that that should have a higher weight than [fol. 1977] the other statement. The fact that Plax Corporation was dissatisfied clearly is a statement of a conclusion and opinion, and it seeks to inquire into the operation of another company's or another person's mind, and that is to be contrasted with the statement as to what a particular employee of Owens-Illinois was doing, or officer, whatever he was.

The Court: Well, I would take this as a report of a salesman to the sales manager of the company.

Mr. Johnson: Subject to the prior limitation.

The Court: Subject to the prior limitation.

Mr. Greenberg: Have we established what Mr. Ryan's position was? I don't recall.

The Court: Yes, he was New York salesman.

By Mr. Greenberg:

Q. I now show you Government's Exhibit 262 for identification and ask you to identify it.

The Court: Is this a similar report as the other one, Mr. Rairdon?

The Witness: Your Honor, I believe this is a similar report, within the same context of understanding.

The Court: All right, you offer it?

Mr. Greenberg: I offer it, your Honor.

Mr. Johnson: Same objection.

[fol. 1977a] The Court: Same objection; same ruling.

(Government's Exhibit 262 for identification received in evidence.)

[fol. 1978] Q. I show you Government's Exhibit 264 and ask you the same questions.

A. I believe this is again a letter under the same general subject.

Mr. Greenberg: I offer 264.

Mr. Johnson: Same objection.

The Court: Same ruling.

(Government's Exhibit 264 for identification received in evidence.)

Q. I show you Government's Exhibit 243 and ask you the same questions.

A. This appears to be another report of the same type.

The Court: Who was Rodgers?

The Witness: He was the Eastern Regional Manager.

The Court: For sales?

The Witness: For sales, yes, sir.

The Court: It is in the same general context, I take it, as the other documents?

The Witness: Yes, your Honor.

The Court: All right. You offer it, Mr. Greenberg?

Mr. Greenberg: Yes, I offer this.

[fol. 1979] The Court: Same objection?

Mr. Johnson: Same objection.

The Court: Same ruling.

(Government's Exhibit 243 for identification received in evidence.)

Q. I show you Government's Exhibit 244 and I propound the same questions.

A. This memorandum appears to be a part of the same considerations by the research and development policy committee on this subject.

The Court: You offer it?

Q. Who was Mr. Carr at that time?

A. At that time he was the general manager of the closure and plastics division.

Mr. Greenberg: I offer it in evidence.

Mr. Johnson: Same objection.

The Court: Same ruling.

(Government's Exhibit 244 for identification received in evidence.)

Q. I show you Government's Exhibit 245 and I propound the same questions.

A. This memorandum appears to be in the same light and [fol. 1980] within the same general category as the others.

The Court: I take it 245 is offered by the Government?

Mr. Greenberg: Yes, it is offered.

The Court: And the same objection?

Mr. Johnson: Same objection.

The Court: Same ruling.

(Government's Exhibit 245 for identification received in evidence.)

The Court: I suggest that we take a brief recess and that you show this witness during the recess the balance of the documents that you intend to offer. Then ask him one general question concerning them, listing the documents. Unless there is any special feature that you wish to go into, I will hear a general objection and make a general ruling, and we will all save a good deal of time.

Mr. Greenberg: The Government will do that, your Honor.

The Court: Fine.

(Short recess.)

The Court: Now, Mr. Greenberg, where do we stand here?

Mr. Greenberg: Your Honor, the witness has read the [fol. 1981] balance of the documents which I intend to cover with him, and I am ready to proceed with a few questions to enable us to offer the balance of these documents.

The Court: First let us identify the specific documents that we are talking about.

Mr. Greenberg: That is what I intend to do, your Honor.

The Court: Thank you.

By Mr. Greenberg:

Q. Sir, have you read Government's Exhibit 249 for identification?

A. This, Mr. Greenberg, was in the list that I just examined with you?

Q. That is correct.

The Court: You do not have to ask him separate questions. Go on with the list and read him the whole list of documents.

Q. Have you read 249, 251, 267, 280 and that part of 285 which is represented by memoranda of May 8, 1953, and May 7, 1953?

A. In the same fashion, yes, sir.

[fol. 1982] Q. And would your answers to my questions and the Court's questions propounded with respect to prior documents which you have identified be the same with respect to the current list of documents?

A. The documents that I examined relate to the matter which arose and was corresponded about in the previous documents that we had examined here this morning.

Mr. Greenberg: Thank you.

The Court: And they came to you or were sent by you, whichever they were, within the same framework and within the same context?

The Witness: Yes, your Honor, within the same framework and within the same context.

The Court: Very well.

Mr. Greenberg: I offer these documents.

Mr. Johnson: Same objection.

The Court: All right, same ruling.

And I may say, so that it is quite clear on the record, that I am taking these documents as relevant material except for any argument on the time factor that the defendant may make, upon the general theory that the state of mind and the activities of buyers and sellers of products [fol. 1983] is some evidence at least on questions, among others, of markets.

Mr. Greenberg: Thank you, your Honor.

(Government's Exhibits 249, 251, 267, 280 and 285 for identification received in evidence.)

The Court: Now do you have some questions, Mr. Johnson?

Mr. Johnson: Yes, I have a few, but before going into the questions, your Honor, I would like to call your Honor's attention to an incident which occurred here when I had Dr. Ball under cross-examination.

At that time I showed him a copy of Modern Packaging Magazine for January, 1960, and Mr. Greenberg at that time made this statement, and I am reading from page 761 of the record:

> "Your Honor, articles of that type are usually advertisements put in by a particular company. If there is no identification of author, it is totally unreliable, and I don't see how we can use it with the witness to impeach him, or for any other purpose."

Mr. Greenberg: I would like to make one comment, your Honor. My statement to the Court was confined to that particular item as it appeared in that particular magazine on that particular day.

[fol. 1984] The Court: That is not what you said.

Mr. Greenberg: Then I amend my statement and clarify it for the record.

The Court: In other words, you now think that Modern Packaging is a great and good magazine, is that right, Mr. Greenberg?

Mr. Greenberg: I now think, your Honor, that Modern Packaging, like other magazines which are well known and well thought of, do contain advertisements, and that there

are other articles which are signed and which are reliable in that magazine.

The Court: Let us get this straight, Mr. Greenberg. Do you know whether the article to which this witness referred was signed or unsigned?

Mr. Greenberg: I do not, your Honor.

The Court: Do you know whether it was an advertisement or not an advertisement?

Mr. Greenberg: I do not, your Honor.

The Court: Very good. That confirms me in my judgment that these should not be admitted for all purposes.

Go ahead now, Mr. Johnson.

Cross-examination.

By Mr. Johnson:

Q. Mr. Rairdon, you have considered here this morning [fol. 1985] a number of documents from the files of Owens-Illinois from the period 1950 to about 1953 relating to various discussions with respect to plastics. Do you know whether these documents which were considered here were all of the documents that you saw or read during that period relating to this subject?

A. I do not know that, Mr. Johnson.

Q. In other words, you do not know whether these documents were taken out of context or not? By "context" I mean that there may have been related correspondence or other related material with them, and I am simply asking you whether you know or not.

A. There could well have been, as indicated in some of the documents, meetings, for example, that were interspersed, and there could have been other papers, and I wouldn't know.

The Court: In other words, you do not purport to say that this is by any means either your complete file or the company's complete file on this subject matter during this period, is that right?

The Witness: Exactly, your Honor, that is correct.

Q. Looking, Mr. Reardon, at the attachment to Exhibit [fol. 1986] G-266, do you know anything about that document except the fact that somehow it came to your hands?

A. That is all, that it came to my hands in the normal fashion and I communicated about this in what I considered to be a normal fashion.

Q. And you do not know the source of any of the information?

A. Except as indicated.

Q. Except as indicated in the document?

A. In the document itself.

Q. Now looking at Exhibit 245, which is a letter from Carr addressed to Rodgers, do you think it is fair to say that that letter indicates that Mr. Carr wasn't too convinced by some of the arguments that had been made to him?

Mr. Greenberg: Your Honor, I wish to note an objection to that question for the record.

The Court: Overruled.

A. Mr. Johnson, Mr. Carr indicates we are taking another look at the possibilities of plastic containers, and beyond that, as I reread the context, I don't see any particular indication of his prejudgment, you might [fol. 1987] say.

Q. There is some discussion of the weight of opal jars, is there not?

A. Yes, sir.

Q. He seems to think that the weight of opal jars is a favorable characteristic, doesn't he?

A. He seems to be mentioning points on both sides in that section.

Q. In other words, going back to my original question, he apparently isn't entirely convinced of some of the arguments that have been made in this series of correspondence, is that true?

A. I would say it is an indication that he is proceeding carefully on any contribution to an appraisal.

Q. Is it fair to say, Mr. Rairdon, that these documents relate largely to the squeeze bottle business?

A. Mr. Johnson, it appears to me that they relate to plastic bottles or plastic container business, and the only plastic bottle there was then as indicated in the context of the different documents that you refer to seems to be the one that was then known as the squeeze bottle.

[fol. 1988] Q. Did Owens-Illinois ever go into the squeeze bottle business?

A. No, sir.

Q. Is it in it today?

A. No, sir.

The Court: Mr. Rairdon, as I understand it, Owens-Illinois presently has a division which makes plastic containers?

The Witness: Yes, your Honor.

The Court: And what are those plastic bottles? Will you define it in very general terms?

The Witness: Your Honor, we would term them rigid or semi-rigid containers as against the very squeezable bottle made out of the other types of polyethelene.

The Court: And as I would call it, am I correct in this, that you make at the present time a very general line of those bottles?

The Witness: It is, I would say, relatively a general line for bottles.

The Court: For bottles?

The Witness: Yes.

The Court: And you make plastic jars, too, do you?

The Witness: Some, yes, sir.

[fol. 1989] By the Court:

Q. And not in very large proportion——

A. Not as large as the bottle, the narrow-neck bottle.

The Court: All right.

By Mr. Johnson:

Q. You do make plastic vials, do you not?

A. Plastic vials, largely polystyrene, yes.

Q. Looking at Exhibit G-244, there is a reference in there, is there not, to the possible purchase of Plax Corporation?

A. Yes, sir, by Mr. Carr.

Q. Did there come a time when Owens-Illinois made a substantial investment in Plax Corporation?

A. Yes, sir.

Q. And acquired half of the outstanding stock of Plax Corporation, did it not?

A. As I recall, it was approximately that.

Q. And that acquisition was cleared by the Department of Justice, was it not?

Mr. Greenberg: Your Honor, I am going to strenuously object to that question. It is a question of law and I strenuously object to it.

The Court: I will overrule your objection. That is not to say the fact that they were cleared by the De-
[fol. 1990] partment of Justice necessarily has any significance to me at all.

Q. Was it?

A. I have no specific knowledge as to that, Mr. Johnson.

Q. You were vice-president of the corporation in 1954, were you not?

A. Yes, sir.

Q. And you say you don't know?

A. I was not involved in the acquisition of the Plax business nor in its carrying out.

Q. Not even to the extent of knowing of negotiation with the Department of Justice?

A. That is correct.

Mr. Johnson: Mr. Clerk, would you mark this document for identification.

(Marked Defendants' Exhibit L for identification.)

Mr. Johnson: Defendants' Exhibit L for identification is a copy of a letter dated February 19, 1954, signed by Stanley M. Barnes, Assistant Attorney General of the United States Department of Justice, addressed to Fred E. Fuller, Esq., Toledo, Ohio.

The Court: Show it to Mr. Greenberg.

[fol. 1991] Mr. Johnson: Does the Government stipulate that that is an accurate copy?

Mr. McManus: We so stipulate.

Mr. Greenberg: We stipulate that this is a true and accurate copy of the letter of February 19, 1954.

Mr. Johnson: I offer it.

The Court: Let me see it, please.

(Document handed to Court.)

The Court: Any objection?

Mr. Greenberg: Your Honor, may we have the grounds for the offer of this document?

Mr. Johnson: A number of documents have been offered in evidence here purporting to show the interest of Owens-Illinois in the plastics business from 1950 to 1953. Subsequently Owens-Illinois acquired an interest in Plax Corporation, which is the largest plastic bottle manufacturer in the United States, and did so without objection from the Department of Justice.

The Court: And what do you say is the significance of that, Mr. Johnson?

Mr. Johnson: The significance of that——

The Court: In this case.

Mr. Johnson: The significance of that in this case is [fol. 1992] that apparently the Department of Justice concluded that there were no anti-competitive effects in that acquisition and consequently I say that no inference of any kind should be drawn from the fact that Owens-Illinois was at that time concerned with the plastics business.

The Court: Well, I would take the letter and overrule the objection, but I am frank to say to you, and I would be less than frank if I did not say to you, that I scarcely draw from the letter any of the conclusions which you have stated. But, in any event, it is in evidence, and there it is.

(Defendants' Exhibit L for identification received in evidence.)

By Mr. Johnson:

Q. Just to clarify one point, Mr. Rairdon, you were talking about the type of plastic bottles now made by Owens-Illinois. Are the narrow-neck plastic bottles which Owens-Illinois now makes made entirely from linear polyethylene, the high-density polyethylene?

A. To my knowledge, the plastic bottles we make are made from high-density polyethylene. The vials we make are made from polystyrene largely. That might not be [fol. 1993] in totality.

Mr. Johnson: That is all I have, your Honor.

The Court: Does your company still have the stock interest you described in Plax Corporation?

The Witness: We do not, sir. I cannot tell you when it was sold.

The Court: Can you tell me approximately when it was acquired? I presume it was acquired somewheres around 1954, isn't that true?

The Witness: Honestly, sir, I cannot——

The Court: You just do not know?

The Witness: I couldn't answer as to either date.

The Court: Could you tell us whether you disposed of your interest, your company disposed of your interest in Plax within the last two years?

The Witness: If I were to guess, sir, I would think it would have been in 1957.

The Court: In 1957?

The Witness: But I am not——

The Court: All right, I just wanted to get a general estimate.

Mr. Greenberg: May we have just a moment, your [fol. 1994] Honor?

The Court: Yes.

(Pause.)

Mr. Greenberg: Your Honor, if it is of interest to you, we can present to your Honor memoranda and letters which dealt with the acquisition of the Plax Corporation by Owens-Illinois. They purchased the stock and——

The Court: I am not interested in the details, Mr. Greenberg. All I was trying to do was to get a relatively accurate or a reasonably accurate time sequence and that is all.

Mr. Johnson: Your Honor, there was some testimony from Plax Corporation in the record.

The Court: On this subject?

Mr. Johnson: Yes, on this subject.

The Court: All right. Is there anything further now from Mr. Rairdon?

Mr. Greenberg: Your Honor, the Government has no further questions or any further documents to cover with the witness.

The Court: Nothing further from the defendant?

Mr. Johnson: No, your Honor.

[fol. 1995] The Court: Thank you very much, Mr. Rairdon, you may step down.

(Witness excused.)

Mr. Pettit: Your Honor, the Government calls Mr. Drigot.

STANLEY W. DRIGOT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Pettit:

Q. Mr. Drigot, by whom are you employed?

A. Continental Can Company.

Q. How long have you been employed by Continental Can Company?

A. Approximately nine and one-half years.

Q. Do you recall, sir, what your duties were during the year 1957?

A. In 1957——

Q. To be more specific, during the month of December, 1957?

A. At that time I was working in the container research division of metal research and development.

Q. What were your duties in that position?

A. Research development, investigative work on proj-

[fol. 1996] ects assigned by my superior.

Q. Mr. Drigot, I would like to show you Government's Exhibit No. 446 for identification and ask you if you recall this report?

A. Yes, I do.

Q. Did you prepare this report?

A. Yes.

Q. Was it in the course of your regular duties to prepare reports of this type?

A. Yes.

Mr. Pettit: Your Honor, the Government offers this document in evidence for all purposes.

The Court: Well, let me ask a couple of questions here: I take it that these tests that are referred to here—did you make the tests yourself?

The Witness: Yes, sir, I did, your Honor.

The Court: This is testing that you yourself did?

The Witness: Yes, sir.

The Court: And this represents the results of your testing?

The Witness: That is right.

The Court: And you made certain recommendations also and those are your recommendations?

[fol. 1997] The Witness: That is correct.

By the Court:

Q. You outlined here the procedure?

A. That is correct.

Q. Is that a fair statement of the procedure you followed in making this test?

A. It is.

The Court: Very good.

Mr. Johnson: Your Honor, the Government has stated that they are offering this for all purposes, but that leaves me uncertain as to what——

The Court: Yes, what is the purpose of this?

Mr. Pettit: Your Honor, this document deals with carbonyl compounds—Schlitz Beer, and also in the body——

The Court: Yes, I see that this deals with carbonyl compounds-Schlitz Beer, but I think that the first thing you should tell me is what carbonyl compounds-Schlitz Beer has to do with this lawsuit.

Mr. Pettit: Well, not directly, your Honor, but I would say this. This generally shows, and, in fact, the first sentence shows that the Continental Can Company was concerned with the considerations of beer packaged in cans as against beer packaged in glass. One of the considera-

[fol. 1998] tions that they were worried about was the volatile carbonyl content of beer packed in cans as opposed to beer packed in glass.

These are offered to show that concern. The first sen-

tence in the report will show that and also the first sentence under "Conclusions."

The Court: All right, I think I have it. Do you?

Mr. Johnson: I have a few questions.

The Court: All right.

Cross-examination.

By Mr. Johnson:

Q. Mr. Drigot, do you recall who asked you to prepare this report?

A. Mr. Brachle, who was manager of the container research at that time, requested me to prepare that report.

Q. Was he your superior at that time?

A. He was.

Q. Do you recall whether he told you the purpose of making this study?

A. Yes, the purpose of making the study was to determine if there were—if we could identify the differences in these two containers, namely, glass and cans.

Q. Had American Can Company at this time recently [fol. 1999] come out with a new beer can or had you heard that they were coming out with a new beer can?

A. The information given to us by our top management was that—the metal research development information—was that American Can was about to introduce a can with an interior lining which would be very close to or similar to or actually composed of glass or a glass-like material.

Q. Did you at that time ever see such a can?

A. No.

Q. And is it fair to say then that the purpose of this report was to determine what would be the nature of this American glass-lined can that you had heard about?

A. That is right.

Q. To determine something about the quality of glass cans?

A. As it affected the product.

Q. As it affected it?

A. Yes.

Mr. Johnson: Your Honor, I object to this.

The Court: On what ground?

Mr. Johnson: Well——

The Court: Now, look, Mr. Johnson, I will overrule the objection.

[fol. 2000] Mr. Johnson: All right.

The Court: It talks about bottles and cans and the competitive story and qualities of each, and it certainly has some relevance to the general subject matter.

Mr. Johnson: The testimony is clear, I think, that it relates to a beer can——

The Court: First let me ask this:

Mr. Witness, you tested the volatile carbonyl content of Schlitz Beer after it was packed in cans, did you?

The Witness: Yes, sir.

The Court: You also tested it after it was packed in bottles?

The Witness: That is right.

The Court: And you made a comparison of the two, didn't you?

The Witness: Yes.

The Court: And that is what you were doing in making this report, wasn't it?

The Witness: Yes.

The Court: All right.

(Government's Exhibit 446 for identification received in evidence.)

The Court: Is there anything further from this wit-

[fol. 2000a] ness?

Mr. Pettit: No, your Honor, that is all.

The Court: All right, sir, you may step down. Thank you.

(Witness excused.)

[fol. 2001] The Court: We will make an announcement on the record with respect to the correction in the announced exhibit number, so that everybody may make note of it and correct their records accordingly.

The Clerk: With respect to the letter of February 19th, the correction should be defendants' Exhibit M in evidence.

The Court: That is the letter from the Department of Justice.

The Clerk: To Mr. Fuller.

The Court: Next witness.

Mr. Pettit: Your Honor, we call L. C. Dudley, and in connection with his testimony we will be referring to 415-B, Government's Exhibit 415-B for identification.

LAUREN C. DUDLEY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Pettit:

Q. Mr. Dudley, by whom are you employed?

A. The Duncan Coffee Company.

Q. Previous to your employment with the Duncan Coffee Company, by whom were you employed?

A. The Continental Can Company.

[fol. 2002] Q. For what period of time, sir?

A. Oh, from February of 1948 until April of this year.

Q. Do you recall what your employment duties were with Continental Can Company in April of 1953?

A. Yes.

Q. You do?

A. Yes.

Q. Mr. Duncan, I show you Government's Exhibit 415-B for identification, and ask you if you recall this exhibit?

A. Yes, I seem to recall it as a group.

The Court: Mr. Dudley, try to keep your voice up. Mr. Hughes, Mr. Handler and these other gentlemen have to hear you.

The Witness: Yes.

A. As a combined group. When I say "combined group" I mean this whole section here.

Q. Did you say this was prepared——

The Court: You too, Mr. Pettit. You have got to be heard down there.

Mr. Pettit: I will project, your Honor.

Q. Was this prepared by the Commercial Research De-

partment, do you recall, or was this—you did say that you [fol. 2003] worked in Commercial Research?

A. No, no, I was in the products sales department.

Q. I see. Was this prepared in the products sales department?

A. Yes, it was compiled in my office.

The Court: What position did you say you had in the products sales department at that time?

The Witness: I was the product sales manager for processed foods.

Q. This was prepared under your direction, I believe you said?

A. Yes. I say compiled. It was really a resume of several studies and also, I would say, quite a few files.

Mr. Pettit: Your Honor, the Government would offer this 415-B in evidence for all purposes, also.

The Court: You may examine concerning it, Mr. Johnson.

By Mr. Johnson:

Q. Mr. Dudley, would you look at the first page of material, actually the third sheet in this exhibit. There is a reference in there, in the second paragraph, to a baby food [fol. 2004] survey which was conducted apparently in 1945; do you know anything about that survey?

A. Nothing other than it was conducted, and I had, I believe, access to it.

Q. Did you prepare it?

A. No.

Q. Did you conduct the survey?

A. No.

Q. Did you have any part in either formulating the questions or in determining where the survey was to be made?

A. No. As a matter of fact, that was prior to my coming with the company.

Q. But the survey had all been done before you ever came to Continental?

A. Yes.

Q. And you picked up a finished survey and drew some conclusions from it; is that true?

A. Yes.

Q. A statement is made at the bottom of that page, "Campaign was conducted in cooperation with Gerber, Clapp, CMI and Continental Can Company."

Where did you get that information?

A. I believe that it was in the file that I had at the time, or was able to get out of the old file.

[fol. 2005] Q. But you did not learn that of your own knowledge, because you were not with the company at the time that was made?

A. No, I was not.

Q. Were you ever an officer or director of Continental?

A. No.

Q. Do you know whether this document ever circulated outside of Continental, was ever distributed outside of Continental?

A. No, I don't.

The Court: What circulation did the document have, if you remember, Mr. Dudley?

The Witness: Well, in essence, it was a compilation compiling material to get approval for the final page, or last page, from my immediate superior at that time to go ahead with some work.

The Court: What were you trying to get approval for?

The Witness: Well, as shown in the conclusions, there were certain research and development that would have to take place in the cans; and I was attempting to get, in effect, budget for it, or approval for it.

[fol. 2006] The Court: Did you get it?

The Witness: Yes, sir.

The Court: Did you carry out the project along the general line you recommended here?

The Witness: I would say generally, yes.

The Court: Generally.

All right.

Mr. Johnson: Your Honor, in view of the fact that this document is offered for all purposes, I submit that it is inadmissible. There is a great deal of material obtained from unknown sources, from material that was not in this witness' knowledge; hearsay of many kinds, including a statement I see here, statement from the Council on Foods and Nutrition of the American Medical Association.

The document is full of hearsay. It is not admissible under any of the standards that have been set up with respect to the admissions of surveys, and I object to it on all of those grounds.

The Court: Objection overruled.

(Government's Exhibit 415-B for identification received in evidence.)

The Court: Anything further?

Mr. Pettit: No, your Honor.

[fol. 2007] The Court: All right, Mr. Dudley, you may step down.

Thank you.

The Witness: Thank you.

(Witness excused.)

Mr. McManus: Your Honor, I would like the advice of the Court. Our next witness is quite a lengthy witness and covers a number of subjects. I don't know if you want me to start with this witness now or break for lunch now and start with him at an earlier time or not.

The Court: I think we might as well call him now and go along for 15 or 20 minutes, get his qualifications and background, and if you find a convenient point at which you think we might break, you advise me.

Mr. McManus: Fine, sir.

Government calls Mr. Cheney.

[fol. 2008] Richard L. Cheney, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Cheney, by whom are you presently employed?

A. The Glass Container Manufacturers Institute.

Q. That is located here in New York City?

A. Yes, sir.

Q. What is your position with that company?

A. I am executive director and marketing manager.

Q. Now, Mr. Cheney, if we could go over your background, starting with your graduation from college, if we could?

A. I graduated MIT in 1927. I worked with the Hobart Manufacturing Company of Troy, Ohio, as an engineer, a field service man, direct sales advertiser, salesman and assistant sales manager.

Q. And from there?

The Court: What do they manufacture?

The Witness: Electrical food preparing machinery.

Q. And from there you went?

[fol. 2009] A. From there I went to work for Stevenson, Jordan & Harrison, management engineers, at their San Francisco office, and in 1939 I went to work for the Purchasing Agents Association of Northern California as executive secretary and editor and publisher of Pacific Purchasing Magazine, Pacific Purchasing.

Q. Now, if I could interrupt you? You said that Stevenson, Jordan & Harrison were management engineers. What type of work was that that you did?

A. The work I did for them was largely in association management. They managed a number of associations.

Q. Trade associations?

A. Trade associations, yes, sir.

Q. And after you left the editor and publisher of—

A. I became West Coast manager of Glass Container Association.

Q. And that would be from what period?

A. That was from 1940 to the end of 1941. Then I joined Safeway stores, as a manager of food container buyers division, and in April 1946 I became [fol. 2010] West Coast manager of Glass Container Manufacturers Institute, which position I held until January 1st, 1954, when I came to New York as director of market research and promotion.

Q. And you held that job until?

A. Until I think it was May, April or May of 1957, when I became executive director and marketing manager.

Q. Now, you said you worked a year and a half with Safeway in the food container buyers division?

A. That's right.

Q. And what was your job at that time?

A. I bought or supervised the buying of packaging materials for the various packing operations of Safeway stores.

The Court: Safeway then conducts its own packaging operations, puts out its own brands in some instances?

The Witness: That is correct, yes, sir.

Q. Now, you indicated that you at one time worked for the West Coast division of Glass Container Manufacturers Association; how many offices does GCMI have?

A. We have the main office in New York, the [fol. 2011] West Coast office in San Francisco, an office in Washington, D. C. and a laboratory with an office at Michigan State University, at East Lansing, Michigan.

Q. Does the West Coast office do the same general type work for that area that the New York office does for the rest of the country?

A. I think it is correct to say that the broad scope of the GCMI activities as they apply in that area are handled by that office or through that office.

Q. And what is the purpose of the Washington, D.C. office?

A. For contact with Government agencies.

Q. Now, could you estimate approximately the percentage of industry represented by GCMI members, if we did it on, let's say, a unit basis, unit number of containers?

A. Yes. On a unit basis, approximately 85 per cent of the glass manufacturers are members of GCMI in this country.

Q. If you did it on a dollar basis, would it be any different?

[fol. 2012] A. I think it would. I have no way of—if I could put it on the basis of physical units produced?

The Court: Yes.

Q. Yes.

A. It would be approximately 92 per cent.

Q. And how many companies are members of GCMI as glass container manufacturers?

A. 36 companies.

Q. Do you also have members who are not manufacturers of glass containers?

A. Yes, sir. We have six members who manufacture closures for glass containers and 20 members who manufacture raw materials or supplies or molds and equipment.

Q. Do you happen to know the companies, how many companies are not members of your association?

A. I don't know exactly. I know some who are not.

Q. Who are the companies that you know of that are not members of your association?

A. Glass container manufacturers?

Q. Glass container manufacturers, yes.

A. There is Star City Glass Company, with its subsidiaries, Gayner Glass and Universal. There is Wheaton Glass Company and the T. C. Wheaton Company. There is Kerr Glass Manufacturing Company and Alexander H. [fol. 2013] Kerr Company.

There is Underwood Glass Company, New Orleans. The Arkansas, I think it is called Arkansas Glass Company. It is a manufacturer of glass containers located in the State of Arkansas.

There was a company in Minneapolis, whose name I don't recall. I believe they are closed down at present. And there is the Gallo, a wholly-owned subsidiary of the Gallo Wine Company. I think they call it the Gallo Glass Company. That is all I can think of now.

Q. Could you tell me what are the requirements for membership into GCMI?

A. Membership is open to those who manufacture and sell glass containers and closures, or raw materials or supplies, supplies used by the glass container or closure manufacturers, except for jobbers.

Q. And could you tell us, tell the Court generally, how the Association is organized? What is the hierarchy in the organization?

A. Well, the governing body is the board of trustees, made up of eleven individuals who are employees of members. The board of trustees elects a president, first

[fol. 2014] vice-president and second vice president from its own membership. All of these serve without compensation. The paid staff totals about 45, and I am executive director, the head of the paid staff. We have an operating committee of three people, and then the rest of the staff reports to one of us three.

Q. And you do have regular standing committees?

A. Yes. We have nine regular standing committees and quite a large number of subcommittees.

The Court: Do you assign various members of your staff to the subcommittees?

The Witness: Yes, sir.

The Court: In other words, I take it, individual staff members may be permanently or semi-permanently assigned to a subcommittee to specialize in this work; is that your practice?

The Witness: That's right; yes, sir.

By Mr. McManus:

Q. Now, if we could, could you tell us what these committees are and explain generally the duties or the purpose of the committee?

A. Well, there is the Market Research and Promotion Committee, whose purpose is to do market research, ad-
[fol. 2015] vertising promotion, public information, publicity.

The Traffic Committee, which is to promote equitable freight rates, both rail and truck, for glass containers and for glass-packed products.

There is a traffic—there is a Labor Relations Committee, which has charge of negotiating two national contracts with two labor unions I was assisting up to a point the individual members in their further negotiations on an individual company basis.

There is the Container Design and Specifications Committee, which develops recommended standards for glass containers.

There is the Standard Finishes Committee—I can't just recall the name—the finish of a glass container being that portion to which the closure attaches—and they develop recommended standards for finishes for glass containers.

There is the Panel Design and Specifications Committee, which conducts or operates a laboratory, a packaging laboratory, located on the grounds of Michigan State University, which has the purpose of developing more efficient, less costly packaging materials, by which I [fol. 2016] mean corrugated shipping containers and interior packing, or small six-pack carriers—other things of that kind.

There is the Standard Testing Procedures Committee, which develops standard testing procedures and quality control materials in the area of glass container manufacturing.

There is the Technical Committee on glass packed products, which has subsidized programs at the University of Massachusetts and the University of California, whose duty is to conduct research and investigation and foster the use of methods for packing products in glass containers.

Did I name nine?

Q. I believe you have, yes, sir. And of course, there may be occasionally subcommittees set up under these various standing committees?

A. Yes, sir.

Mr. McManus: Your Honor, I would think that this might be an appropriate time to take a break, if that is satisfactory?

The Court: All right, we will take a recess now until five minutes after two.

(Recess to 2.05 p.m.)

[fol. 2017] AFTERNOON SESSION

RICHARD L. CHENEY, resumed.

Mr. McManus: Your Honor, if you have no objection, Mr. Andrews of our staff, who is a member of the Bar of the State of Utah, would like to sit at counsel table.

The Court: That will be fine. We welcome Mr. Andrews.

Direct examination continued.

By Mr. McManus:

Q. Mr. Cheney, when I asked you to list the nine committees that you had in GCMI, on double-checking I understand that you listed eight. Would you tell me what No. 9 is?

A. No. 9 is the Government-Industry Relations Committee. That committee carries on our work, liaison work, between Federal, State and local governments, where we have mutual problems or interests.

Q. Is that one of the reasons why you maintain an office in Washington?

A. That is, yes, sir.

Q. Now is your company also engaged in the collection of statistics from member companies?

A. Yes, it is.

Q. And when I say "member companies," would those [fol. 2018] be glass container manufacturers?

A. Just the glass container manufacturers.

Q. And on what basis do you collect these statistics, is it on a unit basis or a dollar basis or what?

A. It is on physical volume measured in gross, the gross being 144 or 12 dozen.

Q. Are these reports broken down in any manner?

A. Yes, they are broken down in certain end use categories.

Q. And could you tell me what those end use categories would be, if you recall?

A. I may not be able to recall them all.

The Court: How many are there?

The Witness: About 14, I believe.

The Court: All right.

A. They are divided into two groups, narrow-neck glass containers and wide-mouth glass containers.

Under narrow-neck there are foods, drug and health supplies, toiletries and cosmetics, beverages, so-called soft drinks, returnable soft drinks and non-returnable, beer returnables, beer non-returnables, household and industrial chemicals.

Wide-mouth are broken down under foods, toiletries [fol. 2019] and cosmetics, health and medicinal, household and industrial chemicals. And then there is dairy containers separately. Those are all that I recall.

Q. And do you collect these statistics from member companies monthly or annually?

A. Monthly.

Q. Do you make annual compilations also?

A. Yes, we do.

Q. When you get these statistics, do you add them into one group?

A. We compile them into one total for the whole industry and send out reports to the members covering the whole industry's figures. We keep their reports. If they send them to us, we do not return them.

[fol. 2020] Q. It is also necessary in dues collection to obtain statistics on a dollar basis from your member companies?

A. Yes. Once a year all members report their dollar sales for the previous years, and it is on these figures that their dues are calculated.

Q. And that would be on a percentage basis of their total sales?

A. That is correct; yes, sir.

Q. So depending on the amount of sales would depend the amount of dues; is that correct?

A. That is correct.

Q. Now, could you tell me what is the purpose of GCMI?

A. Well, the purpose of GCMI is to advance the interests of the glass container and closure manufacturing industries and those of their customers and the public through activities that will improve the production methods of our products, through setting up recommended standards which will be for the benefit of the consumers, the users and consumers, and through the other efforts that I outlined under the nine standing committees, to increase the efficiency in industry and increase the market for glass containers and closures.

[fol. 2021] Q. In your present position, what are your duties and responsibilities to the Association?

A. Well, they are twofold. As executive director, I

am the chief executive officer and supervise all the activities of the Institute. And in my capacity as marketing manager, I have charge of the market research and promotion department, which carries on or has carried on for it market research, advertising, publicity, public information service, merchandising promotion.

Q. Is it necessary in your job to travel around the country?

A. Yes, it is.

Q. And for what purposes do you go around the country? What are your duties in connection with that?

A. I travel around the country to call on our members. I sit occasionally in meetings of our West Coast subcommittees; to make talks to associations of users of glass containers and to other people; to occasionally contact users of glass containers, to obtain their opinions and information about glass containers. I think that is it.

Q. In the other part of your duties, or one of [fol. 2022] the parts of your duties of market research, do you keep yourself advised of statistical data from Government agencies or other trade associations?

A. Yes, where it is available and applicable to packaging products that we are interested in, I do.

Q. And do you keep yourself advised of trends in the glass container industry, improvements and increase in sales or decrease in sales? Do you keep yourself advised of that?

A. Yes, I do.

Q. Do you also attempt to keep yourself advised of other types of containers in the overall packaging industry?

A. Yes, as far as I can.

Q. Under your market research and program committee, does that committee makes surveys and studies of the glass container industry?

A. It has surveys made and studies made, which they review.

Q. And you are familiar with them?

A. I am.

Q. And once these studies and surveys are made, what distribution do you make of them?

[fol. 2023] A. It depends on the study and who might be

interested in it. One type of study is presented orally at our semi-annual meetings with slides. Then copies are sent out to the glass container and closure members of the industry, and others if they are interested. Certain others might be sent to those companies which manufacture containers for certain end uses, if that is what the study pertains to.

Q. Are these studies available to your members at any time?

A. Yes. We handle them on a library loan basis. We have a quantity of copies available, send them out and they return them to us. But they are available at any time.

Q. Now, the promotion end of the market research and promotion part of your job, what does that entail, Mr. Cheney?

A. That includes, of course, advertising. We have a consumer advertising program, which this year is a heavy schedule in Life magazine. We merchandise this program through direct mail to bottlers, packers, retailers, distributors, who might be interested in glass packed products. [fol. 2024] We carry on a trade paper advertising program in the leading—what we believe to be the leading—retail food trade magazines, and in Glass Packer magazine, which goes to many people who pack in glass.

Q. So your promotional program is twofold:

It is aimed both at the person who is going to fill the container and also at the ultimate consumer who will use the product; is that correct?

A. And in addition to that, to the retailer, who sells the glass-packed product—threefold.

Q. The stores themselves.

A. Yes.

Q. Threefold program.

A. Yes.

Q. Could you tell me how these surveys are initiated, the background for these market research surveys, that you have heretofore mentioned? How are they initiated in GCMI? What is their plan?

A. It varies as to the type of the survey. Do you have a particular survey you want to mention?

Q. Well, you say you have a general survey, and you

indicated one of them you discussed with the members annually or semi-annually.

A. Yes.

[fol. 2025] Q. What type would that be?

A. That is a national consumer attitude survey, and at the same time we take that, on alternate years we survey a sample of retailers or some other group that we might be interested in, and this survey is authorized each year by the Market Research and Promotion Committee. It has been a continuing activity since 1955.

Q. And the Market Research and Promotion Committee is made up of glass container manufacturers who are members of your Association?

A. There is a representative—I think there are 13 members on the committee at present, and the members of the committee are executives of glass container manufacturers.

Mr. McManus: Now, your Honor, I would like to refer to Government's Exhibit 33.

Mr. Hughes: Wait just a moment, your Honor.

The Court: Yes.

Mr. Hughes: May I say, your Honor, that there are 132 exhibits involved, so that at times, especially if Mr. McManus skips around, we may not be quite up to them.

The Court: All right.

[fol. 2025a] Well, now, let me ask you at the outset of this discussion, is there any way of grouping these documents so as to fit into any general categories, so that we could save time, or must they each be taken up individually?

[fol. 2026] Mr. McManus: Your Honor, many of these surveys—many of these documents—I should not say surveys—are quite different, and it would seem to me that it would be very difficult to take them up as a group. If as we go along we do find that possible——

The Court: I think that any intelligent grouping that can be made will save an enormous amount of time.

Mr. McManus: Yes, I understand that.

The Court: I wish that all of you would bear that in mind in case at any point it becomes possible to do that, because we are going through 130 exhibits with this witness.

Mr. Hughes: I think that it is usual to start with No. 1.

The Court: Yes, let us start from the beginning and see what problems we will have.

Mr. McManus: Your Honor, actually the earlier parts refer more or less to the later surveys and I would think that it would be more practical if we could start with the first survey, start with 33, and that is the reason we would like to start with that.

The Court: All right.

[fol. 2027] By Mr. McManus:

Q. Mr. Cheney, I show you Government's Exhibit G-33. Do you recognize that survey?

A. Yes, I do.

Q. This was delivered on December 1, 1953, according to the date here. What was the purpose of this survey, would you explain that?

A. G-33 is the introduction to a complete survey. It is not a survey in itself. There are several exhibits here that were all part of that one survey.

Mr. Hughes: Your Honor, may I interrupt to point out that the Government for some reason, which is obscure to me, took a single document and broke it up into about ten different segments. When we are dealing here with Exhibit 33 to about 40, I think it is, it is really all one document.

The Court: What are the numbers now?

Mr. McManus: Just a minute, your Honor. We can cover them all at once on this.

It runs, your Honor, from G-34 through G-38.

Mr. Hughes: G-33.

Mr. McManus: Excuse me, G-33 through G-38.

The Court: The document which is G-39 for identification [fol. 2028] talks of a plan of action for the glass container industry. I take it from what you say that that is not a part of this document but it is a separate document?

The Witness: Yes, sir. They have a relation——

Mr. Hughes: Isn't G-40 also part of this document?

The Witness: We don't have G-40 here.

The Court: Let me see G-40, please.

(Document handed to Court.)

The Court: G-40 must be part, presumably, of either G-39 or G-38.

Mr. McManus: G-33 to G-38, your Honor, and G-40. We have an additional copy here. Could we give it to your Honor?

The Court: Well, I have it here before me. Presumably it is in the bound exhibit file.

Mr. McManus: Yes, sir. What happened was, in photostating, your Honor, they came back disassembled and we did not have the original to put them back in the proper order and we apparently put them back together this way.

The Court: We are dealing now with 33 to 38, exclusively?

[fol. 2029] Mr. McManus: And also G-40.

The Court: Also G-40 but not G-39?

Mr. McManus: That is correct.

The Court: All right.

Q. Now could you explain to his Honor who decided to make this survey?

A. The board of trustees decided to make this survey.

Q. And at that time what was your position?

A. West Coast manager.

Q. Did you participate in the organization of this survey?

A. Yes, I had charge of the survey.

Q. And in the foreword it outlines the purpose of the survey and your participation in the survey, is that correct?

A. Both paragraph No. 1 and paragraph No. 2, yes.

Q. That explains the——

A. The purpose.

Q. The purpose of the survey and your participation in the survey?

A. My participation is covered by the next following paragraph.

Q. And what distribution was given to this sur-

[fol. 2030] vey?

A. The results of this survey were given first to a five-man steering committee that had been guiding us through the work, and then to the market research and promotion committee, then to the board of trustees through charts and oral presentation.

The board of trustees then decided that it should be given to our membership, and on December 1, 1953, it was given to the full membership at the meeting. Charts and printed copies, one of which we have here, were handed out one to a company at that time.

Q. I see. Is this one of the surveys that would be on a library loan basis for your members?

A. No. Numbered copies were recorded out to them but they could keep them. They did not return them.

Q. And that is the reason why on the first page here it is copy No. 159 for confidential use?

A. That is correct.

Q. These were not distributed to people who were not members of your association?

A. No, sir, they were not.

Q. If we can turn over to "What is happening in the over-all packaging industry," it says there "Packaging, [fol. 2031] a 9 billion industry." Can you tell me the basis of that chart, Mr. Cheney?

A. This was prepared by Mr. Sammis whom I engaged to help me in the study, and he obtained the information for this chart from a study prepared by the McGraw-Hill Publishing Company.

Q. And there is an indication here that part of it was prepared from the Division of Interindustry Economics, Bureau of Labor Statistics?

A. The McGraw-Hill Publishing Company study stated that the data for 1947 and 1951 were from the Division of Interindustry-Economics and they quoted that data within their reports.

Q. And the second chart, "Expanding of the Packaging Market"——

Mr. Hughes: When you speak of the second chart, what exhibit are you referring to?

Mr. McManus: Page 3.

Mr. Hughes: The one on page 3?

Mr. McManus: Yes, the one that is on page 3.

Q. Do you know the basis for that chart, Mr. Cheney?

A. Yes, that chart plots from the year 1939 to the year 1952, based on an index of 1939 equals one hundred, the [fol. 2032] early forms of corrugated shipping containers in thousands of square feet of board.

Q. What is the purpose of the chart on page 4?

A. The purpose of the chart on page 4 is to compare the trend line of shipping containers, which we accepted as a best possible measure of the trend of the total packaging market, with the trend in consumer disposable income in 1939 dollars and with the trend in population.

Q. Now, the chart on page 5, what is the purpose of that one?

A. The purpose of this chart is to show in graphic form the breakdown of the total packaging industry in the year 1952 from the McGraw-Hill estimates by categories, and to show particularly that glass containers represented a per cent of it.

Q. And the chart on page 6, what is the purpose of that chart?

A. The purpose of that chart is to show in graphic form the fact that—because of the fact that many glass containers are returnable, are used many times, such as milk bottles and soft drink bottles and returnable beer bottles, by reason of that 71 billion glass packages went to the [fol. 2033] market in 1952 as compared, for example, to 33 billion packages in metal cans.

Q. And what about the chart on page 7?

A. That plots in gross, in physical units again, on the basis of an index of 1939 equals one hundred, the early forms of glass containers, and shows that shipments of glass containers are growing faster than the population and the consumer income?

Q. And the chart on page 8?

A. The chart on page 8 plots certain broad end use categories of glass containers, shipments of glass containers for those broad end use categories, and again compares the several categories to the original trend line.

Q. Then you come to a section of what has been happening in the glass container industry starting at page 9——

A. Page 10.

Q. Excuse me, page 10. What is the basis for this chart? Where was the information for this chart obtained?

A. The information for this chart was obtained from the Department of Commerce figures showing annual shipments of glass containers and it shows the three years,

[fol. 2034] 1941, 1944, and 1952, in box chart form, showing major end use categories.

Q. And the chart on page 11, what is the purpose of that chart?

A. The purpose of the chart on page 11 is to show the long range trend and shipments year by year from 1929 to 1952 of glass containers.

Q. And the one on page 12 would be the same except that it is for narrow-neck foods?

A. Yes, for narrow-neck foods.

Q. And the one on page 13 would show the trend for wide-mouth foods?

A. It shows annual shipments, yes, for wide-mouth foods.

The Court: Where do those figures come from?

The Witness: From the Department of Commerce.

The Court: They are Department of Commerce figures?

The Witness: Yes, sir.

Q. And that would be true for dairy products on page 14?

A. Yes, sir.

Mr. McManus: Your Honor, we have no desire to offer [fol. 2035] and we are not going to offer page 15.

The Court: Let me see what 15 is.

Mr. McManus: It is home canning jars, your Honor. If you would like us to put it in——

Mr. Hughes: Would you tell me to what page of what exhibit you are referring?

Mr. McManus: Page 15.

Mr. Hughes: Among your exhibit numbers, what page of what exhibit is this?

The Court: As I understand it, it is page 15 of Exhibit 33, Mr. Hughes.

Mr. McManus: That is right.

Q. And page 16, Mr. Cheney, is——

The Court: You are excluding from your offer the chart on 15?

Mr. McManus: Yes, sir.

The Court: Why is that? We have such a comprehensive purported survey here that it does not seem to me

that it is going to pay very much to eliminate the material on this one.

Mr. McManus: All right, your Honor. I have no objection to putting it in. So we will offer that with the rest of the document.

Q. The chart on page 16 shows glass container ship-
[fol. 2036] ments in toiletries and cosmetics and medical drugs?

A. Right.

Q. What is the difference——

The Court: These are Department of Commerce figures again?

The Witness: Yes, sir.

Q. And what is the difference in the chart on page 17?

A. The chart on page 17 is to break down toiletries and cosmetic containers between narrow-neck and wide-mouth.

The Court: Those are Department of Commerce figures again?

The Witness: Yes, sir, related, as you understand, to the index of 1939 equals one hundred.

Q. Is the chart on page 18 from Department of Commerce figures?

A. Yes, sir.

Q. And that is for medical and drug containers?

A. It is.

[fol. 2037] Q. Now, the chart on page 19, Department of Commerce figures?

A. Yes, sir.

Q. And this is the same type of chart except for beer bottles?

A. That's right.

Q. And the chart on page 20; is that the Department of Commerce figure?

A. Yes, sir.

Q. And that is for carbonated and non-carbonated beverage bottles?

A. Yes, sir. May I add something? On a number of these charts the per capita figure is shown, and in order to arrive at the per capita figure we use census population figures.

Q. I see.

A. It is also part of the Department of Commerce.

Q. Now, the chart on page 21 is for wine and liquor bottles; correct?

A. Yes, sir.

Q. And that is from the Department of Commerce?

A. Yes, sir.

Q. 22, Department of Commerce?

A. Yes, sir.

[fol. 2038] Q. For chemical, household and industrial containers?

A. Yes, sir.

Q. All right. Now, could you explain the basis of the chart on page 23?

A. The charf on page 23 is a bar type of chart, designed to——

The Court: Wait a minute. Hold everything until I find it.

Mr. McManus: 35, your Honor, page 23.

The Court: I have it. Go ahead.

A. (Continuing) This chart breaks down, or doesn't break down, but this chart shows where, in those cases where we were able to obtain either actual figures of what we considered reliable estimates of the narrower classifications by end use of glass containers, such as pickles and relishes, fruits and fruit juices, baby food and so forth for the years 1941, 1944 and 1952.

Q. And then the next section is what has been happening in competitive industry?

A. Right.

Q. Now, the chart on page 25, Mr. Cheney, what is the basis of that chart?

A. The basis of that chart is the Department of Com-
[fol. 2039] merce figures, showing the short tons of tinplate used for manufacturing of metal cans. This data was available from the year 1940, and it is broken down between fruit cans and non-fruit cans.

The Court: By the Department of Commerce, I take it?

The Witness: Yes, sir.

Q. And the chart on page 26?

A. Shows folding paper boxes. I am sure that is the Department of Commerce. The source of all these figures are shown in the appendix, which I think is Exhibit G-40 —yes, the source of this is Department of Commerce.

Q. And that shows the trend in folding paper boxes?

A. Yes, sir. That is based on dollars, because there were no figures available on physical units.

Q. And the chart on page 27?

A. The source of that is Department of Commerce, and is derived from tons of paper used in making paper mill products.

Q. And the chart on page 28?

A. Source of that, as shown on page 64, or opposite— [fol. 2040] no, on page 64—are estimates based on fragmentary data from Collapsible Tube Manufacturers Association.

The Court: I take it that as you turn to the appendix, you will find that the appendix states whether these are estimates or not, and where the figures come from?

The Witness: Yes, sir.

The Court: In each case?

The Witness: In each case so far, yes, sir.

The Court: So far.

The Witness: Yes.

By Mr. McManus:

Q. You are aware that some of them are not in the appendix, Mr. Cheney? Some of the sources are not in the appendix?

A. Not on any charts we have looked at yet.

Q. Some of the later ones might not be?

A. Some of the later ones will not be.

By the Court:

Q. Well, in those cases, do the charts themselves state what the source of the figures is?

A. I don't think so, your Honor.

Q. No.

A. Not in all cases.

[fol. 2041] Q. In other words, there are some what I

would call blind figures here, without the report stating the source?

A. Without the report stating the source, yes, sir.

Q. Yes.

A. I believe that to be true.

By Mr. McManus:

Q. And what is the basis for the chart on page 29?

A. 29, the source was 1944 and 1951 national production authority figures, and 1952 is an industry estimate obtained from the manufacturers of the raw material.

Q. This was the production of polyethylene bottles and polyethylene production itself; is that right?

A. Yes, the 1944, '51 and '52 figures were, the production of polyethylene were what I just described, and you are correct that there are no figures in the appendix on the shipments of polyethylene bottles. This is based on estimates received from informed sources in the polyethylene bottle industry.

[fol. 2042] Mr. Hughes: I move to strike out the characterization "informed sources," your Honor.

The Court: All right, I will strike out the word "informed."

Estimates received from sources, or sources that he considers to be informed.

Mr. Hughes: Well, I think that may be a totally different thing.

The Court: Yes.

Q. And what is the basis of this chart, polystyrene production, on page 30?

A. Source of this is the Tariff Commission.

Q. Federal Government?

A. Federal Government, yes, sir.

Q. And the chart on page 31, what is the purpose of that chart?

A. Purpose of that chart is to show the current shipments of polyethylene, polyethylene squeeze bottles, polystyrene, and so forth, from the preceding charts, and to show also the estimate, the estimate of Mr. Sammis and myself, our joint estimate, as to their potential in 19— yes, their potential in 1956 or '54, as the case may be.

Q. The next section is "Competition is becoming [fol. 2043] stronger."

Now, on page—back of page 32 there are some statements here, and I wonder if you can recall the basis of these statements, for instance, where you got this information about "Can Manufacturers Institute spent approximately a million dollars a year for consumer advertising"?

Mr. Hughes: What page are you on?

The Witness: Opposite page 33.

A. Mr. Sammis collected the data on this page from the registers that publish the data as to the amount of money spent for advertising by individual companies, and from personal contact with certain of the companies, and from other sources that I am not famiilar with, or that I don't recall at this time.

Q. Now we go to the section "Major competition in the packaging industry."

Mr. Hughes: What page is that?

Mr. McManus: Excuse me. We are going over next to page 37.

Q. And could you tell me the basis of this chart and the purpose of this chart?

A. The purpose of the chart on page 37 is to compare several types of containers of packing materials [fol. 2044] as to their physical, chemical and other attributes, and at my request this comparison was made by Preston Laboratories.

Q. And the chart on page 38, what was the basis for that chart?

A. The basis for the chart on page 38 was a survey reported in Sales Management magazine, which Sales Management magazine itself had had made, as to the properties that housewives desire in packaging materials, and based on this survey Mr. Sammis and I jointly rated the various types of packaging materials according to their categories.

Q. Now going on to page 43, the chart on page 43——

Mr. McManus: It is Exhibit 38, your Honor.

The Court: 38.

Q. —what is the basis of this chart, Mr. Cheney?

A. The lefthand side are a list of end uses for glass containers, and the next column shows the shipments of glass containers for these particular products in the year 1952. In some cases those can be taken directly from Department of Commerce figures. In many cases, such fig-
[fol. 2045] ures are not available, and through quite an extensive and detailed exploration of all possible sources and through the exercize of our judgment based on our knowledge of this industry Mr. Sammis and I arrived at estimates for the products for which the figures are not available.

Mr. Hughes: I move to strike that part of the answer which suggests that the material came from all possible sources?

The Court: Yes, that will be stricken.

Q. And the chart on page 44?

A. Chart on page 44 is really a continuation of the chart on page 43. The other columns show where there was either active or potential competition for glass containers.

Q. And it would be obtained from the same sources as the chart on page 42?

A. Yes, sir.

Q. And the chart on page 45 is to show what, Mr. Cheney?

A. The chart on page 45 is to present our estimate of the possible loss of business by glass containers to metal cans and certain categories, using the glass container shipments as shown on pages 44 and 43.

[fol. 2046] By the Court:

Q. Now, are these estimates of possible loss or loss that you estimate is likely to occur or is it probable loss? How do you characterize your estimates here?

A. I would characterize them as possible loss. Whether or not it would be probable would depend on the things that the industry might do or not do, and things that other people might do or not do.

Q. In other words, what you are really saying is in these estimates is that these items could be packed in can; that is all you are saying, isn't it? Or does it go farther

than that? Does it take into account trends or anything of that nature?

A. It takes into consideration of fact they could be packed in cans. I would say that this does not take into consideration trends, except in the case of beer, but rather takes into consideration a number of factors, such as adaptability, and our estimate of what might happen to consumer preference that would bring about this shift.

The Court: All right, Mr. McManus.

By Mr. McManus:

[fol. 2047] Q. And the chart on page 46 relates to a similar chart?

A. It is of the same nature as 45, except as comparing glass to paper containers.

Q. And the one on page 47, the same type, comparing glass to metal?

A. That's right.

Q. And 48 is comparing glass with plastic film?

A. That's right.

Q. And then the one on page 49 compares loss to plastic containers?

A. Possible loss.

Q. Possible loss. Then the chart on page 50 is a consolidation of previous charts to show possible loss?

A. It is a summary of the total possible losses shown on previous pages.

Q. Then the chart on page 51, what is the purpose of that chart?

A. The purpose of that chart is to show possible gains in——

The Court: In other words, that is the converse of the other chart, I take it?

The Witness: Exactly, yes, sir.

[fol. 2048] Q. And do you know the basis of this chart?

A. Yes. The basis of the figures in the first, or in the righthand column, present packaging, from the earlier charts that showed the present volume as we estimated in glass—I would like to correct that.

Q. Right.

A. The righthand column shows either actual figures from Department of Commerce figures, National Containers Association figures, or are estimates based on all the sources that we could think of to investigate the purpose, as to the amount of these products, or as to the number of gross of competing packing materials used to pack these products at the present time—in most cases here—cans, and in one case, paper—in two cases, paper, and then the first column shows the potential that we thought the glass industry could gain if it did the right things to gain it.

Mr. Hughes: Your Honor, I move to strike out "all possible sources" again. I didn't catch it at that time.

The Court: I don't think he put it that way. I am going to let it stand, Mr. Hughes. He didn't use the phrase, as [fol. 2049] I recall, "every possible." He simply used the phrase everything he could think of.

Mr. McManus: Now, the table, I guess we would call it, on page 57 in the appendix, I believe that is Government's Exhibit 40, your Honor.

The Court: We go now to 40, do we?

Mr. McManus: Yes, sir.

Your Honor, Mr. Cheney says that we could do these pretty well in a group. They are shipments of glass containers.

The Court: Yes.

Now, what about this group here in the table of contents, called "Shipment of glass containers"? Where do the figures come from on those?

The Witness: On page 57, sir.

The Court: On page 55 there is an index to presumably what are various charts; is that right?

The Witness: That is right.

The Court: Now, did all the figures come from the same general sources on those charts?

The Witness: As to shipments of glass containers, they did, they came from the Department of Commerce.

The Court: All right.

Mr. McManus: Then we will go over to page 63.

[fol. 2050] The Court: Where did the shipments of competitive containers come from, also Department of Commerce?

The Witness: Those, the corrugated shipping containers, folding boxes and paper mill products shown on page 63 are from Department of Commerce.

The Court: Metal cans are from where?

The Witness: Department of Commerce.

The Court: Collapsible metal tubes?

The Witness: Estimates based on data from the Collapsible Tube Manufacturers Association.

The Court: Same as previous charts with respect to metal tubes?

The Witness: Yes, sir.

The Court: Polyethylene?

The Witness: The production of polyethylene from the national production authority for the years 1944 and 1951, and 1952 industry estimate, and that industry estimate refers to the polyethylene manufacturing industry.

The Court: Well, what is it a trade association of their-?

The Witness: No, sir. I recall duPont Company and Un-
[fol. 2051] ion Carbide and perhaps others, but I think probably they are from those two companies.

The Court: Polystyrene the same?

The Witness: No, that is from the Tariff Commission, sir.

Mr. McManus: Your Honor, the Government offers Exhibit G-34 through 38 and G-40 for the truth of the matter contained therein, in so far as the statistics are from Federal sources, such as the Tariff Commission or the Department of Commerce, sources of that nature. Excuse me. I should have said 33 through 38.

It offers the rest of the document for the purpose of showing the concern of the glass container industry for competition from or in roads into competitive lines.

The Court: What do you say to that, Mr. Hughes?

Mr. Hughes: I object to it, your Honor, without any voir dire, upon the ground that it is apparent from the testimony of the witness that this is totally a hearsay document.

The Court: I have no intention of restricting your voir dire, Mr. Hughes. You understand that.

[fol. 2052] Mr. Hughes: Yes, sir; I realize that. But it seemed to me at this point——

The Court: You had better plan to proceed with your voir dire.

Mr. Hughes: Yes, sir.

The Court: I am particularly interested, however, in your reaction with respect to the so-called Government figures.

Mr. Hughes: Well, I will elaborate on my grounds and then have a voir dire of whatever your Honor wishes.

The Court: No, I say that at this point, Mr. Hughes, because it seems to me that in your voir dire, among other things, you may want to go into that subject particularly, in addition to others, to determine for yourself whether you consider this as a reliable reporting of Government figures, on the one hand, and if you consider the Government figures as competent, on the other. Because frankly, I am much more impressed ad initio with your objection overall than I am with your objection for the limited purpose——

Mr. Hughes: Yes, sir.

The Court: —that Mr. McManus later suggested.

[fol. 2053] I think before we go into that, at this point we will take a brief recess.

Mr. McManus: Your Honor, at a later date could we possibly subsitute this for the other exhibits, so it would not be so confusing?

The Court: Surely.

Mr. Hughes: I would welcome that substitution.

The Court: I would welcome it right now. In fact, if you have a copy for me, I will take it with me.

Mr. McManus: Why don't we give it to you now, and you can take it with you, and as soon as you return we will have it marked.

The Court: Well, if Mr. Hughes wants it, it is a copy——

Mr. Hughes: I have a working copy.

The Court: You have a working copy.

Mr. Hughes: Yes, sir.

(Short recess.)

[fol. 2054] The Court: All right, you may resume the stand, Mr. Cheney.

RICHARD L. CHENEY, resumed.

The Court: Has everybody got the material they need in hand to go into this cross-examination?

Have you got this before you, Mr. Cheney?

The Witness: I do not, no, sir.

The Court: I think Mr. Cheney better have a copy, if he is going to talk about it.

Mr. Hughes: I should think so, your Honor.

The Court: If you would rather, he can take my copy and have it before him.

Preliminary cross-examination.

By Mr. Hughes:

Q. Mr. Cheney, would you turn to page 43?

A. I have it.

Q. You will see that after the column "end use" there is a column "1952 glass shipments M gross." Do you see that?

A. Yes.

Q. Then if you run down that column you come to "Pickles," and you come to a figure of 3530. Do you see that?

A. Yes, sir.

Q. What is that figure?

[fol. 2055] A. Since this is in thousands of gross, that is 3,580,000 gross of glass containers used to package pickles in 1952, according to our estimate.

Q. And when you say "our estimate," whose estimate was that? Did you prepare that estimate or was it Mr. Sammis who prepared that estimate?

A. Mr. Sammis and I prepared it jointly from the best available sources we could find.

Q. Well, what sources did you use to come up with this 3,530,000 gross of pickles?

A. That particular item, as I remember, was probably based on the annual statistical yearbook of Western Canner & Packer Magazine. As I recall it, that seemed to be the best source at that time.

The Court: What is the phrase "Western Canner &

Packer"? Is it confined to the West Coast or the Western Hemisphere or what?

The Witness: It was started at San Francisco and published there and for many years covered just west of the Rocky Mountains, but its name has now been changed, within the past three or four years to Canner & Packer Magazine because it has gradually become a national publication.

The Court: Is that in the packaging industry generally considered to be a reliable publication?

[fol. 2056] The Witness: In the canning industry, yes, sir.

By Mr. Hughes:

Q. Mr. Cheney, you would not say that everything that was published in the Western Canner & Packer was the gospel truth, would you?

A. No, sir, I wouldn't.

Q. And that was your source, as you recall it, for that figure?

A. For that particular figure, yes, sir.

Q. Now, would you turn to page 45, please?

A. Yes, sir.

Q. And in the second column on that page you have "1952 Glass Shipments," is that correct?

A. Yes, sir.

Q. And the figures in that column, do they correspond to the figures in the second column on page 43?

A. I would say they purport to. I see now that they do not, in the case of pickles.

Q. You notice that the figure on pickles is a different figure on page 45 than it is on page 43?

A. That is right.

Q. Can you account for that difference?

A. No, sir, I can't at this time.

[fol. 2057] Q. Would you go back to page 43 and again go down the column to the item of syrups. Do you see that item?

A. Yes, sir.

Q. And the figure of 1250 gross, thousand gross?

A. Yes, sir.

Q. Do you recall the source of that figure?

A. No, sir, I don't.

Q. You really have no recollection of any kind as to where you got that figure?

A. No, sir.

Q. You do not know whether you were the one who went about getting it or whether Mr. Sammis was the one who went about getting it, is that right?

A. At this time, yes, sir, that's right.

Q. Would you turn to page 45 and run down the second column, and I ask you, is the second column there intended to correspond to the second column on page 43?

A. As I say, it purports——

Q. Is it intended to?

A. It is intended to, I should think.

Q. And you see, of course, that it does not?

A. I do now.

Q. You see the discrepancy there in the figures [fol. 2058] between 1250 and 3000—do you see that?

A. And 2300.

Q. And 2300, yes. You see that, don't you?

A. Yes, sir.

Q. Can you account for that difference?

A. No, sir, I can't.

Q. And then if you turn over to page 47 you see the second column there and you see that the figure for syrup there is 2300, is that right?

A. Yes, sir.

Q. And again is that intended to correspond to the figures in the second column on page 43?

A. I should think that it should, yes, sir.

Q. Now would you go to the ne[illegible]m on page 43, fruit juices. Do you see the figure 1100? Do you see that figure?

A. Yes; sir.

Q. Then if you turn to page 45, you see a figure for fruit juices?

A. Yes, sir.

Q. Those figures were intended to correspond, were they not?

A. I should think they should.

Q. And you see that they do not?

A. Yes, sir.

[fol. 2059] Q. Now do you recall the source of the figure for fruit juices as it appears on page 43?

A. I believe the Western Canner & Packer was the source on fruit juices.

Q. When you say you believe, I want you to bear in mind the distinction between recollection and surmise. Do you have a recollection that Western Canner & Packer was the source?

A. It was a long time, and to the best of my recollection——

Q. I appreciate that.

A. To the best of my recollection it was. This is an item that I can recall that they did list.

Q. And do you recall what the source was of the figure on page 45 for syrups, the one that does not correspond?

A. That should be from the same source, but——

Q. Are you able to account for the difference?

A. I am not.

Q. I beg your pardon, I was asking you about fruit juices and I think I shifted to syrups. If you turn to page 43, do you know the source of the figure for fruit juices?

A. To the best of my recollection, it was Western Canner & Packer.

[fol. 2060] Q. And you cannot account for the discrepancy in those figures?

A. No, sir.

Q. Now are you able to tell us the source of your information for baby food?

A. That was at the time published by the National Canners Association.

Q. In other words, you took a figure published by the National Canners Association, is that correct?

A. Yes, sir.

Q. And salad dressings, et cetera?

A. I don't recall the source on that.

Q. Preserves?

A. I don't recall the source on that.

Q. We have covered pickles. I am now down to catsup. Do you recall the source?

A. National Canners Association.

Q. Do you recall the source for honey?

A. I don't recall the source.

Q. Flavoring extracts?

A. I don't recall the source.

Q. Peanut butter?

A. I don't recall the source.

Q. Mustards?

[fol. 2061] A. I don't recall the source.

Q. Coffee?

A. I don't recall that.

Q. Vegetable oils?

A. I don't recall that.

Q. Olives?

A. The figure for olives was based upon data from the Spanish green olives industry. I don't recall the source of those figures.

Q. It was some sort of industry source?

A. Yes, some sort of an industry source.

Q. And meat and fish products?

A. I don't recall the source.

Q. And vinegar?

A. I don't recall the source.

Q. And Maraschino cherries?

A. That was one item covered by Western Canner & Packer.

Q. Spices?

A. I don't recall the source.

Q. Take page 43 itself. Who actually did the physical task of preparing page 43, you or Mr. Sammis?

A. Mr. Sammis.

Q. Would that be true of page 44?

[fol. 2062] A. That is true of all the numbered pages, all the charts.

Q. In other words, as you look at this exhibit all the pages that are on the righthand side, as you look at it, were all prepared by Mr. Sammis, is that correct?

A. That is correct.

Q. And as you look at it, the material on the lefthand-side, by whom was that prepared?

A. The text was prepared by myself.

Q. Did Mr. Sammis help you in the preparation of that text?

A. Yes, he did, and we conferred in the preparation of the righthand pages.

The Court: In other words, you worked together throughout this pretty closely?

The Witness: Yes, very closely.

Q. Now the figures that you show in this combined exhibit commence in many instances in 1929, isn't that correct?

A. That is correct.

Q. And they extend through to 1952?

A. That is correct.

Q. Now do I understand you to say that for the glass [fol. 2063] container figures your source was the U. S. Department of Commerce?

A. That is correct.

Q. The U.S. Department of Commerce did not start to collect those figures until 1947, isn't that correct?

A. I don't know what year they started collecting the figures directly from the industry. These earlier year figures, I believe, were obtained from the Glass Container Association. They were used in the War Production Board.

Q. I don't think you understood my question. The Department of Commerce itself did not start to collect figures until 1947, isn't that correct?

A. I don't know the year they started.

Q. But you do know that there was some year prior to which they did not collect figures?

A. Yes, sir.

Q. And that some year was a year subsequent to 1929?

A. Yes, sir.

Q. And you are unable to say what year it was?

A. That is correct. May I amplify my answer?

The Court: Just a minute. I am not quite clear on that. [fol. 2064] Are you trying to tell us, Mr. Cheney, with respect to the figures from the Department of Commerce, that you got the figures from published figures of the Department of Commerce, some of which were collected by the Department of Commerce itself, and some of which the Department of Commerce obtained from the glass industry; is that your testimony?

The Witness: Obtained from the Glass Container Association.

The Court: The Glass Container Association?

The Witness: Yes, sir.

The Court: Did the Department of Commerce get it from a book or a bulletin?

The Witness: Yes, sir.

The Court: Or a series of books or bulletins?

The Witness: There was a publication of the Department of Commerce that contained these.

The Court: And that publication of the Department of Commerce contained both the figures it had collected itself and the figures for years prior to that that it collected from the glass container people?

The Witness: Yes, sir.

By Mr. Hughes:

Q. And those figures they more or less obtained [fol. 2065] afterwards, isn't that right?

A. They obtained them from the Glass Container Association. They did not obtain them directly from the independent glass container manufacturers.

Q. Did they obtain them from the glass—what is the name of that association?

A. Glass Container Association.

Q. Did they obtain them from them annually or did they obtain them at the time when the Glass Container Association went out of existence, do you recall?

A. They had them before the Glass Container Association went out of existence.

Q. Do you know how they got them?

A. I do not know how they got them.

Q. All right, fine. Now again referring to the index, and I am referring specifically to page 63, the fifth column, which says, "Index 1939 $."

A. Yes, sir.

Q. That begins with the year 1939 and extends down to 1952?

A. Yes, sir.

Q. Do you have any idea where those particular figures came from?

A. Those figures were arrived at, to the best [fol. 2066] of my recollection, by dividing the figure in

the column next to the left of it by the wholesale price index or by a similar figure for that same year.

Q. You say by the wholesale price index or a similar figure. Was it the wholesale price figure or was it a similar figure?

A. I don't recollect.

The Court: And what wholesale price index was it?

The Witness: I don't recall that.

The Court: You don't recall that?

The Witness: No.

Q. And actually whatever was done in that regard was done by Mr. Sammis, wasn't it?

A. It was.

Q. As to the figures on page 63, you say that your source for the other material there was U.S. Department of Commerce figures?

A. Yes.

Q. And who got those figures, Mr. Sammis?

A. Mr. Sammis.

Q. Will you now turn to page 64——

The Court: When it says down here "Source, United States Department of Commerce," you are only [fol. 2067] talking about the shipments figure, is that right?

The Witness: Yes.

The Court: That is on 63?

The Witness: Yes, that is correct.

By Mr. Hughes:

Q. And that would also be true on the next page, the unnumbered page?

A. That is correct.

Q. You say "Source estimates based on fragmentary data from Collapsible Tube Manufacturers Association." Who collected this fragmentary data, did you or did Mr. Sammis?

A. Mr. Sammis.

Q. Do you presently recall, so that you could describe to his Honor with any degree of reasonable certainty, what that fragmentary data consisted of?

A. No, sir, I don't.

Q. And again on that page you have a source, 1944 to 1951, National Production Authority. Can you tell me what that organization was?

A. That was a governmental organization similar to the War Production Board. As I recall it, that was in existence at the time of the Korean situation.

Q. Do you have any idea how they got those figures?

[fol. 2068] A. No, sir, I don't.

Q. And whatever information you got from the National Production Authority was obtained by Mr. Sammis, is that correct?

A. That is correct.

Q. And then for the year 1952 you have an "industry estimate," and do I understand that in response to his Honor's questions you said that the industry estimates were derived from two sources, namely, the du Pont Company and the Union Carbide Company?

A. That is as I recollect it but there might have been some additional industry sources.

Q. I would like you to pause, and would you please tell me, if you can think of any other industry source?

A. May I refer to the first part of Exhibit G-33?

Q. Surely.

A. It might be mentioned there.

Q. Surely.

A. (After examining) There is nothing here that helps and I can't think of any others.

Q. And whatever data was obtained from these industry sources, whatever they may have been, was obtained by Mr. Sammis, is that correct?

[fol. 2069] A. That is correct.

Q. And again on page 64 you refer to a source there for the polystyrene production in pounds as the Tariff Commission, is that correct?

A. That is correct.

Q. Do you have any idea as to how the Tariff Commission collected those figures on polystyrene production in pounds?

A. No, I don't.

Q. Mr. Sammis was the one who obtained whatever information you got from the Tariff Commission on that?

A. Yes, sir.

Q. Going back for a moment to the Glass Container Association, did that at the time when it was in existence represent one hundred per cent of the glass container manufacturers in the United States?

A. No, it didn't.

Q. Do you have any idea of how many, what percentage it did represent?

A. No, not at this time, I wouldn't be able to estimate that.

Q. Would you turn to page 63, and you see there that the source indicated would be the Department of Commerce. Do you see that?

[fol. 2070] A. Yes, sir.

Q. And that is for the figures in the second column, is that right, under "Shipments"?

A. Yes.

Q. Now there is a column which says, "Shipments, Corrugated Shipping Containers." Were these figures obtained by the Department of Commerce from some sort of a trade association, do you know?

A. I don't know.

Q. In other words, you don't know how the Department of Commerce went about getting these figures for this particular category of material?

A. No, sir.

Q. And whatever information on that subject was obtained, was obtained by Mr. Sammis, is that correct?

A. Yes, sir.

Q. Now, Mr. Cheney, you have referred to the categories as to which the glass container manufacturers, members of your association, report to you, and those were the 15 categories that you indicated, is that right?

A. Yes, but I might——

Q. I am not sure that you mentioned them all.

[fol. 2071] A. I am not sure either.

Q. But there were about 15?

A. About 15, that is correct.

Q. And they are rather broad categories, are they not?

A. Yes, sir.

Q. In other words, you take a category like food containers and you get a figure for food containers—well, there

are literally hundreds of items that are embraced in food containers, isn't that right?

A. That is correct.

The Court: And when you say food containers, that would mean containers, some of which were hermetically sealed containers of a vacuum type, some sterilized, some pickled, some preserved by sugar and so on?

The Witness: That is right.

The Court: In other words, there is no distinction made between the methods of preservation?

The Witness: That is correct.

Q. And there is no attempt on the part of the Association to break the figures down beyond that category of food containers?

A. No, sir.

[fol. 2072] Q. Indeed, the reporting companies do not report in any greater detail than that?

A. That is correct.

Q. So that you do not have from the reporting companies their figures on how much glass they sold for mayonnaise, let us say?

A. No, we do not.

Q. And is that true of the category of medicine and health also?

A. It is.

Q. And toiletries and cosmetics?

A. Yes, sir.

Q. And household and industrials?

A. It is.

Q. And I see here food-packers tumblers. That would be the wide-mouth counterpart, I guess, of food containers, is that correct?

A. It is wide-mouth food containers and I don't know what that last category is.

Q. But in any event——

The Court: Tumblers would be jelly glasses, wouldn't it?

The Witness: Of that type—that would be one type of tumbler.

Q. And medicine and health in the wide-mouth is not reported to you in any greater detail?

[fol. 2073] A. Not in any greater detail.

Q. Nor toiletries and cosmetics in wide-mouth?

A. No.

Q. Nor household or industrials in wide-mouth?

A. No.

Q. When you come to dairy products, is that milk bottles?

A. That is milk bottles, cream bottles and certain jars that might be called for cottage cheese.

Q. The greater bulk of that is milk bottles?

A. The greater bulk of that is milk bottles, yes.

Q. And these figures, as they are reported to the Department of Commerce, are you in a position to say whether the figures that the Department of Commerce receives, are in the broad categories such as you described?

A. Yes, they are in the same categories.

Q. There is no end use breakdown of those figures, is that right?

A. No, sir, there is not.

Q. Now, Mr. Cheney, I would like you to go to page 2 of this document, and I would like you to turn to the text, which is opposite page 2, and that text, you say, was prepared by you, is that correct?

A. That is correct.

[fol. 2074] Q. You say, referring to the package industry that "It is a 9 billion dollar industry today, and the McGraw-Hill Publishing Company forecasts it will reach a value of $10,850,000,000 by 1960."

Would you tell me the source from which you derived that figure of $9,000,000,000?

A. That was a report made by the staff of, I believe it is Chemical Industry Magazine, a McGraw-Hill magazine. It was in ditto form, apparently for use of their own people, and a copy of which was furnished to Mr. Sammis in the course of our investigation.

Q. Do you know how the McGraw-Hill Publishing Company went about getting this $9,000,000,000 figure?

A. Well, I have stated here that they started with a study made by the Division of Interindustry Economics of the Bureau of Labor Statistics, which covered data for 1947 and 1951 and brought that up to date to 1952.

Q. How do you happen to know that?

A. That was stated in the McGraw-Hill report and they quoted from the study of the Division of Interindustry Economics in their report.

Q. So that the McGraw-Hill Publishing Company's docu-
[fol. 2075] ment stated that that was the source and you repeated that that was the source?

A. Yes, sir.

Q. Now, do you know what or who this Division of Interindustry Economics is?

A. Only in a vague way.

Q. Do you know how they went about getting the data which McGraw-Hill Publishing Company said that it relied on and stated so in its report and that you put into your report?

A. No, sir, I do not.

Q. Now, the 9 billion dollar figure was for what year?

A. That was for the year 1953.

Q. Was it 1953 or 1952?

A. 1953.

Q. 1953?

A. Yes, sir.

Q. The chart on page 2 goes back to 1939, does it not?

A. Yes, sir.

Q. Did McGraw-Hill go back to 1939 in the document which you relied upon from McGraw-Hill?

A. To the best of my recollection, it did.

Q. Do you know how they got back to 1939?

A. No, sir, I don't.

[fol. 2076] Q. Was it from some sort of a statistical study, do you know?

A. I don't know. I could guess but I don't know.

Q. Do you know how they went forward from 1942 to 1960?

A. I don't recall. I think they explained it but I don't recall how they did.

Q. So that you really cannot say how they arrived at their 1960 prognostication, is that correct?

A. No, sir; that is their statement.

Q. Do you know how McGraw-Hill got from 1951 to 1953?

A. No, sir, I do not.

Q. Or any year besides 1947 and 1951?

A. No, as I recall it, it was set forth in quite precise detail in that report but I cannot recall how it was done.

Q. No one expects you to recall it. Now turning to page 3, that chart was prepared by Mr. Sammis, is that correct?

A. That is correct.

Q. Do you know what he used, what tools he used, to plot that chart?

A. What do you mean by tools?

[fol. 2077] Q. I will withdraw the question. What source, what source material was it from which he plotted that chart?

A. The source material was the data on corrugated shipping containers shown on page 63.

Q. Which you have already told us about?

A. Exactly.

Q. On that chart on page 3 you see a dotted line, a broken dotted line of all packaging materials. Do you see that?

A. Yes.

Q. Commencing in 1946?

A. Yes.

Q. Where did you get that from?

A. That is evidently a translation of the dollar figures taken from chart 2 to standard dollars. I don't recollect exactly. It was an effort to relate those dollar figures with the physical unit figures of this chart here.

Q. You don't really remember how he did it?

A. No, I don't.

Q. Can you tell me how Mr. Sammis developed the trend line on page 3?

A. No, sir.

Q. On page 3 you plot the broken line for all [fol. 2078] packaging material. Do you know what packaging material he had in mind?

A. It was the total of those listed in the report of McGraw-Hill. I don't know exactly what was covered there.

Q. You mean you don't recall what McGraw-Hill used as its estimate of packaging materials, is that correct?

A. Yes, sir.

Q. And what products were embraced within its study?

A. That's right, I don't recall.

Q. Now, if you turn to page 4, could you tell me how the trend line was determined on that chart?

A. That is the same trend line as the one from the previous page.

Q. And not knowing how the first one was derived you cannot tell how the second was derived?

A. That is correct.

Q. Do you know how the broken line for consumer disposable income 1939 dollars, was obtained?

A. That was obtained by taking the Department of Commerce published figures on consumer disposable income and dividing by the retail price index—dividing by the change [fol. 2079] in the retail price index from the year 1939 so that it would be expressed in 1939 dollars.

Q. Is there more than one retail price index?

A. I don't know that.

Q. If there were more than one you wouldn't know which one was used, is that right?

A. That's right.

Q. Do you know what was meant by the term "consumer disposable income"?

A. I have a general understanding of it, I think.

Q. You tell me what your understanding is.

A. It is the total income of consumers less taxes. I guess that would be the net amount. I don't know what else might be deducted.

Q. And on the trend line of shipping containers, do you know what kind of containers were included?

A. Presumably all corrugated and solid fiber shipping containers.

Q. When you say "presumably," do you know or don't you know?

A. Well, I felt that I had an accurate understanding of it. I have known of this figure for many years, and that [fol. 2080] is my belief and understanding it is.

Q. What I wanted to find out from you is whether you know whether Mr. Sammis in plotting that line, whether you know what shipping containers he took into account?

A. I see now it is shown as corrugated shipping containers. Other than as it is stated here in the appendix, I don't know.

Q. Now, turning to page 5, Mr. Sammis prepared that chart also, did he not?

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Now, Mr. Hughes, I don't want to interrupt you. Are you going through each one of these charts with this witness?

Mr. Hughes: Well, your Honor, I don't know how far I need to go to satisfy myself, and I would hope satisfy your Honor, that there are very valid bases for objection to this document in its entirety and for any purpose that it might be offered; and that is my problem.

The Court: You mean you are attempting to show that it is inadmissible for anything under any circumstances?

Mr. Hughes: Perhaps I ought to take it in two bites. It [fol. 2081] is certainly not admissible for the truth of any facts or anything of that sort that it might be offered for.

The Court: It is not offered for that.

Mr. Hughes: Or as a survey.

The Court: No, it is not offered as a survey.

Mr. Hughes: What is it offered for?

The Court: It is offered to show apparently material before the Association of Glass Container Manufacturers, distributed to them, and apparently given some consideration, and how much we do not presently know, by their executive director, who said that he is experienced in the field, and representing his estimate of the situation.

Is that correct, Mr. McManus?

Mr. McManus: Yes, sir, your Honor. We have also offered the Department of Commerce——

The Court: I am leaving out the second phase of the figures of the Department of Commerce.

[fol. 2082] Mr. Hughes: I understood that he had offered this for the truth of the statistical material.

The Court: Oh, no, only in so far as it related to actual figures taken from Government agencies, as I understood it.

Mr. McManus: That is correct, your Honor.

Mr. Hughes: Well, your Honor, for what purpose and why is it relevant to show what the Glass Container Institute may have been studying in relation to any of the issues in this case?

The Court: It seems to me, Mr. Hughes, it is highly relevant. There is no question about that in my mind.

Mr. Hughes: Well, I would just like to say this, your Honor:

There has been reference here to the state of mind concept——

The Court: Yes.

Mr. Hughes: This awareness concept, and it seems to me that what your Honor observed at the pretrial discussion is pertinent, and that is that the issue that we are concerned with here is whether there is competition, and [fol. 2083] not whether somebody may think there is competition.

The Court: Oh, but, Mr. Hughes, the attitudes and the activities of buyers and sellers are, in my judgment, highly relevant evidence, though not necessarily conclusive, on the question of what is relevant market. Do you question that? If you do, I would like to hear some argument on it. It has never occurred to me that it could be questioned.

Mr. Hughes: Your Honor, I do have doubt about it, because I think that the issue here is whether there is competition within the meaning of the statute.

The Court: What is competition? How can you determine that from an abstract, apart from attitudes of people who buy and sell the products?

Mr. Hughes: Well, it seems to me the best way you can test it is by what actually happens.

The Court: What is one way.

Mr. Hughes: By what we set about to do when we took all those depositions and all the factual data we have sought to develop.

The Court: I have no doubt, if we get that far, you will be producing such data. But it seems to me, it is quite plain that this is at least relevant without saying what [fol. 2084] weight one is to give it on the issue of, for one thing, relevant market, and very possibly with respect to the issue of whether there is actually competition.

Mr. Hughes: Well,——

The Court: (Continuing) Depending, of course, in what framework you are defining competition. I am not trying to do that at this point.

Mr. Hughes: Well, your Honor, let's focus by an objection.

I object to the document on the ground that it is irrelevant and immaterial; that there is no proper foundation laid for its reception and that it constitutes no proof of competition, much less proof of any competition between Continental Can and Hazel-Atlas Glass Company.

The Court: All right, I will overrule the objection.

Now we come down to the second phase, which is a phase of the Department of Commerce, or lets take, for example, the Department of Commerce figures.

As I understand it here, this document, apart from materials gotten from private sources, contains materials from the Department of Commerce, from the Bureau of Labor [fol. 2085] Statistics, from the Tariff Commission, maybe from some other sources; what do you say with respect to that?

Mr. Hughes: Your Honor, may I suggest that we have a conference in chambers, because the question you raise, I think, may arise with other documents, and I think if we have had the benefit of a discussion and your Honor's ruling, I think we will be clear for a great many of the other documents.

The Court: I think that may be as well. We will have a conference in the robing room.

(The following took place in Judge Bryan's robing room:)

Mr. Hughes: Your Honor, sooner or later we would have to come to grips with this question.

The Court: I quite understood that. That is the very reason why I raised it here.

Mr. Hughes: With the Department of Commerce figures.

The Court: Now let me say something about the Department of Commerce figures, and my general view of this:

It seems to me—and I will hear you on this, Mr. McManus, when I get through——

Mr. McManus: Yes, sir.

[fol. 2086] The Court: —if you intend to prove Department of Commerce figures, or you intend to show that these are a correct summary of Department of Commerce

figures, the first requirement of that is to have the Department of Commerce figures, and without the Department of Commerce figures, the type of bulletin they are contained in, at the barest minimum. These gentlemen are in no position whatsoever to test the accuracy, or either the accuracy of the translation of the figures, on the one hand, nor even more important, whether the figures are of any real utility, or admissible in any event.

Mr. Hughes: That is precisely our position, your Honor.

The Court: So that at this stage, my inclination is to admit this document for the limited purpose that I have defined, and which I have ruled on, without in any way indicating how much state of mind, if you want to use that rather ambiguous phrase, or activities, how important a factor that may or may not be in this whole picture. Suffice to say, this is, in my judgment, relevant evidence on the general subject, and we will discuss how it fits into the pattern, and the extent to which it may fit at some other point.

[fol. 2087] No. 2: With respect to the figures that are offered in the charts, that are offered here as evidence of the Department of Commerce figures, which in turn are evidence of something we don't know what they are evidence of, I am going to exclude it as to that. If at some future time you introduce Department of Commerce figures, and either through the present witness or some competent statistician you are able to say that the Department of Commerce figures in there are valid, for some reason or another, and I have admitted them, and this is an accurate summary of them, it will be introduced as a summary, and under the well recognized rules about introducing summaries of complicated figures.

Mr. McManus: Yes, sir.

Mr. Hughes: That, of course, pertains only to what purports to be Department of Commerce figures.

The Court: Of course, Department of Commerce, or indeed the other Government agencies, if Mr. McManus wishes to bring them in and show they were arrived at, that is, show some foundation for their admissibility.

Mr. McManus: I understand, your Honor.

[fol. 2088] Mr. Greenberg: Your Honor, will we need certification of any census or commerce data?

The Court: Well, I think if you bring a published bulletin of the Department of Commerce, I would be amazed, if it was an official publication of the Department, if you required any certification.

Mr. Johnson: We have tried, your Honor, I am sure you know, to be reasonable about those things, and we certainly shall. Sometimes——

The Court: Frankly, I would be a little horrified if there was certification of a well recognized Department of Commerce bulletin. I think we passed that evidentiary stage.

Mr. Johnson: I was going to add that sometimes there are special purpose studies which are nonetheless made by governmental agencies, for which we might want to probe deeper than the mere publication of the document.

The Court: I quite understand that, and you are quite at liberty to do that. For instance, there is this study of the Bureau of Labor Statistics. At the moment I know nothing about that, how it was arrived at, what the Bureau of Labor Statistics did; whether it was a mere estimate by throwing a lot of figures in the air, or whether it was [fol. 2089] a very solid, sound statistical study, that is entitled to weight. I just don't know.

Now, Mr. Hughes, I don't want to restrict your cross-examination on this document, because any cross-examination goes to the weight, to some extent. But it seems to me that we can summarize the thing with this witness by asking whether or not this was his judgment of the problem contained in this book as a result of the studies he said he made, and whether he presented this judgment in this form to the Institute. Then if anybody wants to ask him what the Institute did about it, if anything, they may do so.

Mr. Hughes: Well, your Honor, I don't think I would want to ask him that question in that form, but——

The Court: You can draw your own version as to form.

Mr. Hughes: Frankly, your Honor's ruling and the limitation that your Honor has now put on the document raises some question in my mind as to just how much additional cross-examination on this document there ought to be at this time, it being admitted for that limited purpose, and as your Honor could probably see, my examination up to [fol. 2090] this point had been directed at showing what

had seemed to me were deficiencies in taking this document in its entirety for what it purports to be and for everything that is purported to be recited in it, I think it might be useful if we conferred amongst ourselves for a few minutes and decided whether there should be further examination on this document alone, which could really be very extensive.

The Court: Oh, I stopped you, Mr. Hughes, because if you really wanted to make a thorough examination on this document you could go on for a couple of days without any difficulty.

Mr. Greenberg: Your Honor, may I ask one question to have a point clarified?

Apparently there is some Government statistics in this volume which the defendants will require some foundation testimony for or some certification, such as Bureau of Labor Statistics material, things of that nature.

The Court: Now, you misunderstand me.

Mr. Greenberg: All right, your Honor.

The Court: There are at the present time in evidence no Government statistics. All that is in evidence is a book [fol. 2091] prepared by the witness on the stand as a result of certain things which he says he did, which he presented to the Glass Contsiners Institute. The truth of any of these statements in here, except for such as perhaps the statement that was presented to the semi-annual meeting at such and such a date, this is not evidence of the truth of anything. If you want to establish the truth of any figures, it is up to the Government to establish them.

Mr. Johnson: Just so that I have this clear in my mind for our consideration of this, as I understand it, under your Honor's limitation of the use of this document, errors or inconsistencies, obvious or otherwise, in this document will become irrelevant?

The Court: Well, they would become irrelevant, Mr. Johnson, except to the limited extent that they might show that Mr. Cheney had bad judgment on this whole problem anyway. They wouldn't necessarily. I mean, in other words, I am not saying that the fact that there is a typographical error in some figures demonstrates that his judgment is necessarily no good, but I can conceive of

circumstances where some of the cross-examination might prove relevant even on the limited purpose for which this is in. It might or might not.

[fol. 2092] Mr. Johnson: Then that is helpful.

Mr. Hughes: Well, if your Honor will excuse us?——

The Court: Is there anything else anybody wants to raise in here now?

Before you go out, so that your deliberation will be of maximum fruitfulness at this stage of the afternoon, I should like Mr. McManus to give me some idea of how many more things of this general character we have got, so that they could be considered together with this problem and perhaps disposed of on some similar basis?

Mr. McManus: Your Honor, I believe that this one is more or less unique. There are a number of other surveys, but not of this type.

The Court: Well, this is of course not a survey.

Mr. McManus: Excuse me.

The Court: In the true sense of the word.

Mr. McManus: That is correct, your Honor.

The Court: In other words, it is not like a consumer survey, with the evidentiary rules that apply to surveys.

Mr. McManus: That's right, your Honor.

[fol. 2093] So that as I recall, this is the only one of this particular type. Now, there are some others which possibly can be grouped together and may be considered in a group, and I will make every effort to do that as best I can.

The Court: Now, if we have this mass of documents, are we going to take all day tomorrow with this witness?

Mr. McManus: I wouldn't be surprised, your Honor.

Mr. Hughes: I would think so.

The Court: Particularly, in view of the 4th of July weekend, I think everybody ought to have a reasonable opportunity to miss as much of the rush as possible, and, frankly, in view of the fact that we are going over to the fall on the Government's case for such a lengthy period, I am considering rising for a late lunch hour tomorrow.

How would you gentlemen view that? If I hear any violent protest, I will drive you to the bitter end.

Mr. Johnson: None, with this question:

In view of the extent of Cheney's examination, we will be able to finish with him within that limitation?

Mr. McManus: Well, I will attempt, your Honor, [fol. 2094] to move as quickly as I can.

The Court: Well, if we have got to have Cheney back here, we have got to have Cheney back.

Mr. McManus: There is no problem with him, your Honor. He works right here in New York City.

The Court: Let me say off the record.

(Discussion off the record.)

Mr. Handler: Judge, in line with your comments, I think we can safely assume then that it is Cheney for tomorrow, and nobody else.

Mr. McManus: Your Honor, could I do this:

Could we check on it to this extent——

The Court: Or if you want to take Cheney off, if you have a couple of short witnesses that are here from out of town, let's get them over with.

Mr. McManus: I think there may be. I think there may possibly be two out of town witnesses, who would go on for a document or two.

Mr. Hughes: Who are they?

Mr. Greenberg: Mr. Reinhardt is one.

Mr. McManus: Mr. Reinhardt, and I think there would be one or two documents which will take five or ten minutes.

[fol. 2095] (Further discussion off the record.)

The Court: Well, now, gentlemen, it is now quarter past four. It seems to me if you are going to confer, and unless your conferences are much briefer than lawyers conferences I have ever heard of——

Mr. Handler: They have been awfully brief in this case, sir.

The Court: You are not going to be through by 4.30 with your conference, and you might as well do it at your leisure.

Mr. Hughes: All right. I think that is a good idea.

The Court: If you do it in a leisurely fashion, you will be able to come out with answers much more comprehensive and perhaps much more intelligent than you would otherwise.

So we will take a recess until 10.30 tomorrow morning. We will plan to rise tomorrow so that you can all make your plans to depart at the lunch hour.

All right, gentlemen.

(Adjourned to July 1, 1960, at 10.30 o'clock a.m.)

[fol. 2096] New York, July 1, 1960; 10.40 o'clock a.m.

Trial resumed

Mr. McManus: Mr. Cheney, will you take the stand, please.

The Court: Before we do that—all right you may take the stand.

RICHARD L. CHENEY, resumed.

The Court: What is the present status of the discussions that we had yesterday, and what have you to report, if anything, Mr. Hughes, concerning those?

Mr. Hughes: Well, you mean with reference to today's program?

The Court: In other words, you want to continue, I take it, some cross-examination?

Mr. Hughes: Some, yes, sir. But I think I can confidentially say that it will not be as extensive as I thought it might have been yesterday.

The Court: Very good.

Mr. McManus: Your Honor, before we start *start* again, I [fol. 2097] don't believe the record does show as yet, or the clerk is not informed, that we have made a formal offer of G-33, 34, 35, 36, 37, 38 and 40, for the limited purpose which you ruled on, I believe, yesterday.

The Court: Well, now, Mr. McManus, wouldn't it be simpler if we took the original document and merely marked it with a G number, whatever it is?

Mr. McManus: Well, it has not been marked, your Honor.

The Court: I mean, for identification now.

Mr. McManus: We could withdraw the G numbers that I have referred to, and give this one a new G number, or one of those.

The Court: Yes. It seems to me that a single number will suffice. It is not such a complicated document. There are page numbers within it.

Mr. Hughes: That's right.

Mr. McManus: That's right.

The Court: We have enough numbers to deal with in this case anyway.

Mr. McManus: That's right.

[fol. 2098] Mr. Hughes: The present numbers are 33 to 38 and 40.

Mr. McManus: Yes, sir.

Mr. Hughes: Any number within that.

The Court: Well, let's just take——

Mr. Hughes: G-33 to 38 and 40 are the present exhibit numbers.

Mr. McManus: Well, your Honor, then we will formally withdraw G numbers 33 through 38 and G-40, and substitute G-33.

The Court: G-33.

Mr. McManus: Yes, sir.

The Court: The so-called survey of market problems of the glass container industry, or the document entitled "Survey of Market Problems," will be marked as G-33.

Mr. McManus: Yes, your Honor.

The Court: It will be admitted in evidence at this time for the limited purposes that I indicated at the conference in the robing room yesterday afternoon.

Mr. McManus: Thank you very much.

(Government's Exhibit G-33 received in evidence.)

[fol. 2099] Mr. Hughes: May I proceed, your Honor?

The Court: Yes, you may.

Cross-examination continued.

By Mr. Hughes:

Q. Mr. Cheney, referring to Exhibit 33, I call your attention to pages 50 and 51, which are the figures relating to the possible losses and the possible gains; do you see that?

A. Yes, sir.

Q. And those figures were plainly and simply your judgment figures, is that correct?

A. That is correct.

Q. Representing the judgment of Mr. Sammis in consultation with you, is that correct?

A. Yes, sir.

Q. And this was in what year?

A. It was prepared during the last half of 1953 and presented on December 1, 1953.

Q. Now since that time you have had discussions with counsel for the defendant before becoming a witness here, isn't that correct?

A. That is correct.

Mr. Hughes: I ask that this list be marked for identification.

Your Honor, here is a copy of it and counsel [fol. 2100] has a copy.

(Marked Defendants' Exhibit N for identification.)

Q. In the course of those discussions, Mr. Cheney, do you recall our asking you whether you felt that you could estimate with reasonable certainty the quantities of particular types of products that moved in particular types of containers? Do you recall our discussion along that line?

A. Yes, sir, I think it was proportions rather than quantities.

Q. Proportions rather than quantities, that is correct.

And in the course of that discussion you indicated estimates of percentages of particular end products, and do you recall that we prepared a list of those products with the summary of your estimates of percentages; is that correct?

A. That is correct.

Q. And is the paper that you have before you, Exhibit N for identification, the list to which I have been referring?

A. Yes, it is that list.

Q. And does that list represent your opinion with reasonable certainty as to the percentage of those [fol. 2101] particular products which are moving in the containers indicated in the remarks in the righthand column of the exhibit?

A. That is correct.

The Court: As of when, Mr. Hughes?

Mr. Hughes: Currently, your Honor.

The Court: Currently?

Mr. Hughes: Yes.

The Court: All right.

Q. And that list was prepared based upon your knowledge and experience as you have outlined it to his Honor here on the witness stand?

A. That is correct.

Q. Now in the course of that discussion did we discuss with you other items, other end products, as to which you indicated that you did not feel that you could give us an opinion with reasonable certainty as to the percentages moving in any particular type of container?

A. That is correct.

Q. I show you another list and I ask you whether that is the list which contains the larger number of products from which you selected the products which are reflected in Exhibit N for identification?

A. Yes, that is the list.

[fol. 2102] Mr. Hughes: Your Honor, I have shown this to counsel and I have agreed to furnish this list to them. Actually, through an oversight, this is the only one I have with me, the other is on its way to the Courthouse.

The Court: Very good.

Has that been marked for identification?

Mr. Hughes: No, I am asking that it be marked for identification at this time.

(Marked Defendants' Exhibit O for identification.)

By Mr. Hughes:

Q. So that I may make this clear, if you compare Exhibit N for identification and Exhibit O for identification you can derive those products which you selected and stated that you could give an opinion on with reasonable certainty and those which you could not, is that correct?

A. Yes, the ones that are listed on Exhibit O would be the ones that I could not give you an opinion on.

The Court: Mr. Cheney, do you know where the list, the combined list of products shown in Exhibit N and Exhibit O come from?

[fol. 2103] The Witness: No, they were shown to me by counsel for the defendant.

Mr. Hughes: They are our compilation, your Honor.

The Court: In other words, are you using here a list of products which was taken from some other place or is this the one you made up?

Mr. Hughes: We made it up ourselves.

The Court: You made it up?

Mr. Hughes: Yes.

The Court: All right.

Mr. Hughes: This is not testimony, but we attempted to state a full end use category.

The Court: All right.

Mr. Hughes: Your Honor, with that explanation, I offer these two documents in evidence.

The Court: Now, what have you to say, Mr. McManus?

Mr. McManus: Your Honor, I object to the documents, particularly the first document—is that document N?

The Court: Yes.

Mr. McManus: In that it was made up by the defendants and I believe is a very ambiguous and mis-

[fol. 2104] leading document. It contains such vague terms as "all or substantially all," and "retail sizes" and "institutional sizes."

I think that there is really no basis for this so that you can understand actually what the document purports to be.

Mr. Hughes: Your Honor——

Mr. McManus: Excuse me. Then there is no time period, and it is difficult to tell whether we are talking about

these or whether we are talking about the quantity of the products.

In other words, take ammonia, all ammonia. Are they talking about the cans or the glass that it moves in? Are they talking about the gallons of ammonia?

I think it is a misleading document which has been prepared by the defendant and therefore I object to it.

In addition I would like to ask Mr. Cheney one question.

The Court: You may do that.

Mr. Hughes: Your Honor, I think, if I may, there are one or two additional questions that I would like to put to Mr. Cheney which might clarify this.

[fol. 2105] Mr. McManus: May I just ask one?

The Court: Let Mr. McManus have his question before you do that.

Mr. Hughes: Surely.

Mr. McManus: Mr. Cheney, you are not testifying that this is a complete list of all products that move either in glass or metal containers?

The Witness: By no means.

Cross-examination continued.

By Mr. Hughes:

Q. Mr. Cheney, in the estimates, you will observe with respect to a considerable number of items that your estimate states, "All or substantially all in glass." Could you tell us what you meant by that expression?

A. Well, virtually 100 per cent. In most cases I didn't know of any other containers.

Q. Also there are numerous instances where you have said, "All or substantially in cans," and would you tell me what you meant by that?

A. Virtually 100 per cent. I did not know of any or only of a small amount in any other containers.

Q. When you were expressing this percentage, was it a percentage in your opinion of the quantity of the prod-

[fol. 2106] ucts that moved in the particular type of container?

A. That is correct. In most cases it is.

Q. And when you referred to retail sizes, what were the sizes you were thinking about?

A. Sizes which you would ordinarily buy in a retail store.

Q. And when you refer to "institutional sizes," what were you referring to there?

A. The sizes that restaurants or hospitals or institutions would use for, let us say, mass feeding operations.

Q. Mr. McManus has said that there is no time reference. As of what time was this estimate?

A. As of the present time, generally.

The Court: When did you interview Mr. Hughes' firm or did they interview you, how long ago?

Mr. Hughes: Was there more than one?

The Witness: Yes, we had three interviews.

The Court: In what general time period? I am not interested in dates.

The Witness: Between—I would say between about the first of April and two or three nights ago.

The Court: But your testimony here is that this is your [fol. 2106a] best estimate based on your judgment and experience in the industry as of today?

The Witness: Yes, sir.

The Court: Very good.

[fol. 2107] The Court: Do you wish to examine the witness any further before I rule on these offers, Mr. McManus?

Mr. McManus: Your Honor, I just got this this morning, and I would think that I would not. If at a later time I find that I would like to ask him some questions, I would like to reserve that right.

The Court: You are entitled to question him about that, but I am going to overrule your objection and take the exhibit at this time.

Mr. McManus: All right.

(Defendants' Exhibit N and O for identification received in evidence.)

Mr. Hughes: Your Honor asked from what this basic list was derived, and I think I should say in explanation that it was designed to account for the end products which, taken together, account for the bulk of canned

usage and of glass usage. At least that was what we were attempting to achieve.

The Court: Yes.

By Mr. Hughes:

Q. Mr. Cheney, I show you an article, which purports to be from the Ceramic News of August 11, 1958, and [fol. 2108] which purports to quote from a speech or certain remarks that you made to security analysts in San Francisco. Would you look at it and tell me whether the quotations in that are accurate quotations of your remarks on the occasion of that speech?

A. I recall the article and I read it at the time, and it is my opinion that these are accurate quotations.

Mr. Hughes: I offer that in evidence.

Mr. McManus: No objection, your Honor.

The Court: It may be received.

(Defendants' Exhibit P received in evidence.)

Mr. Hughes: Now, your Honor, I think that concludes any examination that I felt was tied into this Exhibit 33.

The Court: All right. So we will consider that the end of the voir dire on this document.

Mr. Hughes: Yes.

The Court: Sometimes we get a little confused on this.

Mr. Hughes: I think the documents I put in really go beyond voir dire, but they were related to voir dire.

[fol. 2109] The Court: We cannot draw these fine technical distinctions in situations like these, Mr. Hughes.

Mr. Hughes: Yes. I only wanted to be clear that I thought it had broader probative value than just voir dire.

The Court: All right.

Now, Mr. McManus, I presume you wish to proceed further with the witness?

Mr. McManus: Yes, sir; and, your Honor, to move along as expeditiously as we can, and to perhaps get out of the way certain documents which may or may not be objected to, I would like to show the witness G-319 through 346 which, if he will examine, I believe are

advertisements placed by GCMI in the magazines, as indicated on the document.

The Court: Is there any objection to these, Mr. Hughes?

Mr. Hughes: No, your Honor. I would like to ask the witness a few questions in connection with them, but there is no objection if they are marked. Perhaps I could do that at this point.

The Court: Well, suppose we say that G-319 through [fol. 2110] 346, inclusive, will be admitted without objection. Mr. Hughes, however, wishes to ask some questions about them and may do so.

(Government's Exhibit G-319 to G-346, inclusive, received in evidence.)

By Mr. Hughes:

Q. Mr. Cheney, these exhibits which are in the process of being marked are advertisements which the Institute ran in Life and other publications; is that correct?

A. They all ran in Life, yes, sir.

Q. And do you recall the period or the approximate period during which they ran?

A. These ran in the year 1959 and up to about May, 1960.

Q. Now, were these advertisements designed to feature what you regarded as the advantages of a glass container as distinguished from other types of container?

A. That is correct; yes, sir.

Q. And would you tell me what you regard as the advantages of a glass container?

A. Well, there is the chemical inertness of glass; the [fol. 2111] transparency; the dimensional stability, which in turn provides for easy seal and reseal and good seal; the inpermeability; odorlessness; tastelessness.

Q. Did you mention recloseability?

A. I did, sir.

Q. And would you say that they embrace the characteristics which you consider to be advantages of glass as a container?

A. Yes, sir.

Q. And would you say that it was those character-

istics which are the theme of the ads which constitute the exhibits here in evidence?

A. Yes, that is correct.

Q. That is, some of them might feature one or more of them, some of them feature only one; some feature all of them; is that correct?

A. I doubt if any of them feature all of them, but——

Q. At any one time?

A. At any one time, yes. Otherwise your statement is correct.

Q. Now, while we are at it, are there any disadvantages to glass?

[fol. 2112] A. Glass is heavier than most other packaging materials, and it is inclined to break if hit hard enough.

By the Court:

Q. Mr. Cheney, was Hazel-Atlas Glass Company a member of the Glass Container Manufacturers Institute?

A. Yes, sir; they were.

Q. Prior to this merger or acquisition by Continental Can?

A. Yes, sir.

Q. And is Continental Can still a member of the Institute?

A. Yes, sir; it is.

Q. That is, through its Hazel-Atlas Division?

A. And through its White Cap.

Q. And through its White Cap Division.

Q. Let me ask you this: how are these advertisements paid for?

A. These advertisements were paid for from a portion of the dues of all the members of GCMI, which dues are based on the dollar sales, a percentage of their dollar sales.

Q. And as I understand it, Continental Can would be second in the percentage of dollar sales; is that right?

[fol. 2113] A. I don't know that, sir.

Q. Well, who are the first four?

A. First four would be Owens-Illinois, Anchor Hocking, Hazel-Atlas—I am thinking of glass container companies now.

Q. Yes, all right.

A. Yes. And there is some question as to two or three playing for fourth position.

Q. I see, two or three playing for fourth position.

A. Brockway, Knox.

Q. But would it be a fair statement that Continental Can is one of the largest dues paying members?

A. It is, yes, sir.

Q. And some of Continental Can's dues went into paying for these advertisements?

A. Certainly did.

The Court: All right.

Mr. McManus: Your Honor, the next group that I would like to refer to are the group from 85 through 131, which I would like to show the witness, and which I believe to be—he can run through them hurriedly—minutes of meetings of committees, either the permanent [fol. 2114] type, or the special committees, of GCMI, the committees being identified at the top.

The Court: Well, I think first of all, if we have the witness go through all these—I take it that the defendants have been through all these, have they not, Mr. Hughes?

Mr. Hughes: Yes, sir.

The Court: Have you any questions as to the fact that these are the minutes of the various committees?

Mr. Hughes: Well, I have no doubt that if Mr. Cheney was specifically questioned about each one of them——

The Court: That is what I mean.

Mr. Hughes: —he would identify them as the minutes.

The Court: If we take the time to have Mr. Cheney go through 40 or 50 documents here we are going to waste all morning.

Mr. Hughes: Yes.

The Court: And I think we will do it this way, so as to afford the maximum protection to the defendant: Mr. Cheney, at the recess, will run through these documents hastily and see if they are the minutes. I take it, [fol. 2115] looking at 85 and 86, for example, these are all minutes of meetings of the committees named, and if you just try and take a quick check of them at recess,

that will save some time. I will assume at this point that they are the minutes.

Now, those being the minutes, are there any objections to them?

Mr. Hughes: Well, I wonder what the purpose of the offer is?

The Court: I think that is a fair question.

Mr. McManus: Your Honor, we contend that these minutes show the activities of the Glass Container Manufacturers Association, insofar as their attempts to compete with metal cans and their attempts to fend off competition from metal cans in areas where they are important factors. These are largely the minutes of the market research and promotion committee, and they show their activities and their expenditures, and also I did leave out in the non-food field, the plastic container.

Now, your Honor, I have a suggestion, if it is all right. As I told you, we have Mr. Reinhart here from out [fol. 2116] of town, and if Mr. Cheney would like to step out and look at these at this time we could put Mr. Reinhart on. I do not believe it would be for any length of time.

Mr. Hughes: Before that is done and while we are on this subject, do I understand that they are not being offered for the truth of the contents?

The Court: Only in the sense that they record what happened at the meetings.

Mr. Hughes: Yes, that's right.

Mr. McManus: That is correct.

Mr. Hughes: But where factual data purport to be asserted, they are not being offered for the proof of any factual data.

Mr. McManus: They are being offered only as to what took place at the meeting, and not—as you say, if a man said——

The Court: Let's just analyze this problem a minute.

Plainly, if Mr. Cheney, let's say, reported to a meeting that he had put out and mailed this survey to all the members of the Institute, that would be a fact adverted to at the meeting, and I would be prepared to take the minutes as the evidence of that fact. If, however, Mr. [fol. 2117] Cheney takes a chart X from this Exhibit 33

and shows it to the meeting, and chart X is annexed to the meeting as having been exhibited to it, plainly it is not evidence of the truth of the facts in chart X.

Mr. Hughes: Similarly, if there were, let's say, discussion of figures and that sort of thing, industry statistics——

The Court: Except in relation to figures concerning the actual business of the Glass Container Manufacturers Institute, in the form of official reports of that Institute to a responsible committee. In other words, if, for instance, there is a report as to a budget figure for an advertising campaign that had been spent, I would expect to accept that.

Do you follow me?

Mr. Hughes: Yes, I do follow you on that, your Honor.

And to the extent that, as I understand it, to the extent that these minutes reflect or tend to reflect the program concerning which Mr. Cheney has already testified, you would take them as evidence.

The Court: Right.

Mr. Hughes: To the extent that they go beyond that into other areas——

[fol. 2118] The Court: If Mr. Cheney reports that the can manufacturers have a revolutionary can which is about to oust all bottles from the beer industry, I would doubt if I would take that as evidence about the revolutionary can. I would take it merely as evidence that such a report had been made at the meeting.

Mr. Hughes: And opinions?

The Court: That includes opinions.

Mr. Hughes: And prognostications.

The Court: I think that is reasonably clear, gentlemen. You can't cover every situation in minutes of this character at this stage.

All right. Well, now, Mr. Cheney, so that we do this thing as expeditiously as possible, suppose you take that and go into my robing room where you can thumb through these things and take a brief check on them. Then we will call you back.

The Witness: Thank you.

Mr. Hughes: Well, your Honor, I think in view of our discussion in chambers, it is pretty obvious how your

Honor's mind is running in respect to certain of these documents. Nevertheless, I would like to have an ob-
[fol. 2118a] jection, a general objection on the ground——

The Court: You have an objection. I won't pass on it till I hear from Mr. Cheney.

Mr. Hughes: Fine.

Mr. Greenberg: Mr. Reinhart, will you please take the stand.

[fol. 2119] Robert B. Reinhart, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

The Court: What is the exhibit number with Mr. Reinhart?

Mr. Greenberg: Pardon me, your Honor, it is G-776.

The Court: Very well.

Direct examination.

By Mr. Greenberg:

Q. Where do you reside?

A. I reside in Merion, Pennsylvania.

Q. By whom are you employed?

A. I am retired.

Q. Were you employed by the Hazel-Atlas Glass Company at one time?

A. From 1911 to retirement.

Q. Your retirement was approximately in 1958, is that correct?

A. That's right, two years ago.

Q. What was your employment in 1954 with Hazel-Atlas?

A. Sales manager, Philadelphia district.

Q. You had the usual duties of a sales manager?

A. Yes, I did.

[fol. 2120] Q. I show you Government's Exhibit 776 for identification and ask you to identify it.

A. Yes, that is my writing.

Q. Is that your letter?

A. Yes, that's mine.

Q. Do you know what the facts of this document are based on?

Mr. Hughes: I object to the form of that question.
The Court: Yes, I will sustain the objection.
Ask him first what the document is.

Q. What is the document, sir?
A. The document is a repeating of a telephone conversation I had with somebody who was trying to pass the word along——

The Court: No, the document, I take it, is a report from you as Philadelphia district sales manager of Hazel-Atlas to Mr. Algeo at the head office, who was what, the director of sales at that time, or the vice-president in charge of sales?
The Witness: That is right.
The Court: And it dealt with incidents which had occurred in the course of your activities as district sales manager, is that correct?
[fol. 2121] The Witness: That is correct, thank you.
The Court: All right.

Q. Sir, there is a reference in the second full paragraph there to "Some other kinds of packaging." What did you mean by that term?
A. I really don't know what I had in mind except tins.

Mr. Greenberg: I offer this document in evidence.
The Court: For what purposes?
The Witness: For food packing.
The Court: I understand that, Mr. Reinhart, but I am asking Mr. Greenberg. I don't know whether we can use the document for that or not.
For what purposes, Mr. Greenberg?
Mr. Greenberg: Your Honor, we put it in to show again the wedge principle that was being used by various processors as a result of the can-glass relationship, and we put it in for all purposes as well.
The Court: For all purposes?
Mr. Greenberg: Yes.
The Court: It is not going to come in for all purposes?
[fol. 2122] Mr. Greenberg: Then we put it in for the purpose that I stated.

Mr. Hughes: I object to it as proof of the wedge principle, your Honor. This seems to be just rank hearsay.

The Court: Mr. Hughes, this is a fact, a fact that such a report was made by a district sales manager to the vice-president in charge of sales, which in itself is a fact, and I admit it for evidence of that fact, and that is all.

Mr. Greenberg: Thank you.

The Court: Do you want to examine about it?

Mr. Hughes: I don't think so.

The Court: All right, thank you, Mr. Reinhart.

Mr. Hughes: May we just note for the record our usual objections?

The Court: Yes, and the objection is overruled, and it is admitted for the limited purposes that I have indicated.

(Government's Exhibit 776 for identification received in evidence.)

(Witness excused.)

[fol. 2123] The Court: Now I note that Mr. Cheney reappears at a very fortuitous moment. You may resume the stand.

Richard L. Cheney resumed.

Direct examination continued.

By Mr. McManus:

Q. Mr. Cheney, have you examined Government's Exhibits G-85 through 131?

A. I examined exhibits through 116. I thought it was just the minutes. From 117 on, they are semi-annual reports. I can quickly examine them.

The Court: Just run through them briefly.

(Short pause.)

The Court: They are simply annual reports to committees, are they?

The Witness: Yes, sir.

The Court: And those reports were made what, to the board of trustees or the board of directors of the Institute?

The Witness: They are made to the board of trustees and by them presented to the membership. Yes, these are unquestionably semi-annual reports of certain of our committees.

The Court: All right. You have made an offer of these exhibits, I take it?

[fol. 2124] Mr. McManus: Yes, sir.

The Court: Mr. Hughes, before I hear you, do you want to examine about them?

Mr. Hughes: Your Honor, I have no desire to examine on the voir dire in view of the discussion that we had. I think I understand what your Honor has in mind.

These documents, of course, are voluminous. I have a considerable number of notes with respect to each one of them. There might be things that I feel need clarification but they would not go to the voir dire.

The Court: Well, I think you better reserve that for your general cross-examination of Mr. Cheney.

Mr. Hughes: Yes, sir. That would be my feeling.

The Court: And have you any objection to the receipt of these documents on the limited basis that the Court outlined?

Mr. Hughes: Just my usual objection to relevancy and materiality.

The Court: That objection will be overruled and they will be admitted for the limited purposes indicated.

[fol. 2125] Mr. Hughes: Yes, sir.

Now, your Honor, may I say this: When we are talking about these exhibits, mindful of the amount of time that we have available to us today, it does occur to me that on some of these documents it just may not be feasible to attempt any kind of cross-examination on what I would say was the merits——

The Court: Mr. Hughes, I have had that in mind, and considering the volume of documents and what you may desire to go into, I am going to postpone or give you time for additional cross-examination of Mr. Cheney in the fall, if you desire.

Mr. Hughes: We can let Mr. Cheney know and let counsel know.

The Court: Yes. The exhibits that were just referred to, so that the record may be clear, are G-85 to G-131, inclusive.

Mr. Hughes: Did they go to 131? I thought he said to 116.

The Court: No. He testified that the balance of these were reports by committees to the board of trustees which were in turn reported to the membership, and they will be received under the same limitations as the others.

[fol. 2126] Mr. Hughes: May I just ask two general questions?

The Court: Yes.

Preliminary examination.

By Mr. Hughes:

Q. Referring to the reports as distinguished from the minutes, those reports on their face would indicate that they were prepared by the chairman of the particular committee, would they not?

A. Yes, they would on their face.

Q. And actually how were they prepared?

A. The usual custom is for the staff member or members who work with that committee to discuss it with the chairman and then incorporating his ideas and material from the files, the minutes and so forth, preparing the reports, submitting them to the chairman, who then goes over it, making any changes he may wish to and returns it for reproduction.

Q. Did you personally prepare any of these reports?

A. With the assistance of one or more staff members I prepare reports of the committee on market research and promotion and the subcommittee on beer bottles.

The Court: All right.

[fol. 2127] (Government's Exhibits 85 through 131 for identification received in evidence.)

Mr. McManus: The next exhibit, your Honor, is G-39.

The Court: All right, sir.

By Mr. McManus:

Q. Mr. Cheney, I show you Government's Exhibit G-39 entitled "A Plan of Action for the Glass Container Industry."

Did you prepare this document?

A. I prepared this with Mr. Sammis' assistance.

The Court: Was it prepared and presented at the same time as G-33?

The Witness: It was, sir.

Q. And it was presented as indicated here to the GCMI members at the semi-annual meeting of December 1, 1953?

A. That is correct.

Q. And did you follow this, did GCMI adopt this plan of action?

A. Not specifically but in general terms each recommendation except that one with regard to design research, with the exception of that one, in some form or other the other recommendations had been followed ei- [fol. 2128] their by GCMI or in one instance by a group of manufacturers acting as a group.

Q. Could you tell me if on page 40, if you go to page 40, which I believe is the last page of the document——

Mr. Hughes: Which page?

Mr. McManus: Page 40, which should be the last page of the document, entitled, "Advertising Publicity Budget."

Q. Was that budget adopted?

The Court: Wait a minute.

First explain to me two things: You have a minimum program set forth here and then you have a recommended program which is less than the minimum program. Could you explain that to me?

The Witness: Yes, in that exhibit these righthand pages were made from large charts, 30 by 40-inch charts and presented. We first had them in the reverse order, decided it would be better to show the minimum first and the recommended second, and the chartmaker failed to transpose the headings when he transposed the figures.

The Court: So that, in fact, these two should be transposed.

[fol. 2129] The Witness: Yes, sir.

By Mr. McManus:

Q. Could you tell us which one was adopted, Mr. Cheney, if either?

A. Neither one was adopted precisely, but it was more near—what finally resulted two years later was very close to the recommended budget.

Mr. McManus: Your Honor, the Government offers G-39 in evidence for the purpose of showing actually what the plan of action of the glass container industry was.

Mr. Hughes: We have the same objection to interpose to G-33 on the same grounds.

The Court: The objection will be overruled, and this exhibit will be admitted within the framework of the limitations that I have already indicated.

Mr. Hughes: Yes, sir.

The Court: And I take it, Mr. Hughes, that you will reserve any cross on this until your general cross-examination?

Mr. Hughes: Yes, sir.

(Government's Exhibit 39 for identification received in evidence.)

[fol. 2130] Mr. Hughes: Your Honor, may we have it understood that as to all of these documents I am going to make the same objection?

The Court: I think that it would not take any time to simply state the same objection and then we have a record that is a little clearer.

Mr. Hughes: Your Honor, I think that it ought to be made clear, if it has not been, that I had intended to make our usual objections to 117 through 131. I believe I did but——

The Court: Yes, I think you did, but, in any event, I will take it that you did and you will also take it that I have overruled you.

Mr. McManus: G-42 will be our next document, your Honor.

By Mr. McManus:

Q. Mr. Cheney, I show you Government's Exhibit 42. Was this document prepared for the Glass Container Manufacturers Institute?

A. It was.

Q. Were you responsible for having it prepared?

A. I was.

Q. And you had Mr. Ford Sammis of Ford Sammis Company prepare the document?

A. Ford Sammis & Company, yes.

[fol. 2131] Q. And what distribution was given to this document?

A. I know that it was furnished to the members of the Market Research and Promotion Committee. I think it was also mailed to all Glass Container Manufacturer members of GCMI, but I am not sure on that right at the moment.

Mr. McManus: Your Honor, the Government will offer G-42 for the same purpose as G-33 to show the activities——

The Court: To show what was before the Glass Container Manufacturers Institute and their activites in that connection but not for the truth of the matter.

Mr. McManus: Not for the truth of the statistics contained therein.

The Court: Very good.

Mr. Hughes: And not for the truth of the material, of the contents.

The Court: That I think is indicated, yes, except in so far as it indicates that a survey was conducted on behalf of the Glass Container Manufacturers Institute and this is the report with respect to it.

Mr. Hughes: Well, your Honor, this really [fol. 2132] raises a question which may assist us in expediting the matter. I think there are going to be a series of surveys. This is one of them. Some of them are much bulkier documents and they embrace a considerable number of documents.

It has occurred to me, since they are not being offered for the truth of the contents, and since your Honor is not taking them for that purpose, that we could stipulate

with reference to each one of them that a survey at such and such a time was made.

The Court: Well, suppose I take a brief recess at this point so that you can talk about that with Mr. McManus, and see whether we can get a stipulation that (a) will eliminate a lot of technical matter in the courtroom, and (b) will perhaps eliminate a considerable volume of bulk.

Mr. McManus: Yes, your Honor.

The Court: And there is no reason why both of you should not confer with the witness in that connection.

Mr. Hughes: Yes, your Honor.

(Short recess.)

The Court: All right, gentlemen, what have you to report?

[fol. 2133] Mr. McManus: Your Honor, I think we have worked out an arrangement whereby we can show these documents to Mr. Cheney, have him identify them, and go through them very rapidly, and we would make our offer on that basis.

Mr. Hughes: I thought that we were going to stipulate that on or about a certain date a certain survey or report had been made by GCMI or by whoever made it for them, and then you were going to ask the witness what distribution it had and that would be the end of it.

The Court: Yes, I think that is the way to do it.

Mr. McManus: All right, your Honor.

The Court: Then we do not want the actual document, do we?

Mr. McManus: We will have to use the document, your Honor.

The Court: Yes, we will have to use the document so that Mr. Cheney can tell us about the distribution.

Mr. McManus: But we also want the document as part of the record, your Honor.

[fol. 2134] The Court: Well, would you tell me this, Mr. McManus: I fail to see if a survey of the same general character as the last exhibit was made what possible utility it could have to have the record contain these great masses of documents. I am never going to read them—at least I hope I am never going to read them.

I don't see what help they would be to me in deciding this case.

What help do you think they might be to me in deciding the case or to an Appellate Court?

Mr. McManus: Well, your Honor, I think it is important to show—I am not saying that you have to read them, but I think it is important to show the fact that the survey was made and that it is a detailed survey and not just an informal one-sheet arrangement.

The Court: Let us do it this way. You will say that document so and so bears on its face that it is a survey conducted by John Smith & Company of the baby food situation in Chillicothe, Iowa, and that this is a report of 22 pages.

Do you want any more than that?

Mr. McManus: Well, your Honor——

The Court: I just do not see the point of piling paper on paper here, when the facts as to the survey or the [fol. 2135] conclusions as to the survey are of no particular significance.

Mr. McManus: Well, your Honor, I am not too sure that just from the heading—some of these surveys may refer to a number of products.

The Court: Don't they state on their face what they refer to?

Mr. McManus: Well, they would say fruits and vegetables and then there would be a whole list of products. For example, in G-82 it says fruits and vegetables and mixed fruits, peaches, et cetera.

Mr. Hughes: Your Honor, there would be no objection to some reasonable description.

The Court: Yes, some reasonable summary or description of what the survey covered.

Mr. Hughes: Some reasonable description which gets the fact of the survey stipulated to and then whatever inferences are to be drawn, they can be drawn. Any reasonable description as we go along, I am sure will be satisfactory.

[fol. 2136] Mr. McManus: Your Honor, I am afraid if we get into reasonable description here, it would take longer than it would be doing it the other way.

The Court: Mr. McManus, if you want all this bulk in,

go ahead and we will put the bulk in. But for heaven's sake, unless you can point to some very good reason why the Court should examine this material, I will tell you frankly, the Court has no intention of examining it.

Mr. McManus: All right, your Honor.

Mr. Handler: Your Honor, isn't there a question of cost here in the event of an appeal?

The Court: That is one of the things that concerns me.

Mr. Handler: To print all of this material that covers that entire desk, just look at it, would keep printers busy for almost a year printing all this material. We respectfully submit that this is a place where the Government ought to be required to stipulate and not encumber the record with thousands of pages of material that serve no useful purpose whatsoever.

The Court: What do you say to that?

[fol. 2137] Mr. McManus: Your Honor, I am sorry that we have so much bulk here, but I think it is necessary to protect the Government's interest.

The Court: I know. But, Mr. McManus, I have no feeling about bulk per se if bulk is going to be of help to the Court in deciding the issue. The only worry I have about bulk is when it seems to me to have no relevance at all as such.

Mr. McManus: Your Honor, I think that we do need it, because I think we would——

The Court: Let's try one of these. Let's refer to a specific document by way of example.

Mr. Hughes: You were on 42, your Honor. This all started with G-42.

The Court: G-42. Did G-42 go in, or was it 41?

Mr. Hughes: No, because at the point where your Honor asked me if wanted to examine, I suggested a stipulation, and I thought we had one.

The Court: Well, we have covered G-42.

Mr. Hughes: Well, I do want to bring this out from Mr. Cheney, because I think it is going to apply to many of these documents.

The Court: Suppose you examine on G-42 then.

[fol. 2138] By Mr. Hughes:

Q. G-42 was prepared by Ford, Sammis & Company, isn't that correct, and not by you?

A. That is correct, yes, sir.

Q. And forwarded to you?

A. And forwarded to me, yes.

Q. And whatever raw data and working materials they had, they kept; isn't that right?

A. I didn't receive them.

Q. All you got was the finished product?

A. Yes.

The Court: All right. So G-42 I will admit for the limited purposes that I indicated before we took our brief recess.

Mr. Hughes: Well, your Honor, could we clarify this to this extent, because we are moving into the area of survey: as I understand it, you are taking it as proof of the fact that a survey of this nature was made.

The Court: Was made and submitted to the Institute, with the distribution that Mr. Cheney indicated.

Mr. Hughes: Yes. Well, I think that statement of it, [fol. 2139] your Honor, if we could all bear that in mind as we go along, will be helpful to us, so that as your Honor takes it for the same purpose, as I imagine you will, it won't be necessary for me to be popping up all the time.

(Government's Exhibit G-42 for identification received in evidence.)

The Court: I take it 43 is the next exhibit?

Mr. McManus: Yes, sir; your Honor.

The Court: I note in 43 that there is a letter of transmittal which outlines the report. Why isn't a possible solution to put in the letter of transmittal and let it go at that, say to follow X number of pages, whatever they are, six pages of data.

Mr. McManus: Your Honor, on some of these that might be satisfactory, but on others, I don't think the letter of transmittal is of sufficient clarity to indicate what the report does cover in toto.

The Court: Well, I notice 44 seems to me to be of the

same category, 45, 46—all those relate to baby foods. Now, frankly, on these at least, unless you can show me any utility putting in these figures, apart from the title and the letter of transmittal, I am going to exclude it.

[fol. 2140] Mr. McManus: Well, your Honor, can we put them in on that basis at this moment, and I of course have not had a chance to examine each one on that basis, and if I so desire, can I make an argument later to have the remainder put in?

The Court: All right, you may do that.

Mr. Hughes: When you say "on that basis," you mean that the transmitting letter will go in? Is that what I understand?

The Court: That is what I understand Mr. McManus to mean.

Mr. McManus: Yes, and we will indicate the pages; is that right?

The Court: All right.

Mr. McManus: 43, consisting of six pages; 44, consisting of seven pages; G-45, consisting of six pages; and G-46, consisting of 48 pages—these are in addition to the letter of transmittal; G-47——

The Court: All right, G-47 comes to soft drinks.

Mr. McManus: That is correct, your Honor. The letter of transmittal and five pages; G-48, the letter of transmittal and 9 pages; G-49, the letter of transmittal and 39 [fol. 2141] pages; G-50, the letter of transmittal and six pages; G-51, the letter of transmittal——

The Court: You don't have these pages numbered, most of them.

Mr. Hughes: Your Honor, may I at G-51 just interpolate for a minute? You take the letter of transmittal, the last paragraph says, "Philadelphia was chosen because this was one of the first markets where canned soft drinks were introduced in 1953 and has been subject to intense promotion on this product for the past year and half."

Now, certainly it isn't being taken for proof of that fact.

The Court: No, I made that quite clear, I thought.

Mr. Hughes: Yes.

Mr. McManus: G-51, the letter of transmittal and 21 pages; G-52, the letter of transmittal and 52 pages; plus five exhibits; G-53, the letter——

Mr. Hughes: Here again, your Honor, in the last exhibit is a typical last paragraph.

The Court: It is not necessary to go into that, Mr. Hughes, other than what you indicated.

Mr. Hughes: Yes, all right.

Mr. McManus: The letter of transmittal and [fol. 2142] five pages; G-54, the letter of transmittal and nine pages; G-55, the letter of transmittal and nine pages. Now, G-56, your Honor,——

The Court: Now we come to a slightly different trend.

Mr. McManus: That's right.

The Court: Let's take that bulk of material and find out, or can we ask Mr. Cheney what the distribution of these documents was.

Were they all the same, do you know?

The Witness: No, sir; not——

Mr. McManus: Excuse me. On G-56 I would like to indicate that we are only intending to offer page 1 and 2, and not the attachment.

The Court: I see.

Mr. Hughes: G-56?

Mr. McManus: G-56.

The Court: These aren't surveys. We will treat 56 separately for the moment.

Mr. McManus: Yes, sir; your Honor.

By Mr. McManus:

Q. Mr. Cheney, you prepared this document?

A. I did.

Q. And this was sent to all beer bottle manufacturers; is that correct?

[fol. 2143] A. That is correct.

Mr. Handler: Which exhibit is being shown?

Mr. McManus: 56, G-56.

The Court: Well, before we get to 56, what about 43 to 55, inclusive? Are you going to ask Mr. Cheney about those, as to the distribution of them?

Mr. McManus: All right, sir.

Q. G-43, entitled "Baby Food Container Situation 1956," what was the distribution of that document. Mr. Cheney?

A. It went to the members of the Market Research & Promotion Committee, and to the best of my recollection, that is as far as it went.

Q. This was available on a library loan basis to all the other members?

A. Yes, all of that would be available on that basis.

By the Court:

Q. What about 44, the same?

A. The same.

Q. 45?

A. Same.

Q. 46?

A. Yes.

[fol. 2144] By Mr. McManus:

Q. That would be the same distribution?

A. Yes, sir. I might add, the Market Research & Promotion Committee and the West Coast Subcommittee on these baby foods.

The Court: I see.

Q. G-47, Los Angeles store audits?

A. Parent committee and the West Coast subcommittee.

Q. And G-48?

A. The parent committee and the West Coast subcommittee.

Q. And G-49?

A. To the parent committee and the West Coast subcommittee.

Q. G-50?

A. To the parent committee and the West Coast subcommittee.

Q. And G-51?

A. This went to all members of GCMI, all glass container members of GCMI, with multiplate copies to those that manufacture bottles for soft drinks, and was also furnished with publicity releases to newspapers and trade press.

[fol. 2145] Mr. Hughes: Which number was that, please?

The Court: 51.

Q. 52?

A. G-52 was presented to the Market Research Promotion Committee as a chart presentation by representatives of McKinsey & Company, and no other distribution was made of it. Several copies were furnished to me and were used by staff members.

The Court: McKinsey & Company being, I take it, management consultants and market economists?

The Witness: Yes, sir; that would be right.

Q. G-53, distribution?

A. This went to the subcommittee on beer bottles, and probably to the parent committee on market research and promotion.

Q. And G-55?

A. Same as the last.

Q. G-54?

A. Same as the previous one, same as G-53, and G-55, same as G-53.

Q. Same distribution?

A. Same distribution.

The Court: All right, with respect to those exhibits, 43 [fol. 2146] through 55, inclusive, there will be admitted into evidence the title page and the letter of transmittal, and it will be noted that in each case the survey, admitted for the limited purposes indicated by the Court, consists of a number of pages of data and charts which Mr. McManus stated when he was going through them.

Mr. Hughes: May the record show our usual objection.

The Court: Usual objection. Overruled.

(Government's Exhibits G-43 through G-55, inclusive, received in evidence.)

Mr. Hughes: Your Honor, would you want to do the same thing with respect to 42? We started to do this at your suggestion.

The Court: No, I think there ought to be at least one sample of this in the record, so that we see the type of thing that we are dealing with.

Mr. McManus: And I understand it, your Honor, that if going through I should find one or two——

The Court: I will hear you further on it after you go through it, if you decide there are any specific documents you feel would be useful.

Mr. McManus: Thank you, your Honor.

[fol. 2147] The Court: I suggest that if you have a particular document that you think is of some utility, you select it.

Mr. McManus: Yes, your Honor.

Mr. Hughes: It might be helpful if we would be informed, too.

The Court: I am sure before we resume Mr. McManus will inform you as to what he intends to do with respect to this problem.

Mr. McManus: That is correct. Now we are at G-56.

The Witness: Pardon me. Could I add something to make accurate my previous testimony, that McKinsey & Company study, I believe, was also presented to the beer bottle subcommittee, as well as the parent committee.

The Court: Very good.

By Mr. McManus:

Q. And all of these documents are available on a library loan basis?

A. Except for the McKinsey study.

Q. Now going on to G-56, you prepared this document for distribution to the beer bottle manufacturers, you testified?

A. I did.

Q. And it was distributed?

[fol. 2148] A. It was mailed to them with the attachment.

Mr. McManus: Now, your Honor, we would like to offer this document without the attachments for the truth of the matter contained herein. This is not a survey or a study, but it is a statement by Mr. Cheney to the beer bottle manufacturers.

Mr. Hughes: Well, I object to that, your Honor. If he wants to ask Mr. Cheney about anything within his personal knowledge, why can't he do so?

The Court: Well, it seems to me if you want him to go through with Mr. Cheney the facts here then have Mr. Cheney testify that these things occurred and he put

them in a letter and he sent them out to the manufacturers, that is all right with me. It seems to me that the facts are in the letter, and he has read the letter, he testified that these are facts within his own knowledge, he put them in a letter, then we can go from there and you can cross-examine him. But we will go with the cumbersome method if you prefer it.

Mr. Huges: Then I will cross-examine, your Honor.

The Court: Very good.

[fol. 2149] Let's first ask Mr. Cheney:

By the Court:

Q. Now, having looked at this document, the various statements made in that document did purport to recite things that you did? Did you do those things?

A. I did, sir.

Q. And is this an accurate statement of what occurred?

A. It is, sir.

The Court: Very good.

Now, Mr. Hughes, you may cross-examine.

By Mr. Hughes:

Q. Mr. Cheney, going to the third paragraph of Exhibit G-56, you indicate a price at which certain six pack carriers will be sold; do you see that?

A. Yes, sir.

Q. Where did you get that information?

A. Mr. Bennett, of Container Corporation, presented that orally and with charts to a group of representatives from glass container manufacturer companies and myself.

Q. This is something he told you and the group?

A. That's right.

[fol. 2150] By the Court:

Q. Does Container Corporation sell these six pack carriers?

A. Yes, they do, yes, sir.

Q. And he was in effect quoting what his corporation would do?

A. That is correct.

Q. With respect to prices?
A. That is correct; yes, sir.

By Mr. Hughes:

Q. And you got the information with respect to the price of the machines from him; is that right?
A. That's right.
Q. You are reporting something he told you?
A. And several other people, yes, sir.

Mr. Hughes: Yes.
The Court: Did you regard that in effect as a quotation of price by him?
The Witness: I did not. We weren't prospective purchasers.

Q. Of course you don't know whether he made a cross-country trip, do you?
A. Other than he told us he did.
Q. Well, he told you that he planned to?
[fol. 2151] A. Or that he planned to, yes. I happen to know that he did. He phoned me from San Francisco.

Mr. Hughes: I see. I shouldn't have asked it, Judge.
Now, I understand that the charts are not being offered; is that correct?
The Court: That's right.
Mr. McManus: No, sir.
Mr. Hughes: Well, I object to it has hearsay.
The Court: Overruled.

(Government's Exhibit 56 for identification received in evidence.)

Mr. Hughes: Your Honor, I think perhaps the purpose of that offer should be alluded to.
The Court: Yes, I think that might be as well.
Mr. Hughes: On 56.
Mr. McManus: Your Honor, this document, we are certain, shows the glass container manufacturers' interest in promoting beer bottles in competition with metal containers.
[fol. 2152] The Court: All right. Now 57, if that is next.
Mr. McManus: Yes, sir; 57 is next.

57, your Honor, would come, I believe, under our—would be in the same category as 55.

By Mr. McManus:

Q. And can you tell me what distribution was made of that document?

A. This was mailed to all manufacturers of beer bottles.

Mr. McManus: The Government offers G-57.

The Court: Well, it is only two pages. You might as well put it in.

Mr. McManus: The Government offers 57 for the same purpose as G-55.

The Court: Same objection, no doubt?

Mr. Hughes: And this is subject to the same limitations.

The Court: Same ruling.

(Government's Exhibit G-57 received in evidence.)

Q. G-58 has the distribution as indicated, Mr. Cheney?

A. Yes, to the beer bottle manufacturers.

Q. And G-59 is the distribution to the beer bottle manufacturers?

[fol. 2153] A. The same, yes, sir.

Q. G-60, distribution of beer bottle manufacturers?

A. Yes, sir.

Q. Would your answer be the same for 61?

A. Yes, sir.

Mr. McManus: Your Honor, the Government offers G-58, 59, 60 and 61 on the same basis as G-57.

The Court: All right.

Mr. Hughes: Same objections, your Honor.

The Court: Same rulings.

(Government's Exhibit G-58, 59, 60 and 61 received in evidence.)

Q. G-62, a letter of transmittal and two pages of attachment, that was distributed to the soft drink bottle manufacturers?

A. It was.

Mr. McManus: Your Honor, the Government offers G-62.

The Court: Wait a minute. We have 62, 63, 64—are they all in the same general category, Mr. McManus?

Mr. McManus: Excuse me, your Honor.

Yes, your Honor. The Government offers 62, 63 and 64. [fol. 2154] The Court: Well, now, 64 is a bulky document consisting of nine pages; do you want it all in or not?

Mr. McManus: Your Honor, at this time we will offer G-64, the letter of transmittal, and indicating that there are nine pages.

The Court: All right, under the same conditions as we indicated with respect to the other bulky documents.

Mr. McManus: That is correct.

Mr. Hughes: Same objection.

The Court: All right.

Mr. McManus: I just want to make clear we have offered G-62, 63 and 64; is that correct?

The Court: Yes.

Mr. Hughes: Same objection.

The Court: Same objection, same ruling.

(Government's Exhibits G-62, 63 and 64 received in evidence.)

Q. G-65 was distributed to soft drink bottle manufacturers?

A. Yes, sir.

Mr. Hughes: Your Honor, I hate to interrupt, but we are going so fast, I think I am getting lost. Take G-62, for example, which is something in the nature of an industry [fol. 2155] letter, with certain statistical material purporting to be from the Department of Commerce. Mr. McManus, would you explain again the purpose, let's say, of G-62? What is the purpose of that offer?

Mr. McManus: Excuse me, which number again?

Mr. Hughes: G-62. I am taking that as typical. It has some statistical data attached to it. In fact, it is a letter transmitting certain——

Mr. McManus: G-62, we contend, shows the concern of the Glass Container Manufacturers Institute for the intrusion of metal soft drink containers.

Mr. Hughes: That is the purpose of the offer.

Mr. McManus: That is correct.

Mr. Hughes: And that is the limited purpose for which it is taken.

The Court: That is the limited purpose for which it is taken, 62, 63 and 64.

Mr. Hughes: Yes.

The Court: Now 65, I take it?

Mr. McManus: Yes, your Honor.

The Court: Is 65 in the same category and the same considerations as the previous three exhibits, Mr. Cheney?

The Witness: Same as 62, yes, sir.

[fol. 2156] Q. And distributed to soft drink bottle manufacturers?

A. Yes, sir.

The Court: He said they are the same. Are they in all practical purposes the same as the others and handled the same way?

The Witness: Yes.

The Court: All right, that is true of 65, is it, and 66?

The Witness: Yes, sir.

By Mr. McManus:

Q. And 67?

A. Yes, sir.

The Court: And 68?

The Witness: Yes, sir.

The Court: And 69?

The Witness: Yes, sir.

The Court: And 70?

The Witness: Yes, sir.

The Court: All right, now we come to another phase.

Mr. McManus: The Government offers G-65, G-66, G-67, G-68, G-69 and G-70.

Mr. Hughes: Same objection.

[fol. 2157] The Court: For the same limited purpose.

Mr. Hughes: Same objection.

The Court: All right, same objection, same ruling.

(Government's Exhibits G-65 through G-70 received in evidence.)

The Court: Now 71.

Q. Did you prepare this document, Mr. Cheney?
A. I did.
Q. What was the distribution of this document?
A. This was distributed to all Glass Container Manufacturers members of the Institute.

Mr. McManus: Your Honor, the Government offers G-71 for the purpose of showing the Glass Container Manufacturers concern with the intrusion of metal cans for soft drinks.
Mr. Hughes: Same objection.
The Court: Same ruling.

(Government's Exhibit G-71 for identification received in evidence.)

Q. G-72, Mr. Cheney, would you tell me the distribution on that?
A. To all Glass Container Manufacturers members of the Institute.

[fol. 2158] Mr. McManus: The Government offers G-72 for the same purpose as G-71.
Mr. Hughes: Same objection.
The Court: Same ruling.

(Government's Exhibit G-72 for identification received in evidence.)

Q. G-73, with two-page attachment, did it have distribution to the glass container industry?
A. Yes, it did.

Mr. McManus: The Government offers G-73, your Honor.
The Court: Same purpose?
Mr. McManus: Same purpose.
The Court: Same objection?
Mr. Hughes: Yes, sir.
The Court: Same ruling.

(Governments' Exhibit G-73 for identification received in evidence.)

Q. Government's Exhibit 74, Mr. Cheney. Who is John B. Carroll?
A. John B. Carroll is administrative assistant on our staff.

Q. Does he work under you?

A. Yes, part of his time he works under me.

[fol. 2159] Q. And are you familiar with this document?

A. I am.

Q. Did you cause him to prepare that document?

A. Well, this is one of a series that he was already preparing before I came to New York, but it is now under my direction.

Q. And this is a routine document?

A. It is.

Q. Prepared in the regular course of the business of GCMI?

A. In the sense that it is prepared quarterly, the same type of document is prepared quarterly.

Mr. McManus: Your Honor, the Government offers G-74 for the same purpose, the same general purpose as G-73.

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit G-74 for identification received in evidence.)

The Court: Is 75——

The Witness: Same as 74.

The Court: —another issue of the same bulletin?

[fol. 2160] The Witness: It is, sir.

The Court: Issued under the same circumstances and with the same distribution?

The Witness: Yes, sir.

The Court: You offer it, Mr. McManus?

Mr. McManus: The Government offers G-75.

The Court: For the same purpose.

Mr. McManus: Same purpose.

The Court: Same objection, same ruling.

(Government's Exhibit G-75 for identification received in evidence.)

Q. Now, G-76, Mr. Cheney, can you tell me was this prepared under your direction, by your direction?

A. In the sense that I ordered to have the work done by Kenyon & Eckhart.

[fol. 2161] The Court: May I ask you this, Mr. Cheney: This exhibit is entitled "The GCMI-Giant Study." What does the word "Giant" mean? Does it refer to the size of the study or the size of the organization?

The Witness: It could well be the size, but, however, it refers to the Giant food shopping market in the Washington, D.C. area where the field work was made.

By Mr. McManus:

Q. What distribution was made of this study?

A. Exhibit G-76 was distributed to the members of the Market Research and Promotion Committee.

Q. And was that on a library loan basis?

A. It would be but I don't recollect that anyone has asked for it on that basis, but it would be.

The Court: Who were Kenyon & Eckhardt?

The Witness: They are our advertising agents.

The Court: You- regular advertising agents?

The Witness: Yes, sir.

Mr. McManus: Your Honor, the Government offers Exhibit G-76 for the limited purpose of showing competition between glass jars and metal cans.

[fol. 2162] Mr. Hughes: Is this for a limited purpose? When you change the phraseology I am a little troubled. I don't know whether this is something different than what we have been doing.

Is this another situation where we can stipulate the fact of the survey rather than put in 67 pages?

Mr. McManus: I am not too sure how we can actually work this out unless I take a few minutes to count the pages. There is no letter of transmittal to explain this.

Mr. Hughes: I make it 67 pages.

Mr. McManus: However, it is quite obvious, it is entitled "The GCMI Giant Study."

The Court: We will admit the title page at this time.

Mr. Hughes: Your Honor——

The Court: Pages 1, 4 and 5.

Mr. Hughes: Judge, I think your copy might be different from mine.

The Court: Well, let us make it the sections of the report or the survey entitled "Why the study was done and

how the study was done," which are referred to in the table [fol. 2163] of contents, and commencing with pages 1 and 4.

Do you follow me, Mr. Hughes?

Mr. Hughes: Yes, sir, I do, but I assume that is not proof of the fact that this actually was done this way.

The Court: This is still subject to the same limitations and offered for the same limited purposes, is that correct?

Mr. McManus: Yes, sir.

The Court: Again, Mr. McManus, if you find any material in the balance of this exhibit on which you particularly wish to rely, I will hear you on it.

Mr. McManus: Yes, your Honor.

The Court: So that we will consider the offer of 76 to comprise the title page, the first two sections listed in the table of contents, and there will be the same objection and the same ruling, and it will be admitted for the same limited purposes.

(Government's Exhibit 76 for identification received in evidence.)

The Court: Now, Mr. McManus, was there one other witness that you wanted to dispose of this morning?

[fol. 2164] Mr. McManus: No, sir. Mr. Reinhart was the witness.

The Court: He was the witness?

Mr. McManus: Yes, sir.

The Court: Then we will go ahead with Mr. Cheney, if there is anything further for him this morning.

Mr. McManus: G-77 is the next exhibit.

The Court: 77 is another Giant study.

By Mr. McManus:

Q. What was the distribution of that study, Mr. Cheney?

A. This went to all glass container manufacturers.

Mr. McManus: The Government offers G-77 on the same basis as G-76.

The Court: Are you offering all these charts? Why don't you offer the title page, pages 1 and 2?

Mr. McManus: The Government offers G-77, the title page, page 1 and page 2, for the same purposes as G-76 was offered.

Mr. Hughes: Same objection.
The Court: Same ruling.

(Government's Exhibit 77 for identification received in evidence.)

[fol. 2165] By Mr. McManus:

Q. Mr. Cheney, G-78 was prepared by Kenyon & Eckhardt?

A. It was.

Q. And what was the distribution of that?

A. To the best of my recollection, just to the members of the Market Research and Promotion Committee.

The Court: All right, I assume that your offer will be——

Mr. McManus: The Government offers the title page and pages 1, 2, 3 and 4, your Honor.

The Court: All right.

Mr. Hughes: Some of these are Roman and some are Arabic.

Mr. McManus: These are Arabic.

Mr. Hughes: Which are these?

Mr. McManus: The Government offers the title page.

The Court: The table of contents, is that it?

Mr. McManus: The table of contents and pages 1, 2, 3 and 4, for the same purpose.

Mr. Hughes: Same objection.

The Court: Same ruling.

[fol. 2166] (Government's Exhibit 78 for identification received in evidence.)

By Mr. McManus:

Q. Mr. Cheney, what was the distribution of Government's Exhibit G-79?

A. An oral presentation was made to the semi-annual meeting of members and the exhibit itself was made available to all members on a library loan basis.

The Court: You want to put in the letter, the description, the table of contents and the summary?

Mr. McManus: Yes, your Honor. The Government offers G-79 for the same purpose, the title page, the letter

of transmittal, the table of contents, and the description of the survey for the same limited purpose.

The Court: And the summary?

Mr. McManus: And the summary, for the same limited purpose.

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit 79 for identification received in evidence.)

Q. Government's Exhibit G-80, what was the distribution of that document, Mr. Cheney?

A. Same as G-79.

[fol. 2167] Mr. McManus: The Government offers G-80, the title page, the page entitled "Glass Container National Survey 1954 Summary," and bearing copy No. 1, the letter of transmittal, the table of contents, and pages 1, 2 and 3.

The Court: Same objection?

Mr. Hughes: Yes, same objection.

The Court: Same ruling.

(Government's Exhibit 80 for identification received in evidence.)

Q. What was the distribution of Government's Exhibit G-81, Mr. Cheney?

A. Same as G-79.

The Court: That was simply the 1955 edition of G-79, was it?

The Witness: There is some variation but essentially it is the same.

The Court: Essentially so?

The Witness: Essentially so, yes, sir.

Mr. McManus: The Government offers G-81, the title page, the letter of transmittal and the table of contents for the same purpose.

Mr. Hughes: Same objection.

The Court: Same ruling.

[fol. 2168] (Government's Exhibit 81 for identification received in evidence.)

Q. What was the distribution of G-82?

A. The same as G-79.

The Court: That in essence is the 1956 edition of the same survey?

The Witness: Yes, sir. There are considerable variations. We examined different problems and different situations but essentially it is the same.

Mr. McManus: The Government offers G-82, the title page, the letter of transmittal and the table of contents.

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit 82 for identification received in evidence.)

Q. What was the distribution of G-83, Mr. Cheney?

A. Same as G-79.

The Court: Were you the author here or was somebody else?

The Witness: No, in all cases, Mr. Sammis.

Mr. McManus: The Government offers G-83, the title [fol. 2169] page, the letter of transmittal—your Honor, I don't know how we are going to limit this one.

In this instance, your Honor——

The Court: All right, offer it all.

Mr. McManus: I will offer G-83.

Mr. Hughes: Same objection, your Honor.

The Court: Same ruling.

(Government's Exhibit 83 for identification received in evidence.)

The Court: Let the record show that all of these are being offered for the limited purposes previously defined and admitted only for those limited purposes.

Mr. McManus: The Government offers G-84.

Your Honor, I would like to offer the whole document here, too, because I think it will be difficult to break it down.

The Court: All right.

Mr. McManus: For the same purpose.

Mr. Hughes: This was by Mr. Sammis and not by you?

The Witness: That's right.

Mr. Hughes: Same objection.

The Court: Same ruling.

[fol. 2170] (Government's Exhibit 84 for identification received in evidence.)

The Court: Now we are back to the minutes and you have already covered that.

Mr. McManus: That is right.

The Court: What further have we got for this gentleman this morning?

Mr. McManus: We have the letters, the personal letters that were written either by Mr. Cheney or to Mr. Cheney. I think there are 32 of them, 1 to 32.

The Court: 1 to 32?

Mr. McManus: Yes, your Honor, G-1 to 32.

The Court: Have you looked at these, Mr. Hughes?

Mr. Hughes: Yes, sir. I am generally familiar with them. Some are short and some are quite long.

The Court: Is there any generality that applies to them all or not?

Mr. Hughes: What are these offered for?

Mr. McManus: These are offered for the truth of the matter contained therein.

Mr. Hughes: Then I must object.

[fol. 2171] Mr. Handler: They concern statistics, references to surveys, facts and figures.

Mr. Hughes: At least a number of them do.

The Court: Let me ask you this: I notice in the first one it says, "I am enclosing for your information a letter received from the Continental Can Company regarding baby foods."

I do not see a letter from the Continental Can Company here. What was the point, that Obear-Nester got a letter from Continental Can Company?

Mr. McManus: Your Honor, these letters, when all tied together, we believe, will show that Continental Can Company was advertising and had used an advertising campaign——

The Court: I don't think we will start with that now. It is twenty minutes to one and we have 33 letters to go through. I think you might examine these letters and see whether there is any pattern and whether we have to go through this letter by letter, and whether you are in fact seriously offering these for all purposes. We will take this up at our next session.

Mr. McManus: All right, sir. Maybe we can withdraw some of them.

The Court: Yes, try to eliminate any material [fol. 2172] that is not essential to your position.

Mr. McManus: They might be covered by something else.

The Court: All right, gentlemen.

You may step down, Mr. Cheney, thank you. You will, of course, hold yourself subject to call when the trial resumes.

The Witness: Yes, sir.

(Witness excused.)

The Court: Yes, Mr. Johnson.

Mr. Johnson: I would like to make a brief statement which would dispose of this matter.

Your Honor will recall that there was some reference in earlier testimony to litigation between Hartford Empire Company and Hazel-Atlas Glass Company.

The Court: Yes, I am familiar with that.

Mr. Johnson: I would like simply to call your Honor's attention and to note for the record the reports of cases between these two companies, and, with your Honor's permission, I would just give the citations to the court reporter.

The Court: All right, give the citations to the reporter and let me have a copy of them. I think I have read most [fols. 2173-2291] of these and am quite familiar with them, in any event.

"Hartford Empire Co. v. Hazel-Atlas Glass Co., 39 F.2d 111 (W.D. Pa. 1930), reversed, 59 F.2d 399 (3rd Cir. 1932).

"Hartford Empire Co. v. Hazel-Atlas Glass Co., 125 F.2d 976 (3rd Cir. 1941).

"Hartford Empire Co. v. Hazel-Atlas Glass Co., 137 F.2d 764, (3rd Cir. 1943), reversed, 322 U.S. 238 (1944).

"Hazel-Atlas Glass Co., v. Hartford-Empire Co., 322 U.S. 238, rehearing denied, 322 U.S. 772 (1944)."

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Volume II

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 367

UNITED STATES, APPELLANT,

vs.

CONTINENTAL CAN COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED AUGUST 13, 1963
JURISDICTION NOTED OCTOBER 28, 1963

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51—Excerpt of report entitled "Survey on Canned Soft Drinks in Philadelphia" with transmittal letter dated June 17, 1954 from Ford Sammis to Glass Container Manufacturers Institute, Inc.	234	1889

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
GOVERNMENT'S EXHIBITS—Continued		
52—Excerpt of report entitled "An Appraisal of the Success of the One-Way Beer Bottle in the Baltimore Market and a Comparison with the Detroit Market" with transmittal letter dated February 23, 1955 from McKinsey & Company to Glass Container Manufacturers Institute, Inc.	236	1891
53—Excerpt of report entitled "Distribution & Sales of One-Way Beer Bottles in Virginia, October, 1956" with transmittal letter dated December 11, 1956 from Ford Sammis & Company to Glass Container Manufacturers Institute, Inc.	239	1894
54—Excerpt of report entitled "Consumer Survey Among Virginia Beer Drinkers—January 1957" with transmittal letter dated March 1, 1957 from Ford Sammis & Company to Glass Container Manufacturers Institute, Inc.	241	1896
55—Excerpt of report entitled "Distribution & Sales of One-Way Beer Bottles in Virginia—June, 1956 to October, 1957" with transmittal letter dated December 6, 1957 from Ford Sammis & Company to Glass Container Manufacturers Institute, Inc.	243	1898
56—Letter dated October 22, 1958 from R. L. Cheney to Beer Bottle Manufacturers with charts attached	245	1900
57—Letter dated July 7, 1958 from R. L. Cheney to Beer Bottle Manufacturers with chart attached	256	1907
58—Letter dated January 29, 1957 from R. L. Cheney to Beer Bottle Manufacturers with data sheet	258	1909
59—Letter dated March 27, 1957 from R. L. Cheney to Beer Bottle Manufacturers, with data sheet attached	260	1911
60—Letter dated June 3, 1957 from R. L. Cheney to Beer Bottle Manufacturers	262	1913
61—Letter dated August 29, 1957 from R. L. Cheney to Beer Bottle Manufacturers	263	1914
62—Letter dated November 24, 1958 from R. L. Cheney to Soft Drink Bottle Manufacturers with table and charts attached	264	1915
63—Letter dated August 28, 1958 from R. L. Cheney to Soft Drink Bottle Manufacturers with table and charts attached	267	1918

Record from the United States District Court for the Southern District of New York—Continued
Government's Exhibits—Continued Original Print
64—Excerpt of report entitled "A Summary of the GCMI 1958 Continuous National Program Designed to Strengthen the Already Overwhelming Preference for Soft Drinks in Glass Bottles" with transmittal letter dated July 22, 1958 from R. L. Cheney to Soft Drink Bottle Manufacturers 270 1921
65—Letter dated June 2, 1958 from R. L. Cheney to Soft Drink Bottle Manufacturers with table and charts attached 272 1923
66—Letter dated March 12, 1958 from R. L. Cheney to Soft Drink Bottle Manufacturers with table and charts attached 275 1926
67—Letter dated August 13, 1957 from R. L. Cheney to Soft Drink Bottle Manufacturers with table and charts attached 278 1929
68—Letter dated June 6, 1957 from R. L. Cheney to Soft Drink Bottle Manufacturers with table and charts attached 281 1932
69—Letter dated March 1, 1957 from R. L. Cheney to Soft Drink Manufacturers with table and charts attached 284 1935
70—Industry Bulletin #28 dated October 26, 1955, entitled "Soft Drink Can Statistics" from R. L. Cheney with table and charts attached 287 1938
71—Industry Bulletin #19 dated March 10, 1955, entitled "Can Companies Carbonated Beverage Program" from R. L. Cheney 290 1941
72—Industry Bulletin #32 dated March 7, 1956, entitled "Trend to Smaller Sizes" from R. L. Cheney 291 1942
73—Industry Bulletin #38 dated August 21, 1956, entitled "Soft Drink Can Statistics" from R. L. Cheney with table and charts attached 293 1944
74—Memorandum dated February 21, 1958 from John B. Carroll of Glass Container Manufacturers Institute, Inc. to The Industry re Beer Container Trends—Year 1957 with tables attached 296 1947
75—Memorandum dated August 25, 1958 from John B. Carroll of Glass Container Manufacturers Institute, Inc. to The Industry re Beer Container Trends—First Half of 1958 with tables attached 301 1952

[fol. 2292] IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

Transcript of Proceedings—October 3, 4, 5, 6, 10, 11, 13, 14, 17, 18, 19, 20, 24, 28, December 8, 1960

Before: Hon. Frederick P. Bryan, District Judge.

New York, October 3, 1960, 10:30 A.M.

APPEARANCES

Richard B. O'Donnell, Esq., Attorney, Department of Justice, For the Plaintiff; William H. McManus, Esq. and Samuel V. Greenberg, Esq., Attorneys, Department of Justice, of Counsel.

[fols. 2292a-2324] Willkie, Farr, Gallagher, Walton & Fitzgibbon, Esqs., Attorneys for Defendant Continental Can Company, Inc.; Mark F. Hughes, Esq., Helmer R. Johnson, Esq., and Bowie K. Kuhn, Esq., of Counsel.

Covington & Burling, Esqs., Attorneys for American Can Company; H. Thomas Austern, Esq., of Counsel.

[fol. 2325] RICHARD L. CHENEY resumed.

The Court: Mr. Cheney, you may recall that you were previously sworn here.

The Witness: Yes, sir.

The Court: And you will please remember that you are still under oath.

The Witness: Yes, sir.

The Court: Very good.

Mr. McManus: Your Honor, to avoid confusion and to be able to get the documents out that I intend to refer to, for the Court's information they are, with the exception of one document, all in the folder marked 1 to 39.

The Court: All right.

[fol. 2326] Mr. Hughes: Your Honor, we are getting our copies.

The Court: All right. Just hold it a minute, then.

Mr. Hughes: All right, sir.

Mr. McManus: The other additional document will be referred to as No. 419.

I am now referring to documents G-1, 2 and 3. I would like to show it to the witness and ask him if he recognizes those documents.

The Court: Let me ask you this before you go any further.

G-1 and G-2 are letters of transmittal. Are 3 and—what was the other one, 4?

Mr. McManus: Your Honor, 1, 2 and 3 we are going to offer. I will gladly indicate the ones we are going to offer through Mr. Cheney at this time if that will be helpful.

The Court: What is 3? Is 3 enclosed in 1 and 2? Or is that a separate document?

Mr. McManus: My understanding, your Honor, is 3 is Mr. Cheney's reply.

Is that correct?

The Witness: That's correct.

[fol. 2327] The Court: All right. Go ahead.

Direct examination continued.

By Mr. McManus:

Q. Mr. Cheney, directing your attention to Government's Exhibit G-1 from the Obear-Nester Glass Company——

Mr. Hughes: Which one was that, please?

Mr. McManus: Government's Exhibit 1.

Q. —and signed "Joe, President," do you know who "Joe, President" is?

The Court: Did you get this letter from the Obear-Nester Glass Company?

The Witness: I did.

The Court: What is the president's name—Joseph M. Nester?

The Witness: Yes. He has since passed on.

The Court: You got that letter. Did you get the next letter too?

The Witness: I did, sir.

Mr. Hughes: Your Honor, I don't want to confuse this, but in my records that is Exhibit G-2, not G-1.

The Court: They are both signed "Joe." G-1 is signed [fol. 2328] "Joe" and G-2 is signed "Joe," and they are both from the Obear-Nester Glass Company. 1 is March 4, 1954, and the other one is March 24, 1954.

Mr. McManus: These are my notes.

Q. Now, directing your attention to Government's Exhibit G-1, it indicates that there was an enclosure with that document.

A. That's correct.

Q. Are you familiar with the enclosure that came with that document?

A. I can't recall exactly what it was. I know the general nature of it.

Q. Would you look at Government's Exhibit G-419, the last page only. Just the last page here.

A. Yes.

The Court: Is that the letter entitled "Dear Mother"?

Mr. McManus: Yes, sir, dated February 23, 1954.

Q. Do you know if this is the letter, or a copy of this letter, that was attached to Government's Exhibit G-1, Mr. Cheney?

A. It was either that letter or one very similar to it.

[fol. 2329] Q. Going now to Government's Exhibit G-2, which refers again to an enclosure, I refer you to Government's Exhibit 419, next to the last page, which is a letter from May Tarber addressed "Dear Mother," dated March 16, 1954. Is that the letter or a copy of the letter referred to, to your knowledge, in the March 24, 1954, communication of Mr. Nester?

A. It is either the letter or the subject matter is very similar to that.

Q. Going now to Government's Exhibit G-3, from R. L. Cheney to J. M. Nester, dated April 2, 1954, is that your reply to Government's Exhibit G-1 and G-2?

A. It is.

Mr. McManus: Your Honor, the government offers Government's Exhibits G-1, 2 and 3——

The Court: Is that 419?

Mr. Hughes: Yes.

The Court: All right.

Mr. Hughes: Yes.

Mr. McManus: —offers Exhibits G-1, 2 and 3, your Honor, in evidence for the purpose of showing the concern of the glass people with competition from metal cans in the baby food field.

[fol. 2330] Mr. Hughes: Your Honor, just so I can shorten this up, the same objection that I have been making to all these GCMI documents.

The Court: The same ruling. These will not be admitted for the truth of any of the facts contained therein but simply for the purpose of showing what was going on in the exchange of correspondence at that time.

Wait a minute, gentlemen. The clerk calls my attention to the fact that according to his records 419 is not in evidence, but 419A, B and C are in evidence. If we are incorrect in that——

Mr. Hughes: That might be, sir. Can we have a minute?

The Court: Yes. I think, gentlemen, if we once start getting these exhibits confused on the record, we are in a very bad way, indeed.

Mr. Hughes: Yes, I believe so, your Honor. Our record indicates that the clerk is correct, your Honor.

The Court: So 419 is not presently in evidence.

The Clerk: That's right, your Honor.

The Court: We haven't gotten into motherhood yet, the [fol. 2331] motherhood phase of the case.

Mr. McManus: Your Honor, the government offers the letter dated March 16, 1954, from May Tarber to "Dear Mother," and the February 23, 1954, letter from May Tarber to "Dear Mother," which are the last two pages of Government's Exhibit G-19.

The Court: G-419.

Mr. McManus: Excuse me, G-419.

The Court: For identification. You are offering the last?

Mr. McManus: Two pages in evidence as the type of information that was enclosed with G-1 and 2 of the government's exhibit.

Mr. Hughes: The same objection as to relevance, your Honor.

The Court: Overruled. Same ruling.

Now we have got to assign these numbers. May I ask you this: Is it your intention—wait a minute. Are you sure that 419 is actually not in evidence, Mr. Clerk?

The Clerk: Yes, your Honor.

The Court: Then you better restore this identification mark.

The Clerk: I am.

[fol. 2332] The Court: Are you offering 419, apart from these exhibits?

Mr. McManus: No, your Honor, we are not.

The Court: Then let us use No. 419. They will both be considered as one exhibit, 419, the two letters.

Mr. McManus: Those letters are the letters dated March 16, 1954, with the heading of Continental Can Company, Inc., from May Tarber, Food Container Evaluator to Dear Mother, and the letter of February 23, 1954, with the heading Continental Can Company, Inc., from May Tarber, Food Container Evaluator to Dear Mother."

The Court: That will be Exhibit 419.

Mr. Hughes: The two of them together?

The Court: Yes, they will be Exhibit 419. The content is practically identical.

(Government's Exhibit 419 received in evidence.)

Mr. Hughes: Your Honor, I want to be clear again that there is the same limited nature in these rulings as there was in the previous rulings.

The Court: That is all, as I understand it, that the offer was, and the same limitations are placed on it. It is the [fol. 2333] same as my immediately previous ruling.

Mr. McManus: Your Honor, the next exhibit the government will offer is G-14.

The Court: All right. This is your letter, is it, Mr. Cheney, sent to Langselt of the Armstrong Cork?

The Witness: It is, sir.

The Court: Right. Do you want to offer it?

Mr. McManus: We offer it, your Honor, for the same purpose.

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit G-14 for identification received in evidence.)

Mr. McManus: The next exhibit, your Honor, is Government's Exhibit G-16.

The Court: Has Mr. Cheney got this exhibit before him?

Mr. McManus: This is it.

The Court: You better stay up there so we don't have to walk back and forth each time.

Look at 16. Is that a letter from you to Pollock of [fol. 2334] Thatcher Glass?

The Witness: Yes, sir, it is.

The Court: You offer it for the same purpose, Mr. McManus?

Mr. McManus: Yes, we do, your Honor.

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit G-16 for identification received in evidence.)

The Court: I know, Mr. Hughes, if there are any special considerations, you will point them out to me in connection with any of these matters.

Mr. McManus: The next exhibit, your Honor, is Government's Exhibit G-24.

The Court: Is this a letter from you to Heuisler of Maryland Glass?

The Witness: Yes, sir, it is.

The Court: You offer it, Mr. McManus?

Mr. McManus: Yes, your Honor, same purpose.

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit G-24 for identification received in evidence.)

[fol. 2335] The Court: This has to do, I take it, largely with plastics; is that right?

Mr. McManus: Yes, your Honor.

The government now offers G-31 for the same purpose.

The Court: That is a letter from you to William J. Green of Thatcher Glass, Mr. Cheney?

The Witness: Yes, sir, it is.

The Court: Under the date specified, whatever it is?

The Witness: October 21, 1958, yes, sir.

The Court: Yes.

Mr. McManus: The government now offers it, your Honor, for the same purpose.

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit G-31 for identification received in evidence.)

[fol. 2336] Mr. McManus: Your Honor, in so far as documents that we are going to put in through Mr. Cheney are concerned, we are completed with them. However, if you recall, you did allow me to reserve examination of Mr. Cheney about certain documents which were prepared by the defendant and which he identified. I understand that there was some error in the marking of those documents or in the transcript, and to clear the record, I think Mr. Hughes would like to make a statement.

Mr. Hughes: I will, your Honor, in just a moment.

The Court: In the meantime, Mr. Clerk, I will give you these documents back.

Mr. Hughes: Your Honor, at page 2100 of the transcript, there is an indication that a document was marked as Defendants' Exhibit M. That should have been Defendants' Exhibit N.

In addition to that, at page 2102, there is an answer by Mr. Cheney in which he is referring to Exhibit N, and the transcript of the answer reads as follows:

"A. Yes. The ones that are listed on Exhibit N would be the ones that I could not give you an opinion on."

[fol. 2337] It is my understanding that that is incorrect, and that the answer should read:

"A. Yes. The ones that are listed on Exhibit N would be the ones that I could give you an opinion on."

In other words, the negative should not have appeared, because Exhibit N was the list which Mr. Cheney prepared and identified.

Is that not correct, Mr. Cheney?

Mr. McManus: Show them to Mr. Cheney.

Mr. Hughes: I will show Exhibit N to you, and I will show Exhibit O to you, and will you tell me which of these was the list which you prepared?

The Witness: Well, I didn't prepare the list. I gave the answers here.

Mr. Hughes: Well——

The Witness: And N is the one on which I was able to give the answers.

Mr. Hughes: Yes. On which you were able to give estimates with reasonable certainty.

The Witness: That's right.

The Court: Let me have Exhibit N, will you please, Mr. Clerk?

Mr. McManus: The defendant has it, I believe, your Honor.

[fol. 2338] The Clerk: I don't have the original, your Honor.

Mr. McManus: They took the originals back.

The Court: Oh, let me see it.

All right.

Mr. McManus: Your Honor, before I examine Mr. Cheney, I am going to object to this document on the basis that there has been no foundation laid that Mr. Cheney is qualified to give any estimate on the proportion, as he said, proportion of these that go in either type of container.

Mr. Hughes: Your Honor, they are already in evidence. They were admitted.

The Court: I admitted them.

Mr. McManus: I move to strike them.

The Court: Denied. You brought Mr. Cheney here as a fairly competent fellow in this business, and I am going to take it.

Mr. McManus: Your Honor, we don't qualify Mr. Cheney as an expert on how many glass jars pack peanuts and how many don't.

The Court: This all goes to the weight.

Q. Mr. Cheney, directing your attention to Defendants' Exhibit N——

[fol. 2339] The Court: Here is the original. Has somebody got a copy of that report so I can follow what is going on?

Mr. McManus: Would you give Mr. Cheney Exhibit O?

Mr. Hughes: Do we have the original of Exhibit O?

The Court: Just so I am entirely clear in following this,

as I recall, Mr. Cheney was asked if he could express or make certain estimates as to the percentage that was packed in glass and in cans, and it was this long list of various substances that he checked over, the substances or products on which he thought he could make a reasonable estimate and said he could not as to the others; is that correct?

Mr. Hughes: He said that he could make an estimate with reasonable certainty.

The Court: Yes.

Mr. Hughes: As to those that appear on N, N being a selection of a larger group that appeared on O.

The Court: All right.

Q. If you would, Mr. Cheney, to make it clear, as I understand it, Defendants' Exhibit O was prepared by the defendant; is that correct?

[fol. 2340] A. Or at least it was shown to me by the defendants.

Q. And by the defendants, who showed it to you?

A. Mr. Hughes.

Q. Was anyone else present?

A. Yes. I think Mr. Kuhn and Professor Handler.

Q. And about when was this?

A. This was a few days before my last appearance here.

Q. And you had had prior conferences with the defendants on this matter?

A. Not on this matter; no, sir.

Q. Oh, on other matters?

A. On other matters; yes, sir.

Q. And so you were shown Government's Exhibit O just a few days before you intended to testify here?

A. That's correct; yes, sir.

The Court: I think this is Defendants' Exhibit O.

Mr. McManus: Excuse me. Defendants' Exhibit O.

Q. And you took that list, and you selected from that list, while you were seated, talking to them, the ones that you thought you could make an estimate on?

A. Yes.

Q. I mean, you didn't take this back to your office and [fol. 2341] consult any notes or any past recollection? They just asked you, could you make an estimate on ammonia, and you said, "Yes, I could make an estimate on ammonia"?

A. That's correct.

Q. And this language, directing your attention now to Government's Exhibit N——

Mr. McManus: Excuse me. I will correct that.——

Q. And this language, directing your attention now to Defendants' Exhibit N, where it says "All or substantially all ammonia is packed in glass", is that your language or is that the defendants' language?

A. That's my language.

Q. That is your language. Now, could you tell me this: when you say "all", you mean that no ammonia is packed in metal cans?

A. Well, when I say "all" or "substantially all", I mean either none or a small quantity relative to in glass.

Q. When it says "all", it means all ammonia is packed in glass?

A. If I had said all, that would have been what I meant.

[fol. 2342] Q. Didn't you say all, Mr. Cheney?

A. No. I said "all" or "substantially all".

Q. Well, it is either one or the other, Mr. Cheney? It is either all or substantially all?

A. That's correct.

Q. So if there is one can of ammonia packed in cans, that would not be correct, would it?

A. No. It would be substantially all.

Q. And if I asked you that question about any of these others which say "all" or "substantially all", your answer would be the same?

A. Yes, sir.

Q. As I understand it——

The Court: Let me ask you this, Mr. Cheney: When you say "substantially all", what proportion would you say would be excluded from the word "substantially" or "substantially all"?

The Witness: I don't understand your question, sir.

The Court: Well, you say substantially all of something —let us take this record. Let us say that substantially all of this record was transcribed by one court reporter. What proportion of the record would you say was so transcribed?

[fol. 2343] The Witness: 95 per cent or more.

The Court: 95 per cent or more?
The Witness: Yes, sir.
The Court: All right.

Q. All right. Now, going back to ammonia, Mr. Cheney, could you tell me, in 1959 or 1956 or for any year since 1955 the amount of ammonia that was packed in glass containers?

A. No, sir; I could not.

Q. Could you tell me the amount, if any, that was packed in metal containers?

A. No, sir; I could not.

Q. Could you tell me how much ammonia was packed for household use?

A. No, sir.

Q. Suppose I went to any of these other items on page 1 of Exhibit N. Would you look at it, and would you tell me the quantity that was packed in metal containers in units or in dollars or any significant figure.

A. Not without referring to records in my office.

Q. And you did not do that when you made up this list; is that correct?

A. That's correct.

[fol. 2344] Q. Now, going now to Exhibit O, on Defendants' Exhibit O there happens to be a product list as beets, which to my knowledge does not appear on Defendants' Exhibit N; is that correct?

A. That's correct. I don't have a copy of O here, but I recall it was on Exhibit O.

Q. This is a copy of Exhibit O. You might take a look at it.

A. Yes. It appears on Exhibit O.

Q. Are beets packed in metal containers?

A. Yes, sir; they are.

Q. Are they packed in glass containers?

A. Yes, sir; they are.

Q. How many beets, to your knowledge—how many beets were packed in metal containers last year?

A. I don't——

The Court: How many beets?
Mr. McManus: Yes, sir. In——

The Court: You don't mean, how many beets?

Mr. McManus: Excuse me. I withdraw that.

Q. How many metal containers were used for the packaging of beets?

A. I don't know that.

Q. And how many glass containers were used for the [fol. 2345] packaging of beets?

A. I don't know that.

Q. Do you know how many beets were packaged last year in either metal containers or glass containers?

A. I don't know that.

Q. In other words, you know no more about how many beets were packaged than you know about how many glass containers were used for ammonia; is that correct?

A. That's correct.

Q. And if you would examine Defendants' Exhibit N, which I understand you had—I don't like to be repetitious. Could you look at that and tell me if you know how many metal containers were used to package any of those products?

A. In what year?

Q. Well, in the year that you refer to in this exhibit, whichever year that is. I understand that is current.

A. That was current. I have in mind an estimate of about 450 million cans used for soft drinks in 1959, and an estimate that this total may reach 800 million—700 million—excuse me—in 1960. In none of the other cases do I carry in mind the volume.

[fol. 2346] Q. Could you tell me, referring again to Defendants' Exhibit N, the number of glass containers that were used to package any of these products?

A. In the case of the soft drinks, the estimates of American bottlers of carbonated beverages were 35 billion bottles of soft drinks in 1959, and again, that is the only item in which I would carry in mind an estimate of the volume.

Q. And this is based on the American bottlers. This is not of your own knowledge. This is from the American Bottlers Association; is that correct?

A. That's correct.

The Court: Are those public figures?

The Witness: They are, sir?

Q. Is that true of American Can? Did American Bottlers give you those?

A. No. That came from the American Commerce report of tonnages of steel used for various types of cans, including soft drink cans.

Q. So that of all the products listed on Defendant's Exhibit N, the only one that you can recall in which you know the quantity of metal cans or glass containers, is in regard to soft drinks; is that correct?

A. That's correct; yes, sir.

[fol. 2347] Q. If I asked you the number of plastic containers that were used for any of these products, what would your answer be there?

A. I would not have such a figure in mind.

Q. Going over to Defendants' Exhibit O, a copy of which I hand you, could you tell me if there are any products on that list in which you know how many glass containers were used to package any of those products?

A. Other than soft drinks, no.

Q. Would you know how many metal containers were used to package any of those products?

A. No, sir; I would not.

Q. And would you know how many plastic containers were used to package any of those products?

A. No, sir; I would not.

Q. Directing your attention now, again, to Defendants' Exhibit N, the heading is "Ammonia." What are the principal companies packaging ammonia in metal cans or glass containers today?

A. I do not know that.

Q. You don't know the names of any of the companies?

A. I know one: Parsons.

[fol. 2348] Q. And does Parsons package product in metal cans?

A. In glass.

Q. In glass only?

A. To my——

Q. Are you sure of that?

A. No. I'm not sure of that. I know they package in glass. That's what I——

Q. You don't know whether they package in cans or not, do you?

A. No; I don't.

Q. And they are one of the principal companies; is that correct?

A. That's correct.

Q. Are there any other companies that package ammonia in metal cans, to your knowledge?

A. I don't know, sir.

The Court: He didn't say Parsons packaged in metal cans.

Mr. McManus: He said they package it in glass.

The Court: He doesn't know whether Parsons packages it in metal cans.

Q. So if Parsons packages it in metal cans, the classification of "all" would not be correct, would it?

Mr. Hughes: I object to that, your Honor.

[fol. 2349] The Court: All right. Objection sustained.

Q. If you do not know the quantity of ammonia that was packaged in glass containers or metal cans or plastic containers, and you don't know any of the companies with the exception of Parsons that packages this product, what do you base your estimate on that all or substantially all is packaged in glass containers?

A. In our continuing review of trade papers in these fields, and any knowledge about new packages or changes in packaging that go through my department and over my desk, I have—if there had been any substantial amount of packaging of ammonia in metal cans, it would surely—in my opinion it would surely have come to my attention.

Q. But of course it may or may not have come across your desk; is that correct?

A. That's correct.

Q. I take it in compiling this list, being as you did it right in the lawyer's office, you made no attempt to contact your office to verify this list, N, Defendants' Exhibit N?

A. I made no such effort.

Q. You made no effort to contact any packers?

A. That's correct.

[fol. 2350] Q. You made no efforts to examine any stores that might sell any of the products?

A. That's correct.

The Court: What were you doing? You were drawing on your best recollection?

The Witness: That's correct. Yes, sir.

Mr. McManus: Your Honor, the Government moves to strike Defendants' Exhibit N. I mean, I think it is entirely clear that Mr. Cheney is not qualified to make these estimates except as an ordinary person who might walk around the street and read the papers and walk in or out of the stores, and if you accept it, it would only be entitled to the same weight as any normal individual might make from just his normal purchases in or out of a store.

The Court: No. Your motion is denied.

Mr. McManus: That is all we have of Mr. Cheney.

Cross-examination.

By Mr. Hughes:

Q. Mr. Cheney, it is part of your job with GCMI, is it not, to try to keep yourself as well informed as you can on the kinds of products that move in particular types of containers; isn't that right?

A. That's correct.

[fol. 2351] Q. And when you prepared Exhibit N in evidence, were you drawing on the sum total of your knowledge and experience in bringing that to bear in estimating the items that are on that list?

A. I was; yes, sir.

Q. And do you say that those estimates, that you can make those estimates based upon your knowledge and experience with reasonable certainty?

A. I believe so; yes, sir.

The Court: Yes.

Mr. Hughes: I have some——

The Court: I thought you had finished your examination.

Mr. Hughes: No, sir.

The Court: Go right ahead.

Mr. Hughes: I have a considerable number of other things to clarify.

The Court: You go right ahead. I was just pleasantly surprised at the brevity. That is all.

Q. Mr. Cheney, would you say that there was anybody in the world who could tell his Honor the specific amount of beets that were packed in glass in the year 1959?

A. I doubt if anybody carries those figures in mind.

[fol. 2352] Q. Referring to Exhibit N—and Exhibit N is the list where you gave the estimates with reasonable certainty; you recall that—you have that in front of you.

A. I have that in front of me.

Q. Would you say, Mr. Cheney, that in the food items you were not considering frozen foods, fresh foods or dehydrated foods except where the list indicates that?

A. That's correct; yes.

Q. Mr. Cheney, on your direct examination, you referred to a Committee on Standards and Finishes; do you remember that?

A. Standards for Finishes.

Q. Standards for Finishes. Will you tell his Honor what the purpose and function of that committee is?

A. The——

The Court: That was a committee of the glass container manufacturers.

The Witness: The Glass Container Manufacturers Institute.

Mr. Hughes: The Institute, yes.

A. First, the finish of a container is that portion of the container which the closure attaches or fits. The purpose of the Committee on Standards for Finishes is to develop [fol. 2353] recommended standards for finishes to accommodate the various types of closures in order to give the closure manufacturer and the glass container manufacturer a standard to work to.

The glass container manufacturer, when specified to do so by his customer, would furnish a container with a certain GCMI numbered finish. Then, if the customer orders caps to fit that container, the closure manufacturer would have this standard on the blueprint and could manufacture his caps so as to give a satisfactory closure with that finish, knowing that that would be found on the containers.

Q. So in those instances where the closure manufacturers choose to make it available to themselves, they use

the specifications which this committee has developed for these finishes; is that correct?

A. That's correct.

Q. Does this Committee on Standards for Finishes have among its membership representatives of both the glass companies and the companies who manufacture closures?

A. Yes, sir; it does.

Q. And has that been true through the years?

A. Yes, to the best of my knowledge, since the committee started.

[fol. 2354] Q. And are these specifications for standard finishes available to non-numbers of the GCMI?

A. Yes; they are.

Q. So that glass container manufacturers who are not members can obtain these standard specifications; is that correct?

A. That's correct.

Q. And is that also true of closure manufacturers who are not members of the GCMI?

A. Yes, sir; it is.

Q. And do I understand that the purpose of this work, the ultimate purpose is to have standard specifications so that you get a good and effective seal between the container and the closure?

A. Yes. Recommended standards for that purpose.

Q. Would you say that if your specifications are followed both by the glass container manufacturer and the closure manufacturer, you do get an effective and a good seal?

A. Yes. Our specifications do not go to the caps. They go only to the glass.

Q. My question was, if the glass container manufacturer follows them and the closure manufacturer follows them, you will get an effective and a good seal; is that right?

[fol. 2355] A. Yes, sir.

Q. Would you say that standard specifications for finishes have been developed for substantially all glass containers except in the cases where there might be a new style or an experimental style of glass containers?

A. Yes. That's correct.

Q. And is this arrangement within GCMI a purely voluntary one as to developing these specifications and making use of them?

A. That—it is; yes, sir.

Q. And in practice, would you say that everyone does make use of these specifications, as far as you know?

A. As far as I know, they do; yes, sir.

Q. And would you say that the work of this committee has been effective in the purpose of developing specifications that make for a good seal between the glass container and the closure?

A. Yes, sir. We think it has been very effective.

Q. Does Glass Container Manufacturers Institute make estimates of the total glass container packages going to market each year?

A. Yes; we do.

[fol. 2356] Q. And I am talking about filled glass containers that find their way into the market place.

A. Yes.

Q. You make estimates of what that total is; is that correct?

A. That's correct.

Q. And in making that estimate, you have to take into account both the returnable bottle and the non-returnable bottle; is that correct?

A. That's correct.

Q. That being so, will you tell his Honor how you go about making these annual estimates of the number of bottles that actually go to market in a given year?

A. We take——

Q. Glass containers.

A. Glass containers. Yes. We take totals from the Department of Commerce statistics for all glass containers except those for soft drinks, beer and milk, because part of each of those three categories is returnable. Then, to that we add all other glass containers——

The Court: Are those figures glass containers manufactured or glass containers sold?

[fol. 2357] The Witness: Shipped.

The Court: Shipped?

The Witness: Yes, sir; and we have to assume that they are used in the year shipped.

The Court: Yes.

The Witness: Which isn't precisely true, of course.

The Court: All right.

A. (Continuing) Then to that we add the number of crowns from Department of Commerce figures used to seal soft drink bottles, the number of crowns according to the Department of Commerce figures used to seal beer bottles, and the number of closures according to Department of Commerce figures used to seal milk bottles, and adding those to the total number of the other glass containers we get the number of glass packages that went to market in that year, assuming that those——

The Court: In other words, dealing in all of the areas where you've got returnable bottles, you go on the closure count rather than the bottle count?

The Witness: That's right; yes, sir.

Q. And pursuing that method, you arrive at an estimate of the total glass packaging going to market in any one year; is that right?

[fol. 2358] A. That's correct; yes, sir.

Q. And do you in your work consider that this is the meaningful way of determining the size of the annual glass container usage?

A. Yes. That's the most accurate way I know of.

Q. And did you at my request prepare from your records an estimate of the total glass packages going to market in the years 1954 to 1959?

Mr. McManus: Your Honor, I am going to object to this. To my knowledge, this has never been shown to the Government. I thought there was a fair exchange of documents here, and we have had no chance to look at any of this. We don't even have a copy now.

The Court: You will have a chance right now, because we are going to lunch, and a copy of the documents will be given to the Government over the lunch hour to look at it. We will return here at ten minutes after 2.

Mr. McManus: May these be marked?

The Court: Yes.

(Marked Defendants' Exhibit D-356 for identification.)

(A luncheon recess was taken to 2:10 P.M.)

[fol. 2359] AFTERNOON SESSION

2:10 P.M.

The Court: Mr. Cheney, would you resume the stand, please.

RICHARD L. CHENEY resumed.

Cross-examination continued.

By Mr. Hughes:

Q. Mr. Cheney, as we recessed for lunch, I was asking you whether Defendants' Exhibit Q for identification was a compilation which you made at my request of your estimates—when I say "you"; I mean the GCMI estimates of total glass packages going to market in the years 1954 through 1959. Did you make that list at my request?

A. Yes, sir; it is.

Q. And when did you make it for me?

A. On Friday.

Q. And is the material indicated in this list taken from your records?

A. It is.

Q. And these are the figures which the GCMI estimates of total glass packages going to market in the years 1954 through 1959; is that correct?

A. That is correct.

[fol. 2360] Mr. Hughes: I offer it in evidence.

Mr. McManus: I have a few questions I would like to ask about it, but if Mr. Hughes would like to continue his examination, I will ask them at the end of it.

The Court: You might just as well ask about it now, unless it unduly interrupts Mr. Hughes.

Mr. Hughes: No, sir. That is perfectly all right.

The Court: All right.

By Mr. McManus:

Q. Is this figure, 73.1 billion based in part at least on your GCMI statistical data?

A. It is based on Department of Commerce statistical data.

Q. Is any of it based on your GCMI data?

A. No, sir.

Q. None of this is based on the data you collected from your members?

A. No, sir.

Q. And, as I understand it, what you have done here is that in the line of beer you have estimated the number of trips a beer bottle will take; is that correct?

[fol. 2361] A. No, sir. We, in the case of beer, soft drinks and milk, we rely on the Department of Commerce figures as to closures shipped in that year.

Q. Or crowns?

A. Crowns, yes.

Q. So that would take into account the re-use feature of the returnable bottles; is that correct?

A. That's correct; yes, sir.

Q. And this would be concerned with the brewer, for example, re-using his bottle; is that correct?

A. Yes, sir.

Q. This would not be a new sale by a glass container manufacturer to a brewer, it would not reflect that?

A. Not as it applies to the returnable bottles; no, sir.

Q. How about in regard to the non-returnable bottles? How do you take care of that factor in this chart?

A. Well, in products other than those where a returnable container is used, we use the Department of Commerce statistics as to the shipments of those containers. This would be food containers and wine, liquor and so forth. Then, when we come to the three categories, we set aside [fol. 2362] any information as to glass container shipments and count the closures, crowns in the case of beer and soft drinks, and milk bottle closures in the case of milk bottles, as representing the number of packages that went to market.

Q. I see.

A. So that that automatically includes both no-deposit and deposit beer bottles and soft drink bottles.

Q. So that there was a number of these 74.5 billion in 1959 which were not shipped by the glass container manufacturer?

A. That's correct.

Q. Do you know what proportion of this group was shipped by the glass container manufacturer?

A. Yes. Our shipments in 1959 were 21 billion units.

Q. And the rest of this would be represented by re-use; it would be represented by re-use, I take it?

A. That's correct.

The Court: Just let me inquire here. Was the total 79 billion? Is that right?

The Witness: 75.9 billion.

The Court: 75.9 billion?

[fol. 2363] The Witness: Yes, sir.

The Court: And of that 75.9 billion, only 25 billion represent shipments by glass manufacturers, and the others are refillables?

The Witness: Only 21 billion represent shipments of new glass containers. Now, out of that 21 billion, some are returnable, being used for the first time, and some of which will be used many times.

Q. But if I take the 21 billion from the 75 billion, I actually get 54 billion?

A. Yes.

Q. The great proportion of that group the glass container manufacturer has no control over, is not selling and has really no concern with it other than to replace them when they wear out; is that correct?

A. The latter part of your statement is correct.

Q. He is not selling the great majority of that 54 billion; is that correct?

A. Not in that particular year, no. At one time or another he sold them.

Q. These are just continually being re-used and not in the market?

A. That's correct.

Mr. McManus: That is all I have on the chart.

[fol. 2364] The Court: All right. You just offered this?

Mr. Hughes: Yes; I did.

The Court: Any objection to that?

Mr. McManus: No, your Honor.

The Court: It may be received.

Mr. Clerk, we will continue at this point in using the letter system of marking defendants' exhibits until we come to the exhibits in the defendants' case in chief.

Mr. Hughes: Very well, your Honor.

The Court: I think that would be better, and then we get a clear line of demarcation between your exhibits introduced during the course of the Government's case and your so-called exhibits in chief.

Mr. Hughes: All right. Then that——

The Court: If that has been marked——

The Clerk: It has, your Honor. It was marked before we recessed for lunch.

Mr. Hughes: It is the only one, your Honor.

The Court: It is the only one.

Mr. Hughes: It is the only one since we had this understanding in chambers the other day, so it is quite easy for——

[fol. 2364a] The Court: Is that going to throw anybody's schedule off? It seems to me a fairly sensible way of doing it.

Mr. Hughes: No. It will not disturb any schedule at all.

The Court: Very good. Then this will take the next letter in the line of defendants' exhibits.

(Defendants' Exhibit Q received in evidence.)

[fol. 2365] Richard L. Cheney resumed.

Cross-examination continued.

By Mr. Hughes:

Q. Mr. Cheney, can you or your organization estimate the number of trips that a returnable beer bottle makes?

A. Yes. We do that each year.

Q. What is your current estimate of the number of trips that a returnable beer bottle makes?

A. A beer bottle makes 22 trips, is our current figure as I recollect it.

The Court: Is that 22 trips during the course of a year?

The Witness: No, sir, in the course of the life of the bottle.

The Court: In the course of the life of the bottle.

The Witness: Yes, sir.

Q. Can you estimate the number of trips of a returnable soft drink bottle?

A. About 25 trips.

Q. During the life of the bottle?

A. During the life of the bottle.

Q. Can you tell us how you make those estimates?

[fol. 2366] A. Yes. These are estimates based on a seven or eight-year period, and we do that because we have no way of knowing the inventory of empty bottles on hand at the beginning of any year, or in the float, as they call them. We take over the period of seven or eight years the figures, in the case of beer, the gallonage figures, from the alcoholic tax published figures, and we convert that into numbers of 12-ounce-size containers. That is, you divide the gallonage in ounces by 12 ounces and get the number of 12-ounce containers it would take to hold that gallonage.

We take the short tons of steel given in the Department of Commerce statistics on canned production for beer cans, and through conversion factors convert that into a figure representing the number of 12-ounce cans that would be made from such tonnage.

We then take the number of no-deposit beer bottles as reported by the Department of Commerce figures and assume that they are all 12-ounce capacity. Then with the canned figure and the one-way bottle figure deducted from the total gallonage, we assume the rest of the beer went into returnable bottles, and we get from that an estimate of the number of bottles of beer that went to market in returnable [fol. 2367] bottles during that period of years. Then, dividing that figure by the number of returnable bottles which we shipped to the brewers over that period of years, we find the average number that is a fair estimate of an average number of trips each bottle made.

Q. Mr. Cheney, in your opinion, are there adequate sup-

plies of sand, soda ash and lime available in the United States as a whole which are suitable for the manufacture of glass containers?

A. Yes, sir.

Q. That would be true east of the Rockies?

A. Yes, sir.

Q. Would that be true west of the Rockies?

A. Yes, sir, it would.

Q. Would that be true in the State of California?

A. Yes, sir, it would.

Q. In your opinion, is there an adequate supply of labor in the United States as a whole for the manufacture of glass containers?

A. Yes, in my opinion there is.

Q. And would that be true east of the Rockies?

A. Yes, sir.

[fol. 2368] Q. West of the Rockies?

A. Yes, sir.

Q. And in the State of California?

A. Yes, sir.

Q. Mr. Cheney, since World War II, has Oil City Glass Company entered the business of manufacturing and marketing glass containers?

A. Yes, sir, it has.

Q. Would that have been around 1952?

A. I believe so.

Q. Since World War II, has Castle-Hansen Glass Company entered the business of manufacturing and marketing glass containers?

A. Yes, sir.

Q. When or about when would you say they entered the field?

A. I would say probably 1958.

Q. Did they take certain inactive facilities over, renovate them and put them into operation?

A. Yes, sir, they did.

Q. Since World War II, did the Metro Glass Company enter the business of manufacturing and marketing glass containers?

A. Yes, sir, they did.

[fol. 2369] Q. When or approximately when did they enter this business?

A. I would—to the best of my recollection, I would say about 1952.

Q. Would you want to correct that to 1947?

A. That could be.

Q. In any case, did Metro Glass become part of National Dairy Products Corporation?

A. Yes, it did.

Q. And about when was that?

A. I would say about 1957.

Q. And was that the first time that National Dairy Products Company entered the business of maunfacturing glass containers?

A. Yes, sir, it was.

Q. Since World War II, did Warner-Lambert Pharmaceutical Company enter this business?

A. Yes, sir.

Q. And by "this business," I mean manufacturing and marketing glass containers.

A. I understand that.

Q. About when did they enter this business?

A. I would say 1956.

Q. Since World War II, did Arrowhead & Puritas [fol. 2370] Waters, Inc. enter this business?

A. Yes, they did.

Q. Would that have been around 1956?

A. I think so, yes.

Q. Did they take over inactive facilities, renovate them, and go into operation?

A. They did.

Q. And did Arkansas Glass Container Corporation enter this business since World War II?

A. Yes, sir.

Q. Would that have been around 1957?

A. Yes, sir.

Q. Did Underwood Glass Company enter this business since World War II?

A. Yes, it did.

Q. Would that have been around 1956?

A. Yes, sir.

Q. Did Star City Glass Company enter this business since World War II?

A. Yes, sir.

Q. Would that have been around 1957?

A. I should think so, yes, sir.

Q. Is Star City Glass Company presently a subsidiary of National Bottle Company, do you know?

[fol. 2371] A. Yes, it is.

Q. Did United Can & Glass Company enter this business since World War II?

A. Yes, it did.

Q. Was that approximately 1949?

A. Yes, sir.

Q. Did the Gallo Wine Company, through the E. J. Gallo Winery, Inc., enter this business of manufacturing glass containers in or about 1958?

A. Yes. I believe the name of the company is the E & J Gallo Wine Company.

Q. Did a company by the name of Glass Products, Inc. of Minneapolis, Minnesota enter this business about 1958?

A. Yes, sir.

Mr. Hughes: That is all I have, your Honor.

Redirect examination.

By Mr. McManus:

Q. Mr. Cheney, you indicated that you have a committee that attempts to set a standard finish on a glass so that it will properly fit a closure; is that correct?

A. Not exactly. We——

Q. Would you word it then?

[fol. 2372] A. Yes. This committee develops recommended standards for finishes so that—and it is to those standards that the closure manufacturers work.

Q. You don't have standards for all closures; is that correct?

A. We don't have standards for any closures. We have standards for practically all finishes, that is glass finishes.

Q. Are there a number that are not standard finishes that are used in glass containers?

A. A small number, yes.

Q. The finishes have tolerances; that is, you can't get a finish right on the head; is that correct?

A. That's right.

Q. So you have a tolerance from the minimum finish to the maximum that a cap manufacturer is supposed to meet; is that correct?

A. Of certain dimensions, yes.

Q. Aren't there instances, if a cap is made at the maximum tolerance and the glass finish is at a minimum, that in many instances these will not perfectly mate?

A. I don't know that I can say that.

Q. You just don't know?

[fol. 2373] A. No.

Q. You have gone over certain companies that have gone into business since 19—well, since World War II, I believe.

A. Yes.

Q. How did Warner-Lambert enter into the manufacture of glass containers?

A. Warner-Lambert purchased Emerson Drug, which owned Maryland Glass and Gulfport Glass Companies.

Q. So they entered through a merger?

A. Yes, sir.

Q. How did Oil City enter into the manufacture of glass containers. The Oil City Glass Corporation was a new organization which purchased a plant from the Knox Glass Company.

Q. They got one of Knox's plants?

A. That is correct.

Q. They did not build their own new plant?

A. No.

Q. And Castle-Hansen, how did it enter the manufacture of glass containers?

A. That was a new company which purchased and/or leased—that is, partly purchased, partly leased—a property which had been part of the Reid Glass Company, which [fol. 2374] had gone into bankruptcy.

Q. And Reid Glass Company went into bankruptcy since World War II?

A. Yes, and were closed down when Castle-Hansen entered.

Q. Arkansas Glass Company, how did that come into existence?

A. That came into existence as a new corporation. I think they virtually built a new glass-container plant, although over the years I recollect there had been some

facilities in Arkansas. I don't know whether they took over any existing—they did not take over an existing glass-container-manufacturing plant, to the best of my knowledge.

Q. But there was a plant already there, even though it wasn't in operation; is that correct?

A. I think that is possible.

Q. How did Underwood Glass Company get into business?

A. That is a new company and they built their facilities from the ground up.

Q. Where did they build those?

A. In New Orleans.

Q. Star City Glass Company, how did they get into the [fol. 2375] business?

A. They built their own manufacturing facilities new, and then they acquired—in the course of bankruptcy proceedings of Gaynor Glass Works, they acquired the Gaynor Glass Works which I think never closed down; I think they continued.

Q. Star City acquired Gaynor Glass Works?

A. Yes.

Q. United Can & Glass, when did they come into business?

A. The predecessor company was known as Atlas Diesel Engine Company, which was purchased by Hunt Foods. They sold the diesel engine business, took the plant facilities and built a can-manufacturing plant and a new glass-container-manufacturing plant.

Q. Have they acquired any other glass container manufacturer?

A. Hunt Foods have. They acquired the assets of Glass Containers, Inc., and set up a subsidiary known as Glass Containers Corporation, and now the glass facilities that were part of United Can & Glass are part of Glass Containers Corporation.

Q. Within the last year or two, have there been any new entries into the glass container business?

[fol. 2376] A. Well, if you would include 1958, there would be the Minneapolis.

Q. Since 1958?

A. Since 1958—let's see, there is one that may—I don't

believe it is in operation as yet, the American Wheaton in Terre Haute, Indiana.

Q. American what?

A. American Can Company is where the word "American" comes from. The name of the company is American Wheaton Company.

Q. What are the companies involved in the setup of that company?

A. American Can Company and Wheaton—it is either Wheaton Glass—yes, it is Wheaton Glass Company.

Mr. McManus: That is all I have of Mr. Cheney.

Recross-examination.

By Mr. Hughes:

Q. Mr. Cheney, did you want to make a correction in Exhibit N with reference to the item chili sauce?

A. Yes.

Q. Would you tell his Honor what correction you wish to make?

[fols. 2377-2388] A. On chili sauce, my answer would be correct if, after chili sauce, it would say "(consumer sizes)." My answer had to do with the retailer consumer sizes only.

Q. And it was only in those sizes that you were making your estimate?

A. Yes.

Mr. Hughes: That is all.

Mr. McManus: That is all, your Honor.

The Court: All right. You may step down, Mr. Cheney.

Before Mr. Cheney goes, I take it that the exhibits you referred to this morning, that these are all the exhibits you want to put in through Mr. Cheney?

Mr. McManus: That is correct, your Honor.

(Witness excused.)

[fol. 2389] LAURENCE E. DANBOM, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, Mr. Danbom?

A. Washington, D.C.

Q. And you are employed by the Federal Bureau of Investigation?

A. Yes, sir.

Q. In what field office?

A. Washington field office.

[fol. 2390] Q. How long have you been with the FBI, sir?

A. Nine years and ten months.

Q. Were you instructed by the Bureau to conduct an investigation for the Antitrust Division?

A. Yes, sir.

Q. When were you so instructed?

A. Approximately August 23rd.

Q. And what, in substance, were your instructions, sir?

A. I was instructed to—

Mr. Hughes: May we have it clear whether these instructions were oral or in writing, or both?

The Court: I think that is sound.

Q. What, in substance, were your written instructions, sir?

A. To report to the Department of Justice for an assignment.

Q. Did you so report?

A. Yes, sir.

Q. Would you describe what type investigation you conducted?

A. I was instructed to visit a number of grocery stores in the Washington, D.C., area, and to purchase food items from markets, food markets, that were used—packaged in [fol. 2391] the same—not in the same container, but the same product packaged in either glass or cans. Then, also, to visit drug stores and purchase products that were packaged in liquid—in plastic, glass and cans, and to purchase

products at a department store, household items, that were packaged in plastic and cans and glass.

Q. Did you purchase such products, sir?

A. Yes, sir.

Q. And are these products that you referred to in the courtroom here today?

A. Yes, sir.

Q. Where are they located?

A. On the table (indicating).

Mr. Greenberg: Will the record show that the witness has pointed to Government's counsel table.

The Court: Yes.

Q. Do they each have an identifying label on them?

A. Yes, sir.

Q. For what purpose?

A. So that I could identify them, and identify the place I purchased them, and the date, and my initials on each item.

Mr. Greenberg: Would you please mark this Govern- [fol. 2392] ment's Exhibit 949 for identification.

(Document referred to was marked Government Exhibit 949 for identification.)

The Court: Is that the same as——

Mr. Greenberg: That is the same as the Court's exhibit, your Honor.

The Court: The same as Court's Exhibit 2?

Mr. Greenberg: Yes, except that we have indicated for your Honor's benefit the G numbers which relate to each of the physical exhibits which we are introducing.

Mr. Hughes: That doesn't embrace the facing sheet, does it, of Court's Exhibit 2?

Mr. Greenberg: No, it does not.

Q. Now, Mr. Danbom, I show you Government's Exhibit 949 for identification, and ask you to tell us what it is.

A. This is the list of items that I purchased from the various stores in Washington, D.C., and the suburbs.

Mr. Greenberg: I offer G-949 into evidence, your Honor.

Mr. Hughes: I object to it as incompetent and irrelevant and immaterial. There has been no proper foundation laid

[fol. 2393] for its acceptance, and certainly has no probative value.

The Court: I will let you examine on it, Mr. Hughes.

Mr. Hughes: Your Honor, may I say preliminarily that I will do what I can by way of cross-examination. I have tried in good faith to prepare myself——

The Court: Mr. Hughes, if you do not complete your cross-examination this afternoon we will give you overnight, and we will have Mr. Danbom come back, and you can cross-examine him further tomorrow.

Mr. Hughes: There may be situations arise here that may require us to do some further investigation.

The Court: I am aware of that, Mr. Hughes. I think I am aware of some of the problems that are implicit in this whole thing, and that is why I intend to follow your cross-examination very closely.

Cross-examination.

By Mr. Hughes:

Q. Mr. Danbom, you have been with the FBI nine years?

A. And ten months, yes, sir.

Q. Prior to that, what did you do?

A. Prior to that, I was in the Standard Oil business as a salesman for the Standard Oil Company.

[fol. 2394] The Court: Incidentally, Mr. Hughes, have you a copy of this exhibit?

Mr. Hughes: I have a copy of—what is that exhibit?

Mr. Greenberg: 949. Prior to the opening of this afternoon's session, the Government transmitted to defense counsel a conformed copy of G-949, and Mr. Hughes now has it in his hand.

The Court: All right.

Mr. Hughes: I do not have any extra copy, your Honor, of Court's Exhibit 2.

The Court: I am not following it from this, because I am not concerned at the moment with exhibit numbers; I am concerned with actual items.

Q. What was the nature of your work with the Standard Oil Company?

A. A salesman, sir.

Q. A salesman of what?
A. Of Standard Oil products.
Q. What kind of products?
A. Oil, gasoline, tires, batteries, accessories.
Q. That is, you went around to filling stations, is that right?
A. Yes, sir.
[fol. 2395] Q. What did you do before that?
A. Before that, sir, I was in the United States Navy.
Q. And before that?
A. Before that, sir, I was a school teacher and a football coach.
Q. And before that?
A. A student.
Q. Were you ever employed by a manufacturer of cans?
A. No, sir.
Q. Were you ever employed by a manufacturer of glass containers?
A. No, sir.
Q. Were you ever employed by a manufacturer of plastic containers?
A. No, sir.
Q. Were you ever employed by a food packer?
A. No, sir.
Q. Were you ever employed by a packer of toiletries and cosmetics?
A. No, sir.
Q. Were you ever employed by a beer manufacturer?
A. No, sir.
[fol. 2396] Q. Were you ever employed by a soft drink manufacturer?
A. No, sir.
Q. Were you ever employed by an advertising agency?
A. No, sir.
Q. Were you ever——
A. May I say at this point I recall I was employed by a candy manufacturer, making candy and selling candy in drug stores.
Q. You didn't tell me about that. When were you employed by that company?
A. About 19—after the war, 1946 and '47.
Q. How long were you with them?

A. I recall about three years.

Q. In what capacity?

A. As a salesman.

Q. Operating in what area?

A. In the South Bend, Indiana, area.

Q. In what area did you operate for the Standard Oil Company?

A. Lafayette, Indiana; South Bend, Indiana.

Q. Was that for Standard Oil of Indiana?

A. Yes, sir.

[fol. 2397] Q. Did you ever work for any person, firm or corporation whose business is the conducting of consumer preference surveys or public opinion surveys?

A. No, sir.

Q. Do you live in the District of Columbia?

A. No, sir. I live in Wheaton, Maryland, which is just outside of the District of Columbia.

Q. So that you do not live in the neighborhood of any of the stores which Exhibit 949 indicates that you visited, is that correct?

A. No. sir.

Q. Were these the first occasions when you ever visited any of these stores?

A. Well, I would say the Woodward & Lothrop department store is a very large store in Washington, and I made many of these purchases there.

Q. It is the largest department store in Washington, isn't it?

A. Yes.

Q. And you made many purchases there?

A. Yes.

Q. Did you ever buy any canned goods there before August or September of 1960?

A. Not that I recall. It is mostly clothing I purchased [fol. 2398] there.

Q. Did you ever buy any ladies' cosmetics there?

A. No, sir.

Q. Any toiletries of any kind?

A. No, sir.

Q. Any household or chemical products?

A. No, sir.

Q. Prior to embarking on these visits to the stores to

which you have alluded, you say that you received some instructions, is that correct?

A. Yes, sir.

Q. Were those instructions oral in writing?

A. The instructions were in writing, sir.

Q. Do you have the written instructions?

A. No, sir, I don't.

Q. Where are they?

The Court: Mr. Greenberg, will you illuminate us as to that?

Mr. Greenberg: If the Court please, we have provided you, Mr. Hughes, with a copy of the written instructions, the only written instructions which exist.

The Court: Mr. Witness, I show you what is Court's [fol. 2399] Exhibit C-1. Are those the instructions you refer to?

(Witness examines document)

The Witness: Yes, these are the instructions.

The Court: You may return that to Mr. Hughes.

(Document handed to Mr. Hughes.)

Q. When did you see these instructions embraced in Court's Exhibit 1 for identification for the first time?

A. I think I saw those about the 25th of August—about the 24th or 25th.

Q. Where did you see them?

A. In the Washington field office of the FBI.

Q. Who showed them to you?

A. My supervisor.

Q. What is his name?

A. Mr. Powell.

Q. Did you and he have any conversation with reference to these instructions at that time?

A. Just the fact I was given an assignment.

Q. That calls for a yes or no answer.

A. Yes, sir.

Q. And consequent upon that conversation, what did you do?

[fol. 2400] A. I went to the Department of Justice for further instructions on what they wanted me to do.

Q. Whom did you see at the Department of Justice?

A. I met Mr. Greenberg and Mr. McManus.

Q. You met and had a discussion with them; is that correct?

A. Yes.

Q. That is, together? They were together with you?

A. Yes.

Q. Can you fix the time of that discussion?

A. That was on a Friday, August 26th. I think that is the correct date.

Q. Was that Friday morning?

A. Friday morning, yes, sir.

Q. And you embarked on your assignment during that day?

A. Yes, sir.

Q. Did either Mr. Greenberg or Mr. McManus give you any additional instructions beyond what is embraced in this piece of paper, Court's Exhibit 1 for identification?

A. No, sir, just to go to these—they named the stores for me.

[fol. 2401] The Court: They named the stores?

The Witness: Yes, sir.

The Court: What did you do, write the names down they gave you?

The Witness: Yes, sir.

The Court: Or did they give you a typewritten list of stores?

The Witness: They gave me a list of stores they wanted me to purchase these items from, and also the money.

Q. Who was it that indicated the stores they wanted you to visit?

A. I don't specifically recall who it was. There were just the three of us there discussing it.

Q. Did you put that in any memorandum of any kind?

A. On a sheet of paper, I think I did.

Q. Do you have that sheet of paper?

A. No, sir, I don't.

Q. Where is it?

A. It is in the office.

Q. Where is the office, in Washington?

A. Washington, D.C.

Q. You have preserved that piece of paper however?

A. Yes, sir.

[fol. 2402] Q. Did you commit anything else to paper on the occasion of that visit with Mr. McManus and with Mr. Greenberg?

A. The lists that I made here, yes.

Q. Do I understand then that part of their instructions was that they gave you a list of products and told you to go out for them?

A. No, sir. The instructions were to purchase items, the same items that were packaged in the same or in two different containers, a glass container and a metal container—the same product.

Q. But I am referring now to your first meeting with these gentlemen, and you have told me that they told you the names of the stores, and you made a memorandum of the stores. Now, what else did they tell you?

A. To bring the products back to their office and identify the products.

Q. Did you make any other contemporaneous memorandum on the occasion of that meeting between you and Messrs. McManus and Greenberg?

A. Well, as I purchased the items I wrote those items. Is that what you mean?

Q. No. I am referring to any memorandum that you may [fol. 2403] have made of your conversations with these two gentlemen other than the list of stores that you have told us you made a record of?

A. No, sir.

Q. So that if I understand you correctly the sum total of your notes of any discussion between you and Mr. Greenberg would be embraced in this memorandum to which you have referred?

A. Yes, sir.

Q. And which is in Washington?

A. That's right.

Q. Was there any reason you didn't bring that memorandum to court?

A. No particular reason, sir, no.

Q. You knew you were going to testify here, didn't you?

A. Yes.

Q. How long have you been with the FBI?

A. Nine years and ten months, sir.

Q. And in your experience, you have made memoranda from time to time of instructions that have been given to you?

A. Yes, sir.

Q. And from time to time you have been questioned [fol. 2404] about such instructions, is that correct?

A. Yes, sir.

Q. And in any event, they are reposing in Washington; is that right?

A. Yes, sir.

Q. Did you at any time subsequent to that occasion make any memoranda of any kind other than what is embraced within Exhibit 949 for identification?

A. Well, I made a list of the products that I purchased and then transcribed my notes.

Q. You made some notes; is that right?

A. I mean the products; yes, sir. As I purchased the products, I copied them down and——

Q. And are those notes in existence?

A. No, sir.

Q. What did you do with those notes?

A. Those are in Washington, too.

Q. But they are in existence, though?

A. Yes, sir.

Q. Whereabouts in Washington?

A. In the field office.

Q. Did you make any other notes of any kind?

A. No, sir.

Q. Did you return to have any subsequent conversations [fol. 2405] with either Mr. Greenberg or Mr. McManus during the period from August 26th to September 6th?

A. You mean, did I meet them again?

Q. Yes.

A. Yes, sir; I did.

Q. And where did you meet with them?

A. In Mr. McManus' office.

Q. And did you receive any further or additional instructions——

Mr. Hughes: I withdraw that.

Q. First, how many other meetings were there between either you and Mr. McManus or Mr. Greenberg?

A. Well, every time I ran out of money, I had to go back and get more money and then identify the receipt.

Q. How much money did you start out with?

A. It was given to me in cash: $50.

Q. When did you run out of the first 50?

A. At the Safeway store and the Giant store.

Q. Was August 26th your first shopping day?

A. August 26th was the first shopping day.

Q. So you ran out of the $50 that day; is that right?

A. To the best of my recollection, sir, yes.

[fol. 2406] Q. And then you went back to see Mr. McManus and Mr. Greenberg?

A. Yes, sir.

Q. And when did you go back: on the 27th?

A. On the 26th. No. I didn't go back—the 27th was on Saturday. The 26th I went back.

Q. That is, after——

A. After I purchased the items; yes, sir.

Q. Which stores did you visit on the 26th?

A. The Safeway store and the Giant store.

Q. And about when did you start this—when did you enter the first of these stores? Which one did you go to first?

A. The Safeway.

Q. How long were you there?

A. Approximately one hour.

Q. And that was somewhere on Wisconsin Avenue, was it?

A. Yes, sir.

Q. What was the other one?

A. The Giant food store.

Q. Is that also on Wisconsin Avenue?

A. Yes, sir; about ten blocks farther south.

Q. And how long were you in there?

[fol. 2407] A. Approximately an hour and a half to two hours.

Q. And then you returned to——

A. Yes, sir.

Q. —to Messrs. Greenberg and McManus?

A. Yes, sir.

Q. Did you have any of these products with you when you returned?

A. Yes, sir.

Q. And at that time did they give you any further instructions?

A. Not that I recall. At that time they mentioned that they were going to go to Woodward & Lothrop store and then they named two other stores on Wisconsin Avenue that I was to go to.

Q. Then, if I understand you correctly, upon the occasion of your first visit, you were only instructed to go to those two stores that you visited that day; is that correct?

A. No, sir. I recall that day they mentioned the Giant and the Safeway and Fisher's market and Magruder's market.

Q. All in the nature of either food stores or grocery stores?

[fol. 2408] A. Food stores or grocery stores.

Q. The drug stores did not come into the conversation that first day?

A. Yes, sir. I think they mentioned that I would be going to a drug store later on.

Q. Did they give you the name?

A. Yes, sir.

Q. That day?

A. I don't recall, sir.

Q. That list would reveal that, wouldn't it?

A. It possibly could, sir. I don't recall that, either.

Q. Anyway, have you told us your recollection of the substance of what transpired between you and Messrs. Greenberg and McManus when you returned on the 26th of August and spoke with them? Can you think of anything else that transpired?

A. No, sir. I can't think of anything else.

Q. Did they tell you to do anything else on that day?

A. No, sir. It was around 4 or 4:30. No, sir. I think that was all.

Q. So that when you left that day, so far as you were concerned, was that the end of your assignment?

[fol. 2409] A. No, sir. No, sir.

Q. Had you been given some more money?

A. I think I picked up additional money on the Monday, the following Monday.

Q. How was it left when you left on Friday afternoon?

A. The items were brought back, and I identified them, and I turned the receipt over to Mr. McManus, and I told him I would see him on Monday for additional money, and I would call on the Fisher's market and the Magruder's market to make additional purchases.

The Court: Mr. Danbom, when you talked to Mr. McManus or Mr. Greenberg, you say they told you to purchase —am I correct in this—products that were the same but were packed in glass, were sold in glass containers and sold in tin containers?

The Witness: Yes, sir.

The Court: When they told you about products being the same, did they go any farther? Did they give you any further description of what they meant by "the same"?

The Witness: For instance, tomato juice: if you see tomato juice in jars or tomato juice in a can, purchase that item. If you see——

[fol. 2410] The Court: Did they give you any other examples, do you recall?

The Witness: I don't recall, but I realized that they wanted the same product, packaged in the same—in two different containers. So I just went along the shelf and picked out fruits and syrup——

The Court: Picked out anything that looked to you as if it was the same product? Is that right?

The Witness: Yes, sir.

Q. And on that first visit to Safeway, you went through the entire store; is that correct?

A. Yes, sir.

Q. And picked out what you considered to be compliance with the directions; is that right?

A. Yes, sir.

Q. In the course of going through the store, did you make any notation or memorandum of the articles which did not appear to be moving in more than one type of container?

A. I don't understand the question, sir.

Q. Did you happen to notice corn, for example?

A. In what——

Q. Did you happen to notice it at all?

A. Corn, yes, sir.

[fol. 2411] Q. And that moved in tin cans; is that right?

A. Yes, sir.

Q. All right. Did you make any list of those products which you saw that moved in only one type of container?

A. No, sir. No, sir.

The Court: Are we to take it, then, Mr. Witness, that with the exception of this list that is here, any product sold by this Safeway store that isn't on this list and that moved in either glass or tin, moved only in glass or tins and were not in both?

The Witness: Well, I would say, sir, that I picked out the products on the shelf that I saw packaged in glass and metal.

The Court: Yes, and——

The Witness: I wouldn't say—if I saw corn, I did see corn and it wasn't in glass, I wouldn't purchase the corn.

The Court: So it is a fair conclusion from this, isn't it, Mr. Witness, that you made a thorough survey of the store?

The Witness: Yes, sir.

The Court: You went up and down all the aisles; is that right?

[fol. 2412] The Witness: The shelves; yes, sir.

The Court: And you bought everything that you saw on those shelves that was packaged, as you saw it, in both glass and in tins?

The Witness: To the best of my ability; yes, sir.

The Court: So that as far as that store was concerned, anything that is not on this list and which was packed in either glass or in tins was packed only in glass or only in tins; is that correct?

The Witness: Yes, sir.

The Court: All right. We will take a brief recess at this point.

Mr. Greenberg: If the Court please——

The Court: No. We will take a brief recess.

(Short recess.)

The Court: Did you have something to say, Mr. Greenberg?

Mr. Greenberg: No, your Honor. I would prefer to defer my comments until redirect examination.

The Court: Very well.

Q. Mr. Danbom, I want to be sure that I have one phase of your testimony correctly. Do I understand that Court's Exhibit 1 for identification were the only written instruc-
[fol. 2413] tions of any kind that you had from any source in connection with this assignment about which you are now testifying?

A. Yes, sir. That——

Q. Do I understand that you saw that before your first visit with Mr. McManus?

A. Yes, sir.

Q. And Mr. Greenberg?

A. Yes.

Q. And all other instructions or discussions with reference to this assignment were oral; is that correct?

A. Yes, sir. To the best of my recollection.

Q. And were they all with either Mr. Greenberg or Mr. McManus?

A. Yes, sir.

Q. None of them with your chief?

A. No, sir.

Q. Your chief, whom you heretofore identified?

A. No, sir.

Q. On the first day, according to Exhibit 949, you visited the Safeway store and the Giant supermarket; is that correct?

A. Safeway; yes, sir.

[fol. 2414] Q. And——

A. And the Giant; yes, sir.

Q. And in the Safeway, you spent $10.01; is that right?

A. Yes, sir.

Q. And——

A. In Giant?

Q. In Giant you spent what on the 26th?

A. $23.82.

Q. I may have misled you, Mr. Danbom, because the copies of these exhibits I have before me seem not to be in chronological order. Can you tell me how much you spent in Safeway the first day?

A. $10.01, and then I went back to the Safeway market, I recall, for additional purchases.

Q. Before we come to that, because that was on another day, wasn't it——

A. Yes, sir. I recall. Yes, sir.

Q. On the first day, you also went to the Giant food market?

A. Yes, sir.

Q. And was that also on Wisconsin Avenue?

A. Yes, sir.

Q. How much did you spend there the first day?

[fol. 2415] A. $23.82.

Q. So that on that first day you didn't really use up the $50, did you?

A. No, sir. I must have had some money left over there.

Q. So when you went back to see Messrs. Greenberg and McManus, there were discussions about matters other than replenishment of funds, were there not?

A. Yes, sir. I recall that.

Q. Now, give us the substance of that whole discussion.

[fol. 2416] A. I recall mentioning a few items. For instance, jam, I said I saw in glass and in cans, and I saw a number of other fruits in cans and glasses. I did not know if I should buy all of the fruits that I could see, or just some of the fruits that come in just cans and glasses.

Q. You say you saw the jam in both glass and cans; is that right?

A. I recall it was on Friday.

Q. Can you remember what kind of jam it was?

A. No, sir.

Q. Did you make a memorandum of it?

A. No, sir.

Q. When you went to Safeway this first day, did you make any kind of contemporaneous notes as you made these purchases?

A. Yes, sir. As I made the purchases, yes, sir.

Q. What did those contemporaneous notes record?

A. They record these notes I made here.

Q. So that they indicated the product, those contemporaneous notes indicated the product and the price?

A. That's right.

[fol. 2417] Q. And are those notes still in existence?

A. No, sir. I destroyed those notes.

Q. Did anybody tell you to destroy them?

A. No. I just——

The Court: What did you do, destroy them after you put it on the sheet?

The Witness: Yes, after I dictated them, I destroyed them.

Q. Did those notes indicate the size or the quantity?

A. No, sir.

Q. Were you told to make a memorandum of the quantity, the size of the container?

A. No, sir.

Q. Nobody gave you any such instruction?

A. No, sir.

Q. Did you make any memorandum of the brand of the product?

A. No, sir.

The Court: You must have on some occasion.

The Witness: On some of those I did, yes, sir, I recall that.

Q. On some of them you did not?

A. Yes, sir. On some I did not.

[fol. 2418] Q. Did you make any contemporaneous memorandum of the approximate shelf display for any particular brand?

A. No, sir.

Q. Did you talk to anybody in the store that day?

A. I recall talking to a shelf boy, and asked him if a certain product came in a glass container.

Q. Do you remember what product you talked about?

A. No, I don't recall the product.

Q. And not recalling the product, you obviously don't recall his answer; is that right?

A. That's right.

Q. Did you make any record of that conversation?

A. No, sir.

Q. Is that the only conversation you had with anybody?

A. No.

Q. Did you identify yourself to anybody in the store?

A. No.

The Court: You did not talk to anybody in management or anybody in charge?

[fol. 2419] The Witness: No, sir.

The Court: At the Safeway store, how large is the Safeway store?

The Witness: It is a large, modern supermarket located in the residential section.

The Court: Is it new, a big, new one?

The Witness: It is comparatively new, yes, sir. I would say it is about four or five years old.

The Court: Do you have any idea how many products are sold in that store, how many different varieties of products are sold in that store?

The Witness: I have no idea, sir.

The Court: Can you give us any estimate? Or have you just no idea?

The Witness: I have no idea of how many products.

The Court: You wouldn't know if it was a thousand, 5,000 or 10,000?

The Witness: Offhand, I have no idea. It has vegetables, and I have no idea.

The Court: Then you wouldn't know how many products were sold in containers of various kinds?

The Witness: No, sir.

[fol. 2420] By Mr. Hughes:

Q. In this first conversation with Mr. McManus and Mr. Greenberg, do I understand that one of the illustrations they gave you of the kind of product to look for was tomato juice?

A. Yes, sir.

Q. What other illustration did they give you of products to look for?

A. I don't recall any other products. I mentioned myself, I said, "What about beets that came in cans or glass?"

Q. Is this the first conversation now?

A. Yes, sir.

Q. You said, "What about beets?" and what did they say?

A. That would be a good product to get.

Q. What other products were mentioned?

A. I don't recall any others, sir.

Q. Does that mean that there was no discussion or that you don't recollect it?

A. Well, the point was that I was to purchase food products that were not refrigerated and packaged in glass and metal containers.

Q. But was there any discussion with you as to specific [fol. 2421] items to look for?

A. No, sir.

Q. Well, this tomato juice was mentioned?

A. Well, as an example he said, "Tomato juice that is used in the home, beans, peaches, whatever you see in cans or glasses."

Q. Was there any discussion between you and them as to the standards that you were to apply in determining whether products were in fact similar products?

A. In the food products line?

Q. Yes.

A. Beets—no, sir, I wouldn't say there was.

Q. For example, did they talk to you about such things as asparagus spears and asparagus tips? Did you have any talk along those lines?

A. I purchased them and I brought them back to them, and I said, "This is what I purchased."

Q. And, so, when you were going through the store and you saw asparagus spears and you saw asparagus tips, you determined for yourself that they were similar and you made a purchase?

A. Similar, yes, sir.

Q. Now, when you returned with these products you told them what you had discovered with reference to jam. What [fol. 2422] did they tell you?

A. To buy the jam, I saw in the can and the jam I saw in the glass.

Q. And you did that?

A. Yes, sir.

Q. And was this in Safeway?

A. I would have to refer to the package—to the notes here (examining document).

Yes, on my return trip to the Safeway store on August 30th, I purchased a can of strawberry jam and a jar of strawberry preserves.

Q. On your return trip, you purchased eleven other items, did you not?

A. Yes, sir.

Q. How come that you did not purchase them on the first visit?

A. I think I had some questions about—I asked about soft drinks and chocolate syrup, I mentioned.

Q. Now, you had some questions and you had some discussions; is that right?

A. Yes, sir.

Q. Does reference to this page of Exhibit 949 refresh your recollection as to those discussions? It calls for an [fol. 2423] answer yes or no.

A. Yes, it does.

Q. And these were discussions with Messrs. Greenberg and McManus?

A. Yes, sir.

Q. And they were in the interval between the first and the second visit; is that right?

A. Yes, sir.

Q. Tell me the substance of those discussions.

A. I remember I asked—I mentioned to Mr. Greenberg and Mr. McManus I saw cranberries in cans and glass, and I saw chocolate syrup in a glass and in a can, and I saw soft drinks in a glass and in a can, 7-Up, and should I purchase items of that sort, and they said, "Yes."

Q. Your instructions had been to purchase any food products that you saw; is that correct?

A. Food products, yes, sir.

Q. And you had some concern as to whether cranberries fell within that category?

A. No, sir, not on that.

Q. Did you have any concern about strawberry jam being within that category?

A. No, sir.

[fol. 2424] Q. But you nevertheless went back and said you saw them and had not bought them; is that right?

A. Yes.

Q. And they told you to go out and buy them; is that right?

A. Yes, sir.

Q. Can you tell me why it was that you did not purchase the cranberries on the occasion of your first visit to the store?

A. No, sir, I cannot tell you.

Q. Your mind is a blank on that subject?

A. I just purchased so many items on that day, I just don't recall. I felt on the second day I would go back and look for additional products.

Q. There is no doubt you did not purchase it on the first day, isn't that so?

A. Yes, sir.

Q. There is no doubt in response to your other products, you said you went around and purchased everything you saw in the food line that you thought were similar products in either glass or cans; isn't that right?

A. Yes, sir.

Q. And you did see these cranberries; right?

[fol. 2425] A. Well, I recall seeing them the second time, yes, sir.

Q. But you told us you recall a discussion with Messrs. Greenberg and McManus about these cranberries on the occasion of your second visit, and I would like to know why it was that you did not purchase them on your first visit if you saw them and later talked to them about it.

A. I don't recall the reason why I did not buy them on the first day.

Q. Did you see Royal Anne cherries on the first day?

A. I saw cherries the first day.

Q. Did you see Royal Anne cherries the first day?

A. Yes, sir.

Q. Did you see them in cans and in a jar—in jars?

A. Yes, sir.

Q. And you did not buy them?

A. No, sir, I did not.

Q. Why didn't you?

A. Because I recall I purchased a fruit for salads on one day, and I thought perhaps that would be sufficient. And I [fol. 2426] mentioned when I got back, should I purchase additional fruits, like cherries, boysenberries in cans and glasses.

Q. But your instructions were to buy samples of every-

thing that you saw that you in your own judgment considered to be similar, isn't that right?

A. Yes, sir.

Q. So in the first instance you really ignored those instructions, isn't that right?

A. No, sir.

Q. Well, you did not buy everything you saw?

A. It was a busy supermarket that day, and I probably looked at the item and did not buy it that particular day.

Q. Well, whether the market was busy or not busy, your instructions were to buy everything you saw; is that right?

A. Yes, sir. And I said, "I can go back to the same store on Monday and pick up additional products."

Q. But you have already told his Honor that on the first day you bought everything that you saw that you deemed to be similar?

[fol. 2427] The Court: Mr. Hughes, hasn't that been gone over sufficiently? What is the point of this?

Mr. Hughes: Well, your Honor, I would really like to know what his instructions were, and I think it bears on his instructions.

Q. I ask the witness again whether it isn't a fact that either Mr. McManus or Mr. Greenberg at some time, and maybe from time to time, mentioned specific products that they asked you to go out and try to find. Is that correct?

A. I don't recall at this time specifically. Now, they may have mentioned cherries, and I looked for cherries, and I got dark cherries, and I goy Royal Anne cherries. To me it did not seem significant at the time.

Q. But whether it seemed significant or not, I want your recollection, and, if you haven't any, just say so and I will leave it.

I want your recollection as to whether either one of them at any time or from time to time mentioned specific products and told you, "Go out and look for them and see if they are in glass and cans."

A. I do not have a recollection on that.

Q. You don't have a recollection one way or the other?

[fol. 2428] A. Yes, sir.

Q. In any of the stores that you visited, did you ask any

employee for any product in glass or cans other than this conversation to which you have referred?

A. No, sir.

Q. Is that the only employee of any store to whom you spoke?

A. I spoke to the shelf man in the Giant and asked him the same question, if a certain item is packaged in glass—corn or—as I saw corn on the shelf, or lima beans, or anything; I said, "Does this come in a glass container?" If it were in glass.

Q. You say you spoke to the man in the Food Giant store?

A. Food Giant.

Q. And what products did you ask him about?

A. I don't recall specifically.

Q. Did you make any contemporaneous memorandum of those conversations?

A. No, sir, I did not.

Q. Where are the contemporaneous memoranda you made of all these visits to all these stores?

[fol. 2429] The Court: He has already testified, Mr. Hughes, that he destroyed them when he——

The Witness: When I dictated them.

The Court: —when he dictated this memorandum. Please let us not repeat. We have enough ground to cover already.

By Mr. Hughes:

Q. Mr. Danbom, do you have any memoranda or working notes of any kind, nature or description, other than this list of stores to which you have alluded in connection with this assignment?

A. No, sir.

Q. That is the only document that you have other than Exhibit 949; is that correct?

A. Yes, sir.

Q. And having made 949, you destroyed anything else that you may have had?

A. Anything else. As I dictated them, I destroyed my notes, yes, sir.

Q. Did anyone accompany you on any of these visits to any of these stores?

A. No, sir.

Q. Were all of these visits to the stores over a period from August 26th to September 6th?

[fol. 2430] A. September 6th, yes, sir. September 7th, sir, I recall.

Q. September 7th?

A. September 7th, yes, sir.

Q. And which store was that?

A. Woodward & Lothrop store.

Q. Did you visit any stores other than the stores that are referred to in Exhibit 949?

A. No, sir.

Q. Did you observe whether in the Safeway stores any products other than food products were sold?

A. Yes, sir, there were some products.

Q. Do you recall what those products were?

A. Yes, sir. In my notes, I saw the Breath O' Pine all-purpose cleaner, and I saw a bottle of all-purpose Texize cleaner. I read their labels, and they were used for the same purpose, so I purchased that product.

Q. Those are two items that appear on your August 26th report of the Safeway store visit; is that right?

A. Yes, sir.

Q. What other products did you notice that they sold in the Safeway store?

[fol. 2431] A. I noticed that Safeway sold the Scamper liquid soap for dishwashing that came in a can, and I saw a plastic container of Lux soap for dishes that came in a plastic container.

Q. Did you make any count of the number of items for sale in the Safeway store other than food items?

A. List the number of them? No, sir, I could not.

Q. You couldn't tell his Honor how many such items were on display, could you?

A. As far as soaps?

Q. Yes. Anything other than food.

A. No, sir.

Q. In this visit to the Safeway store, were there any items not on display that you asked for?

A. No, sir.

Q. Is that true in these other stores?

A. In every store I called on, sir, yes, sir.

Q. You confined yourself to items that were on display?

A. On the shelf, open for purchase.

Q. Taking the Safeway store again, can you tell me whether any of the items you listed as having purchased on the second visit were not on display on the first visit?

[fol. 2432] A. No, sir, they were all on display the second visit—the items that were on display the second visit were also on display the first visit.

Q. When you made these purchases, did you make any attempt to purchase comparable sizes?

A. In some instances I did, yes, sir.

Q. And in some instances you did not?

A. I did not.

Q. In those instances you did not, did you make any particular memorandum?

A. No, I did not. No, sir, I did not.

Q. Before visiting the Safeway store, did you make a survey of the kind of neighborhood?

A. No, sir, I did not.

Q. So that your characterization of the neighborhood is just based on whatever observation you made going from the FBI office to the store; is that right?

A. To the store, yes, sir.

Q. You did not make any survey to determine whether there were any restaurants or taverns or schools or hospitals in the neighborhood?

A. No, sir, I did not.

Q. Or any diner, or anything of that sort?

[fol. 2433] A. No.

Q. I think you told us none of these stores was in the neighborhood where you live yourself.

A. No, sir.

Q. I don't suppose you have any idea, do you, of how many supermarkets there are in the metropolitan area of Washington?

A. No, sir.

Q. You couldn't help us out on that at all? You have no idea of how many drug stores there are?

A. I have no idea of how many there are, no, sir.

Q. Were all the stores that you visited in the northwest section of Washington?

A. No, sir. The Safeway, Giant, Magruder's and Fisher's

Market were all in the northwest. The Woodward & Lothrop store is downtown Washington.

Q. Is that in the northwest area?

A. It is considered northwest, yes, sir.

Jumbo Food Market and People's Drug Store is out in the northeast section of Washington, metropolitan Washington.

Q. Is the Jumbo Food Store that you visited in the District of Columbia at all?

[fol. 2434] A. No, sir, it is in Adelphi, Maryland, just over the line.

Q. Is that one of the stores you were told to go to?

A. Yes, sir.

Q. Who told you to go there?

A. Mr. McManus.

Q. Did he give you any indication why he selected that store?

A. I mentioned the People's Drug Store, and then there is a big Jumbo down the street I could go to.

Q. But I am asking you whether he gave you any indication as to why——

A. Yes, he mentioned Jumbo Market. I said, "That's just near People's Drug Store in Adelphi there."

Q. So you went to the Adelphi store?

A. Yes.

Q. That was near one of the drug stores you visited?

A. Near the People's Drug Store, yes, sir.

Q. Did he gave you any instructions with reference to visiting that particular store, the Adelphi store?

A. I think he mentioned that that store handles a lot of [fol. 2435] large cans of food products.

Q. That is, he indicated to you some knowledge of that particular store; is that right?

A. The large——

Q. That was a store he knew about and you did not know about; is that right?

A. Yes, sir.

Q. And he indicated to you that it was a store that handled large containers?

A. Yes, sir.

Q. That carried large quantities; is that right?

A. As I recall, yes, sir.

Mr. Hughes: Your Honor, I am sorry to take this time, but it is very difficult.

The Court: That is all right. Go ahead.

By Mr. Hughes:

Q. Was your first visit to the jumbo store on September 2nd?

A. Yes, sir.

Q. And was that where you bought a can of tomato catsup and a bottle of tomato catsup?

A. Yes, sir; a large can and a bottle, yes, sir.

Q. Prior to that visit to that Jumbo store, had you attempted to——

[fol. 2436] The Court: Let me see the bottle of tomato catsup; the bottle and the can.

Mr. McManus: It is a No. 10 can.

The Court: This is a hotel pack.

Mr. McManus: Your Honor, that store he went to is known to retail to consumers. It is a regular retail grocery store, and he did go there, and that is one of the reasons I asked him to go.

The Court: It says on the can:

> "A complete line of the finest foods packaged especially for hotels, restaurants, schools and institutions in packages best adapted for commercial serving."

Mr. McManus: That may be so, but it is sold through a retail outlet. In that area there happen to be consumers other than retail that happen to buy it. I am sure Mr. Stokely has no objection. That is why I asked Mr. Danbom to go to that area. There is no question about it, no mystery about it.

By Mr. Hughes:

Q. Mr. Danbom, you made no survey of the neighborhood in which the Jumbo store was, did you, in Adelphi?

The Court: I am going to ask you to hand up the couple [fol. 2437] of different kinds of items I want to look at. I want to look at the olives.

(Handed to Court.)

Mr. Hughes: One is green and one is ripe; is that right?

The Court: One is green and one is ripe; pitted green and ripe olives.

Now let me see the baked beans.

(Handed to Court.)

Mr. McManus: We have got two sets.

The Court: All right. Go ahead, Mr. Hughes.

Q. Did Mr. McManus tell you, in words or in substance, that if you want to that Jumbo market at Adelphi you could get tomato catsup in a can?

A. Yes, sir. And I also recall buying Wesson Oil in a bottle from some store, and I said, "I have seen Wesson Oil in a can, but I haven't run across it."

Q. And he said, "Well, if you go to the Adelphi store you will probably get it"?

A. "You might find Jumbo Food carrying Wesson Oil."

Q. So you went there and you got it; is that right?

[fol. 2437a] A. Yes, sir, that was there.

Q. And have you got the Wesson Oil can?

A. The third from the bottom. I brought that back to the office, and it had a hole in the top of it and it leaked, so we didn't bring it.

[fol. 2438] Q. Was it as big a can as the can that is in front of his Honor?

A. Yes, it was. It was a large——

Q. It was as large as that or larger?

A. It was at least as large if not larger.

Q. Have you got the bottle?

A. The bottle we brought, yes.

The Court: Let us see the bottle.

Mr. Greenberg: Your Honor, the bottle is in our office. We will be very happy to bring it out now. Mr. Hughes said it was not necessary to have it. We haven't offered the bottle, you understand——

Mr. Hughes: I didn't understand that. Is that one of those that is stricken off your list?

Mr. Greenberg: Yes, Mr. Hughes, by virtue of the fact that the can had a hole in it. By reason of the fact that we didn't have a pair, we decided not to put the Wesson Oil in a container——

Mr. Hughes: Your Honor, it appears from the testimony of the witness that the can was at least as large as if not larger than the one on your Honor's desk, and which bears an exhibit number—I don't know what the exhibit number is—and I would like to see the bottle that the witness purchased.

[fol. 2439] The Court: All right. Go ahead with something else in the meantime.

Q. Did you buy anything else, Mr. Danbom, that is not on the table here in the courtroom?

A. Yes, sir. We made some other purchases there.

Q. What other things did you purchase that are not on the table?

Mr. Greenberg: If the Court please, to save time we will make available all the products that we purchased——

The Court: I think this, if I might say so, Mr. Greenberg, is not for the purpose of saving time. It is for the purpose of informing the Court what happened, which is a very different matter. All the products that were purchased ought to be here in the courtroom. If there are any that aren't here, let us get them in here right now.

Let me see the Wesson Oil.

Mr. Hughes: Should I continue, your Honor, while that is——

The Court: Yes.

For the record, here is the Wesson Oil, which has not been marked as yet, but which I am instructing the clerk to mark as soon as I get through with the question.

[fol. 2440] You say that this is the Wesson Oil in glass that you bought, and the Wesson Oil can was as big as or bigger than the cans shown on Stokely's finest tomato katsup, which is G-1045?

The Witness: Yes, sir.

The Court: All right.

The Witness: Yes, sir.

The Court: Will you mark this, please, Mr. Clerk.

(Bottle of Wesson Oil, marked Government's Exhibit G-1156 for identification.)

Q. At the Giant store, did you say that you bought two different containers of peas? Do I understand that?

A. Well, let's see. Yes. I did, sir.
Q. And do we have them on the table?
A. Yes, sir.
Q. And have you identified them for us?
A. Yes, sir.
Q. And do you remember on which visit it was that you bought them?

Mr. Greenberg: Mr. Hughes, will you show the witness the physical exhibits, because I do believe the physical [fol. 2441] information is contained on them.
The Court: All right.
Mr. Hughes: Without reference to the physical exhibits, you could not——

A. No. I bought this in the Giant store on Wisconsin Avenue on the 26th of August, and I bought this at the Giant store on Wisconsin Avenue on the 26th of August.
Q. And did you talk with any of the clerks when you bought them?
A. No, sir. No.
Q. Did you notice that the Aunt Nellie's refers to them as early harvest sugar peas? Do you notice that?
A. Yes. I notice that.
Q. Do you notice that this other Aunt Nellie's in glass refers to sweet peas and whole onions? Did you notice that?
A. I noticed——
Q. Did you notice that?
A. Yes, sir.
Q. And did you consider them to be comparable items?
A. Yes, sir.
Q. You don't know whether in fact they are comparable [fol. 2442] items?
A. No, sir.
Q. You didn't speak to anybody at Aunt Nellie's about them, did you?
A. No, sir.
Q. Or in the store?
A. No, sir.
Q. Did you say that you found Nescafe in both a bottle and a metal container?
A. Yes, sir.

Q. Have you got that?

A. Yes, sir.

Q. Did you happen to notice whether the Nescafe in the can was an imported item?

A. Did——

Q. I say, did you or didn't you?

A. No, sir; I didn't.

Q. So that as I show it to you now for the first time it comes to your attention that that is an imported item or at least indicates that it is an imported item?

A. Indicates that it is; yes, sir.

Q. And so that you are really unable to say, based on any of your knowledge and observation, whether there is any domestically packed Nescafe moving in metal contain-
[fol. 2443] ers; is that right?

A. Yes, sir.

Q. That is, yes, sir, you are unable to say?

A. I am unable to say.

The Court: What were the prices of those [redacted]? Let me see them, Mr. Hughes. I would like to follow these as we go along.

Mr. Hughes: Yes, sir.

Q. Would you furnish that information to his Honor, please?

The Court: It is your position, Mr. Hughes, that this instant coffee is for a continental coffee, that it is an after-dinner coffee as compared to the coffee that we are accustomed to?

Mr. Hughes: Yes, sir, that is right.

A. Yes, sir. The jar of Nescafe in the glass is 39 cents, and the can of Nescafe instant is 79 cents.

The Court: Gentlemen, we are going to close here. It is now 4:30.

Mr. Hughes: Well, your Honor, I was going to say this: I am frank to say I don't know whether this is really preliminary examination in preparation for an objection or whether it is more than that, but——

The Court: Well, Mr. Hughes, I think sometimes it is
[fol. 2444] a little difficult to snip these into segments, and

I think that if you are going to cross-examine on this subject, I think you might as well pursue it, because all of this has a bearing as we go through it on my ultimate view of this question.

Mr. Hughes: Yes. Well, your Honor, it seems to me first that enough has been shown on cross-examination to indicate the limited nature of this assignment, the limited nature of the instructions, the limited nature of what Mr. Danbom candidly says he did to make all of this, all of his testimony far below the dignity of a survey and far below the dignity of anything that rises to any real probative value; so that I do press the preliminary objection as to the admissibility of these many containers.

The Court: Well, Mr. Hughes, I am frank to say that if there are in these items purchased in large supermarkets items that are truly comparable, they may have some probative value. I am frank to say to you that items of Nescafe coffee, after-dinner coffee, obviously done in France for 79 cents, and ordinary Nescafe for our use in coffee in America, to me have no probative value at all, none whatsoever.

Mr. Hughes: Well, your Honor, that, I think, brings me [fol. 2445] to this point. I have tried——

The Court: What do you say, Mr. Greenberg? Excuse me just a minute, Mr. Hughes. What do you say is the significance of the Nescafe?

Mr. Greenberg: Your Honor, I think it indicates that similar products use cans and glass containers, that there is some feeling that coffee of this type can be marketed in a metal can, and it shows common usage.

I would like to say, your Honor——

The Court: I could not imagine two products more—well, I could certainly imagine two products more different. That is not a very accurate statement. But I certainly can't imagine anything less comparable than these two.

If you are trying to establish a line of commerce or part of a line of commerce, I can't imagine what probative value these have in establishing that result.

Mr. Greenberg: Your Honor, there has been testimony and documents which have indicated that it is feasible to use a metal can for instant coffee, and, in addition, that the

defendants had strenously and very efficiently attempted to sell such metal cans for instant coffee.

[fol. 2446] Here, your Honor, is an indication that the same type of coffee has been packed in both.

The Court: Do you know anything about the respective qualities of these coffees and the problems of packing them? Are you prepared to produce any evidence to that effect, except that they are both coffee, one grown in Turkey and the other in Venezuela or Guatemala, with entirely different properties, with entirely different characteristics, with entirely different taste?

Mr. Greenberg: I would like to direct your Honor's attention to the testimony of a witness during our last session which indicated that Continental Can or some other company had shipped instant coffee in a can to sell to Africa, and I do say this, your Honor, that these particular exhibits are not the best exhibits we have, admittedly.

The Court: No. I quite -gree.

Well, the point is this——

Mr. Greenberg: There are diced carrots in cans and glass, apple juice and so on.

The Court: I am not talking about diced carrots at the moment. I am talking about coffee.

Mr. Greenberg: If the Court please——

[fol. 2447] The Court: Are you telling me that I am expected to say to myself that extra large California green ripe olives are the same as Aunt Nellie's selected Spanish olives and have the same general characteristics, because there was some testimony here, as I recall it, that you could pack ripe olives in cans but you couldn't put the other kind of olives in cans, or vice versa.

Mr. Greenberg: If the Court please, there is a deposition of a company down in Tampa, Florida, which I think indicates that Spanish imported olives have been put in a can, and all I am trying to say is, your Honor, that we are going to have depositions read into the record by the defendants with references to a lot of products, and while we may not have a comparable exhibit obtained from a store in Washington on that type of olive, still we assert that companies have used cans for that type of olive, and I think it is borne out in depositions and may be borne out——

The Court: Is this done in rebuttal or in the case in

chief, because if we are relying on the defendants' deposition, and you are presently attempting to meet the defendants' deposition, it seems to me you gentlemen are away ahead of yourselves. I did not know what the depositions contain——

[fol. 2448] Mr. Greenberg: I did not mean to state, your Honor, that that was our only purpose. I was merely trying to state that these exhibits may have future utility, but I reiterate——

The Court: I will tell you what we are going to have to do with these exhibits tomorrow. I am certainly not going to let this mass of stuff in just in a bulk this way. Enough has been illustrated this afternoon, and that is that I will admit things in. I notice here Hot-Shot Bug Killer, can and bottle.

It looks to me—and I am not going into it now—as if these were roughly the same type of product. If you have got something of that nature, then perhaps some selective basis might be used for indicating that in this particular instance there is a Hot-Shot Bug Killer in a bottle and a Hot-Shot Bug Killer in a can and they are both equally Hot-Shot, but apart from that—and there may be many other instances—I am not going to let this stuff in in bulk, not going through item by item and deciding what is comparable, at least on its face, and what is not comparable.

On that basis, it may be tonight you will want to go [fol. 2449] through and comb through the selections and eliminate the stuff that you think that I think would not be comparable, and then we will have a simpler proceeding tomorrow. I suggest you do that and let us know what, if anything, you decide to eliminate in the morning.

Mr. Greenberg: We will do that, your Honor.

Mr. Hughes: Your Honor, the cross examination thus far has certainly been without the benefit of anyone seeing any of these stores, and really represents what we have been able to piece together rather rapidly viewing this material.

I would say that so far as what Mr. Danbom did—that is, his explanation generally as to what he did—perhaps there won't be too much more, but I am loathe to leave this whole subject, your Honor, unless and until we have felt we have had an opportunity to conduct some sort of an

examination of the stores where these purchases were made, and while I am perfectly willing to go ahead and do the best I can tomorrow in pursuance of your Honor's suggestion——

The Court: Mr. Danbom will be subject to recall, if need be, or if you have an investigator of your own; a man of [fol. 2450] your own who went to the stores, you can put him on and have him testify.

Mr. Hughes: We haven't done that, obviously.

The Court: I understand that. I will give you an opportunity to do that, if you wish.

Mr. Hughes: The point is we may feel impelled to ask your Honor for further time on cross examination.

The Court: All right. But in the meantime I don't know how much of this you have had a chance to examine.

Mr. Johnson: We haven't. We have had practically no opportunity to examine it, but there is another problem that I have noticed in trying to—in the little that I have looked at, in many of these cases both weights and qualities have been obscured by the stickers.

The Court: I have noticed that, too, which rather concerned me, because it seems to me that the question of relative quality, particularly when there is a large spread in price, might bear on the subject. But I can't solve that this afternoon.

I think you gentlemen might want to examine this stuff, [fol. 2451] and, of course, it will be available here, and there is no reason at all it should not stay in the courtroom. The courtroom is locked when people leave tonight. Nobody is going to walk off with the bacon, literally or figuratively.

Mr. Hughes: Your Honor, I think it would be helpful—we will proceed as far as we can, in accordance with your Honor's program—if, after that—we will go as far as we can, but that we be given a day to see through these things.

The Court: We will see what will happen tomorrow.

All right, gentlemen, 10:30 tomorrow.

(Adjourned to October 4, 1960, at 10:30 a.m.)

[fol. 2452] New York, October 4, 1960, 10.30 a.m.

Trial resumed

Colloquy Between Court and Counsel

The Court: When we rose last night, I asked counsel to give consideration to the grocery store we have on the table here, and how we would handle these exhibits with the purpose of saving as much time as possible. Are there any suggestions? Mr. McManus?

Mr. McManus: Well, your Honor, first we did what you suggested, and we did exclude certain exhibits that we thought were probably not comparable.

The Court: Very good. That gets our volume down somewhat, at least.

Mr. McManus: Your Honor, I don't know that it would be—of course, we will be glad to put Mr. Danbom back on the stand for any cross examination, but we have the [fol. 2453] products paired off individually and could go through them rapidly and exhibit them to the Court to show why we consider them to be comparable.

The Court: Well, there are two ways of doing that. One is to put Mr. Danbom back on the stand and have Mr. Hughes go through these exhibits in terms of the offer that was made, or have you do it.

Now, it doesn't really, it seems to me, make any material difference who takes the laboring oar here in a non-jury case of this character.

Mr. Hughes, have you got any thoughts on this subject?

Mr. Hughes: Well, your Honor, I had some additional general cross examination, but it seems to me that the burden of demonstrating to your Honor the probative value of these groceries is upon the government, and therefore I would think that any attempt to move them into evidence should be the government's responsibility.

The Court: All right. I think that may be right.

Mr. Hughes: But you do——

The Court: You may be right.

[fol. 2454] Mr. Hughes: I can either continue with this general cross examination now, or I can suspend——

The Court: Well, I don't think a continuation of the general cross examination would do any good at the moment. It would seem to me that we now have an offer of the

report of Mr. Danbom, outlining or listing the various purchases that he made.

Now, plainly, Messrs. McManus and Greenberg, you intend to follow that up with an offer of the actual items that were purchased.

Mr. McManus: That's correct, your Honor.

The Court: Now, I suggest that we go through the items that were purchased, either with Mr. Danbom, or maybe Mr. Danbom—it is not necessary for him to be on the stand——

Mr. Greenberg: If the Court please, each of these physical exhibits contains a label which indicates the store the physical exhibit was purchased in and the date. We believe that it is unnecessary to call Mr. Danbom back because we have submitted the report of the agent and we will offer each of these exhibits——

The Court: All right. Now——

Mr. Greenberg:.—at the present time.

[fol. 2455] The Court: All right. In the course of the offer what you will do, in each case you will describe the item and, in essence, the theory on which you say it is comparable.

Mr. Hughes: Your Honor, there may be specific questions addressed to Mr. Danbom with respect to some of these. The pattern may become clear, in which event, after——

The Court: Well, I think it would be as well to have Mr. Danbom on the stand. He can as well sit there as he can sit in the courtroom.

Will you resume the stand, please, Mr. Danbom. Then if it becomes necessary to question him during the course of the offer, he will be available and we won't have to get him up again.

I will say that I will not rule on those as we go along. What I will do is reserve on the entire offer, pending further cross examination by Mr. Hughes of Mr. Danbom, and pending any comments which Mr. Hughes may wish to make with respect to the given items as they go in.

Mr. McManus: Yes, your Honor.

The Court: Now, Mr. Hughes, again—sit down, Mr. Danbom.

[fol. 2455a] Mr. Hughes, as we go along, from the standpoint of your presentation, would it be more effective from your point of view to comment on these items individually or to reserve your comments to the conclusion?

[fol. 2456] Mr. Hughes: I think we will reserve the right——

The Court: You will reserve, all right.

Mr. Hughes: We may want to ask questions, but we will reserve any comments that we wish to make. We may want to address questions to the witness.

The Court: I see. All right. Well, let's proceed along those lines.

Mr. Greenberg: If the Court please——

The Court: Just one minute, please.

Incidentally, gentlemen, have you supplied the defense with a list of the exhibits that are out?

Mr. Greenberg: Yes, we have, your Honor. I transmitted a list to Mr. Johnson this morning.

The Court: As I see it—and I think this ought to go in the record—of all the exhibits which have been marked for identification, and which are on the table before the Court, all of which, as I understand it, are referred to in—what is the exhibit number?

Mr. Hughes: 949, your Honor.

The Court: 949?

Mr. Hughes: Yes.

The Court:—Exhibit 949 for identification, which has been offered, which is the list prepared by Mr. Danbom, [fol. 2457] the following exhibit numbers have been withdrawn from the offer by the Government:

G-1021 and G-1020; G-977, G-976; G-1006 and G-1007; G-1022 and G-1023; G-1033 and G-1034; G-1059; G-1082 and G-1077.

Mr. Greenberg: Your Honor, the Government offers into evidence Government's Exhibits 951 and 950. Your Honor, these exhibits contain tomato juice. One is a metal can and one is an ordinary glass container. These physical exhibits, along with the others, your Honor, indicate the results of competition in action.

The Court: All right. Well, that is the general theme on which you are relying here, is it not?

Mr. Greenberg: That is correct, your Honor.

The Court: Specifically, you claim that these two items are substantially the same product.

Mr. Greenberg: Exactly, your Honor.

The Court: And that is 950 and 951.

Mr. Greenberg: That is correct.

Will you desire me to hand these up to your Honor?

The Court: I think it would be as well if I at least in the beginning looked at these things myself, to get an idea what they look like.

[fol. 2458] Incidentally, these exhibits that have been marked, have they the price on?

Mr. Greenberg: No, your Honor, except in so far——

The Court: I know the list shows it.

Mr. Greenberg: In so far as the list shows it. Some of them have the normal price charged by the grocery stores, which were fixed by them in the regular course of their business.

Mr. Hughes: When you say the "normal price charge," what do you mean by that?

Mr. Greenberg: I withdraw the word "normal." The price charged.

The Court: Whatever is the price label, the price in the store, is what Mr. Greenberg means.

Mr. Greenberg: That is correct.

The Court: Or the price stamped.

Let me ask you this as we go along. I think another thing you might tell me is what is the relationship, roughly, in terms of quantity?

Mr. Greenberg: Well, your Honor, we have not noted the quantity contained in each of these containers. I believe the testimony of Mr. Danbom yesterday indicated that in some instances he attempted to obtain roughly similar [fol. 2459] sizes, but in other instances he did not.

The Court: Yes, I understand that.

Now this is one quart, for instance, I note. That is the glass jar, which is 951, and this would be one quart 14 fluid ounces.

How many fluid ounces in a quart, Mr. Hughes?

Mr. Hughes: I will have to ask someone more learned than I.

The Court: Professor Handler, what about you? How many fluid ounces in a quart?

Mr. Handler: 32.

Mr. Hughes: I will stipulate to that, your Honor.

The Court: All right, so much for that.

Mr. Hughes: Your Honor, I have some questions.

LAURENCE A. DANBOM resumed.

Cross-examination.

By Mr. Hughes:

Q. Mr. Danbom, you never worked for Libby's?
A. Pardon me, sir?
Q. Did you ever work for Libby's?
A. No, sir.
Q. Did you ever work for the Ritter Company?
[fol. 2460] A. No, sir.
Q. Were you in touch with anybody at Libby's in connection with this assignment?
A. No, sir.
Q. Were you in touch with anybody from Ritter's?
A. No, sir.
Q. You made no inquiries of any kind of them; is that correct?
A. Yes, sir.
Q. Made no attempt to find out from anyone in Libby's why it packs that particular exhibit in a metal container?
A. No, sir.
Q. And no attempt to find out from Ritter's why it packed that particular product in a glass container?
A. No, sir.

The Court: Would your answers, Mr. Danbom, to the questions Mr. Hughes just asked you, if asked with respect to the manufacturers of the other products, be the same?
The Witness: Yes, sir.
The Court: All right.

Q. And that would be true with reference to every single
[fol. 2461] product?
A. Yes, sir.
Q. That you are to be questioned about?
A. Yes, sir.
Q. Did you make any observation with reference to the quantity of Exhibit 95——

The Court: Call it Libby and Ritter.

Q. —of the quantity of the product in the container as you bought it?

A. Just for my own personal reason I noted the quantity of the canned tomato juice.

Q. You noted that as you bought it?

A. Yes, sir.

Q. Did you make any record of it?

A. No, sir.

Q. Can you tell me now what the quantity was?

A. I don't recall. His Honor just said 14——

Q. No, but as you sit there, do you recall that quantity?

A. No, sir.

The Court: Well now, what difference does it make, Mr. Hughes, if he recalls the quantity, if the quantity is on the can?

Mr. Hughes: Well, it may be in some instances, it may [fol. 2462] not be in other instances. There are about 200 articles here.

Q. Now, did you observe the amount of shelf space devoted to this Libby's in this type of can at the Safeway store?

A. I noted where it was sold on the shelf, yes, sir.

Q. Did you note the amount of shelf space devoted to this particular display of food?

A. Yes, sir.

Q. And can you give us an approximation of what the amount of that shelf space was?

A. I don't recall now.

Mr. Greenberg: If the Court please, the Government would like to note an objection for the record. We believe counsel is going outside the scope of the direct examination and should not lead the witness in this direction.

The Court: Overruled.

Q. Did you note the amount of shelf space devoted to the display of the Ritter's tomato juice, a sample of which you bought?

A. Yes, sir; I did.

Q. Can you tell us how much was devoted to that article? [fol. 2463] A. I don't recall now, or at the time it didn't occur to me, didn't seem very much.

Q. Did you make any note of it?

A. No, sir.

Q. Did you make any note of whether there were any other brands of tomato juice in glass?

A. No, sir.

Q. That is, you can't tell me now whether there were any other tomato juice in glass, any other brands of tomato juice in glass?

A. No, sir. I bought the can of tomato juice in the can, and I saw the bottles of tomato juice in the bottle, and I purchased tomato juice in cans and bottles.

Q. Do you have any idea of whether there were any differences in the preparation of these two products?

A. No, sir.

Q. And you have no information as to what the quantity of this Libby's packed in cans was in inventory in that store on that day?

A. No, sir.

Q. Now would you have any idea of the quantity of it in any store in Washington that day?

[fol. 2464] A. No, sir.

Q. Or metropolitan Washington?

A. No, sir.

Q. Or in the United States?

A. No, sir.

Q. And would that be true of Ritter's on that day?

A. Yes, sir.

The Court: With respect to the questions that Mr. Hughes asked you, would that apply to all the products purchased on that day?

The Witness: Yes, sir; your Honor.

The Court: The same answers you would give with respect to those products.

The Witness: Yes, sir.

Q. Do you have any information as to the quantities of this Libby's packed in cans, sold in Washington on that day or any day?

A. No, sir.

Q. Or over any period of time?

A. No, sir.

Q. Would that also be true of the Ritter's?

A. Yes, sir.

Q. Would that also be true of any of the other products?

[fol. 2465] A. Yes, sir.

Q. That are on the counsel table?

A. Yes, sir.

The Court: In other words, Mr. Witness, all that you did was to purchase specific items that you thought were comparable?

The Witness: Yes, sir.

The Court: You have no notes or observations to give us as to the shelf space occupied, the number of such items that were in the store, the sale of such items in the store or anywhere else, or the amount sold, or any figures, in terms of quantities; is that right?

The Witness: Yes, sir.

The Court: All right.

Q. Do you know where this Libby's was packed?

A. No, sir.

Q. Do you know where Ritter's was packed?

A. No, sir.

Q. Do you know whether as to these articles or any articles the pack was an experimental pack?

A. No, sir.

Q. Do you know whether as to these articles or any articles, you were purchasing obsolete stock?

A. No, sir.

[fol. 2466] Q. And can you tell me now, as you sit there on the witness stand, whether any of these articles which you purchased that day, in the type of container you purchased them in, are still being marketed by their manufacturer in that same type of container today?

A. I couldn't tell you that, no, sir.

Q. And can you tell me the reason or give me any reason why any of these articles were packed by the packer in the type of container that they are packaged in?

Mr. Greenberg: Your Honor, the government feels that it must note another objection for the record. Counsel's questions are argumentative. They are arguing the theories of his case. They are not seeking to probe the witness' knowledge.

The Court: I don't know why anybody can't argue his case by asking questions of the witness as to what he knows. There is no objection to doing that.

Mr. Greenberg: I don't believe a foundation has been laid for any of these questions.

The Court: Overruled.

Q. Now, as to food products, did you observe whether——

[fol. 2467] The Court: I might say, Mr. Greenberg, that is often the very best way of arguing your case.

Q. As to food products, did you observe whether any of the same products that you purchased were sold in the same store in frozen form or in dried form?

A. I didn't take notice, sir.

Q. Did you notice in Safeway, for example, whether they sold fresh meat?

A. I passed the meat counter, yes, sir.

Q. Do you know whether they sold fresh vegetables?

A. Yes, sir.

Q. Do you know whether they sold fresh dairy products?

A. Yes, sir.

Q. And you have no idea of the quantities of those products——

A. No, sir.

Q. —sold?

A. No, sir.

Q. And you have no idea of the quantities of any of these products in frozen form that may have been sold by that store that day or on any other day?

A. No, sir.

Q. And that would be true of all the stores that you

[fol. 2468] visited?

A. Yes, sir.

Q. And I don't suppose you have any knowledge or information as to how this tomato juice in this can was filled, do you?

A. No, sir.

Q. And do you know anything about the method by which the tomato juice in the exhibit bottle was filled?

A. No, sir.

Q. Would that be true of all the food products?

A. Yes, sir.

Q. Would it be true of the other products?

A. Of the drugs?

Q. Yes, sir.

A. Yes, sir.
Q. Drugs, toiletries?
A. Yes, sir.
Q. Cosmetics?
A. Yes, sir.
Q. Household items?
A. Yes, sir.
Q. Did you make any attempt to determine the quality of any of the products which you purchased?
A. No, sir.
[fol. 2469] Q. And did you make any attempt to ascertain whether the contents of the canned goods corresponded to the labels on the goods?

The Court: What do you mean by that, Mr. Hughes?
Mr. Hughes: Well, some of these labels, your Honor, may show a given size of the contents of the——
The Court: Well, Mr. Hughes, now we aren't going into that.
Mr. Hughes: Well, your Honor——
The Court: If you have any evidence that you want to produce, or if you can produce any evidence that any of these items are in effect frauds on the public, you can do so. But this man obviously didn't open—did you open any of the cans?
The Witness: No, sir.
The Court: No. All right. Or any of the packages? You didn't open any of the stuff at all?
The Witness: No, sir.

By Mr. Hughes:

Q. And, incidentally, were any of these items that you [fol. 2470] bought on specials the day that you bought them, do you know?
A. I don't recall, sir.
Q. You just don't know one way or the other?
A. Yes, sir.
Q. You made no note of that?
A. I made no note of that, sir.
Q. And are you in a position to tell us whether any of these items were processed by some sort of heat sterilizing process?
A. No, sir.

The Court: Mr. Hughes, look: he has said repeatedly that he doesn't know anything more about these things except that he purchased the cans from the shelf of two things that looked as though they were the same. I don't see any reason for going beyond that with this witness.

Mr. Hughes: I agree with you. I think it is transparently clear, your Honor, that the sort of things that we consider that bear upon the relevance and admissibility of these products were things as to which this witness is not knowledgeable.

The Court: All right.

Now, do you have anything further about the tomato [fol. 2471] juice?

Mr. Hughes: Your Honor, we are at the point where your Honor was about to rule on the admission of these two specific items.

The Court: Well, I am going to reserve ruling on admission until we conclude with the list of things.

Mr. Hughes: Very well.

The Court: I am not going to attempt to rule each time as they go along. I am going to see the whole picture, and then I will make a ruling.

Mr. Hughes: Your Honor, it seems to me that if we are right in our basis of objection, it may save a considerable amount of time if your Honor——

The Court: Well, let me say this to you, Mr. Hughes: It seems to me that what you are saying goes to the weight of this evidence. If, in a large store, as to these two things, or these two items of tomato juice, one is packed in tin in a roughly comparable amount, it is at least relevant. The weight to be given to it is something entirely different.

My present inclination is to take it without saying what weight I ascribe to it. It certainly is some evidence, put in an entire picture, that indicates that tomato juice can be [fol. 2472] packed in tins and glass.

Now, the extent to which that can be done, or the factors that enter into it, is another matter.

Mr. Hughes: Your Honor, addressing myself to these two specific exhibits, then, I object to them on the ground that they are incompetent, irrelevant and immaterial; that they are no proof of competition between cans and glass in any Section 7 sense; that one of the avowed purposes for offering these exhibits was in some manner to reflect what

Mr. Cheney, their own witness, has testified to; that none of the exhibits refute or even tend to refute any evidence that he gave; that the burden is upon the government to establish its case; that it is not upon us to disprove it, and that we have shown sufficiently, it seems to me, that Mr. Danbom was performing—and I say this with due deference to him—nothing more than a clerical function in going to these stores, making the purchases merely as a clerical matter, without regard to any of the factors that have to be known and have to be taken into account in determining why products move in a particular way.

No one has ever disputed, least of all ourselves, that you [fol. 2473] can go into a supermarket and you can find a product in almost any type of container which you can think of, but that is, it seems to me, utterly without significance, unless you know all of the other information with reference to that container, such as the——

The Court: No. It may be, Mr. Hughes, that it is of minimal significance without the factors that you talked about, but because something is of minimal significance or even, it could be said, if it were insignificant in the picture, that doesn't mean it is either irrelevant, incompetent or immaterial, and your objection is overruled.

As a matter of fact, while we are going on, I will admit the tomato juices.

(Government's Exhibits G-950 and G-951 for identification received in evidence.)

Mr. Hughes: Your Honor, I think it will expedite this whole process, if Mr. Greenberg really intends to offer them all, to offer them all and we will note the same objection.

The Court: Well, the only point is this: I am ruling on the tomato juice because I think the tomato juice is roughly comparable. I don't know what the rest of this stuff is. [fol. 2474] Some of it has been eliminated.

If you are willing to have it all go in under my general ruling, that's fine. I don't want to prejudice your rights to object to any specific item, that's all, on the ground that you say they are not comparable at all; you are trying to compare oranges and lemons.

Mr. Hughes: One of the problems, it seems to us, your

Honor, is that you are really not in a position, even the Court is not in a position, to determine whether they are comparable without all of the other facts and circumstances.

The Court: Oh, yes. I am in a position to say on the surface they are reasonably relevant and neither incompetent nor immaterial, without going to the weight to be given. I can certainly do that item by item.

Now, if you would wish to state your objection to the whole mass on the same basis, I will rule.

Mr. Hughes: May I have a moment, your Honor.

Your Honor, I think I will adhere to my original position, and that is that we will object to the whole mass upon all [fol. 2475] the grounds that I have indicated to your Honor.

The Court: Very good. So your objection is overruled.

Mr. Hughes: Does this also mean, your Honor, that you have overruled our objection to Mr. Danbom's testifying at all?

The Court: Oh, yes, I have overruled your objection.

Mr. Greenberg: If the Court please, may I ask Mr. Hughes if he has any objection to Government's Exhibit 949, which has been marked for identification?

Mr. Hughes: Yes, the same objection.

Mr. Greenberg: Government offers G-949.

The Court: I think what you ought to do before you put in 949 is to eliminate from 949, strike from it physically, the items which you have withdrawn.

Mr. Greenberg: We have done so, your Honor.

The Court: All right. You have done so. The objection is overruled to 949.

(Government's Exhibit G-949 for identification received in evidence.)

[fol. 2476] Mr. Greenberg: Your Honor, I have just a few questions of Mr. Danbom. If I may, I would like to ask them at this time.

The Court: Very good.

Now, with reference to the physical marking of these things, I don't propose to do it in the courtroom. I think we will reserve the actual physical marking until recess. But I think that the record ought to show the actual num-

bers that you are presently offering, Mr. Greenberg, so that we will know what numbers I have ruled upon.

Mr. Greenberg: Your Honor, at a convenient recess we will read the numbers into the record.

The Court: All right.

Mr. Hughes: Your Honor, I am not sure whether the record is clear or not that there is the same objection to Exhibit 949.

The Court: Yes, I understand that.

Mr. Greenberg: May I proceed, your Honor?

Redirect examination.

By Mr. Greenberg:

Q. When you were in the process of buying the various physical exhibits on display, were you told how much money you can spend?

A. At that particular store?

[fol. 2477] Q. At all the stores.

A. No. No, sir, I was not.

Q. Was the figure $150 ever mentioned to you?

A. It was mentioned that we have $150 to spend, but if we needed more—but——

Mr. Hughes: May I have the last question and answer?

The Court: Yes.

(Record read.)

The Court: If you needed more, what, could you get more?

The Witness: We could get more.

By Mr. Greenberg:

Q. Was there any financial limit put upon you sir?

A. No.

The Court: Anything further?

Mr. Greenberg: We have nothing further.

Mr. Hughes: Yes, we have some more, your Honor.

The Court: All right, Mr. Hughes.

Recross examination.

By Mr. Hughes:

Q. Mr. Danbom, do you have Exhibit 949 for identification in front of you?

[fol. 2478] No, sir, I don't.

The Court: Will somebody supply the witness with a copy of it.

Do you have it?

The Clerk: Yes, your Honor.

By Mr. Hughes:

Q. Mr. Danbom, you will observe that in the lower right-hand corner there have been numbers placed upon that exhibit. Do you see them in the lower right-hand corner, consecutive numbers?

A. Yes, sir.

Q. And——

The Court: You mean typewritten?

Mr. Hughes: No, just in pencil.

The Court: In pencil?

Mr. Hughes: Yes.

The Court: Oh, are you referring to G-925?

Mr. Hughes: I am referring to Exhibit G-949.

The Court: No. I understand that. But what is the figure you refer to?

Mr. Hughes: Well, your Honor, so that it would be easy to examine with reference to this exhibit, before the session today I agreed with Mr. Greenberg that I could mark those [fol. 2479] pages so that in questioning the witness about——

The Court: What I am trying to find out, Mr. Hughes, is what we are doing here, so I understand what is going on.

Mr. Hughes: Yes.

The Court: Let me see that a minute.

I see. Yes. In other words, you are now referring to G-949 at the lower right-hand corner?

Mr. Hughes: No, sir, I am referring to the penciled numbers, 1, 2, 3 and 4 and consecutively, in the lower right-hand corner, with a circle around it.

The Court: Oh, I see. Very faint.

Mr. Hughes: Yes, it's a very faint number. And may the record show that I placed that numbering on the exhibit.

By Mr. Hughes:

Q. Now, Mr. Danbom, would you take page 9 of that exhibit, as I have marked it. Do you have that in front of you?

A. Yes, sir.

Q. And do you see up in the upper right-hand corner the word "Date" and then the date 9/1/60?

[fol. 2480] A. Yes, sir.

Q. And then do you see in the lower right-hand corner the date dictated, 9/1/60?

A. Yes, sir.

Q. Now, is there any significance in having two spaces for dates?

A. No, sir.

Q. So that the date at the top and the date at the bottom, do they always correspond?

A. Yes, sir.

Q. And do you see, towards the bottom, the legend "File number"—and I am again referring to page 9——

A. Yes, sir.

Q. —followed by the letters "WFO-60-580"? Do you see that on page 9?

A. Yes, sir.

Q. Can you tell me the significance of the letters "WFO"?

A. Yes, sir. Washington Field Office.

Q. And what is the significance of the number 60-580?

A. That is the number of the case that was assigned to me to work on. That is our file number, field number case.

[fol. 2481] Q. I see. And does that mean that the file of the Washington field office has that number?

A. Yes, sir.

Q. And does that mean that there is a Washington field office file?

A. Yes, sir.

Q. And where would that file be—in the Washington field office?

A. Yes, sir.

Q. You don't have it here?

A. No, sir.

Q. And now would you turn to page 1 of that Exhibit 949, and you see where it says "File number WFO-60-580"?

A. Yes, sir.

Q. Followed by another dash, and the number 11?

A. Yes, sir.

Q. What is the significance of the -11 which appears to be added to the file number in that case?

A. That is the page or the serial of that file, the serial number of the file.

Q. Well, page 9 does not have the -11; is that right?

A. Yes, sir.

[fol. 2482] The Court: Mr. Hughes, what is the relevance of this? What is the significance of this inquiry?

Mr. Hughes: Well, your Honor, I am trying to find out——

The Court: How can this possibly have any bearing on this matter? If you can tell me, I would be interested.

Mr. Hughes: I think in a few minutes I will come to what I think—I don't know that it has any significance, but I want to find out myself.

The Court: Well, make it short, because I am not going to give you much more latitude on this kind of cross.

Mr. Hughes: All right, sir.

By Mr. Hughes:

Q. Now, would you turn to page 14. Do you see that?

A. Yes, sir.

Q. And do you see that following the file number, 60-580——

A. Yes, sir.

Q. —there had been a number, but there is an erasure?

[fol. 2483] A. Yes, sir.

Q. Did you make that erasure?

A. No, sir, I didn't.

Q. Who did?

A. The steno, I think, who had written it. I know she erased those numbers. The stenographer erased those.

Q. Did you tell her to?

A. I said we wouldn't need that number on the copies of these lists. We wouldn't need the number.

Q. Well, on some of them you left the number on, didn't you?

A. Because—yes, sir. Two girls typed up these lists, and one girl left them on and the other girl started—I said, "Well, just eliminate that. They are of no significance."

Q. On how many of these did you cause that erasure to be made?

A. On five pages.

Mr. Greenberg: If the Court please, may we at this juncture know the purpose for this line of questioning?

The Court: Well, I think the Court would like to know the purpose of the line of questioning. It doesn't seem to [fol. 2484] me to make any conceivable difference in this case. What are you trying to get at?

Mr. Hughes: I would like to know why there was an erasure.

The Court: Well, I don't care whether there was an erasure or not. It couldn't possibly affect this witness' testimony. It seems to me we are just wasting time on this line of cross examination.

By Mr. Hughes:

Q. Were those erasures made before these papers were delivered to Mr. McManus and to Mr.——

A. Yes, sir. We made those in the Washington field office.

Q. Was it made on all the copies?

A. On all three copies, yes, sir.

Q. Now, in connection with this assignment, Mr. Danbom, did you prepare any writing of any kind in connection with the assignment or referring to the assignment in any way, other than Exhibit 949 in evidence, and your notes that you testified were in the field office in Washington?

A. No, sir.

Q. Did you have any communications of any kind, [fol. 2485] written communications, with Mr. Powell, your chief?

A. No, sir.

Q. When you went to any of these stores, did you have a notebook with you?

A. No, sir, I didn't. I did not.

Q. That would be true of all the stores you visited?

A. Yes, sir.

Q. And referring back to Exhibit 949, you will observe, taking for example, page 1, that there is a legend: "It is to be noted that a number of items were purchased in the smaller size in the interest of economy." Do you see that?

A. Yes, sir.

Q. Whose suggestion was that?

A. Well, I mentioned it to Mr. McManus. I said, for instance, olive oil I saw in different sizes and I purchased the smaller size because it would save a little money.

Q. And what did he say to that?

A. "Fine. Very good."

Q. And was that a conversation that you had on the occasion of your second visit with him?

A. When I returned that evening, yes, sir.

[fol. 2486] Q. Now, running through these pages of this exhibit, you will find a similar notation from time to time. Do you observe that?

A. Yes, sir.

Q. And did you have any further conversations with Mr. McManus with reference to that subject?

A. No, sir.

Q. Just in one conversation after your first visit to Safeway?

A. Yes, sir.

Q. Now, you went to the Woodward & Lothrop department store on four occasions; is that correct?

A. Yes, sir.

Q. And when was the first occasion you went there?

A. On September 1, 1960.

Q. Before going there, did you have a meeting with Mr. McManus and Mr. Greenberg?

A. Yes, sir.

Q. Did you discuss your impending visit to that store with them?

A. Yes, sir.

Q. And what did you say to them and what did they say to you with reference to it?

[fol. 2487] A. Both Mr. Greenberg and Mr. McManus said to buy from Woodward & Lothrop household items that were packaged in plastic, glass and metal, and they have a special section in the store for household items.

Q. And was that the sum total of your conversation with them on that first occasion?

A. Yes, sir.

Q. And, having had that conversation, you went to that store for the first time when?

A. On September the 1st.

Q. Wasn't it August 31st?

A. August 31st. On August 31st, yes, sir.

Q. And following that visit to the store, you had a further conference with Mr. McManus and Mr. Greenberg?

A. Yes, sir.

Q. And when was that?

A. When I returned to Mr. McManus' office with t[illegible] purchases, I recall mentioning that there were other items in the household department that I noted, and should I purchase those.

Q. And what items did you note to them?

A. I noticed, for instance, Clean-Tint fabric color, and a metal can of Fabspray, which I thought was used for the [fol. 2488] same purpose.

Q. And what did they say to that?

A. "If you think it's the same product, purchase it."

Q. And is that the sum total of your conversation with them——

A. Yes, sir.

Q. —on that day?

A. Yes, sir.

Q. And when was that conversation?

A. That would be August 31st.

Q. You went back on September 1st?

A. Yes, sir.

Q. You made that single purchase?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And following that, did you return again and have a conversation with Mr. McManus and Mr. Greenberg?

A. I don't recall, sir.

Q. Did you go to the store again?

A. Yes, sir, I did.

Q. On what date?

A. I went to the store again on September the 6th.

[fol. 2489] Q. Was that on your own responsibility, or following conversations with them?

A. Following conversations with Mr. McManus and Mr. Greenberg.

Q. And when did you converse with them prior to your visit to the store on September 6th?

A. I recall it was on the morning of September the 6th.

Q. And you and they had a conversation?

A. Yes, sir.

Q. Will you tell us the substance of what they said and what you said?

A. I recall Mr. McManus saying to purchase some items from Woodward & Lothrop like bath lotion and hand lotion and bath oil, cologne, if it was packaged in plastic and glass.

Q. In other words, he suggested that you purchase these items?

A. Yes.

Q. And following that, you went and purchased the items——

A. Yes, sir.

Q. —that are indicated on page 15?

[fol. 2490] A. Yes, sir.

Q. As I have numbered these pages?

A. Yes, sir.

Q. And then you went there another time; is that correct?

A. Yes, sir.

Q. And that was when?

A. The following day.

Q. And you made two purchases; is that correct?

A. Yes, sir.

Q. As shown on page 16?

A. Yes, sir.

Q. And was that at the suggestion of either Mr. McManus or Mr. Greenberg?

A. I recall that on September 6th I ran out of money, and I said, "I saw an item that appeared to be a mighty good item in Breck shampoo that was packaged in glass

and packaged in plastic," but I would need more money to purchase that item.

Q. And what did Mr. McManus say to that?

A. He gave me the money and I purchased the item.

Q. Did he tell you to purchase it?

A. Yes, sir.

[fol. 2491] Q. And was that the only item that you referred to in the conversation with him preceding your visit to the store on September 7th?

A. Yes, sir.

Q. And if we were to add up the amounts which you have indicated in this Exhibit 949 in evidence as the amounts that you paid for the various articles, we would get the total of the amount that you spent?

A. Yes, sir. Yes, sir.

[fol. 2492] Q. Now, would you refer, please, to those pages of Exhibit 949 that relate to your first visit to the Giant supermarket. Would that be page 3 and page 4?

A. Yes, sir.

Q. Was it on the day of your first visit to that supermarket that you bought the boysenberries?

A. Yes, sir.

Q. Again refering to Exhibit 949, you refer from time to time to identifying a receipt, turning it over to Mr. McManus; do you see that?

A. Yes, sir.

Q. To what were you referring when you used that term "this receipt"?

A. When the clerk at the cash register of the Giant supermarket itemized the products, I asked her for the receipt and then I returned it to Mr. McManus, and identified it as the receipt of the purchases made by me at the Giant store on that particular date.

Q. And when you refer to that receipt running through this exhibit, you got a receipt in each instance from each store?

A. Yes, sir.

Q. And in each instance you turned it over to Mr. Mc-

[fol. 2493] Manus.

A. Yes, sir.

The Court: Is there any thing further with this witness, Mr. Hughes?

Mr. Hughes: Your Honor, I am just going through my notes.

Q. Did you ever come back to Mr. McManus or Mr. Greenberg with instructions with reference to purchasing Aerosol cans?

A. I mentioned that I saw chocolate syrup in a pressure can. "Would you want something like that?" And both agreed, "Yes, if you saw chocolate syrup in an Aerosol can, purchase it."

Q. Is that the only reference to Aerosol cans there was in the conversations between you and them?

A. Well, I assumed that meant all products that I saw in Aerosol cans.

Q. In other words, you interpreted what they said to you to be on the lookout for Aerosol cans?

A. Aerosol cans.

Q. In all categories that you were looking for; is that right?

A. Yes, sir.

Mr. Hughes: I think that is all.

[fols. 2494-2534] The Court: Anything further?

Mr. Greenberg: The Government has no further questions, your Honor.

The Court: All right, you may step down, Mr. Danbom.

(Witness excused.)

[fols. 2535-2553] OFFERS IN EVIDENCE

(Court's Exhibits 3 through 12 were marked for identification.)

(The following Government's Exhibits, previously marked for identification, were received in evidence:)

Exhibits 952 through 975.
978 through 1005.
1008 through 1019.
1024 through 1032.
1035 through 1058.
1060 through 1062.
1064 through 1076.

1079 through 1081.
1083 through 1085.
1087 through 1091.
1093.
1095 through 1102.
1105 through 1149.
1153 through 1155.

[fol. 2554] WILLIAM B. SLOAN, called as a witness by the government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Sloan, you are an agent of the Federal Bureau [fol. 2555] of Investigation?

A. Yes, sir, I am.

Q. And from what office?

Q. I am assigned to the Atlanta, Georgia office.

Q. And in the course of your duties, were you directed by the Antitrust Division of the Department of Justice to make an investigation in certain stores in Atlanta, Georgia to determine products which would be packed in cans and glass, cans, glass and plastics, or glass and plastic?

A. Yes, sir.

Q. And in the course of your duties you reported back to the Antitrust Division the results of your survey?

A. Yes, sir, I did.

Q. And do you have copies with you of what you observed in those stores?

A. Yes, sir.

Mr. McManus: Your Honor, I believe the first one is Court Exhibit 5, which we would like marked as Government's Exhibit 11.

The Court: Presently it is Court's Exhibit 5 for identification?

Mr. McManus: Yes, your Honor. We would like to mark [fol. 2556] that Government's Exhibit 11 for identification.

The Court: For identification?

Mr. McManus: For identification.
The Court: Very well.

(Court's Exhibit 5 for identification marked Government's Exhibit G-1158 for identification.)

Mr. McManus: Excuse me, your Honor, I seem to have made an error.
The Court: You were referring to Court's Exhibit 7?
Mr. McManus: Yes, sir. May we correct that so that Court's Exhibit 7 should be Government's Exhibit 1158 for identification?
The Court: All right. Court's Exhibit 7 will be handed to the clerk so that it may be marked.

By Mr. McManus:

Q. Mr. Sloan, I show you Government's Exhibit 1158 and could you tell me what this purports to show?
A. This is a schedule of various products that I observed at the Colonial store, Candler Road and McAfee Road, Decatur, showing the various items that were contained in a can and glass. Also, some items that were contained in plastic and can.

[fol. 2557] Mr. Hughes: Would you say that again?
The Court: Plastic and can.
The Witness: Plastic——

Q. This report also shows the brand name, Mr. Sloan?
A. It shows the brand name and the size.
Q. And the check mark is to indicate where you observed that product in glass or plastic or can?
A. That's right, sir.

Mr. McManus: Your Honor, the government offers G-1158.
The Court: I take it you wish to examine the witness on it?
Mr. Hughes: Yes, I do, your Honor.

By Mr. Hughes:

Q. Mr. Sloan, how long have you been with the FBI?
A. I have been a special agent nine and a half years.

Q. Have you ever been connected with the can manufacturing business in any way?

A. No, sir.

Q. Or the glass manufacturing business?

A. No, sir.

[fol. 2558] Q. Or the plastic container manufacturing business?

A. No, sir.

Q. Or the food packing business?

A. No, sir.

Q. Or have you been connected with any concern which manufactures toiletries or cosmetics?

A. No, sir.

Q. Or drugs?

A. No, sir.

Q. Medicines?

A. No, sir.

Q. Household items?

A. No, sir.

Q. And——

The Court: Have you ever been in any business connected in any way with any of the items that appear on Exhibit 1158?

The Witness: No, sir.

The Court: All right.

By Mr. Hughes:

Q. And are you chemist?

A. No, sir.

Q. This exhibit, Exhibit 1158, which you identified, re-[fol. 2559] lates to a visit that you made to the Colonial store in Atlanta; is that correct?

A. Yes, sir.

Q. Is that store in your neighborhood? Do you live in the neighborhood?

The Court: Let me ask you for one thing, for my information. Is Decatur a suburb of Atlanta?

The Witness: It is part of the metropolitan area.

By Mr. Hughes:

Q. Is your home near there?

A. This particular store, I would say, is three miles from my home.

Q. Are you familiar with that neighborhood?

A. Fairly; fairly familiar.

Q. Do you know whether there are any restaurants or taverns in that neighborhood?

A. The closest restaurant would be a mile away, and that is a dry county. There wouldn't be——

Q. That is a dry county?

A. Yes, sir.

Q. Are there any diners or anything of that sort?

The Court: All Atlanta is dry, isn't it?

[fol. 2560] The Witness: Yes, sir.

A. The only thing, eating place, would be a five-and-dime store and a drug store. They are nearby.

Q. Are there any schools and hospitals nearby?

A. There is a school about a half a mile. No hospitals.

Q. Now, when you undertook this assignment to go to the Colonial store, did you understand that one of the things that you were to look for was containers made of plastic?

A. Yes, sir.

Q. And what did that term mean to you?

A. Well, just a container made of plastic.

Q. Is that the best you can conjure up when you are asked to define what that term embraces?

A. Yes, sir.

Q. Well, would it include in your mind such a thing as a plastic tube?

A. I think in one instance it was a plastic tube.

Q. Well, whether you think or not, would you consider that that was embraced within the term?

A. Yes, sir, I believe so.

[fol. 2561] Q. Would you consider that flexible packaging was embraced within that term, things like plastic film?

Mr. McManus: Your Honor, my only objection is, would Mr. Hughes define what he means by "flexible packaging"?

The Court: Well, he is about to do that.

Mr. McManus: Mr. Hughes?
The Court: Mr. Hughes, yes.

By Mr. Hughes:

Q. Do you understand the term "flexible packaging"?
A. Not thoroughly.
Q. Does it mean anything to you?
A. Flexible—I would say it is something like cellophane, the same basic——
Q. And would that be embraced within your understanding of containers made of plastic?
A. No, sir.
Q. And were you also to look for containers made of tin? Was that part of your assignment?
A. Yes, sir; metal, tin.
Q. And what did that embrace in your mind?
A. Tin cans.
[fol. 2562] Q. Anything else?
A. No, sir.
Q. Would it embrace tubes made of tin?
A. No, sir.
Q. Things like toothpaste tubes?
A. No, sir.
Q. In other words, you would consider that a plastic tube was within the definition of a container made of plastic, but you wouldn't consider that a metal tube made of tin was within the definition of a container made of tin; is that a fair statement of it?
A. I believe so.
Q. Now, did you make only one visit to this store, this Colonial store? Did you make only one visit to that store?
A. There were two visits. I started on August 29th, and I had to end the day. I naturally stopped work and came back the next day. Two days of work.
Q. Were they consecutive days?
A. Yes.
Q. How long were you there on the assignment altogether, would you say?
A. I would roughly say approximately eight hours.
[fol. 2563] Q. I notice that on this Government's Exhibit 1158 for identification you do not indicate any prices of any of the products that you observed; is that correct?

A. No prices.

Q. Did you in fact note the prices?

A. I didn't note—I didn't pay——

Q. You didn't pay any attention to that, did you?

A. I didn't pay any attention, no sir.

Q. Did you make any observation of the quality of any of the products in any of the containers that you observed?

A. No, sir.

Q. Did you pay any attention to differences in preparation of the product?

A. No, sir.

Q. Could you tell whether the products which you observed were specially packed for special purposes, such as, for example, diatetic purposes?

A. No, sir.

Q. Do you know whether any of the products which you observed were processed by heat sterilization?

A. No, sir.

[fol. 2564] Q. Did you make any observation as to the amount of shelf space devoted to the different types of containers for what you determined to be similar products?

A. No, sir.

Q. Now, do you have any information as to the quantities of any product which you observed in the inventory of that store on that day

A. Would you repeat that, sir?

Q. I say, do you have any idea of how much that store had in inventory of any of the products that you observed and put on this list, Government's Exhibit 1158?

A. No, sir.

Q. And I don't suppose you have any idea as to the quantities of any of these items which were sold by that store that day or any other day?

A. No, sir.

Q. Or by any other store in the Atlanta area?

A. No, sir.

Q. Or in the United States?

A. No, sir.

Q. And you don't have any information, do you, with respect to the formulation of any of the products which you [fol. 2565] observed packaged in either cans or glass or plastic?

A. No, sir.

Q. Do you know what a light-duty detergent is?

A. Do I know what a light-duty detergent is?

Q. Yes, sir.

A. No, I don't.

Q. Did you take any note as to whether any of the products which you purchased were packaged locally or at a distance?

A. No, sir. I did not purchase any products.

Mr. Hughes: I withdraw that.

Q. Did you make any observations as to whether any of the products which you observed were packed locally or at a distance?

A. No, sir.

Q. And could you tell from the package of the article, or any of the articles that you observed, whether or not they were being test marketed?

A. No, sir.

Q. Did you know whether any of them were on sale, that is, on special?

A. No, sir.

Q. Could you tell whether any of the articles you ob-
[fol. 2566] served were from obsolete stock?

A. No, sir.

Q. And could you tell whether any of them were packed experimentally?

A. No, sir.

Q. And are you able to say whether any of the articles which you observed that day are still being packed by the packer?

A. No, sir.

Q. And you did not get into any direct contact with any of these packers either prior to or subsequent to your visit to that store, did you?

A. No, sir.

Q. And you don't know what reasons motivated them for packing their product in a particular container, do you?

A. No, sir.

Q. Or in a particular size?

A. No, sir.

Q. Did you observe whether in the Colonial store that day there were frozen food products on display?

A. No, I did—let me put it this way: They sell frozen products, but I didn't note them, pay any attention to them.

[fol. 2567] Q. In other words, you did not pay any attention to them?

A. No, sir.

Q. So you couldn't tell us——

The Court: They had a department in which they sold frozen food products?

The Witness: Yes, sir.

By Mr. Hughes:

Q. And did they sell dried foods; dehydrated foods; did you notice that?

A. I did not notice that.

Q. Would you know what items were dehydrated food items, actually?

A. Well, I would say prunes, dehydrated prunes.

Q. That occurs to you as such an item?

A. Yes, sir.

The Court: Are we agreed that that is dehydrated, the ordinary prune that you might use?

Mr. Hughes: I don't know.

The Court: All right. Mr. Sloan, I don't think you are expected to know either.

Q. Did you happen to observe whether any of the products were imported?

A. No, sir.

[fol. 2568] Q. That is, you made no observations along that line at all?

A. No, sir.

Q. And going back to the other products sold in the store, did you observe whether they sold fresh fruits and vegetables, fresh foods?

A. Yes, sir. They have that department.

Q. Fresh meats?

A. Yes, sir.

Q. And fresh dairy products?

A. Yes, sir.

Q. Milk, butter and things of that sort?

A. Yes, sir.

Q. But you made no particular note of what articles of that kind they were selling, is that right, beyond the fact that they were selling articles of that general nature and description?

A. That's correct.

Q. Now, you don't have any information, do you, as to the method of processing of the various products that you observed?

A. No, sir.

Q. And you don't have any information as to the method of filling the containers?

[fol. 2569] A. No, sir.

Q. Do you happen to know the difference between high-density and low-density polyethylene?

A. No, sir.

Q. There has been marked for identification in this case as Court's Exhibit 3 a communication from Mr. Bicks to the Director of the Federal Bureau of Investigation.

Mr. McManus: Your Honor, at this time, if we could, if the defendants have no objection; could we give this a government number? There is no problem about it.

The Court: Oh, I think so. As you refer to these things, I think you better translate them from court exhibit numbers to government exhibit numbers.

Mr. Hughes: That would be——

The Clerk: 1159.

The Court: Mr. Clerk, I will give you these exhibits as we go along so you can mark them.

(Court's Exhibit 3 for identification marked Government's Exhibit 1159 for identification.)

By Mr. Hughes:

Q. I will start all over again, Mr. Sloan, and show you Government's Exhibit 1159 for identification and ask you [fol. 2570] whether you ever saw that or a copy of that before.

A. Yes, I saw a copy of this.

Q. And were they the instructions to you as to what you were to do?

A. Yes.

Q. And they served as your guide in carrying out your assignment?

A. Yes.

Q. I call your attention to the last paragraph of that exhibit.

A. Yes, sir.

Q. Do you recall whether at any time during the execution of your assignment you had occasion to get in touch with either Mr. McManus or Mr. Greenberg?

A. I did not.

Q. Mr. Sloan, I call your attention to Government's Exhibit 1158 for identification. Do you have that there?

A. Yes, sir.

Q. Will you turn to the last page, to the item "Hair shampoo." Do you see that?

A. Yes, sir.

The Court: Is that page 9?

[fol. 2571] Mr. Hughes: Yes, page 9.

Q. You have a check mark opposite a Prell three-ounce item under the column "Plastic." Is that the article that was in the plastic tube to which you referred earlier in your cross examination?

A. Yes, sir.

Q. And just——

The Court: What do you mean by that? Let me understand precisely what you mean by a plastic tube. Is that a toothpaste tube, the shape of the——

Mr. Hughes: Your Honor, I think we can be helpful. We don't want to add to the drug store, but we do have——

The Court: Well, I think it is very important, Mr. Hughes, that we do not monopolize all the products in this country in the courtroom.

By Mr. Hughes:

Q. Is this plastic tube that I show you the article that you observed, as far as you can tell?

A. It's the same type. I don't know about the size.

The Court: Let me see that.

Q. If this were a three-ounce size, would you say it was the same thing?

[fol. 2572] A. Yes, sir.

Q. In any event, it was that tube?

A. Correct.

The Court: What is this? How does this work, Mr. Hughes? Is it sort of a squeeze——

Mr. Hughes: Yes, sir. I warn you not to take the top off. If you take the top off, it operates more or less as a tooth-paste——

The Court: Is this viscous in form?

Mr. Hughes: Yes, it flows.

The Court: Not a liquid, but a heavy liquid.

Mr. Hughes: I don't purport to be an expert, but, as I understand it, with plastic it doesn't collapse the way the metal tube does.

The Court: I see.

Mr. Hughes: But you press and the contents are dispensed.

Perhaps I should assure your Honor that we have not many articles like that included in the record.

The Court: What do you propose to do with that now?

Mr. Hughes: Your Honor, perhaps I thought to mark it as our exhibit for identification. That would be——

[fol. 2573] The Court: And if anything else goes in, yours will go in with it.

Mr. Hughes: Yes. And we will continue the lettering.

The Court: Yes. Up to the close of the government's case in chief, we will continue the lettering of the defendants' exhibits.

(Defendants' Exhibit R marked for identification.)

[fol. 2574] Q. Now, returning to the last page of Government's Exhibit 1158 for identification, do you notice the item "deoderant"?

A. Yes.

Q. And there are two items there, one, two fluid ounces, which you indicate was a plastic container; is that right?

The Court: 12 fluid ounces, I think that is.

A. Pardon me. That is a 1.2.

Q. 1.2 fluid ounces.
A. Yes.

The Court: Oh.

Q. Do you know whether that was a squeeze type bottle, plastic bottle?
A. I am pretty sure it was, yes.
Q. And do you remember what if anything there was on it? Do you remember whether the name on it was Mum Mist?
A. I don't recall that.
Q. You wouldn't dispute that, would you?
A. Could be. I don't know.
Q. And the other item is 7 ounces. Was that in a glass jar?
A. .7 ounces.

[fol. 2575] The Court: .7 ounces.
Mr. Hughes: Excuse me.

Q. .7 ounces?
A. Yes.
Q. That was in a glass jar?
A. Yes.
Q. And that was a cream; is that right?
A. I believe it was.
Q. Do you know what color it was? Do you know what color the contents were, the color of the bottle, of the jar?
A. I can't remember that, sir.
Q. Do you remember the color of the plastic container?
A. No, sir.

Mr. Hughes: Now just one other item, your Honor.

Q. On page 8, do you see the item "toilet bowl cleaner"?
A. I do.
Q. And under that do you have a trade name "Sani-flush"?
A. Yes, sir.
Q. And you have that listed, one of those items, as an [fol. 2576] Aerosol; do you see that?
A. Yes, sir; I see that.
Q. Well, will you describe that item for me, that you say you saw in an Aerosol container?

A. I can't recall at this time.

Q. Well, would it surprise you if I were to tell you that that article doesn't come in an Aerosol container?

Mr. McManus: I object, you Honor.

The Court: I will allow the question.

Mr. McManus: It is really not a question; it is a statement of fact by Mr. Hughes. That is the reason I am objecting.

The Court: We are not taking any statements of fact by Mr. Hughes. I will permit the question.

Mr. Hughes: I thought it was a question

The Court: All right.

Q. Would you like the question again, Mr. Sloan?

A. Yes, sir.

(Question read.)

A. I don't know why the check mark is here. It could have just the can. It might be my error.

Q. You could have made a mistake, couldn't you?

A. Yes, sir. There are four columns there.

[fol. 2577] The Court: What page is that on?

Mr. Hughes: Page 8, your Honor.

The Court: Page 8. Oh, yes, I see.

Q. Did you notice whether the Saniflush in the can was in powder form?

A. I did not open the can.

Q. And do you or do you not say that you saw any Saniflush in a glass container?

A. I did not——

The Court: Wait a minute.

A. Wait a second. I did see it. I got my columns mixed up, that is all.

Q. Do you know which if any of these various household products were powders or liquid, in this list of products that appear on Exhibit 1158 for identification?

A. No, sir.

Q. I mean, you couldn't give us that detail now, could you?

A. No, sir.

Q. And would you have any independent recollection of the items that you saw without the benefit of that sheet before you to refresh your recollection?

A. No, sir; not at this time.

[fol. 2578] Q. You have lots of assignments in your work, don't you?

A. Yes, sir.

Mr. Hughes: Well, your Honor, I object to it, on the ground that it is both irrelevant and immaterial, and that no proper foundation for the reception of the document into evidence has been made.

The Court: The objection is overruled. 1158 for identification and Defendants' Exhibit R will both be received.

Mr. McManus: Your Honor, if the defendants have no objection, I think it might help also if 1159 is received in evidence.

Mr. Hughes: Which is 1159?

The Court: Those are the instructions to the agent.

Mr. Hughes: I have no objection to that.

The Court: All right, 1158, 1159 and the green tube will be received.

Mr. Hughes: Well, perhaps I should explain my position. 1158 having been admitted over my objection, I don't object to the admission of 1159.

The Court: I see.

(Government's Exhibits 1158, 1159 and Defendants' Ex-
[fol. 2579] hibit R received in evidence.

Direct examination continued.

By Mr. McManus:

Q. Mr. Sloan, did you make a visit to another store subsequent to the visit you just discussed?

A. Yes, sir.

Q. And what store is that, Mr. Sloan?

A. That is the Big Apple Supermarket, at 302—pardon me—3203 Greenwood Road Southeast, Atlanta.

Q. And do you have a copy of the list of the products that you observed at that store?

A. Yes.

Mr. Hughes: Mr. McManus, it would help me in following if you could tell me what Court exhibit number that is?

Mr. McManus: This is not a Court exhibit number. I am going to give you a copy. Will that help you?

Mr. Hughes: Well, it would help us to relate to—all right.

Mr. McManus: If I could have it marked, your Honor, than I will give defendants a copy.

The Court: All right, we will have it marked for identification with a Government's exhibit number.

(Marked Government's Exhibit 1160 for identification.)

[fol. 2580] Mr. Hughes: Could you give us some time so that we could follow this?

Mr. McManus: Yes, I will.

The Court: Does 1160 for identification relate to any of the documents, by way of report, that were given to the defendants last night?

Mr. McManus: Yes, your Honor. It is taken from that report.

The Court: Which one?

Mr. Hughes: Which one?

Mr. McManus: It is the 9760 report.

Mr. Hughes: Constituting part of what?

The Court: It would be part of 5, wouldn't it?

Mr. Hughes: It might be part of 6. That is the difficulty, your Honor. These are all mixed up.

The Court: No, the 9-page schedule. Do you have 6?

Mr. Hughes: 6.

The Court: There are only two reports by Mr. Sloan. One is the 9-page schedule and the other was Exhibit 5.

Mr. Kuhn: This is part of 10.

Mr. Hughes: This is part of Exhibit 10 for identification.

[fol. 2581] The Court: Oh, is it?

Mr. Hughes: Yes.

The Court: All right. You have got it now, in any event, have you?

Mr. Hughes: Now, is there a pending question? I am straightened out. Is there a pending question?

Mr. McManus: I am just about ready to ask one.

The Court: Go ahead.

By Mr. McManus:

Q. Mr. Sloan, you have a copy of Government's Exhibit G-1160 for identification?

A. Yes, sir.

Q. And that exhibit purports to show the products packaged in glass, can and plastic containers, observed by you on the shelves of the Big Apple Supermarket in Atlanta?

A. Yes, sir.

Q. And in the left-hand column is the name of the product?

A. Yes.

Q. And in the middle column is the number of types of brands that that product was packed in, in glass; is that [fol. 2582] correct?

A. Yes, sir.

Q. And the number in cans is in the right-hand column?

A. Yes.

Q. Now, could you tell me just one thing, Mr. Sloan? In relation to the stores in the Atlanta area, do you know is this supermarket a large, medium size or small store?

A. It is not the largest. I'd say it is medium-sized.

Mr. McManus: I see.

Your Honor, the Government offers G-1160.

The Court: First of all, Mr. Sloan, let me ask you this question: You recall the questions that Mr. Hughes asked you with respect to the last exhibit, do you?

The Witness: Yes, sir.

The Court: Would your answers to those questions be the same with respect to this exhibit as they were with respect to the last exhibit?

The Witness: Yes, sir.

The Court: All right. Now you can go ahead from there, Mr. Hughes.

[fol. 2583] Mr. Hughes: Yes.

By Mr. Hughes:

Q. Mr. Sloan, if you did not have that Exhibit G-1160 for identification before you would you have any independent recollection of the products that you observed in the Big Apple Supermarket on September the 1st, 1960?

A. No, sir.

Q. So that without that exhibit in front of you, you could not state to his Honor what you had seen and observed there that day, by way of products; is that correct?

A. Yes.

Q. Was this the second store you went to, do you remember?

A. Yes, sir.

Q. And how long were you in this store?

A. It would be my guess or estimation, approximately four hours.

Q. And did anyone assist you in making your observations?

A. No, sir.

Q. And did you prepare a list of what you observed?

[fol. 2584] A. Yes, sir.

Q. Did you do that yourself?

A. Yes, sir.

Q. Now will you turn to Exhibit G-1160; do you notice that first item there, "olives"?

A. Yes.

Q. Do you know what kind of olives they were?

A. I do not recall.

Q. You just can't give us any help on the subject at all, can you?

A. No, sir.

The Court: For example, Mr. Sloan, you don't know whether these olives were stuffed olives or green olives or the dark ripe ones?

The Witness: No, sir.

The Court: Just olives?

The Witness: Olives.

Q. And turning over to the next page, do you see the item "coffee," the third last item under "food products"?

A. Yes, I see.

Q. Do you recall what kind of coffee that was that you saw?

A. Well, I would tell you by brand name some of them, [fol. 2585] that is all, maybe two or three.

Q. Well, I will come back to that in a minute. But did you note whether any of this was ground coffee or soluble cof-

fee, or did you make any such distinction as that in your mind?

A. No, sir.

Q. Well, now, going back to these headings, you say "number in glass," then you say "number in cans," and then under "olives" you have "five." Does that mean—well, what does that mean when you say "olives five"?

A. That is the type of olive, type of olive.

Q. Are you talking about the brand now?

A. No, sir. That is different type of olives that it had on the shelf.

Q. In other words, this means that you saw five, what at least to you seemed to be five different types of olives?

A. Yes.

Q. In glass?

A. Yes, sir.

Q. And that is wholly without regard to brand; is that correct?

A. That is correct, sir

[fol. 2586] Q. And you saw three types of olives in cans; is that correct?

A. Yes, sir. That is what it says here. That is how I would know.

Q. How did you come to the determination that there were three different types of olives in the cans?

A. Different name on the outside, as his Honor just said, green olives, ripe olives and whatnot.

The Court: If some olives were stuffed with onions, some were stuffed with pimento, for instance, would that make a difference?

The Witness: I don't know about—it would be stuffed olives. I didn't go—distinguish from stuffed.

The Court: Now let me ask you this: altogether, I gather from this list there must have been eight different kinds of olives on those shelves; is that right?

The Witness: Yes, sir.

By Mr. Hughes:

Q. And that is wholly without reference to brand; is that right?

A. Yes, sir.

The Court: Well, now, could you by any chance tell us [fol. 2587] what the eight different kinds of olives were, without trying to differentiate at the moment between glass and cans?

The Witness: No, sir.

Q. Well, now, go back to this item of coffee; you see under the number in glass you have eight; do you see that?

A. Yes.

Q. Does that mean that you observed eight different types of coffee?

A. In the case of coffee, I went by brand on that.

Q. So that on some of these categories you went by brand and on some of them you went by the kind of product; is that correct?

A. I believe coffee was the only item I went by brand.

Q. By brand?

A. Yes.

Q. Now, take baby food; was that brand or was that separate items under that number 22?

A. No, sir, I believe that is separate items.

Q. Well, do you actually have any independent recollection of that?

A. No, sir.

[fol. 2588] Q. I mean, you are not telling his Honor that you saw 22 different, separate items of baby food wholly without relation to brand, are you?

A. 22 different baby foods. No, brand was not considered there.

The Court: In other words, you start off with prunes and strained kind of things, all the various kinds of vegetables and fruits, and so forth, and that would comprise your 22, or, as I gather it here, 29 different kinds of baby foods; is that right?

The Witness: Yes, sir.

Q. Take the item of peaches; do you see you have under glass four?

A. Yes, I see that.

Q. What does the numeral 4 there mean, that you saw four different kinds?

A. Four different kinds of peaches. As I recall—I can

recall one, spiced peaches. Then another one was pickled peaches, and I can't recall the other two, sir.

The Court: And another one was ordinary canned peaches?

The Court: And another one was ordinary canned peaches?

The Witness: I suppose so. I can't recall.

Mr. Hughes: I was referring to the ones in glass, as it [fol. 2589] happened, your Honor.

The Court: All right.

Q. Were some of them sliced, some of them not sliced, is it possible?

A. It is possible.

Q. But you don't remember?

A. No, sir.

Mr. Hughes: He said spiced.

Q. I said, some of them might have been sliced and some of them might not have been sliced; you just don't know?

A. No, sir.

Q. Now, is the soft drink analysis here, or tabulation, with 23 soft drinks in glass and 12 in cans, was that also without regard to brand?

The Witness: That was brand. Brand was in there, such as Pepsi Cola and Coca Cola.

The Court: In other words, Pepsi Cola and Coca Cola you would count as two? And 7-Up, you would count as one?

The Witness: Yes, sir.

The Court: And Hires Root Beer, you would count as another one, and so forth and so on?

The Witness: Yes.

[fol. 2590] The Court: Then you would go on to all the shades and flavor?

The Witness: Yes.

The Court: Cream soda and sarsaparilla, and all that stuff?

The Witness: Yes.

By Mr. Hughes:

Q. So there was just the element of brand and the element of kind of flavor within the brand; is that right?

A. Yes, sir; in that instance.

Q. You can't tell us exactly how you arrived at that ultimate figure of 23; is that right?

A. I just stood there and took awhile to count the number of brands they had, and I just wrote 23 on my notes.

Q. You can't tell me now how many brands there were, can you? There were 23 brands?

A. 23 brands.

The Court: No, he didn't say that.

A. (Continuing) Or flavors.

Mr. Hughes: I thought he didn't say that.

The Court: He didn't say that.

Q. How many brands were there?

A. I cannot say exactly the brands.

[fol. 2591] The Court: Let me ask you this, Mr. Witness, could you tell us from this tabulation whether, for instance, in this store in South Atlanta, Coca-Cola appeared both in glass, in glass bottles, and in a can?

The Witness: You use Coca-Cola. Coca-Cola doesn't come in cans.

The Court You just know that——

The Witness: Yes.

The Court: Can you tell us from this tabulation any soft drink of the same brand that comes both in a can and in a bottle that was in that store at that time?

The Witness: The only one I can be definite about would be Pepsi-Cola, I believe. Pepsi-Cola.

The Court: They had bottled Pepsi-Cola and in cans?

The Witness: Yes, sir.

By Mr. Hughes:

Q. Did you observe the sizes of the bottles and the cans?

A. No, sir.

Q. You couldn't tell us whether they were comparable [fol. 2592] or not?

A. No, sir.

Q. And made no comparison of the price of the Pepsi-Cola in the bottle or in the can?

A. No, sir.

Q. Now, would you go to the last item on the first page, asparagus. You see that you have six cans. Is that six different kinds of canned asparagus?

A. Yes.

Q. Or is that brands?

A. Six kinds.

Q. And will you name those six kinds for us?

A. I would be unable to name all of them. I might name two.

Q. Well, name two of the six.

A. It would be asparagus tips, asparagus spears.

Q. In cans?

A. In cans. That's the only ones I can recall.

The Court: Mr. Hughes, we will take a brief recess.

(Short recess.)

[fol. 2593] The Court: Go ahead, Mr. Hughes.

Before you proceed I want to ask the witness one question here.

By the Court:

Q. In the first exhibit that you referred to, which is G-1158, Mr. Witness, you went into considerable detail with respect to brand names, sizes and types of products, and I note that in the second exhibit, which we now have under consideration, 1160, you eliminate a large part of the detail that you had in your first exhibit.

A. That's right.

Q. Can you tell me how that came about? Why did you adopt one method of tabulation in the first store you went to and a different method of tabulation in the second store?

A. It was taking considerable time, and so, arriving back in the office, I just re-evaluated and reexamined the department's memo and came up with doing it in the brief manner.

Q. I take it you have a fair case load in the Atlantic field office, have you?

A. Yes, sir. I have to fit it in with my other work.

[fol. 2594] By Mr. Hughes:

Q. You understood it to be a hurry-up job?

Mr. McManus: I object, your Honor. I am not sure what a hurry-up job is.

The Court: Well, if the witness can answer the question.

Mr. McManus: Maybe Mr. Hughes can tell us.

Q. Can you answer that question?

A. Well, it took me—we had about 15 days to do it.

Q. Did you understand that you were to complete this assignment as rapidly as you possibly could?

A. Not as rapidly; just to get the report in by the date shown in the memo.

Q. And how much time did that give you?

A. I think—let's see——

The Court: Well, does the memo state it?

Mr. Hughes: I believe it does, your Honor.

The Court: "If it is feasible, we would like the investigation completed and the reports forwarded to us on or before September 19."

Is that the way you understood it?

The Witness: Yes, sir.

[fol. 2595] The Court: I was reading from G-1159.

By Mr. Hughes:

Q. And did you meet that deadline?

A. Yes, sir.

Mr. Hughes: Your Honor, I object to Exhibit G-1160 for identification on the ground that it is incompetent as well as irrelevant and immaterial. My grounds for stating that it is irrelevant and immaterial are the same grounds that I have previously urged with reference to prior documents.

In addition to that, your Honor, it seems clear to me that the witness has no independent recollection of what he saw and did, and the paper itself, which is really tendered as the evidence, is incompetent. You can't cross examine a piece of paper.

And so I feel that, in addition to both relevance and materiality in this instance, I should add the objection as to competence.

The Court: I will hear you, Mr. McManus.

Mr. McManus: Your Honor, what we are trying to prove by this witness is not that he is an expert in packaging, not that he is an expert in the food or drug field, all we are trying to prove, you Honor, is that if a man is going into a store to buy baby food, for example, or apple juice, [fol. 2596] or applesauce, he could find those products in metal cans and glass containers.

Now, we don't hold out Mr. Sloan to be any type of an expert in any of these products. He is just like an ordinary shopper that is going into the grocery store to buy a can of applesauce, and he has got a choice of applesauce in cans and he has got a choice of applesauce in glass, and it is our contention that the glass people and the can people are trying to influence Mr. Sloan to buy these products in there and they are making them available in the retail outlets.

I think it is interesting that Mr. Sloan does not know the types involved, one from the other. I think Mr. Sloan is an ordinary, every-day shopper. Probably most of the shopping he does is for his family, and the same is true of the other agents.

Before I got in this case I knew nothing particularly about applesauce, whether it came in cans or glass. If my wife sent me to the store to buy it, I would have bought one or the other, and I probably would have been influenced by the advertising.

Mr. Sloan is an ordinary shopper going into the store [fol. 2597] for what is available in these particular products, and I think this document is offered and should be accepted on that basis, your Honor.

The Court: Do you wish to be heard further, Mr. Hughes?

Mr. Hughes: Your Honor, it did not seem to me that anything Mr. McManus said addressed itself to the question of competence. My point would be that in substance the testimony of Mr. Sloan is that he really has no recollection, and the piece of paper really constitutes the testimony.

By the Court:

Q. Well, when was this piece of paper made, Mr. Sloan? When did you make the report which included this material?

A. This material, the report, was made—I can tell by—I haven't got it with me, but it wasn't long after that. I came back to the office and dictated it——

Q. Did you have notes?

A. Yes, sir. I made notes, a schedule.

Q. And you made notes while you were in the store?

A. Yes, sir.

[fol. 2598] Q. You plainly did not carry all these items in your head.

A. No, sir.

Q. And then you came back to the office, and then you prepared this from your notes?

A. Not at that time. I prepared my report that went to the Department of Justice, and this was prepared for this purpose here today.

Q. Yes, I understand that. But this is in essence an excerpt of the items listed in your report?

A. Yes.

Q. And your report which you forwarded to the Antitrust Division, or was forwarded to the Antitrust Division, was made up, in so far as the items are contained on these two sheets of paper, G-1160, from you- notes, contemporaneously?

A. Yes, sir.

The Court: Well, I will tell you what I am going to do. I am frank to say, without at this point trying to ascribe the weight that I would give to 1158, for example, I will say the weight I give to 1160 would be very much less than the weight I would give to 1158. It seems to me, in the form in which it is prepared, to be of minimal significance, if any. However, I am going to admit it in evidence for whatever [fol. 2599] it may be worth.

Mr. Hughes: May I ask just one more question, in view of your Honor's ruling?

The Court: Yes.

By Mr. Hughes:

Q. I show you Court's Exhibit 10 for identification and ask you to look at the bottom of that second page of that exhibit and tell me, if you can, how much time elapsed be-

tween the time of your visit to that store and the time that you prepared your memorandum back at the office.

A. I visited the store on September 1, 1960, and I actually dictated this memorandum, as you call it, 9/6/60.

The Court: You dictated the memorandum from notes?

The Witness: Yes, sir.

The Court: All right.

Mr. McManus: Your Honor, Mr. Sloan, I believe, will testify that he visited three other stores, and he has copies from each one of those. If it would expedite matters at all, I will be glad to mark those three at this one time; and I think——

[fol. 2600] The Court: Mark them for identification.

Mr. McManus: That is what I mean, your Honor, and I think they are self-evident——

Mr. Hughes: Your Honor, may we have a few minutes? Because we get new numbers on these things and my notes overnight were prepared in a certain way——

The Court: Would you like me to give you five minutes or so to get those things in shape?

Mr. Hughes: If I get the numbers, Judge, I think I can go along.

The Court: All right.

(Government's Exhibit G-1160 for identification received in evidence.)

Mr. McManus: Will you mark this?

(Government's Exhibit G-1161 marked for identification.)

The Court: Can we tell Mr. Hughes—perhaps he already knows from which of these court exhibits these data are taken.

(Discussion off the record.)

(Government's Exhibits G-1162 and G-1163 marked for identification.)

The Court: Are there three of these or two?

[fol. 2601] Mr. McManus: There are three.

The Clerk: I am making the other one, your Honor.

The Court: All right.

Mr. Hughes: Your Honor, may the record show that Government's Exhibit G-1162 for identification constitutes part of Court's Exhibit 10 for identification?

The Court: All right.

Mr. Hughes: It apparently does. And G-1163 apparently is related to pages 4 and 5 of Court's Exhibit 10 for identification.

Your Honor, can we just have enough time to check these lists so we know that we are talking about the same thing?

The Court: Yes.

Mr. McManus: Your Honor, at lunch I will see how we can work this out.

The Court: Yes, try to give him copies of these other things and relate them to the court exhibits involved.

Mr. McManus: I will, your Honor.

I am sorry for this delay.

[fol. 2602] The Court: Now, gentlemen, with respect to these three exhibits, can we not handle these three exhibits by asking general questions? I don't want to restrict you, Mr. Hughes.

Mr. Hughes: No.

The Court: But for all practical purposes it seems to me they will turn out to be the same type of documents, prepared in the same manner. Perhaps we can save a good deal of time by treating them with the same general questions related to the questions previously asked.

Mr. Hughes: I think so, your Honor. Here and there I may want to ask some specific questions.

The Court: Of course.

By Mr. McManus:

Q. Mr. Sloan, Government's Exhibit G-1161, is that a survey that you made in Winn Dixie Food Market in Atlanta?

A. Yes, sir.

Q. And it was similar to the survey that you conducted in Government's Exhibit G-1160?

A. Yes, sir.

Q. And was Government's Exhibit 1162 a survey of the shelves of the A&P food store in Atlanta, similar to the [fol. 2603] survey that you made in Government's Exhibit G-1160?

A. Yes, sir.

Q. And was Government's Exhibit 1163 a survey of the shelves in the Kroger retail store in Atlanta, a survey similar to the one that you made in Government's Exhibit G-1160?

A. Yes, sir.

Mr. McManus: Your Honor, the government offers G-1161, 1162 and 1163.

By the Court:

Q. Now, Mr. Witness, take 1160 in your hand, please. Do you recall the questions that Mr. Hughes asked you and the Court asked you with reference to 1160? Do you?

A. Yes, I recall them.

Q. If the same questions were asked you with respect to 1161, 1162 and 1163, would your answers be the same?

A. Yes, sir.

Q. In substance?

A. Yes, sir.

The Court: All right.

Now, Mr. Hughes, have you anything further you want to [fol. 2604] question the witness on on these three exhibits?

Mr. Hughes: Excuse me, your Honor.

The Court: Yes.

By Mr. Hughes:

Q. Mr. Sloan, this Winn Dixie Food Store, is that within Atlanta? Is that within the city limits of Atlanta?

A. Not within the city limits. It's address——

Q. Is it in the suburban area?

A. Yes, sir.

Q. Do you live near this store?

A. It's about the same, about three miles away.

Q. Do you know anything more about this neighborhood than you told us about the neighborhood of the first store that you visited?

A. It is in the same general area.

Q. The same——

The Court: How far is the Winn Dixie Food Store from the Big Apple Supermarket?

The Witness: Approximately one mile.

Q. Now, one additional question that I don't think was put to you before, Mr. Sloan: You never worked for any concern that conducts surveys, have you?

[fol. 2605] A. No, sir.

Q. And you don't know anything about the techniques of conducting surveys, these consumer preference surveys and that sort of thing?

A. No, sir.

Q. You don't profess to be expert in that field?

A. No, sir.

Mr. Hughes: All right. The same objection, your Honor.

The Court: All right. The same objection, the same ruling, with the same caveat attached.

(Government's Exhibits G-1161 through G-1163 for identification received in evidence.).

Mr. Hughes: Your Honor, were your questions addressed to all three of those documents?

The Court: My questions to the witnesses were addressed to all three of those documents.

Mr. Hughes: May I have a minute? I was thinking of 1161.

The Court: Yes. My questions were directed to all three of them.

By Mr. Hughes:

Q. Mr. Sloan, going back to 1161, the fourth from the last [fol. 2606] item on page 3, you see, is baby bottles.

A. Yes, sir.

Q. Those baby bottles did not have anything in them, did they, when you observed them?

A. No, sir. They were empty.

The Court: Well, this baby bottle, did the baby bottle come in another glass container, or was the baby bottle the glass container by itself?

The Witness: It was just upon the counter by itself.

The Court: Just the baby bottle?

The Witness: Yes, sir.

The Court: Not wrapped in anything?

The Witness: No, sir.

By Mr. Hughes:

Q. And would your explanation of the numbers on these sheets be the same as your explanation on Exhibit 1160?

A. Yes, sir, based on this.

Q. Now, turning, Mr. Sloan, to Exhibit 1163, which relates to the Kroger store——

A. Yes, sir.

Q. Do you live near that store?

A. This store is about four miles from my home. It is in [fol. 2607] another direction from the others.

Q. And would you know anything about whether there were any restaurants or taverns or eating places near this store?

A. No, sir, except a five-and-ten-cent store; they have a little counter.

Q. I mean, do you really have any knowledge on this subject? Can you really tell us anything in detail about the neighborhood that this store is in?

A. This store is part of a shopping area of about 15 stores. At one end is Kroger's and at the other end is another grocery store.

Q. Are there any schools near it?

A. There's a high school about one-quarter of a mile.

Q. Any hospitals near it?

A. No, sir.

Q. Now——

The Court: What sort of area is that? What sort of population, if you know? What sort of population does that shopping center serve?

The Witness: It's a residential area.

The Court: Small houses?

The Witness: Small houses; medium class; medium [fol. 2608] income.

The Court: A medium-income group?

The Witness: Yes.

By Mr. Hughes:

Q. Now, I show you Exhibit 10 for identification, and specifically page 4 of that Exhibit 10, Court's Exhibit 10 for identification, and I call your attention to the last sentence of the opening paragraph. Do you see that, that sentence?

A. Yes, sir, I see it.

Q. Now, having seen that, I ask you whether the list which you prepared of what you observed in that store was prepared in any other or different manner than the list that you prepared for the other stores that you have told us about thus far in your examination.

A. It was prepared the same way, just going down the aisle with a card and writing numbers down.

Q. Did you prepare it yourself?

A. Yes, sir.

Mr. Hughes: I have no further questions, your Honor, on that exhibit, and the same objection as to that.

The Court: The same ruling. All three exhibits will be [fol. 2609] admitted under the same circumstances and under the same conditions as 1160.

Mr. Hughes: I am not sure the record shows an objection by me to 1163.

The Court: You have an objection to all those exhibits, 1161, 1162 and 1163, in substance the same objection.

Mr. McManus: Your Honor, that is all we have for Mr. Sloan. It is almost lunchtime. I am not suggesting we break, but if we did, I might be able to give Mr. Hughes that data——

The Court: It would be a good idea.

It is plain to me, gentlemen, that the essence of our getting anywhere here is to keep our paper work under good control, because if it once gets out of control, counsel is lost and the Court is lost.

Mr. McManus: That's right.

Mr. Hughes: May I ask one question before Mr. Sloan leaves?

The Court: Yes.

By Mr. Hughes:

Q. Mr. Sloan, have you testified now as to all the stores you visited?

A. Yes.

[fol. 2609a] The Court: All right.

(Witness excused.)

The Court: Gentlemen, we will take a recess until 2 o'clock, and I believe that will give you sufficient time to straighten out the paper work.

Mr. McManus: It will, your Honor.

The Court: Very good.

(Recess taken to 2:00 p.m.)

[fol. 2610] AFTERNOON SESSION

2:15 P.M.

The Court: All right, Mr. McManus.

Mr. McManus: Mr. Craig, take the stand, please.

EDWARD J. CRAIG, called as a witness, having been duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Craig, are you an agent of the Federal Bureau of Investigation?

A. Yes.

Q. And where are you located?

A. I am assigned to the Atlanta office, Atlanta, Georgia, office of the FBI.

Q. And were you in August of this year requested by the Antitrust Division of the Department of Justice to make an investigation for that Department?

A. Yes, I was.

Q. And did that investigation consist of your going to various stores in the Atlanta area to observe products

packed in cans and glass, the same product, or cans, glass and plastic, or glass and plastic?

A. That is correct.

[fol. 2611] Q. And you completed that investigation?

A. I have.

Q. And you forwarded copies of the investigation to the Antitrust Division?

A. That is correct.

Q. Mr. Craig, I would like to show you Government's Exhibit 1164 for identification——.

Mr. Hughes: You are going to take these one at a time?

Mr. McManus: If you have no objection I would just as soon offer all of Mr. Craig's at one time, your Honor.

The Court: I think that would save time.

Q. —Government's Exhibit 1165 for identification, Government's Exhibit 1166 for identification, Government's Exhibit 1167 for identification, Government's Exhibit 1168 for identification. Now, Mr. Craig, would you look at those exhibits, and would you tell me if they are the copies of the reports that you made to the Antitrust Division?

A. These statistics are the statistics that I compiled, yes.

Mr. Hughes: Would you talk a little louder, please?

[fol. 2612] The Court: Yes, try and keep your voice up.

A. Yes, these statistics are the same statistics that I compiled.

Q. And the indication at the top is the stores that you visited?

A. That is correct.

Q. And upon the date that you visited those stores?

A. That is correct.

Q. And these are the products that you observed in the containers, as indicated?

A. That is correct.

Mr. McManus: Your Honor, the Government would like to offer Government's Exhibits G-1164 through G-1168, inclusive.

Mr. Hughes: Your Honor, may I have some examination?

The Court: You may cross.

By Mr. Hughes:

Q. Mr. Craig, will you first confine your attention to Exhibit G-1164 for identification. Do you have it? Mr. Craig, first, will you tell us how long you have been with the FBI?

A. I have been a special agent since July 15, 1957.

Q. Have you ever been connected with a can manufac-
[fol. 2613] turing company?

A. No.

Q. Glass manufacturing company?

A. No, sir.

Q. Plastic container manufacturing company?

A. No, sir.

Q. Food packer?

A. No, sir.

Q. Packer of toiletries and cosmetics?

A. No, sir.

Q. Packer of drugs and medicines?

A. No, sir.

Q. Packer of household chemicals?

A. No, sir.

Q. Are you a chemist?

A. No, sir.

The Court: Have you ever, Mr. Craig, had anything to do in a business way with any firm manufacturing or selling, at wholesale or retail, any of the items on Exhibits G-1164 through G-1168?

The Witness: No, sir.

Q. And so far as you can recall, have you ever had any contacts of any kind with any of the firms manufacturing any of the products on those exhibits, to the extent that you
[fol. 2614] could remember their names?

A. No, sir.

Q. Now, have you ever been connected with an advertising agency?

A. No, sir.

Q. Have you ever been connected with any firm that conducts public opinion surveys or polls?

A. No, sir.

Q. And you don't profess to have any familiarity with the techniques of surveys or public opinion polls, do you?

A. No, sir.

Q. Now, going to Exhibit 1164 for identification, do I understand that the first page of that 1164 for identification, which contains a list, was prepared from another paper?

A. That is correct.

Q. I show you a paper, which has been identified as Court Exhibit 10 for identification in this action, and I ask you to look at page 8 of that exhibit, and also to the second paragraph of page 8, and I ask you to read that paragraph, and having done so, I would like to put a question to you.

A. (Reading) "Through the cooperation"——

[fol. 2615] Q. No, read it to yourself.

A. Oh, I'm sorry.

Q. Having read that, can you tell me whether the list of products which was prepared, was prepared by you or by some employee of the store?

A. No, sir; myself.

Q. Now turning to the second page of Plaintiff's Exhibit 1164 for identification, when you reported initially the results of your investigation, you submitted no such list, did you, as appears on the second page of Exhibit 1164 for identification?

A. Will you repeat that, please?

(Question read)

A. The list——

Q. Please answer yes or no.

A. There was no list, as refers—as the work would imply.

Q. And would it be correct to say that the material that appears on page 2 of Exhibit 1164 for identification was material prepared by you, based upon conversations that you had with some employee of the store?

A. There was no conversation. It was actual visual contact with this, this merchandise. I saw this merchandise. [fol. 2616] I saw the merchandise that we are referring to here, these 50 different lines. I went from—I went down the counter and observed each one of these lines.

Mr. Hughes: I move to strike it out as not responsive.

The Court: Denied.

Q. Now, Mr. Craig, did you, during the course of your investigation that day, have any conversations with any employee of the store?

A. Yes, the——

Q. That calls for an answer yes or no.

A. Yes.

Q. These items on the second page relate to the cosmetics and toiletry products; is that right?

A. That's right.

Q. And did you have a conversation with an employee of the store that pertained to the cosmetics and toiletry products that the store carried?

A. Yes, yes, sir.

Q. And did you have that conversation on the day in question?

A. On August the 30th.

Q. Yes.

[fol. 2617] A. This particular case.

Q. And in the course of that conversation did the employee of the store go into the subject of what product lines they had in cosmetics and toiletries? Did he go into that general subject with you?

A. No, I would say no; I would say no.

Q. Now, I show you the last paragraph on page 8 and the first paragraph on page 9 of Court's Exhibit 10 for identification; and ask you to look at it, and having looked at it I will put a question to you. I also meant to ask you to read the next to the last paragraph on page 8 of Exhibit 10.

A. All right, sir.

Q. Now, you see that, do you?

A. Yes.

The Court: Mr. Clerk, would you be good enough to let me have those Court exhibits for identification?

Q. Turning to the first or the next to the last paragraph on page 8, is it or is it not a fact that you got your information with respect to the number of different lines of these cosmetic and toiletry products which that store handled from Mr. Harling?

A. Yes, what I said there, yes, I would say that.

[fol. 2618] Q. So that the information that you got, to the effect that this department handles 50 different lines of these items came from Mr. Harling; is that correct?

A. Yes.

Q. In the course of a conversation with him; is that correct?

A. Yes.

Q. And is it also correct that the information contained in the last parenthetical reference on page 2 of Exhibit 1164 for identification came from Mr. Harling?

A. Yes.

Q. And from no other source?

A. No other source.

[fol. 2619] Q. And from no other source?

A. From no other source.

By the Court:

Q. Let me ask you this, Mr. Witness: I am now referring to the second page of 1164. Assuming that the information Mr. Harling gave you about 50 different lines of these items which are packaged in glass, plastic and tin containers, would the items listed there on that second sheet be the only items out of the 50 that were packaged in more than one of those types of containers?

A. Are you referring to the colognes, toilet waters?

Q. Yes. You have listed on this exhibit for identification some seven different items, and you say that there are 50, according to what Mr. Harling told you, lines of these items packaged in glass, plastic and tin containers. Do you follow me?

A. Yes, sir.

Q. I want to know if the six different categories that you have got here—if the numbers under the columns represent the total number of such items that are packaged in more than one of the three types of containers.

[fol. 2620] A. To the best of my knowledge, yes.

Q. So that in that whole store, as you understand it, according to the information given to you by Mr. Harling, these items listed are the only ones that are packaged in more than one kind of container?

A. That's correct.

The Court: All right.

By Mr. Hughes:

Q. And did Mr. Harling tell you that in the lines of perfumes, colognes, toilet waters, stick colognes, dusting powders and soaps they display in excess of 5,000 items?

Mr. McManus: I object, you Honor, as being hearsay. I thought that was the type of hearsay we were going to exclude.

The Court: Oh, no. Already there is information on this sheet offered in evidence which the witness testified is hearsay information.

Mr. McManus: Yes, your Honor.

The Court: If there is such hearsay information, I am going to permit Mr. Hughes to go into it further.

Mr. McManus: I thought you were going to exclude it if it was hearsay. I thought the witness observed this.

[fol. 2621] The Court: You offered it. I thought Mr. Hughes was questioning on his objection. Perhaps by the time he is through there will be no objection.

Mr. McManus: We will be glad to withdraw page 2 of Exhibit 1164.

Mr. Hughes: There is a pending question——

Mr. McManus: Your Honor, we are going to withdraw our offer on page 2 of 1164.

The Court: In any event I am going to permit the question.

(Question read.)

Mr. McManus: I have my objection.

The Court: Objection overruled.

A. That's correct.

By the Court:

Q. When you say 5,000 different items, do you know if he meant 5,000 different pieces or bottles and so forth, or 5,000 different kinds?

A. The 5,000 different bottles—the items of glass and plastic containers, if I may——

Q. Yes, you may.

A. Rich's department store advertises as the largest department store in the South, and this is a very big depart-

[fol. 2622] ment, this cosmetics and toiletries. It's a tremendous department. So 5,000 items for display alone, as I went over each one of the perfumes and the colognes and the toilet waters. It was tremendous, and I did go over that. Mr. Harling was contacted for the reason——

The Court: Well, we aren't critical of what he was contacted for.

By Mr. Hughes:

Q. And you would say this is the leading department store, would you, in Atlanta?

A. May I say it is advertised as the leading department store. I don't know.

Q. And this department that handles these colognes and so forth, is that a big department within that department store?

A. Yes.

The Court: How much space do they take up, would you say, as a rough estimate? As much as this courtroom or bigger?

The Witness: I would say five times this courtroom.

Q. This is the cosmetics and colognes?

A. That is correct, in the store, where these items are on [fol. 2623] display.

Mr. Hughes: Your Honor, I have some more questions. Your Honor, I am going to try to phrase the questions that I am now going into so that, if possible, they will cover all of the stores that this witness visited.

The Court: Very good.

Mr. Hughes: So that we will try to shorten it up.

By Mr. Hughes:

Q. In making these observations that you have alluded to, did you make any particular note of the quantities of the products in the containers that you noticed?

A. No, sir.

Q. Did you make any observation of the quality of the products in the containers that you noticed?

A. No, sir.

Q. Did you pay any attention to differences in preparation of the product?

A. No, sir.

Q. First let me ask you this: Did you visit any stores where foods were on sale or was your assignment confined exclusively to drug stores and department stores?

[fol. 2624] A. Drug stores—not drug stores, department stores.

Q. You did not go to any supermarkets or grocery stores?

A. No, sir.

Q. Did you go to the grocery department of any department store?

A. In Atlanta they don't sell groceries in department stores.

Q. I see.

A. No, sir.

Q. And, of course, you don't have any information, do you, as to the quantities of any of these items that you noticed and that appear on Exhibit G-1164 for identification; you have no idea of the quantities of those items that the store had in inventory that day?

A. No, sir.

Q. Or any day?

A. No, sir.

Q. And you don't know how many of those items they sold that day or any day; isn't that a fair statement?

[fol. 2625] A. Just from what Mr. Harling told me.

Q. Yes. But I say, you wouldn't have——

A. No first-hand knowledge, no, sir.

Q. And that would be true of any stores in the metropolitan Atlanta area, would it not?

A. Yes.

Q. And you don't have any such knowledge as to any store in the United States, do you?

A. No, sir.

Q. I am not sure that I asked you this, but are you a chemist?

A. No, sir.

Q. And you don't know anything about the formulation of any of the products which were packaged in cans or glass or plastic which you took note of on the occasion of your visit to these stores?

A. No, sir.

Q. And you couldn't tell whether any of these articles that you purchased were being test marketed, could you?

A. I didn't purchase any.

Mr. Hughes: I withdraw that.

Q. You couldn't tell me whether any of the packages of any of the articles which you observed were being test mar-
[fol. 2626] keted?

A. No, sir.

Q. And could you tell from the package of the article, the articles you observed, whether they were from obsolete stock or not?

A. No, sir.

Q. And could you tell from the package of the article that you purchased whether it had been packed as an experimental pack?

A. No, sir.

Q. I think I said "purchased." I meant to say "observed." You understood that?

A. Yes, sir.

Q. And do you know whether any of the articles were on sale that day?

A. What articles are you referring to.

Q. That is, whether they were on a special sale. Any of these——

A. I don't know, sir. I don't know whether they were on special sale.

Q. And you did not keep track of the prices, did you?

A. No, sir.

Q. You did not make price comparisons as between one
[fol. 2627] container and another?

A. No, sir.

Q. And did you happen to notice whether any of the metal containers were aerosol containers?

A. The ones that I noticed I made a note of, sir.

Q. Could you tell us whether any of the packages of the articles which you observed are presently being packed in the same form or in the same type of container?

A. I don't know, sir.

Q. And you couldn't tell us the reason why any of the

packers put their product in the particular form of container, could you?

A. No, sir.

Q. And you don't have any information as to the method of filling these various containers that you saw; is that correct?

A. That's correct.

Q. Do you know the difference between high-density and low-density polyethylene?

A. No, sir.

Q. You were asked to observe containers made of plastic. What did you consider that that term embraced?

[fol. 2628] A. From my viewpoint, I would consider it a much heavier material than cellophane. Something that would hold a liquid.

Q. Do you know the difference between polyethylene and polystyrene?

A. No, sir.

The Court: Mr. Craig, referring now to G-1165, the second one, dealing with Davison-Paxon department store, I note on the second page, under a listing of various types of medical and toiletry products, the statement "This department handles a hundred different lines," et cetera.

Did that information come to you by your own observation or as a result of conversations with the store or with an employee of the store?

Mr. Hughes: Your Honor, I suggest that if he looks at pages 15 through 18 of Exhibit 5 for identification it may help him to answer your Honor's question.

The Court: Have you got Exhibit 5 there?

Mr. Hughes: I will get it, your Honor.

The Court: Will you read my question to the witness.

[fol. 2629] (Question read.)

The Witness: That came to me from my own observation. This 100 figure was furnished, as I stated, by Mr. Foilb, but to arrive at that 100 figure I went over these particular lines.

The Court: You checked it yourself?

The Witness: That's right, I went over the counters,

over the shelves, with him, because it is tremendous. You have to have somebody——

The Court: In other words, you went with him and he was talking, and at the same time you got whatever information from him you could?

The Witness: That's right, sir.

The Court: Go ahead, Mr. Hughes.

By Mr. Hughes:

Q. Do you consider that the plastic tubes are embraced within the definition of a container made of plastic?

A. Yes, sir.

Q. You saw that——

A. Based on Prell this morning.

Q. You would include that——

A. As a plastic container?

Q. Yes.

[fol. 2630] A. Yes.

Q. Would you include a toothpaste tube in the category of a container made of tin?

A. No. I didn't do that, no.

Q. I say, you did not consider that to be——

A. No. No, sir.

Q. Do you know the difference between cellophane and polyethylene?

A. No, sir.

By the Court:

Q. Mr. Craig, I am still not sure about something here. Let's take again page 3 of G-1165 for identification.

Now, here you list deodorants and you say number in glass, 1; number in plastic, 1; number in tin, 1. And then you say there were available 50 different lines. Does that mean that there was one particular deodorant that was packaged in glass and in plastic and in tin?

A. No. Of the 50 different lines, they came in glass and plastic containers, as far as I could determine from the shelves.

Q. What is the significance of the 1, 1, 1 figures?

[fol. 2631] A. The fact that these items did come in plastic, glass and tin.

Q. In other words, the 1 number doesn't mean that there is only one item?

A. That's correct.

Q. Does it mean that all 50 items came in glass and plastic and tin?

A. Yes. Yes, sir. As far as I was able to determine from the shelves.

Q. Let's take deodorants. Apparently, from what I can tell, there are liquid cream deodorants and roll-on deodorants. Do you mean to tell me that the roll-on deodorants came in glass and plastic and tin?

A. No, sir.

Q. Or that liquid cream deodorants came in glass and plastic and tin?

A. Liquid creams came in glass, plastic and tin.

Q. They did?

A. Yes.

Q. Now, have you any idea of what proportion of liquid deodorants was in glass, in plastic or in tin?

A. I couldn't establish that due to the volume of inventory. It would be tremendous to try to establish that.

[fol. 2631a] Q. In other words, from all that you know, out of the 50 items, one item was packaged in glass, 48 in plastic and one in tin?

A. Quite possible, yes.

[fol. 2632] Q. And your answer would be the same with respect to Suntan lotion, cream and men's lotion; is that correct?

A. That is correct.

The Court: All right.

Let me be sure I get this straight. Taking men's Suntan lotion or cream, the 50 various formulas, and according to these figures, of the 50 different formulas, one could have been packed in glass and 49 packed in plastic; is that right? As far as you know?

The Witness: Well, I know that one in glass. There is many, many more.

The Court: There were many, many more.

The Witness: That's right, sir.

The Court: Or do you know whether there were 49 in glass and one in plastic?

The Witness: I can't tell you.

The Court: All right.

By Mr. Hughes:

Q. Now, Mr. Craig, I call your attention to Court's Exhibit 5 for identification, and I call your attention specifically to page 15; do you see that?

A. Yes.

[fol. 2633] Q. Is it or is it not a fact that Mr. Foilb estimated that his department had on the shelves for display in excess of 10,000 packaged items in the field of perfumes, colognes, toilet waters, stick colognes, dusting powders, soaps and so forth?

A. That's right.

Q. And then did Mr. Foilb further advise that he desired to explain how some of these items were packaged?

A. I wanted to see them. I said I wanted to see these items, and we went from counter to counter.

Mr. Hughes: I move to strike it out as not responsive.

The Court: No, I will let it stand. You can ask another question.

Mr. Hughes: All right.

Q. My question was whether Mr. Foilb, F-o-i-l-b, said that he wanted to explain some things to you; is that right?

A. Yes.

Q. Yes?

A. Yes.

Q. And he did make explanations; is that right?

A. Yes, sir.

[fol. 2634] Q. And one of those explanations in that connection is Suntan lotion; is that right?

A. That is correct.

Q. And the explanation that he gave you is recorded on page 16 of Exhibit 5 for identification; is that right?

A. That's right.

Q. Did he give any indication to you as to the quantities of that particular item that came in plastic and the quantities that came in glass and the quantities that came in tin?

A. No, sir.

Q. And all that he told you was that there were approximately 50 formulas of brand names in various sizes; is that right?

A. That is what he told me.

Q. And that is the sum total of your knowledge on the subject, isn't it?

A. After my observation of these items.

Q. Well, I say, that is still the sum total of your knowledge on the subject?

A. Yes, sir; yes, sir.

Q. And you don't know any more than that right now?

[fol. 2635] A. No, sir.

Q. And without Exhibit 1165 in front of you you really have no independent recollection of the items that you saw in that store on that day; is that correct?

A. That is correct.

Q. And you really couldn't reconstruct what you saw in that store on that day without the benefit of this paper in front of you; is that correct?

A. That's right.

Q. And would that be true, really, of all the stores that you visited?

A. That is correct.

Q. You carry out many assignments in your work with the FBI, do you not?

A. Yes, sir.

Mr. Hughes: Now, your Honor, I think maybe I ought to do some of these things one by one.

As to 1164—just one moment, please—your Honor, as to 1164, we object to it on the grounds urged as to the admissibility of Exhibits 1160 through 63.

The Court: Well, I tell you, Mr. Hughes, since page 2 of that has been withdrawn and you object to it, page 2 is out. As to page 1—let me look page 1.

[fol. 2636] Mr. Handler: Is all of page 2 withdrawn?

The Court: Yes, the offer of page 2 is withdrawn.

Mr. Handler: The entire part of it?

The Court: Wait a minute. I don't seem to have 1164.

Mr. Hughes: I have a copy of it here.

The Court: No, I have got it here somewhere, Mr. Hughes. Here it is.

Well, I will let page 1 in for whatever it may be worth.

I overrule the objection.

Mr. McManus: Your Honor, could I ask one more question about 1164?

The Court: Yes.

Direct examination.

By Mr. McManus:

Q. Now, Mr. Craig, you explained to Mr. Hughes about what Mr. Harling had told you. Would you take a look at paragraph 2, page 8, of Court's Exhibit C-10.

Mr. Hughes: Page what?

Mr. McManus: Page 8. It starts with "Mr. Harling advised this department store handles approximately 50," and so forth.

[fol. 2637] Q. Now, Mr. Harling advised you that this department store handled approximately 50 different lines of perfumes, colognes, toilet waters, stick colognes, dusting powders, soaps; is that correct?

A. That is correct.

Q. And he said within this line are many fragrances for each of the above items. Now, he also estimated they carried 3,000 packaged items in that field; right?

A. That's right, sir.

Q. And that would be within the line of perfume, cologne, toilet waters, stick colognes, dusting powders and soaps; is that correct?

Mr. Hughes: I object to that, your Honor.

The Court: On what ground?

Mr. Hughes: It seems to me that it is argumentative; it is asking the witness not for any conversation, but apparently to interpret what the conversation was. The question was that something meant something. He was stating conversation.

The Court: Well, let me hear the question.

Mr. McManus: My question was, your Honor——

The Court: No, let the reporter read the question. You are objecting to the question as to form?

[fol. 2638] Mr. Hughes: Presently as to form.

The Court: All right, let's have it, Mr. Reporter, please.

(Question read.)

The Court: Objection sustained as to form.

Q. Now, would you read that paragraph and tell me what Mr. Harling did tell you?

A. He stated that this——

Mr. Hughes: I object to the witness reading from a document. I have no objection to his refreshing his recollection.

Q. All right. Now take your time and——

The Court: Let me ask you this, Mr. Witness: You have read that paragraph; does it refresh your recollection as to what Mr. Harling told you?

The Witness: Yes, sir.

The Court: All right, to the best of your recollection, what did Mr. Harling tell you? What did he say to you and what did you say to him?

The Witness: Of the items we were discussing, colognes, perfumes, toilet waters, and so forth, this massive display, I asked him, "How many items of fragrances along with the perfumes do you have on display here?"

[fol. 2639] And he said, "There is 5,000 items here."

By Mr. McManus:

Q. Now, could you read the next paragraph, and would you tell me what Mr. Harling told you in the first sentence of the next paragraph?

A. With regard to the 50 different lines——

Mr. Hughes: Now, I object to the witness reading from a piece of paper.

The Witness: I am trying to establish——

Mr. McManus: He is not reading from the paper. That is not on that paper.

Mr. Hughes: All right.

A. Of the 50 different lines, I wanted to know what items —what he considered, what made up these lines and what these lines consisted of, and he said they consisted of rouge, tinted foundations, and all these items came in particular fragrances. In other words, the perfume starts

off with toilet water and it goes right on through to the soap. It includes everything, mascara, eyelash makeup, hair tint, everything. Some women desire the whole perfume.

The Court: And in each one of these they have different fragrances, different shades?

The Witness: Different shades, yes, sir.

[fol. 2640] The Court: In other words, an eye tint, for instance, you would get say 10 different shades of eye tint, and in each of those 10 different shades of eye tint you would get 20 different fragrances; is that right?

The Witness: That's right, Sir; that's right. It all comes the way some women desire the full, full——

By Mr. McManus:

Q. Did you ask them how they come packaged, in what type of container?

A. I asked them——

Mr. Hughes: I object to that as leading and suggestive. It's a Government witness.

The Court: No, no, I will permit it.

A. I asked him to show me these containers. He said, "I will take you to the counters."

We went down the line. This makeup comes in tin containers; this in a plastic; this is in a glass container, this particular fragrance. Now, there is 10 different fragrances along this line.

Q. But would you look at that second paragraph and refresh your recollection again, if you could, as to what he told you, as well as what you observed?

[fol. 2641] A. Yes, sir. He told me that these items came in plastic, tin and glass containers.

Mr. McManus: That is all, if your Honor please.

Cross-examination.

By Mr. Hughes:

Q. And after all of that, you came up with these figures that are on the second page of Exhibit 1164; is that right?

A. I would like to state that that is the same information that I gave his Honor there with the other.

The Court: That's right.

Q. That's right; you came up with the figures in the manner that you explained to his Honor.

A. Yes.

Mr. Hughes: I offer that page in evidence.

The Court: All right, you object to it?

Mr. McManus: Yes, your Honor.

The Court: Overruled.

Mr. McManus: Could I ask a question to clarify that?

The Court: You can ask any question you want within limits, but I think we are pretty well squeezing this lemon dry.

Mr. McManus: All right.

[fol. 2642] Redirect examination.

By Mr. McManus:

Q. On page 2 of Defendant's Exhibit S in evidence, I just want to ask you where you have "tinted foundations" and it says "number in glass and you have "1", was there only one that you saw in glass, or does that mean 1, or does that mean something else?

Mr. Hughes: I object to it as leading and suggestive and repetitious and improper redirect.

The Court: Overruled.

Q. Would you answer, please?

A. That applies to that tinted foundations come in glass containers.

Q. That doesn't indicate that only one tinted foundation came in glass containers?

Mr. Hughes: I object to that as leading and suggestive.

The Court: I think you have had your answer. I will sustain the objection.

Q. Now, is there anything further on 1164, which is in evidence, both pages of which are presently in evidence?

(Government's Exhibit 1164 for identification received in evidence.)

(Defendants' Exhibit S received in evidence.)

[fol. 2462] Mr. Hughes: Your Honor, could we have a moment, please?

The Court: All right, we will take a brief recess at this point.

(Short recess.)

[fol. 2643] The Court: Mr. Craig, you may resume the stand.

Now, Mr. Hughes, you were about to cross-examine.

Mr. Hughes: Yes, sir. I wanted to return just for a moment to Exhibit G-1164 and page 2 of G-1164.

Mr. McManus: Excuse me, your Honor. Page 2 is not Government Exhibit 1164.

The Court: You want that separately marked.

Mr. McManus: Well, it is theirs.

The Court: All right, page 2 has been marked Defendants' Exhibit S.

By Mr. Hughes:

Q. Do you have that before you?

A. I don't have that.

The Court: All right. I will hand it to you. Defendants' Exhibit S.

Q. Mr. Craig, part of your instructions had to do with making observations of containers made of tin, isn't that right?

A. That's right, sir.

Q. And what would you embrace within the definition of containers made of tin?

[fol. 2644] A. May I take a specific item to explain it?

Q. Well, you can illustrate by a specific item, yes.

A. All right, sir. For instance, in a suntan lotion, I would say it was a tin can to the best——

Q. So you would say tin cans were embraced within your concept of what a container made of tin is?

A. That's right, sir.

Q. Anything else?

By the Court:

Q. Let me ask you this: Are face powders included in there?

Mr. Hughes: It says rouge makeup, Judge.

A. No, rouge makeup is rouge itself. That's a different item.

Q. Does rouge makeup come in little jars; is that the idea?

A. Yes, sir, it comes in jars and it comes in little tin containers, little makeup tin containers, compacts.

Q. Like lipstick?

A. That's right.

Q. And if you had one of these lipsticks unscrewed and you put it—not on your lips, but if somebody puts it on her [fol. 2645] lips would you say that was a tin container?

A. Yes, sir.

Q. If you looked at it, aren't some of them made of gold?

A. Oh, coloring.

Q. You don't know whether it is gold or not?

A. No, sir.

Q. You don't know ~~whether it is tin~~ in the sense that tin cans are made of tin, do you?

A. I thought it was certainly light enough, the material itself. I would consider it tin myself. The rouge—lipstick container I thought was tin.

By Mr. Hughes:

Q. You don't know whether it is tin or bronze or aluminum?

A. No, sir.

Q. And you say that item of rouge makeup. Will you describe for his Honor the kind of container that was, if you can recall it? Can you recall it?

A. Not—I wouldn't say, no, sir.

Q. You really can't recall it?

A. No, sir, I can't.

The Court: All right. Now, are we moving to 1165, Mr. [fol. 2646] Hughes?

Mr. Hughes: Yes, sir.

The Court: All right. Let me have that back.

Mr. Hughes: That was 1164, your Honor.

The Court: Yes.

Mr. McManus: That was Defendants' Exhibit S you were referring to.

The Court: All right. Defendants' Exhibit S. You are quite right.

Mr. Hughes: Well, your Honor, as to the Exhibit G-1164, I object to that as incompetent upon the specific ground of incompetency I have heretofore urged; also, on the ground that it is irrelevant; also, on the ground of its immateriality; and I object more specifically to the last two pages of that upon the ground that these appear to be mere compilations based on hearsay declarations made to Mr. Craig.

The Court: Overruled.

(Government's Exhibit G-1165 for identification received in evidence.)

Mr. Hughes: Your Honor, I have no——

The Court: No questions with respect to that?

[fol. 2647] Mr. Hughes: No, but I object to it on all of the grounds previously urged as to all of the other exhibits, except those objections that I pressed as to additional pages—I think it was 1165.

The Court: Yes. All right. Now, just take a look at 1166 with me a minute, Mr. Witness, will you.

The Witness: Yes, sir.

The Court: I notice you have got shoe polish, number in glass and number in tin, and you have got two under the number in glass column, two under the number in tin column. Can you tell me whether the shoe polish in glass was liquid shoe polish?

The Witness: Yes, sir.

The Court: Can you tell me whether the number in tin was the little round tins of shoe polish about that big around that you open and that has got a paste in them?

The Witness: That's right, sir.

The Court: All right. I will make the same ruling and admit this for what it may be worth.

(Government's Exhibit G-1166 for identification received in evidence.)

[fol. 2648] By Mr. Hughes:

Q. And on that same 1166, do you see the item "Glue," and you have "Number in tin, 1"? Do you see that item?

A. Yes, sir.

Q. Was that in a tube? Was the glue in a metal tube?

A. No, sir, that was in a tin can.

The Court: All right, Mr. Hughes, now on 1167.

Mr. Hughes: Yes, sir. Now I am going to 1167.

Q. Did somebody in the Sears Roebuck store prepare the list for you at that store?

A. No, sir.

Q. Did anybody assist you in the preparation of the list?

A. No, sir.

Q. Did anybody in Sears Roebuck indicate that he would assist you in obtaining the list?

A. I would like to qualify that, if I may.

Q. Well —

A. May I?

The Court: Yes.

[fol. 2649] A. In other words, this man accompanied me so I wouldn't be involved with the store detective or anyone else. This man was beside me all the time I was there. But in this case I went from counter to counter myself and he just stood behind me.

Q. And when you went to Sears Roebuck, did you identify yourself as an FBI agent?

A. I did.

Q. By the way, did you understand that this whole assignment that you were undertaking was one that they wanted you to complete as quickly as you possibly could?

A. I would say yes.

Q. And you went about it as expeditiously as possible; is that correct? Is that a fair statement?

A. Yes.

Q. Mr. Craig, you will observe pages 2 and 3 of Exhibit 1167 for identification; do you see them?

A. Yes, sir.

Q. And isn't it a fact that the information contained on those pages was prepared by you based on information that someone in the store furnished to you? And in that con-

nection I refer you to pages 20 and 21 of Exhibit 5 for identification.

[fol. 2650] A. I would like to state that it was the same as the other situation, where this man accompanied me as I went through the displays.

Q. Well, now, when you sent your report in, Mr. Craig, the only thing that you had listed in any kind of a list form was the material that appears on page 1 of 1167 for identification, isn't that right?

A. That's correct.

Q. So that the information that appears on page 2 that is in list form was something that you made up after you sent in that report, isn't that right?

A. That was made up at the same time to assist the Court, that they didn't have to read all through this, that they would have it—it would be easy to observe. That's why I made that up.

Q. Yes. Well, what you are saying is that you made up pages 2 and 3 of 1167 as a sort of tabulation of what was told to you and appears on pages 20 and 21, isn't that right?

A. That's right.

Q. Yes. So that you tried to put in graphic form what was told you and set forth in pages 20 and 21; is that right?

A. That's correct.

[fol. 2651] Mr. McManus: Your Honor, I object. I don't believe the witness has testified what in narrative form was told to him. He testified that he observed that fact.

The Court: That is my recollection of his initial testimony. Now, let's clear this up.

Mr. Witness, referring to pages 2 and 3 of G-1167, the information on those two sheets was the result of your personal observation or a conversation?

The Witness: Personal observation.

By Mr. Hughes:

Q. Well, now, Mr. Craig, when you made the original report, the only things you listed and reported were the items on page 1, isn't that right?

A. There it is, there. That's my original report.

Q. Yes.

A. That's the tabulation.

Q. That's right. And you didn't make any tabulation of the materials on pages 2 and 3 of 1167 for identification at that time, did you?

A. This is words, and these are figures. It's the same thing.

Q. I say, you did not make any tabulation, did you, on [fol. 2652] pages 20 and 21 of——

A. No.

Q. Instead what you did was to make a written report of what Mr. Bowman explained to you, isn't that correct?

A. No.

Mr. McManus: I object, your Honor.

The Court: He already said it wasn't a fair statement.

By Mr. Hughes:

Q. Did Mr. Bowman make any explanations to you? This calls for an answer yes or no.

Mr. McManus: Your Honor, I don't think he ought to be straitjacketed. I think he ought to be permitted to tell what he observed.

The Court: Well, I am not a great yes-or-no fellow. The yes-or-no answer doesn't impress me very much.

You may answer the question in your own way, Mr. Witness.

Mr. Hughes: Would you like the question again?

(Question read.)

A. That is a very ambiguous question. I can't answer [fol. 2653] that——

The Court: Did he say anything to you? You had a conversation?

The Witness: Yes, sir. Yes, sir. He did explain to me.

The Court: And in the course of conversation——

Mr. Hughes: Now, the witness said he did explain.

The Court: He did explain. All right.

By Mr. Hughes:

Q. And you reported that he explained something to you, didn't you? Did you or didn't you?

A. Yes, sir.

Q. Now, referring again to page 2 of 1167 for identification, do you see the parenthetical reference at the bottom of page 2, "They are packaged in varying types and formulas as well as fragrances"? Do you see that?

A. Yes, sir.

Q. Do you say that that was something that you observed?

A. No, that was told to me. This statement was told to me.

[fol. 2654] Q. And you see the parenthetical reference on page 3, the parenthetical references?

A. Yes, sir.

Q. That was all told to you by somebody?

A. No, sir. No, sir. I saw these items and went down the line. This is——

Q. And you are referring to the first parenthetical reference?

A. Yes.

Q. Now, let's take the reference to hair colorings. Is that parenthetical reference something that you observed?

A. I would like to explain it.

The Court: Yes, you may.

A. With hair colorings, hair colorings come in heavy textures, light textures, depending upon the hair, blond, brunette, brown.

The Court: How did you learn that? Where did you get the information?

The Witness: By looking at each one of the containers.

The Court: That is, what it said on the container?

The Witness: That's right: for heavy hair, light hair, [fol. 2655] blond hair—there were 20 formulas for the women to use, all shapes, sizes and fragrances, to come back to the original perfume, even for their hair.

Q. And when you speak of 20 formulas, are you using the word "formula" in the sense what you have described

these variations in the product? Is that what you are——

A. Yes, sir. That's the way I used it.

Q. And would your explanation of the figures that appear on pages 2 and 3 be the same explanation as you gave to his Honor in the case of Exhibit 1164?

A. Yes, sir.

Mr. Hughes: I object to this, your Honor, upon the same grounds urged as to all of the preceding exhibits.

The Court: Same ruling?

(Government's Exhibit G-1167 for identification received in evidence.)

By Mr. Hughes:

Q. Mr. Craig, referring to Exhibit 1168, do you have that in front of you?

A. Yes, sir.

Q. When you made your original report, you did not sub-
[fol. 2656] mit any list at all, did you?

A. I don't have that before me.

Q. Well, you don't have any recollection of having submitted any list, do you?

A. Well, I would like to see my report. In other words, I don't know.

Q. In other words, you would have to refer to the report to be able to answer me; is that right?

A. That's right, yes.

Q. Well, now, I show you pages 23 and 24 of Exhibit 5 for identification.

Mr. Hughes: Is 22 part of it?

Mr. McManus: Is this the Belk and Gallant?

By Mr. Hughes:

Q. I show you those pages and ask you, when you made your original report, whether you reported in anything like the form that appears on Exhibit G-1168 for identification.

A. No, sir.

Q. How did you go about preparing that?

A. Translated these words into figures?

Q. That is, translated the words that appear on Exhibit 5 to 1168; is that right?

A. If this is Exhibit 5——

[fol. 2657] Q. Yes.

A. Yes.

Q. And without the benefit of Exhibit 5 in front of you, you would have been unable to prepare Exhibit 1168 for identification?

A. That's right.

Q. Isn't that right?

A. That's right.

Q. You wouldn't have remembered that sort of thing, would you?

A. No, sir.

Q. And in the case of Belk and Gallant Company, you did see a Mr. Minton, didn't you?

A. Yes, sir.

Q. And you did have conversations with him; is that correct?

A. Yes, sir.

Q. And in those conversations he did make some explanations to you; is that correct?

A. Mr. Minton? No, sir. Mr.—well, yes. May I see it?

Q. Yes. Of course.

A. Mr. Minton—if I may——

Q. I asked you, did he make explanations to you?

[fol. 2658] A. Yes, he made explanations to where the items were and showed me on the counters; things like that.

Mr. Hughes: Your Honor, the same objection to G-1168 for identification as to the earlier, immediately preceding exhibits.

The Court: Same ruling.

(Government's Exhibit G-1168 for identification received in evidence.)

The Court: Mr. Witness, let me make it clear, all the various questions as to what the various numbers represent here, 1168, 1167, 1166, 1165, that were addressed to you by Mr. Hughes and by myself, your answers with respect to the same of those would have been the same in substance; is that right?

The Witness: That's correct.

The Court: All right. Let's get to 1169.

Mr. McManus: Your Honor, that is all Mr. Craig has.

The Court: Anything further from Mr. Craig?

(Witness excused.)

Mr. McManus: The next witness, your Honor, is Mr. [fol. 2659] Landsgaart.

WILLIAM O. LANDSGAARD, called as a witness by the government, being first duly sworn, testifies as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Landsgaard, you are an agent with the Federal Bureau of Investigation?

A. Yes, sir.

Q. And from what office?

A. From the Atlanta, Georgia office, sir.

Q. And did you receive a request from the Antitrust Division of the Department of Justice to make a survey of certain stores in the Atlanta area during August and September of 1960?

A. Yes, sir.

Q. And what type of stores did you cover, Mr. Landsgaard?

A. I contacted the independent grocery stores in the Atlanta area.

Q. And you completed your canvass of these independent stores?

A. Yes, sir.

Q. And you made your report back to the Antitrust Divi- [fol. 2660] sion?

A. Yes, sir.

Q. I would like to show you Government's Exhibits G-1169, G-1170, 1171, 1172 and 1173.

A. Yes, sir.

Q. Now, Mr. Landsgaard, do those exhibits show the stores that you visited and the dates that you visited those stores?

A. Yes, sir.

The Court: Now, Mr. McManus—yes. All right. That is all right.

Q. And did you indicate on these exhibits the products that you observed in those stores that were packaged in either cans and glass, plastic and glass, plastic and cans, or glass, cans and plastic?

A. Yes, sir.

Mr. McManus: Your Honor, the government would like to offer Exhibits G-1169 through G-1173.

By Mr. Hughes:

Q. Mr. Landsgaard, do you have any independent present recollection of your observations at the Austin supermarket, without reference to the schedules that are there before you on the witness stand?

A. No, sir.

[fol. 2661] Q. And would that be true as to your observations at the other stores?

A. Yes, sir.

Q. So that apart from them, you really couldn't testify without the aid of those schedules; is that correct?

A. That's correct.

Mr. Hughes: I object to them as incompetent.

The Court: On what theory, Mr. Hughes?

Mr. Hughes: On the theory that the witness isn't really testifying. He is reading pieces of paper.

The Court: Oh, this is perfectly good past recollection. Overruled. Assuming that the proper foundation has been laid for past recollection.

Mr. Hughes: I will proceed, your Honor. I had some other questions.

The Court: All right.

By Mr. Hughes:

Q. Mr. Landsgaard, how long have you been with the Bureau?

A. As special agent, since February, 1958.

Q. And does that mean that you have had a experience [fol. 2662] with the Bureau than that?

A. Yes, sir. I was a clerical employee for approximately five years prior to that.

Q. And has that been your one and only occupation?

A. Yes, sir.

Q. You began with the FBI?

A. With the exception of my service time.

Q. And were you here this afternoon when the other witnesses were testifying?

A. Yes, sir.

[fol. 2663] Q. Were you able to hear the questions and the answers?

A. Most of them, sir.

Q. You had no connections of any kind with any can manufacturing company, had you?

A. No, sir.

Q. Or a glass manufacturing company?

A. No, sir.

Q. A manufacturer of plastic containers?

A. No, sir.

Q. A packer of any kind of food products?

A. No, sir.

Q. Drug products?

A. No, sir.

Q. Toiletries or cosmetics?

A. No, sir.

Q. Household items?

A. No, sir.

Q. You have never been connected in any way with a business that conducts surveys of any kind?

A. No, sir.

Q. And you are not a chemist by training or experience; is that right?

A. No, sir.

[fol. 2664] Mr. McManus: Your Honor, to save a little bit of time, the Government is willing to stipulate, as to

these questions that Mr. Hughes has just asked this witness, that if the other witnesses were asked those questions, any future witnesses from the FBI, they would testify that they had no connection or no such experience.

The Court: All right.

Q. Now, in connection with these observations you made at these various stores, you have made no note of any prices; isn't that correct?

A. That is correct, sir.

Mr. Hughes: Can we have the same stipulation on that, and as to all future witnesses?

Mr. McManus: They can, your Honor.

Mr. Hughes: Pardon me?

Mr. McManus: The defendants can. That is, future witnesses from the FBI.

The Court: Yes.

Mr. Hughes: Yes.

Q. Now, as you went about making these observations in the stores that you visited, did you make any observations of the quantities of the product in the containers that you observed?

[fol. 2665] A. No, sir.

Q. Did you make any observation of the quality of the products in the containers?

A. No, sir.

Q. Did you pay any attention to the differences in the preparation of the product?

A. Well, I might qualify that by saying, for instance, in some instances where they had beets, pickled, sliced and diced, I made just a note of that in my mind as I went by. However, as far as any other preparation, I didn't.

Q. That happens to stand out in your memory; is that right?

A. Yes.

Q. And apart from that, did you pay any attention to differences in the preparation of the product?

A. No, sir.

Q. And can you tell from your observations whether the products which you observed were specially packed for special purposes, as, for example, dietetic purposes?

A. No, sir.

Q. And do you know whether any of the products which you observed were processed by any heat sterilization [fol. 2666] methods?

A. No, sir.

Q. Did you make any observation as to the amount of shelf space devoted to the different types of containers for what you determined to be similar products?

A. No, sir.

Q. And you have no information as to the quantities of any product inventory in any of the stores that you visited on the day that you visited them?

A. No, sir.

Q. Or on any other day?

A. No, sir.

Q. In any other stores in Atlanta or in the United States, is that right?

A. That's right.

Q. And you don't know the quantities of any of these items sold by any of these stores or any other stores; is that correct?

A. That is correct, sir.

Q. And you have no information, do you, with respect to the formulation of any of the products which you observed in cans or glass or plastic containers?

A. No, sir.

[fol. 2667] Q. Do you know what a light duty detergent is?

A. To myself, I would feel that it would probably be household, that a housewife might use for dishes which she would have her hands in, compared to a detergent for cleaning the floors, and so forth.

Q. Did you make any observations as to any of the products which you observed, whether they were packaged locally or at a distance?

A. No, sir.

Q. Could you tell from the package whether or not it was being test marketed?

A. I didn't take any notice of that, sir.

Q. Could you tell whether it was obsolete stock?

A. No, sir.

Q. Did you notice whether any of them were on special sale?

A. No, sir.

Q. Could you tell from the package of the article whether it had been packed as an experimental pack?

A. No, sir.

Q. Do you know the difference between high density and low density polyethylene?

A. No, sir.

Q. Do you know the difference between polyethylene [fol. 2668] and polystirene?

A. No, sir.

Q. Do you know the difference between cellophane and any of the other products that I have mentioned?

A. I know that cellophane is more or less a real fine thin material.

Q. Can you identify and tell the differences between that and other types of film or flexible packaging?

A. No, not offhand.

Q. Can you tell from the package of the article that you observed whether or not the packer who packed it is still packing it in the same type of container today?

A. I didn't get that question, sir.

(Question read.)

A. I don't know, sir.

Q. Can you tell from the package of the product that you observed or from any other source why the packer packaged it in the particular type of container that you observed it in?

A. No, sir.

Q. You never spoke to any of these packers of these products, did you?

A. No, sir.

[fol. 2669] Q. You don't have any information as to the method of filling the containers, do you?

A. No, sir.

Q. In these food stores that you visited, did you notice whether they had any frozen foods for sale?

A. I recall that they did have counters for it. However——

Q. But you don't recall what the items were; is that right?

A. No, sir.

Q. Do you recall whether they had dehydrated foods for sale?

A. I believe several of them did. However, I made no note of that either.

Q. Did any of them sell fresh fruits and vegetables?

A. Yes, sir.

Q. And fresh meat?

A. Yes, sir.

Q. Fresh dairy products?

A. Yes, sir.

Q. You have never participated in the making of any surveys, have you, public opinion surveys?

A. No, sir.

[fol. 2670] Q. And you don't profess to be experienced in the techniques of such surveys; is that correct?

A. No, sir.

Mr. Hughes: Your Honor, I will return to my notes now as to these specific exhibits.

The Court: All right.

Q. Will you define for me what you understand by the term "a container made of plastic"?

A. If I might state this: I was in here this morning when they had the Prell Shampoo. That is my term of plastic as a container.

Q. You would consider that a container——

A. Plastic container, yes.

Q. What else would you consider a plastic container?

A. Can't think of any examples offhand right now, sir.

Q. How would you define containers made of tin? What would be embraced within your idea of containers made of tin?

A. I might take an example like Libby's tomato juice. That is a tin, what I would call a tin. Also, these Aerosol cans, which are pressurized cans, would be, in my estimation, tin; shoe polish and items of that type.

[fol. 2671] Q. How about tubes, toothpaste tubes?

A. No, sir; I wouldn't consider those as a can.

Q. And you didn't so consider them when you were making your observations?

A. No, sir.

Q. Did you make any differentiation between dry, liquid or solid products?

A. No, sir; not on my list.

Mr. Hughes: Your Honor, again in the possibility of saving time, could we have a stipulation that if I put these sort of questions to the other agents——

The Court: Yes, I would think so.

By the Court:

Q. Mr. Witness, you heard the questions that were put to the first of your agents, Mr. Sloan, did you?

A. Yes, I heard most of them.

Q. He was the man who went to the other food stores.

A. Yes, sir.

Q. Would you say that your answers to the questions with respect to your lists, Government's Exhibits 1174 and [fol. 2672] so forth, would be the same as Mr. Sloan's answers with respect to his lists, in substance?

A. With regard to my list, sir, in regards to 1173, if I might bring that up, under "barbecue sauce," there is a number 6 in glass and on- in can. Now that 6 would mean there were six different brands packaging them in cans, or in glass, rather, pardon me, and under "cans" there is a figure 1, which meant that I indicated there was one brand which packages it in cans and 6 brands packaged in glass.

Q. All right. Well, let's get down to the next item, olives.

A. Yes, sir.

Q. That would be six different brands of olives packed in glass and three different brands packed in cans, would it?

A. Yes, sir.

Q. Would there be any difference or any distinction here between ripe olives, stuffed olives, whole green olives, pitted olives?

A. No, sir.

Q. In other words, you wouldn't be able to tell from this list whether certain kinds of olives were in cans and certain kinds of olives were in glass?

[fol. 2673] A. No, sir; that is correct.

Q. Now here is apples, for instance, two in glass and five in cans. You wouldn't be able to tell whether it was

a baked apple in glass or apple sauce in glass, or spiced apple in glass?

A. No, sir.

Q. In other words, it could be that there were spiced apples and baked apples in glass, and all the apple sauce was in cans; is that right?

A. That is correct.

Mr. Hughes: Your Honor, I was wondering whether Mr. McManus was prepared to stipulate that as to any remaining FBI witnesses, if I were to put the questions to them that I have just put to this witness about his knowledge and observations, whether their answers would be to the same effect?

Mr. McManus: Can you so stipulate, Mr. McManus?

Mr. McManus: With one clarification, your Honor. Mr. Landsgaard did indicate that he would have considered Prell as a plastic container, and I would want it understood very clearly that by so doing, that that does not exclude all other plastic containers, because there were other types that he could not remember.

[fol. 2674] The Court: Well, he didn't say that this was the only thing he considered to be a plastic container.

Mr. McManus: No, but I wanted to make that clear.

The Court: Otherwise, you will stipulate with respect to all the other FBI agents?

Mr. McManus: Yes.

The Court: That their answers, in substance, to the various questions that might be asked them would be the same as those asked of Mr. Landsgaard, or with respect to cosmetics and toiletries, the same as the previous witness?

Mr. McManus: Well, I would rather not with respect to those cosmetics and toiletries, but I would with respect to every other one.

Mr. Hughes: Well, I don't——

Mr. McManus: Well, with respect to cosmetics and toiletries, if any witness testifies I would be so willing to stipulate, because I think the witness got a little confused in cosmetics and toiletries.

The Court: Well, are there cosmetics and toiletries on Mr. Landsgaard's list?

Mr. McManus: No, there is not, I don't believe.

The Court: Now, is there anything further on Mr. [fol. 2675] Landsgaard, Mr. Hughes?

Mr. Hughes: Yes, sir. I have to go through these individual exhibits, your Honor. It takes a little time. I am sorry.

The same objection as to Exhibit G-1169 for identification.

The Court: Now, are we going to take these seriatim?

Mr. Hughes: Yes, I would, your Honor, because I have to look and see if I have any special notes.

The Court: All right, same ruling with respect to 1169.

(Government's Exhibit 1169 received in evidence.)

Mr. Hughes: Same objection as to Exhibit G-1170.

The Court: Same ruling.

(Government's Exhibit 1170 received in evidence.)

The Court: On 1171, I notice you have got an item "spices" here, and you have 16 in cans and 5 in glass. I gather from that that there could have been 16 different spices, each packed in tins, and 5 other different spices [fol. 2676] packed in glass; is that right?

The Witness: That is correct, sir.

By Mr. Hughes:

Q. On that same page, do you see the first item "beans"?

A. Yes, sir.

Q. What does that term embrace?

A. Well, as I recall, that would have embraced the baked beans and the pork and beans.

Q. Well, does it or doesn't it?

A. Yes, as well as I recall.

Q. Well, did you differentiate between baked beans and pork and beans?

A. No, sir.

Q. Does it include anything like green beans?

A. No, sir.

Q. Lima beans or any of those products?

A. No.

Mr. Hughes: Same objection as to G-1171.

The Court: Same ruling.

(Government's Exhibit 1171 received in evidence.)

The Court: Now turning to 1172 and going to the second page of 1172, here you have got aspirin "number in glass," "number in cans," 4 and 4.

[fol. 2677] As far as aspirin is concerned, do you include as cans the little tin boxes that come with 10 aspirin tablets in it, or 20 aspirin tablets?

The Witness: Yes, I would call those tins.

The Court: And if you bought a hundred aspirin tablets, they would come in glass, wouldn't they?

The Witness: Yes, sir.

By Mr. Hughes:

Q. The 4 that you say in cans were of the sizes that his Honor just questioned you about; is that right?

A. As well as I recall, yes, sir.

Mr. Hughes: Same objection as to G-1172.

The Court: Same ruling.

(Government's Exhibit 1172 received in evidence.)

Mr. McManus: Could I ask one question, your Honor?

The Court: Yes.

By Mr. McManus:

Q. When you are talking here about aspirin and you say that there 4 in cans, and you are talking about the small pocket type of can, we call it, were the 4 aspirin, do you recall one way or the other, the number that the bottle contained, or approximately——

A. No, sir, that would be, for instance, one would have [fol. 2678] been Bayer, St. Joseph.

Q. Yes, but do you recall the size?

A. No, sir; I don't recall the size, actually.

Q. You don't know whether it was 20 or 50 or a hundred?

A. No, sir. As well as I can recall, the majority of those are small, what I would call in cans, are the small——

The Court: Pocket size.

A. —tins.

Q. And would they be the same in glass, small glass type of aspirin?

A. I don't know the number, but I feel, as I know, the little glass bottles would hold probably more than what they would in the little cans.

Q. But were you talking about the little glass bottles when you marked the 4 down?

A. Yes, sir; that is correct.

The Court: All right.

By Mr. Hughes:

Q. To your observation, the glass bottles contain more product than the tin containers: is that correct? I am referring to aspirin.

[fol. 2679] A. Yes, as well as I can recall.

Mr. Hughes: Same objection.

The Court: Same objection to 1172 by the defendant. Same ruling.

Mr. Hughes: That was 1172, your Honor?

The Court: Yes.

Now, 1173 is the last one of Mr. Landsgaard's.

Mr. Hughes: Same objection, if your Honor please.

The Court: Same ruling.

(Government's Exhibit 1173 received in evidence.)

Mr. Hughes: That is all.

Mr. McManus: That is all.

The Court: Anything further from Mr. Landsgaard?

Mr. McManus: No, your Honor.

The Court: You may step down.

(Witness excused.)

Mr. McManus: Mr. Golden.

JOHN J. GOLDEN, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

[fol. 2680] Direct examination.

By Mr. McManus:

Q. Mr. Golden, you are an agent of the Federal Bureau of Investigation?

A. Yes, sir.

Q. And what is your home office?

A. I am assigned to the Atlanta, Georgia, division.

Q. In August of this year did you receive a request from the Antitrust Division of the Department of Justice to conduct a survey of certain stores in the Atlanta area?

A. Yes, sir.

Q. And did you conduct the investigation and report back to the Antitrust Division of the Department?

A. Yes, sir.

Q. And that covered a period of August and part of September of 1960?

A. Yes, sir.

Q. Mr. Golden, I show you Government's Exhibits 1174, 1175, 1176 and 1177; do these exhibits indicate the stores that you visited in Atlanta and the dates that you visited them?

A. Yes, sir.

Q. And does this exhibit also list the product that you [fol. 2681] observed, which was packed in either cans, in glass, glass and plastics, cans and plastic, or plastic cans and glass?

A. Yes.

Mr. McManus: Your Honor, the Government offers Exhibits G-1174 through G-1177, inclusive.

By the Court:

Q. Have you got any independent recollection as to these figures, Mr. Golden?

A. Possibly one or two, your Honor.

Q. Well, generally no?

A. Generally no, I don't think I could——

Q. How are these made up? Were these made up from notes you took at the time?

A. Yes, sir.

Q. Of your observation?

A. Yes, sir.

Q. And those notes were translated into these lists?

A. Yes, sir.

Q. Do these lists represent an accurate translation of the notes and the notes of your observation; is that right?

A. Yes, sir.

[fol. 2682] The Court: All right.

Now, Mr. Hughes.

Mr. Hughes: Your Honor, I don't know where we are on that proposed stipulation. It was left so uncertain.

The Court: I think we ought to try and do it. I think we ought to try and get this last Atlanta agent out of here, if we can.

Mr. Hughes: I don't have too many questions. I think I had better quickly go through them.

The Court: I think that is the simplest way. I think we'd better do it that way.

Cross-examination.

By Mr. Hughes:

Q. Mr. Golden, how long have you been with the Bureau?

A. I started with the Bureau in 1950, sir.

Q. Before that what did you do?

A. I had a number of jobs.

Q. Could you just——

A. Well, I was a law clerk; I was an elevator operator; stock boy.

Q. Well, let me get at it this way: Did you hear the testimony of the preceding witness?

A. For the most part, yes, sir.

[fol. 2683] Q. Well, did you have any jobs at any time with any of these can or glass or plastic manufacturing companies?

A. No, sir.

Q. And had nothing to do with public opinion surveys?

A. No, sir.

Q. Or food container—food packing?
A. No, sir.

The Court: I think we have a stipulation already on the record to that effect.
Mr. Hughes: All right.
The Court: I think that is covered.

Q. Now, in connection with your assignment, can you tell us what you understood the term "containers made of plastic" to mean?
A. Well, when I thought of plastic, I thought of the item referred to earlier today, Prell, and then I think of the squeeze type deoderant bottle as a plastic type container.
Q. That about embraces your——
A. That is what I was thinking of when I considered a plastic container, yes, sir.
Q. Do you know the differences between polyethylene [fol. 2684] high density, low density products?

The Court: Will you stipulate that none of the agents know the difference between the various polys?
Mr. McManus: We will so stipulate, your Honor.
The Court: All right.

Q. And you are not a chemist?
A. No, sir.
Q. Now, I am not sure about this, whether we have a stipulation on this, but did you make any observation with reference to prices of the article you saw?
A. No, sir.
Q. Did you make any observation of the quantities of the product in the containers you observed?
A. Any what, sir? I'm sorry.
Q. Did you make any observation of the quantities of the product?
A. No, sir.
Q. Did you make any observations of the quality?
A. No, sir.
Q. Did you pay any attention to differences in preparation of the product?
[fol. 2685] A. Will you explain what you mean by "preparation"?

The Court: Well, how the product was prepared? Did you go into the difference in the way the thing was made up?

The Witness: Oh, no, sir, not the construction of it, no.

Q. Now, could you tell whether the products which you noticed were specifically packed for special purposes?

A. No, sir; I couldn't tell.

Q. Do you know whether any of the products which you observed were processed by any heat sterilization methods?

A. No, sir.

Q. Did you make any observation as to the amount of shelf space devoted to the various items?

A. No, sir.

Q. And you have no knowledge of the quantities of any of these items which the store had in inventory that day or any day?

A. That is right; no, sir.

Q. Or any other store anywhere?

A. No, sir.

Q. You don't know what quantities of these products [fol. 2686] any store sold at any time, do you?

A. No, sir.

Q. Do you have any information whatever with respect to the formulation of any of the products which you observed packaged?

A. No, sir.

Q. I think that is already covered.

Did you notice whether any of the products which you observed were packaged locally or at some more distant place?

A. No, sir; I didn't.

Q. Did you notice whether they were being test marketed?

A. No, sir.

Q. Or whether it was an experimental pack?

A. No, sir; I didn't.

Q. Whether they were on special sale?

A. No, sir.

Q. Or whether they were obsolete stock?

A. No, sir.

Q. Do you know whether the packages as you observed

them are being packaged today in the same type container that you observed them in?

A. I don't know for sure, no, sir.

[fol. 2687] Q. And could you tell from the package of the product or from any other source why the packer used the particular container he did?

A. No, sir.

Q. Did you observe whether these stores had frozen foods on display for sale?

A. I don't—I didn't observe it. I would assume that the type of store——

The Court: These are all drug stores. These are not food products, primarily.

The Witness: Yes, sir; I contacted drug stores.

Q. Did you visit any food stores at all?

A. No, sir.

Q. Now will you give me your definition of a tin container, what would be embraced in that?

A. Well, by example, the tin can similar to the aspirin container, referred to in earlier testimony, and a—there was a bug killer product, I don't recall the name, that was packaged in a can. I can't tell you the size of it, but that is what I had in mind, or shoe polish. That would be my thoughts on tin line.

Q. Would it include metal tubes?

A. Are you referring to a toothpaste type tube?

Q. Yes, sir.

[fol. 2688] A. No, sir; I do not take that into consideration.

Q. And on Exhibit G-1174 for identification, where you have the item "toothpaste in cans," can you describe for us what kind of a can that was?

A. It would have been an Aerosol type can. I did not differentiate.

Q. Did you make any differentiation between dry, liquid or solid products in your observation, or in preparing your list?

A. So far as the product, no, sir; I was only interested in container.

Q. And again referring to Exhibit G-1174, I see a refer-

ence there to "baby bottles"; did you regard them as a container?

A. Yes, sir; I did.

Q. When you observed them, they were empty bottles, were they not?

A. Yes, sir.

Mr. Hughes: I object to Exhibit G-1174 for identification on the same grounds.

The Court: Same ruling.

(Government's Exhibit 1174 received in evidence.)

Q. Can you tell me what, referring now to Exhibit [fol. 2689] G-1175 for identification, what the numbers mean on the schedule?

A. In compiling my schedules, rather, my notes, I considered the brand and what the product was, and if similar manufacturer had the item in, say, for instance—well, taking the first one, nasal spray, for example, if the same manufacturer had it in both plastic and glass, I counted up the plastic containers and the glass containers.

Q. Well, were you doing this just by brands?

A. Yes, sir; that was the line I pursued.

[fol. 2690] Q. Does that mean that as to nasal spray you observed five brands?

A. Yes, sir.

Q. Does it indicate how many types of containers you observed within any particular brand?

A. No, sir.

Q. Would that be true of glass also?

A. Yes, sir, it would be.

The Court: As far as shave cream is concerned on 1175, were those all aerosol, some aerosol glass and some aerosol can?

The Witness: The cans, as I recall, your Honor, were aerosol type. I don't recall any aerosol glass.

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit G-1175 for identification received in evidence.)

Mr. Hughes: The same objection as to G-1176.

The Court: Same ruling.

(Government's Exhibit G-1176 for identification received in evidence.)

The Court: On 1177, would you be able tell us, Mr. [fol. 2691] Golden, with respect to the athlete's foot remedy in cans, which of those were powders and which, if any, were liquid?

The Witness: I can recall, I believe, one that was a powder in a can, your Honor; but just based on my recollection, I believe those in plastic were liquid. I can't be sure.

The Court: Those in plastic were liquid and those, generally speaking, in cans were powders?

The Witness: Powder type, yes.

The Court: All right.

By Mr. Hughes:

Q. Mr. Golden, I show you page 11 of the Court's Exhibit 5 for identification. I show you both pages 10 and 11 and ask you whether that is a copy of your report, or one of your reports?

A. Yes, sir; it bears my initial on there.

Q. And that is your report with regard to your visit to the Lane Rexall drug store?

A. Yes, sir.

Q. I call your attention to the last paragraph of page 11. Do you see that?

A. Yes, sir.

Q. Did you have any conversation with the pharmacist [fol. 2692] at that store?

A. Yes, sir. I talked to him.

Q. And did you learn that that store handled two cosmetic products which were packed in glass and two in a theatrical can?

A. Yes, sir.

Q. On page 1 of Exhibit 1177 for identification you have an item there, fever thermometer.

A. Yes, sir.

Q. Did you consider that to be a container?

A. I considered the plastic container that the glass thermometer came in. I took it all into consideration.

Q. Well, you were really referring to the plastic container in which the thermometer came; is that right?

A. Yes, sir. Yes, sir.

Q. Were you including the thermometer in it or just the container in which it came?

The Court: Well, Mr. Hughes, what difference does it make? It is only——

Mr. Hughes: All right. Same objection.

The Court: Same ruling.

Is there anything anybody wants to ask of Mr. Golden now?

[fol. 2693] (Government's Exhibit G-1177 for identification received in evidence.)

By Mr. McManus:

Q. Mr. Golden, you listed in your exhibit that one of the liquid detergents came in a plastic container.

A. Yes.

Q. Is this generally the type of container, Government's Exhibit 1054?

Mr. Hughes: I object, your Honor.

The Court: Overruled.

A. Yes, sir.

Q. Would you consider Government's Exhibit 1149 as a plastic container?

A. I would like to see that, if I may, sir. Yes, sir.

Q. And would you consider Government's Exhibit 1p90 as a plastic container?

A. Yes, sir.

Mr. McManus: Your Honor, that is all we have of Mr. Golden.

The Court: Anything further from this witness?

Mr. Hughes: Just one moment, your Honor.

[fols. 2694-2696] Cross-examination.

By Mr. Hughes:

Q. Would you describe for his Honor the case in which this fever thermometer came, as you observed it?

A. The fever thermometer?

Q. The case.

A. It comes in two parts: a screw type that has the pen or pencil type clip on it.

Q. That is what you observed?

A. That is what I observed, yes.

Mr. Hughes: No further questions.

Mr. McManus: Your Honor, I have no further questions of this witness, except to say that in so far as the stipulation, we have other witnesses. Mr. Hughes is reading from a list. If he would give me a copy of the list, I think we would be able to check off 90 per cent of the list and save some time.

Mr. Hughes: I consider the paper to be a work product, your Honor.

The Court: All right. You may be excused, Mr. Golden.

(Witness excused.)

. . . . . .

[fol. 2697] New York, October 6, 1960, 10:30 a.m.

Trail resumed

(The following took place in chambers):

Mr. Hughes: Your Honor, overnight I have worked with Mr. McManus on the problem of stipulating some of the subjects of cross examination and, as a result, I understand that Mr. McManus is prepared to indicate a stipulation to you.

The Court: the stipulation, as I understand it, gentlemen, has been substantially agreed upon, and it is your present purpose to inform the Court of what the stipulation is.

Mr. McMaus: That's correct.

Mr. Hughes: That's correct.

The Court: Will you read the stipulation, please.

STIPULATION OF PLAINTIFF RE: REMAINING FBI WITNESSES

Mr. McManus: The plaintiff stipulates that if the remain-
[fol. 2698] ing FBI witnesses which it will call to testify were cross examined with respect to the following matters each of them would answer substantially as follows:

That he had never been employed by a can manufacturer, a glass container manufacturer, a plastic container manufacturer or a firm engaged in conducting surveys or polls of public opinions or consumer preference, and that he is not experience- in the techniques of such polls or surveys;

That he has never been employed by a packer who uses any of the kinds of containers that he observed during the course of his assignment;

That he has not been in communication with any of the packers whose products he has stated that he observed;

That he is not a chemist;

That he does not know the difference between high-density and low-density polyethylene, nor the difference between either of them and polystyrene;

That he took no note of and made no list of products in the stores which he visited which were packed in only one type of container;

That he took no note of and made no record of prices
[fol. 2699] of the products which he observed;

That he took no note of and made no record of the quantities of products in the containers he observed;

That he took no note of and made no record of the quality of the products in the containers he observed;

That he took no note of and made no record of the differences in the preparation of the products in the containers he observed;

That he could not say whether the products which he observed were specially packed for special purposes, such as, for example, diatetic purposes;

That he did not know whether any of the products which he observed were processed by heat sterilization;

That he made no observation as to the amount of shelf space devoted to the different types of containers used to package what he considered to be similar products;

That he has no information as to the quantities of any of the products which he observed in inventory in any store, or as to the quantities sold in any store in any period of time, or as to the quantities sold in the metropolitan area [fol. 2700] of the community in which the observations were made, or as to the quantities sold in the United States at any time;

That he has no information with respect to the formulation of any of the products which he observed to be packaged in cans or glass or plastic;

That he did not notice whether any of the products which he observed were packaged locally or at a distance;

That he could not tell from the package of any article which he observed whether or it it was being test-marketed, or whether or not it was obsolete stock, or whether or not it had been packed as an experiment, or whether or not it was on special sale on the date of the observation;

That he couldn't tell from the package of any article which he observed whether or not the packager who packaged it is still packing in the same type of container;

That he could not tell from the package of the products that he observed or from any other source why the packer chose the particular type of package for the product;

[fol. 2701] That in the case of stores whose principal business is the sale of foods, he noticed that they carried fresh fruits and vegetables, fresh meats and fresh dairy products, that they carried frozen foods and foods in dried or dehydrated forms, but that he made no particular observations as to what the particular products were;

That he has no information as to the method of processing the various products he observed and no information as to the method of filling the containers he observed.

The Court: All right.

[fol. 2702] ALBERT A. HUSTEDT, called as a witness on behalf of the Government, was duly sworn.

The Court: What exhibits are you going to refer to with this witness?

Mr. McManus: Your Honor, I would like to refer to Government's 1178 and also to Court's Exhibit 8, and that would run 1 through 20. Excuse me. 8 and 9, the entire matter in Court's Exhibits 8 and 9. The Government's Exhibit was 1178 only.

The Court: All right.

Direct examination.

By Mr. McManus:

Q. Mr. Hustedt, you are a member of the Federal Bureau of Investigation?

A. Yes, I am.

Q. You are an agent, in other words?

A. Yes.

Q. And in August of this year did you receive a communication from the Antitrust Division of the Department of Justice, asking you to conduct an investigation in the [fol. 2703] Los Angeles area?

A. I did.

Q. And did this investigation require you to go to certain stores in the Los Angeles area and to examine the shelves of those stores to ascertain products which were packaged in cans and glass, glass and plastic, cans and plastic, and cans, glass and plastic?

A. It did.

Q. And did you conduct that investigation?

A. Yes, sir.

Q. And did you report back to the Antitrust Division of the Department of Justice?

A. Yes.

Q. I show you Government's Exhibit 1178, and also hand you copies of what are Court's Exhibits 8 and 9. Now referring to Government's Exhibit 1178, could you tell me what that is?

A. Yes, sir. It is a compilation of the list of products that I found, packaged in the manner indicated, as a result

of investigation at the five chain grocery stores, five independent grocery stores, five drug chain stores and five department stores.

Q. And Court's Exhibits 8 and 9, what are those?

[fol. 2704] A. Those are reports I prepared which reflect results of my investigation.

Q. And Government's Exhibit 1178 is a compilation of the products that are in Court's Exhibits 8 and 9?

A. Yes, they are; sir.

Q. And Court's Exhibits 8 and 9 break down Government's Exhibit 1178, so you can ascertain at what stores you saw a particular product which is listed in Government's Exhibit 1178?

A. That is correct, sir.

Mr. McManus: Your Honor, what we would like to do here is offer Government's Exhibit 1178. We would also in this case like to offer Court's Exhibits 8 and 9, because it is an explanation of Government's Exhibit 1178.

The Court: Well, it seems to me, Mr. McManus, that you ought to lay a little more foundation of what this agent actually did in this investigation. It is your burden, I think, to lay the foundation, and while we departed somewhat from that yesterday, I think we should go a little farther.

Mr. McManus: I see.

Q. Now, Mr. Hustedt, could you tell me what were your instructions from the Antitrust Division in regard to this [fol. 2705] investigation?

A. I'm sorry. I didn't get that.

Q. What were your instructions from the Antitrust Division in regard to this investigation?

A. My instructions were to visit five chain grocery stores, five independent grocery stores, five chain drug stores and five department stores, and to compile a list of items that were packaged both in cans and glass, glass and plastic, cans and plastics, and in all three.

Q. And what stores did you visit? Would you look at your list there and tell me the stores that you visited?

A. Yes. The names of the individual stores?

Q. Yes.

A. Yes. As far as the chain grocery stores are con-

cerned, I visited Ralph's Grocery Company. Do you want the addresses, too?

Q. We might as well have them for the record.

A. It is located at 3rd Street and Vermont Avenue, in Los Angeles. Safeway Store No. 32, which is located at 230 South Vermont Avenue, Los Angeles; Alpha Beta Food Market, which is located at 5071 Rodeo Road, Los Angeles; Thrifty Mart Store, which is located at 3621 South La [fol. 2706] Brea Avenue, Los Angeles; Market Basket, which is located at 6298 West 3rd Street, Los Angeles.

Then for the independent markets, I visited the Beverly-Normandie Market, 4213 Beverly Boulevard, Los Angeles; Midtown Market, 2882 West 9th Street, Los Angeles; Bi-Rite Market, 2913 North Broadway, Los Angeles; LaSalle Market, 1900 West Washington Boulevard, Los Angeles; Lord's Market, 863 South Vermont, Los Angeles.

For the department stores: May Company, 7th and Hill Street, Los Angeles; Bullock's Department Store, 659 South Broadway, Los Angeles; The Broadway, located at 401 South Broadway, Los Angeles; W. T. Grant Company, 437 South Broadway, Los Angeles, and J. W. Robinson, 600 West 7th Street, Los Angeles.

And for the drug chains: Thrifty Drug Company, 427 South Broadway; Charm Drug Company, which is an agency of the Rexall Drug Company, 1602 West 7th Street, Los Angeles; Manray, 3170 Wilshire Boulevard, Los Angeles, which is an agency of the Owl-Rexall Drug Company; Sav-on-Drugs, 1701 South Western Avenue, Los Angeles; D & B Pharmacy, 11000 South Vermont Avenue, Los Angeles.

[fol. 2707] That is it, sir.

Q. All right. Now let us take, for example, the first food store that you entered, Mr. Hustedt. How did you carry out your assignment in the first store, for example?

Mr. Hughes: Will he identify that store?

Q. Will you identify that store?

A. Yes. It is Ralph's Grocery Company.

The Court: What was Ralph's Grocery Company? What was the store like, a great big supermarket?

The Witness: Yes, sir. In my opinion it is one of the largest—the largest—one of the largest stores in the area.

Q. And would you please tell us what your procedure was in carrying out your assignment?

A. Yes. Since Ralph's was the first store that I visited, I contacted the comptroller of the store and discussed the situation and told him what I desired, and he related to me that——

Mr. Hughes: I object to this. I object to any conversations.

The Court: Yes. Please don't give what was said. In other words, you contacted the manager and made arrangements with him to pursue your inspections, and then go [fol. 2708] on from there.

The Witness: Fine.

Q. So you made arrangements through the management to examine the shelves of the Ralph's store?

A. That is right.

Q. Did the manager accompany you in your rounds?

A. No, he did not.

Q. You went alone?

A. No, sir; another agent went with me.

Q. Now in your rounds, could you explain what you did?

A. Yes, sir. I had a piece of paper and I wrote down four headings, cans and glass, cans and plastic, glass and plastic, and all three, and I started up, started and walked up and down the aisles, looking at the products on the shelves, and wherever I noted any particular product packaged under those categories, I wrote the name down.

Q. You made no notation of the brand; is that correct?

A. No, sir.

Q. Or no notation if there was one or more brands?

A. No, sir.

Q. And you made no notation of the size or the cost of [fol. 2709] the item; is that correct?

A. I did not, sir.

By The Court:

Q. I wonder if you can tell us what standards you used to determine whether an item was the same product or not?

A. Well, the standard I used, sir, was this: I put myself in the position where if I was going into a store for a certain product, whether or not I would buy it.

Q. Well, for example——
A. In other words, for the same end use. That is——
Q. As you understood?
A. As I understood it, sir.

The Court: All right, go ahead.

By Mr. McManus:

Q. And you made notes as you went along and made your observations; is that correct?
A. Yes, sir.

By The Court:

Q. For instance, item 30 on Government's Exhibit 1178 is coffee. You made no distinction between instant coffee, that is, soluble coffee, or instant coffee, or so-called regular coffee, did you?
[fol. 2710] A. Well, sir, I distinctly remember coffee. There is coffee both in the cans and in the glass.
Q. Well, as I say, you didn't distinguish so-called instant coffee and the coffee that you put in the pot?
A. On that particular item I didn't take the instant coffee into consideration.
Q. You didn't take it into consideration?
A. No.

Mr. McManus: Excuse me. Could I have that answer?

(Answer read.)

By Mr. McManus:

Q. Did you happen to know if there was ground coffee in both?
A. Yes.
Q. There was ground coffee?
A. Yes.
Q. In both cans and glass?
A. There is regular coffee in——
Q. Cans?
A. —cans and glass, yes.
Q. Was there soluble coffee, to your knowledge, in both cans and glass?

[fol. 2711] A. What, instant?

Q. Yes.

A. I believe in instant there is only glass.

Q. Now going on to Government's Exhibit 1178, that is a compilation of your reports of all the products that you observed in particular type containers that are identified on that sheet; is that correct?

A. Yes, sir.

The Court: These are not broken down by individual stores?

The Witness: No, sir.

The Court: You have got food item—I see.

The Witness: I didn't break them down into any categories. These are just the total items that I observed.

Q. Now, as I understand it, there is asparagus on that list; is that correct?

A. Yes, sir.

Q. So to identify what store or stores you observed the asparagus in cans and glass, you would have to refer back to the reports that you have, which are Court's Exhibits 8 and 9; is that correct?

A. That is correct.

Q. And although asparagus is listed once, you could only [fol. 2712] tell if it was found in more than one store by referring back to Court's Exhibits 8 and 9?

A. That is correct.

Mr. McManus: Your Honor, we would now like to re-offer Government's Exhibit 1178 and Court's Exhibits 8 and 9.

The Court: Well, the first question I want to ask is, if you are offering 8 and 9, do you mean to include the accounts of the conversation between this witness and the various store managers?

Mr. McManus: We would be willing to strike any conversation between the store manager and the agent. The only purpose in offering Court's Exhibits 8 and 9 is in explanation of the Government's Exhibit 1178.

The Court: Well, that would mean in each one of these sheets, as far as I could see, and whether this is universal or not, I can't tell, with the exception of perhaps the last sentence in the first paragraph, all except the listing would be eliminated; is that correct?

Mr. McManus: Your Honor, we would offer only the identification of the store and the listing in Court's Exhibits 8 and 9. That would all, your Honor.

[fol. 2713] Mr. Hughes: Your Honor, may I say first, preliminary, I do have some questions, but if and when we get to the question of the admission of these, it seems to me that the exhibits should indicate the actual areas that are stricken from it and the government counsel, it seems to me, can take his pen or his pencil and do that—go through that process.

The Court: Well, I think that must be done. The portions of the exhibits that are not being offered should be physically stricken or indication made to that effect. That is a matter of mechanics. We will come to that in due course.

Now, is there anything further you have of this witness?

Mr. McManus: No, sir.

The Court: You have completed your offer. Mr. Hughes wishes to examine.

By Mr. Hughes:

Q. Mr. Hustedt, can you tell me about how much time you spent in each store in the course of this assignment?

A. Well, that varied from store to store, sir, and it would be impossible to give you a very accurate figure. I would say——

[fol. 2714] Q. Well, would you give me a maximum time and a minimal time?

A. Well, the maximum time, I would say, would be two hours and the minimum time would be 45 minutes.

Q. So there were some stores that you went through in 45 minutes?

A. Yes, sir.

Q. And how many would you say took about 45 minutes?

A. Oh, I would say—excuse me a minute—three.

Q. About three stores?

A. Yes.

Q. Where you took about 45 minutes?

A. Yes, sir.

Q. And could you identify those stores?

A. Yes. It would be the Charm Drug Company at 1602

West 7th Street; Manray's at 3170 Wilshire Boulevard; and the D &B Pharmacy at 1100 South Vermont.

Q. And would you say that as to all of the others you spent approximately two hours?

A. No.

Q. There was a range, is that it, from the——

[fol. 2715] A. What?

Q. There was a range from a minimum of 45 minutes to a maximum of two hours; is that right?

A. Yes, sir.

Q. And could you give me an idea of the average time of a visit?

A. Oh——

Q. You can't? You can't give me an average?

A. It would be an educated guess.

Q. I don't want an educated guess.

Now, you started this assignment on August 29th, did you not?

A. Yes, sir.

Q. You completed the assignment on September 6th, so far as actual observations were concerned; is that not correct?

A. No, sir. September 2nd.

Q. September 2nd?

A. Yes, sir.

Q. So there was no observation by you or by anyone else on September 6th; is that correct?

A. That is correct, sir.

Q. And how many visits did you make altogether between August the 29th and September the 2nd?

[fol. 2716] A. Twenty stores.

Q. Twenty stores?

A. Yes, sir.

Q. Now, on August the 30th, you visited eight stores, did you not?

A. On August the 30th

Q. On August the 30th. If it will help you I will refer to the stores that I have——

A. Well, I have them right here in a row. I will count them back. Eight stores, that is correct sir.

Q. And those stores were in the heart of the City of Los Angeles, were they not?

Mr. McManus: Your Honor, I would like to object to the form of that. Knowing a little about Los Angeles, I would like a little more definition about what the heart of Los Angeles is.

The Court: You mean Los Angeles has no heart?

Mr. McManus: That is actually my theory, your Honor: there is no heart of Los Angeles. It covers about 50 or 100 miles in every direction.

Q. I will withdraw the question. All of them were within the city limits of Los Angeles; is that right?

[fol. 2717] A. Yes, sir.

Q. Some of them as much as five miles apart; is that not right?

A. Yes, sir.

Q. And spread out over an area of maybe as much as six or seven square miles; is that right?

A. I would say the two—that's right.

Q. And probably a good deal more than that?

A. No, sir.

Q. Six or seven is about right?

A. Right.

Q. Now, will you tell his Honor how much time you spent in each of these stores?

A. I didn't keep time, Mr. Hughes. All I can say is that from 45 minutes to two hours; enough time for me to walk around the store and look at all the products.

Q. Are you saying that you can't estimate for his Honor about how much time you spent in each of these stores?

The Court: When you say "these," are you referring to the August 30th stores?

Mr. Hughes: I am referring to the August 30th stores, [fol. 2718] yes, sir.

A. The best answer I can give is the time it took me to walk around the stores, and this time, it was 45 minutes——

Q. How did you go from store to store?

A. By car.

Q. By car. And would you say that you examined or observed thousands of items in each of these stores?

A. Individual items?

Q. Yes.

A. By just taking—yes. I would say yes.

Q. In each one of them; right? In each one of these stores you observed thousands of items; right?

A. Yes.

Q. And you would characterize these as large stores, would you not?

A. Yes.

Q. Now, was Mr. Kerley with you when you visited these eight stores?

A. On the 30th?

Q. Don't you remember that?

The Court: No. He asked you whether you were referring to the 30th.

[fol. 2719] Mr. Hughes: Yes, sir.

Q. I am asking you, can you recall to me now, without recourse to any paper or writing of any kind, whether Mr. Kerley was with you when you visited each one of those eight stores?

A. I would say yes.

Q. And what did he do?

A. We walked together looking for the items, checking the items.

Q. So, as I understand it, Mr. Kerley's sole function was to accompany you to each one of these stores and to walk with you as you walked through these stores; is that what you are telling his Honor?

A. That's what he did.

Q. Isn't it a fact, Mr. Hustedt, that in some of these stores you divided the labor and that you took part of the store and that he took part of the store?

A. That is not right.

Q. So you brought him along and he went through these eight stores more or less as a passenger; is that right?

A. Well, I wouldn't use that terminology.

Q. What did he do?

A. He assisted me in looking at the products.

[fol. 2720] Q. What did he do?

A. Well, the best way to explain it is this: While walking down an aisle—I can't say exactly how many products are on the shelves, but walking down the shelf of the super—an aisle of the supermarkets, you can see whether one

shelf is all cans and if there are any bottles on it, or if —what type of packages are on the shelves; and we would walk along and, if we saw something that wasn't a can, we would stop and examine it to determine what it was; and you could look at a thousand—some shelves are all cans and some are all paper packages, like breads and things like that. You can observe an awful lot of products on a shelf and get an idea of what they are packaged in.

Q. I want to be sure of this. Is that your explanation to his Honor of the function that Mr. Kerley performed on that day in those eight stores?

A. Mr. Kerley was with me at all times, that's right.

Q. Have you got anything more to add to your explanation of what he did?

A. Well, Mr. Hughes, Mr. Kerley was with me for this reason; we started out and we determined that by walking [fol. 2721] down the aisle together and observing the products—there are two sides of an aisle—by walking down together, we could spot where there were items that we were interested in locating, and we could check them.

Q. And he was doing some of the spotting and you were doing some of the spotting; is that right?

A. That's right. And when he would find an item that we were interested in, he would call it to my attention.

Q. Now, you were pretty busy that day, weren't you?

A. Yes, sir.

Q. How long were you at it?

A. All day.

Q. How long is all day?

A. About 8 in the morning until about 6 at night.

Q. Going through the stores, and then going from store to store; right?

A. Yes, sir.

Q. Now, you made 20 visits to stores altogether, you have told me; is that correct?

A. Yes, sir.

Q. Would it be correct to say that Mr. Kerley accom- [fol. 2722] panied you on 15 of these visits?

A. I would have to check it. I don't—I know one day he did not accompany me. Do you want me to check it.

Q. Do you have to look at records in order to check that?

A. Yes, sir.

Q. And isn't it a fact that as you sit there on that witness stand now, it is literally impossible for you to tell his Honor any product you saw in any particular store during the period from August 29th to September 2nd?

A. From my recollection?

Q. Yes.

A. That's right. But I have my original notes here that will assist me.

Mr. Hughes: I move to strike the balance of that answer.

The Court: I will let it stand.

By Mr. Hughes:

Q. Now, on September 2nd, how many stores did you visit?

A. I count four.

Q. Four on September the 2nd; right?

[fol. 2723] A. Yes, sir.

Q. Was Mr. Kerley with you that day?

A. Yes, sir.

Q. And were they all within the city limits of Los Angeles?

A. Yes, sir.

Q. And were they scattered around?

A. I would say they were over a six-mile area, too, approximately.

Mr. Hughes: Your Honor, I object to the admission of any of these documents on the ground that no proper foundation for their reception has been shown or indicated, and I urge the same objections that I interposed to the other exhibits of this similar character.

The Court: The objection is overruled. I make the same ruling with respect to these that he made with respect to the previous exhibits.

As far as Court's Exhibits 8 and 9 are concerned, they, of course, will be admitted, with the matter that we previously discussed stricken from them.

Mr. McManus: Yes, your Honor.

The Court: That will be physically stricken from the exhibit.

[fol. 2724] Mr. McManus: Yes, sir.

That is all, Mr. Hustedt.

Mr. Hughes: I have some more.
The Court: All right.

(Court's Exhibits 8 and 9 for identification received in evidence and market Government's Exhibit's G-1178A and G1178B.)

Cross-examination.

By Mr. Hughes:

Q. One of the things you were told to look for were articles in glass and plastic containers; is that right?
A. Yes.
Q. And what do you consider to be embraced within the term "containers made of plastic"?
A. I would say plastic.
Q. I didn't catch that answer.
A. I say I can't give you the definition of plastic. I understand it's plastic if——
Q. Would you say anything made of plastic that would contain things would be a plastic container?
A. If it was a container, yes, sir.
Q. Well, anything that was made of plastic, designed to contain things you would consider to be a plastic container; is that right?
[fol. 2725] A. That is right.
Q. And you were asked to look for articles that were packaged in containers made of tin; is that right?
A. Yes, sir.
Q. And what would you include in that definition?
A. Well, I included in that definition cans, and I also heard this question here—I also included these tubes.
Q. Toothpaste tubes——
A. Toothpaste and——
Q. Did you include pails?
A. Pails?
Q. Pails.
A. I don't understand that.
Q. Well, do you consider pails to be within the definition of the kind of thing you were looking for?

The Court: Did you find any pails?
The Witness: I don't recall any.

By Mr. Hughes:

Q. Now, as you made these observations, did you take note of the fact that many of the containers had labels on them? I am referring more particularly to the cans.

A. Yes, sir.

[fol. 2726] The Court: Well, they all had labels on them, didn't they?

The Witness: Yes, sir. That's how I identified the products.

Mr. Hughes: Well, your Honor, I am distinguishing between an actual wrap-around label on the can, and there were some cans, I suppose, that had the brand and other data just lithographed on them.

By Mr. Hughes:

Q. Is that right?

A. Just what, sir?

Q. Had the brand and other data lithographed on them.

The Court: You mean as distinguished from something made of paper and wrapped around the can?

Mr. Hughes: Yes, sir, that's the distinction.

A. I can't recall that, sir.

Q. Well, in any event, you do recall that many of the cans did have these paper labels on them; is that right?

A. Yes, sir.

Q. Now, in the course of your observations—that's all you really did, was merely to observe, isn't that right?

[fol. 2727] A. That's right.

Q. You did not pick these articles up and finger them or something of that sort?

A. Some of the plastic items we did.

Q. The plastic items you did?

A. Yes, sir.

Q. But none of the other items; is that right?

A. Well, when there was a question in my mind about what the product was made of, to my best recollection, that's the only time I picked them up and handled them.

Q. You did not do much handling of the products, did you?

A. No.

Q. You were too busy getting on with the job to take the time to pick these up and look them over; isn't that a fair statement?

A. No, that's not a fair statement.

Q. About how many would you say you examined?

A. I couldn't say at this time.

Q. Many? Many in relation to the entire number you saw?

A. No.

[fol. 2728] Q. Now, do you know what a fiber can is?

A. No.

Q. And have you ever seen cans that have a fiber body and have a metal top and a metal bottom? Have you ever seen any such cans as that?

A. Oh, I think——

Q. I say, have you ever seen any such cans as that anywhere, at any time?

The Court: He is about to tell us.

A. It wouldn't be a can if it was fiber, would it?

Q. You would say it wouldn't be a can if it was fiber?

A. No, I wouldn't. I wouldn't call it a can.

Q. Was one of the products that you observed Serutan?

The Court: You may refer to your list.

A. Yes.

Q. According to your observation, that was in cans and glass ecntainers; is that right?

A. That's right.

Q. And as far as you were concerned, that was a metal can; is that right?

[fol. 2729] The Court: Well, now, wait a minute. You say the can was a metal can?

Mr. Hughes: I say as far as he was concerned, he regarded that as a metal can.

By Mr. Hughes:

Q. Is that right?

A. Well, I put it down, so some place I must have seen something that I considered a can, yes, sir.

Q. Does this look like what you saw, do you remember?

A. I can't say if that is what I saw. It's——

Q. I say, does it look like what you saw?

A. I can't remember distinctly seeing this product.

Q. That is, you have no recollection of seeing anything; is that right?

A. Well, not——

Q. Can you describe to us what you saw and noted as a can of Serutan?

A. I can't recall distinctly seeing Serutan.

Q. So you have no recollection on the subject at all and cannot describe for his Honor the kind of container it was that you put on your list as a can of Serutan?

[fol. 2730] A. That's right.

Mr. Hughes: I ask that the container that I showed the witness be marked for identification.

(Defendant's Exhibit T marked for identification.)

The Court: Have you anything further, Mr. Hughes?

Mr. Hughes: I may have, your Honor. I am just looking to see.

By Mr. Hughes:

Q. One of the things that you observed was french fried ants, french fried butterflies and french fried grasshoppers, do you remember that?

A. Yes, sir.

Q. Do you remember whether they were domestically packed?

A. They were imported.

Q. Were any other items that you observed imported?

A. I don't know, sir. The only reason I know they were imported, they were such a different item that we looked where they were manufactured.

Q. But as to all the other items, you couldn't tell us whether they were domestically packed or imported; is [fol. 2730a] that right?

A. No, sir.

[fol. 2731] Q. You, in your observations, indicated that you saw an item which you described as cherries; is that right?

A. Yes, sir.

Q. And did you include in that item maraschino cherries?

A. I didn't make any breakdown of cherries. I didn't go as far as types or——

Q. And another item you had was patent medicines; do you remember that?

A. Yes, sir.

Q. You made no attempt to break that item down, did you?

A. No, sir; it was too numerous.

Q. Did you notice that with respect to patent medicines, many of them came with an outer container?

A. Well, sir, I didn't go inside the outside container.

Q. And did you notice that some of these patent medicines were in these folding paper boxes, as they stood in the shelves?

A. Do you mean the boxes where the individual packages are shipped or displayed?

Q. Yes.

[fol. 2732] A. Yes, sir.

Q. And was that not also true of many of the cosmetics and toiletry items that you observed, there was an outer paper or cardboard container?

A. Well, I think we are talking about two different outside packages now. Now, when we are talking about the patent medicines, the outside cartons used for display purposes, and these cosmetics, I just looked in the showcases and on the shelves and I didn't——

Q. Did you notice that any of the things that you looked at were in paper cartons or little paper boxes?

A. Sir, the items that I saw were exposed to me, because I don't ever remember going into any package to determine what the inside package was made of.

The Court: In other words, if you saw something that appeared to be a bottle of patent medicine with a carton around it, you didn't go any farther?

The Witness: No.

Mr. Hughes: That is all, your Honor.

The Court: All right, let me have that exhibit, please.

Let me ask you——

[fol. 2733] Mr. McManus: Is the Serutan being offered?

The Court: Now I show you Exhibit T and ask you if you would consider that a can or not?

The Witness: I would have to say I would consider that a can, your Honor.

The Court: You would consider it a can.

Mr. Hughes: I offer it in evidence.

The Court: All right.

Mr. McManus: Your Honor, I would like one question: where was that obtained? I would like to know where it was obtained?

The Court: Where the Serutan was obtained?

Mr. McManus: Where that particular can was obtained?

The Court: Will you tell us that?

Mr. Kuhn: That was obtained in the Rexall Drug Store on 42nd and Grand Central.

The Court: You bought it?

Mr. Kuhn: I did.

The Court: Very good.

Redirect examination.

By Mr. McManus:

Q. Would you consider that a metal can?

A. Pardon?

Q. Would you consider that a metal can, Mr. Hustedt?

[fol. 2734] A. Yes.

The Court: Incidentally, on your offer, the can will be received.

Mr. Hughes: Yes.

(Defendant's Exhibit T received in evidence.)

Q. Now, Mr. Hustedt, we are talking about plastic containers; are you familiar with cellophane?

A. Yes.

Q. Were any of the products on your list, that you listed as plastic containers, packed in cellophane?

A. No, sir.

Q. Or any films of that type?

Mr. Hughes: May I have that last question and answer, please?

The Court: Let's make it "or any wrapping."

Mr. Hughes: But may I still have the question and answer?

The Court: All right.

(Record read.)

Q. Or do you recall one way or the other?

A. Well, anything I considered cellophane I didn't include.

Q. Now, you said that on your list you had included metal [fol. 2735] tubes; do you recall how many of the products on your list were packaged in metal tubes?

A. Toothpaste and glue.

Q. Were there any others?

A. Not to my knowledge.

Q. Were either one of those products packaged in the more conventional metal can, to your knowledge?

A. I remember toothpaste was.

Q. Was it the glue?

A. I can't remember that.

Mr. McManus: That is all I have.

The Court: All right, anything further?

Mr. Hughes: Just one or two questions.

Recross-examination.

By Mr. Hughes:

Q. Do you know the difference, or can you by observation tell the difference between cellophane wrapping and other types of transparent wrapping?

A. Well, from my observation I would consider any wrapping that is thin in nature and——

The Court: Transparent?

The Witness: Not necessarily transparent, but has no rigidity.

The Court: Flexible?

The Witness: Flexible, I would call that cellophane.

[fols. 2736-2739] Q. In other words, as far as you were concerned, that is a name or a word that embraces all flexible packaging; is that right?

A. Oh, no.

The Court: Now we are getting a little complicated, Mr. Hughes.

Mr. Hughes: All right, I withdraw that.

The Court: You mean any type of wrapping that is like——

The Witness: Cellophane.

The Court: —looks like cellophane, you consider to be cellophane; is that what you are trying to say?

The Witness: That's right, your Honor.

The Court: All right, you may step down, Mr. Hustedt. Thank you.

(Witnessed excused.)

* * * * * * *

[fol. 2740] Joseph H. Servel, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside?

By The Court:

Q. Are you with the Chicago FBI?

A. Yes, sir; your Honor.

Q. You work out of that field office?

A. Yes, your Honor.

Q. Did you make various inspections of grocery stores and other stores under directions received from the department of justice?

A. Yes, your Honor.

Q. When did you do it?

A. Between August 30th, I believe it was, and the first part of September of this year.

Q. Did you prepare lists of what you saw?

A. Yes, your Honor.

Q. Where are they?

Mr. Greenberg: Just a moment.

We have marked them as Government's Exhibits 1179 [fol. 2741] through 1186 for identification.

The Court: Those are all from this witness?

Mr. Greenberg: That is correct, your Honor.

By The Court:

Q. Tell us in very brief compass precisely what you did in these stores?

A. I went to the store, introduced myself to the store manager as an agent.

Q. All right, you went in the stores and you looked.

A. Right. I examined the products on the shelves.

Q. You went and examined products on the shelves.

A. And made a list.

Q. You made a list?

A. Yes.

Q. And that list included in the documents before you the various stores?

A. Yes, your Honor.

Q. How many stores?

A. I went to eight stores altogether.

Q. Eight stores. What kind of stores?

A. Five independent groceries, one drug—one department store and two drug stores.

[fol. 2742] Q. What were you looking for?

A. I was looking on the shelves to find items that were packaged in cans and glass, or cans, glass or plastics, or glass and plastic.

Q. All right, and those documents you hold in your hand, which are exhibit numbers to which Mr. Greenberg has referred, are the lists that were made up of the items you observed; is that right?

A. Yes, your Honor.

The Court: You offer them in evidence?

Mr. Greenberg: I offer them into evidence.

The Court: You may examine, Mr. Hughes.

Mr. Greenberg: Before Mr. Hughes examines, I would like to thank the Court very humbly for carrying the burden of the questioning.

Mr. Hughes: Your Honor, I have no examination on the voir dire, if that is the correct expression.

The Court: Yes.

Mr. Hughes: So I object to each of these on the same grounds previously urged to similar reports of this character, and I particularly note certain hearsay data that appears.

The Court: Well, should the hearsay data be eliminated?

[fol. 2743] Mr. Greenberg: Your Honor, we have agreed to eliminate it, but just as an offhand comment, it would seem to be part of the res gestae, and if your Honor rejects that document, then I suppose——

The Court: We will cut out the hearsay, res gestae or no, and you gentlemen will arrange to strike that matter physically from the exhibits in due course.

I will admit them upon the same conditions and make the same ruling as with respect to the previous matter, exhibits of this nature.

Now, do you have some questions?

Mr. Hughes: I have a few questions.

The Court: Very good.

(Government's Exhibits 1179 through 1186 received in evidence.)

Cross-examination.

By Mr. Hughes:

Q. Exhibit G-1179, have you got that in front of you?

A. The ones I have are not marked.

Q. In any event, one of the places you went to is the Epicure Shop of Carson, Pirie & Scott; is that right?

A. That's right.

[fol. 2744] Q. And Carson, Pirie & Scott is a large department store?

A. That is correct.

Q. And would you say that the Epicure Shop of that store featured what I would describe as fancy products?

A. That is correct.

Mr. Greenberg: If the Court please, Mr. Hughes said "What I would describe as fancy products." May we have a definition for the record?

The Court: All right, tell us what you mean by "fancy products"?

Q. Mr. Witness, do you think you understood me when I said that it was a store that featured fancy products? Did that conjure up something in your mind?

A. Yes, it did.

The Court: Would you say that "fancy products" were products for epicures or gourmets?

The Witness: Well, as it happens, in this particular department they wouldn't be restricted to the epicure or gourmet, I don't believe.

Q. Rather fancy on the price, too, wouldn't you say?

Mr. Greenberg: I object to that, your Honor.

[fol. 2745] The Court: Prices were rather higher than the ordinary grocery store; is that right?

The Witness: In most instances.

The Court: In most instances.

Mr. Greenberg: If the Court please, I would like to point out for the record that Mr. Hughes stipulated and we stipulated with him that the agents didn't look at the prices.

Mr. Hughes: I quite agree to that.

Mr. Greenberg: Then you withdraw your question?

Mr. Hughes: No.

Mr. Greenberg: Oh.

The Court: Very good. Anything further?

Mr. Hughes: Just a second.

Q. What is your definition of a container made of plastic?

A. Well, to define a container made of plastic, I would have to say that my definition, as I was preparing this list, arrived at the fact that it was plastic container by examining it. In most instances I would squeeze it or pick it up or look at it and determined it was plastic.

The Court: If it looked like plastic to you, you said it [fol. 2746] was plastic?

The Witness: And it felt like plastic, then I called it plastic.

Q. Did it include tubes, such as the Prell tube you saw here in the court the other day?

A. Not in most instances, no.

Q. No, I say, do you consider that to fall within your definition of a plastic container?

A. I believe that is plastic, yes, but I was more—a better illustration would be one that the liquid detergent comes in.

Q. But if you saw something like that Prell, you would have regarded that as a plastic container; is that right?

A. Yes.

Q. And would you regard these toothpaste tubes as metal containers?

A. No.

Q. What would you consider to be a metal container?

A. Tin can, tin, actually metal, the whole thing, top and bottom and sides.

Mr. Hughes: That is all.

The Court: All right, thank you, Mr. Servel.

(Witness excused.)

[fol. 2747] Mr. Greenberg: Government calls Mr. Alton E. Bramblett to the stand.

Alton E. Bramblett, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. Chicago, Illinois.

Q. Did you hear the questions propounded by his Honor to Mr. Servel?

A. Yes, sir.

Q. Would your answers to those questions be the same?

A. Yes, sir.

Mr. Greenberg: You may cross-examine.

The Court: What exhibits——

Mr. Greenberg: Oh, excuse me, your Honor.

These are Exhibits G-1187 through G-1190. Government offers those exhibits into evidence.

The Court: Show them to the witness and ask him if those are the lists he made.

By Mr. Greenberg:

Q. Would you tell us what these are?

[fol. 2747a] A. These are the lists that I prepared after contacting these various stores and obtaining information regarding the containers that these items were contained in, whether they were contained in a plastic container, glass container or a tin container.

The Court: All right, you offer them?

Mr. Greenberg: I offer them, your Honor.

[fol. 2748] Mr. Hughes: Will you return G-1187, please.

The Court: May I have copies of them from which I can follow?

Mr. Greenberg: Your Honor, I will hand up the Government exhibits to you, and I wonder if Mr. Hughes might indicate what report he is talking about, so the agent can identify it.

Mr. Hughes: Musket and Hendricksen.

The Witness: Yes, sir.

By Mr. Hughes:

Q. In the case of that store, Mr. Bramblett, isn't it a fact that the list of products was furnished to you by Mr. Madez?

A. No, sir.

Q. Well, I show you Exhibit G-1187 and I ask you to read the opening part of it and, having done so, I would like to ask you a question.

Mr. Greenberg: Did you identify it?

Mr. Hughes: Yes.

A. Yes, sir.

Q. You say, having read that opening paragraph, that Mr. Madez did not furnish the list?

A. Mr. Madez accompanied me on the tour of the store.

[fol. 2749] Q. But you state that Mr. Madez furnished a list, don't you?

A. Yes, sir.

Q. And you do recall that there were, in some of the other visits to other stores that have not been referred to here—that the list was furnished to you; don't you recall that?

A. Yes, sir.

Q. And wasn't this the same as the other stores as to which the Government is not offering proof?

A. No, sir.

Q. So that you say that the statement in G-1187, your report of what happened, is incorrect?

A. The word "furnished" would be incorrect.

Q. You say that is a mistake?

A. He accompanied me on a tour of the store.

Q. So you say the word "furnished" is incorrect?

A. Yes, sir.

The Court. Except in the sense that he pointed out items on the shelves; is that right?

The Witness: Yes, sir.

By Mr. Hughes:

Q. On the same exhibit is an item "Ointments, First [fol. 2750] Aid"; do you see that?

A. Yes, sir.

Q. Can you tell me what kind of products were embraced in that item?

A. I don't recall the brand names of the products, no, sir.

Q. Do you recall the kind of products they were?

A. No, sir.

Q. Were any of them in plastic tubes?

A. I beg your pardon?

Q. Were any of those ointments in plastic tubes?

A. Yes, sir. I would think so. I would consider a plastic tube to be plastic.

Q. Were any of them in metal tubes?

A. No, sir, I didn't consider a metal tube as being a metal container.

Q. Will you turn to G-1190. Do you see that Exhibit G-1190?

A. Mine are unmarked.

The Court: That is Goldblatt Bros.

Q. Goldblatt Bros.

A. Yes, sir.

Q. Will you tell me how many items were embraced within the list of products shown?

[fol. 2751] A. Now, I have two, Mr. Lipinski and Mr. Pernicky. Which one are you referring to.

Q. Mr. Lapinski's.

A. I don't quite understand your question, sir.

Q. I say, can you tell me how many items were embraced within these six descriptive designations that you have made on this?

A. No, sir, I couldn't.

Q. I say, can you tell me how many?

A. No, sir.

Q. You haven't any idea? Is it a big store?

A. Yes, sir.

Q. And do you recall that there were a very large number of items?

A. No, sir, not a large number.

Mr. Hughes: That's all.

The Court: All right. You make the same objection to these, I take it, Mr. Hughes?

Mr. Hughes: I thought I had. In any event, I do make it.

The Court: Yes. I think again we have some material here that is in the nature of hearsay that will be physic[illegible] stricken, the lists themselves will be admitted. I am ma[illegible] the same ruling in all respects as I did with respect to the [fol. 2752] previous documents of this nature.

Mr. McManus: Yes, sir.

The Court: Anything further from Mr. Bramblett?

Mr. McManus: No, your Honor.

(Witnessed excused.)

(Government's Exhibits G-1187 through G-1190 for identification received in evidence.)

GINO L. LAZZARI, called as a witness by the government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Lazzari:

Q. Mr. Lazzari, did you hear his Honor's questions to Mr. Servel?

A. I did.

Q. And would your answers to those questions be the same?

A. Yes, they would.

Q. I now show you Government's Exhibits 1191 through 1199 which have been marked for identification and I ask you what they are.

A. These are lists compiled by me as a result of an [fol. 2753] investigation in this matter conducted by myself.

Q. And do they reflect what you observed in each of the stores indicated?

A. That's right. They reflect my observations regarding certain of the products that were packaged in two or more of the following containers: that is, tin, glass or plastic.

Q. Have you completed your answer?

A. Yes, sir.

Mr. Greenberg: Government offers these exhibits into evidence.

Mr. Hughes: Same objection on the same grounds.

The Court: Same ruling.

(Government's Exhibits G-1191 through G-1199 for identification received in evidence.)

Mr. Hughes: May I have G-1191?

Cross-examination

By Mr. Hughes:

Q. That is the food division of Marshall Field, Mr. Lazzari.

A. All right.

Q. Mr. Lazzari, did you note that most of the foods in this department were imported?

[fol. 2754] A. That's correct, sir; but the items listed here——

Q. Not——

Mr. Greenberg: Your Honor, the witness was trying to complete his answer.

The Court: Yes. Go ahead.

A. The items listed here were packaged within the United States. They are not importe

Q. I beg your pardon?

A. The items listed here were packaged in the United States; not imported items.

Q. That is, caviar was packaged in the United States?

A. According to what Mr. Smith pointed out, yes, sir.

Q. How many items would you say were in that store altogether?

A. I couldn't give a——

Mr. Greenberg: Does he mean the store or the department?

The Court: He is talking about the department.

Q. This department.

A. I couldn't give an accurate estimate.

[fol. 2755] The Court: Would it be hundreds?

The Witness: Hundreds, yes, sir.

The Court: Would there be thousands?

The Witness: I would not say thousands, no sir.

By Mr. Hughes:

Q. And would you say that this was of the gourmet type of store—borrowing an expression used here?

A. Yes. It is a little above the regular food chain store.

Q. Now, 1192, which is Marshall Field's houseware de-

partment, do you see your description of the housewares there?

A. Yes.

Q. How many items were embraced within those six categories? Can you give us any idea?

A. Well, by product, I would say approximately 100.

Q. A hundred. How big a department is that housewares department?

A. Well, in my opinion it wasn't too large. I think it would be on the Marshall Field catering—they just maintain it.

[fol. 2756] The Court: Was it as large, for instance, as the food division?

The Witness: No, sir.

Mr. Hughes: Your Honor, in passing, I assume what we have been describing here as the hearsay——

The Court: All of these exhibits, material that is hearsay, and plainly recognizable as such, will be physically eliminated, or at least stricken out.

By Mr. Hughes:

Q. Now, will you look at G-1197. That is Atlantic & Pacific Company.

A. Right.

Q. Do you see that?

A. Yes.

Q. You were accompanied by Mr. Stahl on that observation?

A. Yes, sir, I was.

Q. Did you split the job?

A. No, sir.

Q. That is, you both went down the aisles together?

A. He accompanied me while I prepared my list.

Q. What did he do?

[fol. 2757] A. He accompanied me down the aisle and, as we came across a different—a certain product that was packaged in both tin and glass or glass and plastic, he would point them out as we went down and I would make a note of it.

Q. On Exhibit G-1197, which is the A & P, can you tell

me what items were embraced within your description "Fish"?

A. I would think from recollection that that would be the anchovy and small fish of that type. I also think——

The Court: Would you include tuna fish and salmon?

The Witness: Yes, sir.

Q. And can you think of anything else that was included? In other words, what did you see and observe?

A. Tuna fish, salmon, herring, just about anything——

By the Court:

Q. Shrimp?

A. Shrimp, yes, sir.

Q. Canned oysters?

A. Canned oysters, clams; sea foods.

[fol. 2758] Q. Can you tell us, for example, whether tuna fish was packed in both tin and glass?

A. I would say that I have seen it in tin. I know I have seen it in tin. In glass, I think it is in the tuna-noodle affair.

Q. But not tuna fish by itself, as far as you know?

A. I couldn't accurately say.

Q. What about salmon?

A. I couldn't accurately say, but, as indicated here, I evidently saw some sort of fish in glass; but the majority of the tin were salmon——

Q. You don't know, as far as salmon goes, whether salmon was packed in tin, glass or both; you know it was packed in tin?

A. Yes, sir.

Q. But you don't know whether it was packed in glass?

A. No, I couldn't say.

The Court: All right.

Mr. Hughes: That's all, your Honor.

The Court: All right.

I take it, Mr. Hughes, you make the same objection?

[fol. 2759] Mr. Hughes: Yes, sir.

The Court: Same ruling.

(Witness excused.)

FREDERICK F. STAHL, called as a witness by the government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Mr. Stahl, where you in the courtroom when his Honor propounded questions to Mr. Servel?

A. Yes.

Q. And did you hear the answers?

A. Yes.

Q. And would your answers be the same to those questions?

A. Yes, sir.

Q. I show you Government's Exhibits 1200 and 1201 and ask you what they are?

A. These are the lists of products that were packaged in two or more containers made of tin, glass or plastics. The lists were obtained from the Jewel Tea Company and the National Tea Company located in Chicago.

Q. Did you observe the products listed on these ex-
[fols. 2760-2761] hibits?

A. Yes, I did.

Q. Your answer is?

A. Yes.

Mr. Greenberg: Government offers G-1200 and G-1201 into evidence.

Mr. Hughes: Same objection.

The Court: Same rulings.

Have you any questions of the witness?

Mr. Hughes: No questions.

The Court: Very good.

Thank you, Mr. Stahl, you may step down.

(Witness excused.)

(Government's Exhibits 1200 nad 1201 for identification received in evidence.)

. . . . . .

[fol. 2762] Leo V. Finn, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Finn, by whom are you employed?

A. I am employed by the Antitrust Division, Department of Justice.

Q. And how long a period have you been employed by the Division?

A. I have been in the Division 22 years.

Q. And what is your title in the Division?

A. My present title is business economist.

Q. Do you hold any major degree in economics?

A. No, I do not.

Q. Could you tell me, is your background more of an accounting or statistical background?

A. Well, I have a degree in accountancy.

Mr. Hughes: Will your Honor ask the witness to keep [fol. 2763] his voice up?

The Court: Try and keep your voice up.

A. (Continuing) I have a degree in accountancy.

Q. But you have no major degree in economics?

A. No, I do not.

Mr. McManus: Your Honor, as a matter of procedure at this point, I would like, if possible, if I could show the witness folder A, which is 801, and go through folder A, and then if the defendants would like to examine on folder A, then to folder B and folder C.

Is that satisfactory?

Mr. Johnson: I have a suggestion in this connection that I think will facilitate the handling of these.

My understanding is that the Government proposes to offer three books of statistics through Mr. Finn; is that correct?

Mr. McManus: That is correct; 801, 802 and 803.

Mr. Johnson: And an additional book on Mr. Tolton.

Now, these books are interrelated, many of the charts and tables are interrelated, and many of the questions [fol. 2764] that I have, I believe, are related to either or both.

The suggestion I would like to make is that the Government offer all of their material on Mr. Finn, then offer whatever they have to offer on Mr. Tolton, and the offer be reserved, ruling on the offer be reserved, until such time as I subsequently get a chance to examine Mr. Finn and Mr. Tolton in turn. In other words, I would suggest that they complete the direct on Mr. Finn, then complete the direct on Mr. Tolton, then call Mr. Finn back for cross, and the same for Mr. Tolton.

Now, unless we can do something like—I'm afraid it would be almost impossible to follow this.

Mr. McManus: Your Honor, the only problem I have is this: our direct is going to be necessarily very short, because as I was starting to bring out with Mr. Finn, Mr. Finn is not on the stand as an economist. Mr. Finn took——

The Court: Mr. Finn has done certain things with certain figures; is that right?

Mr. McManus: That is correct.

The Witness: That's right.

Mr. McManus: And he has taken the basic data, all of [fol. 2765] which we have furnished to the defendants, with the exception of the American National Can statistics, and he has compiled them into tables. Mr. Tolton did the same thing, only he can put them into chart form, some of the basic data being different.

My understanding is that, as we discussed the other day, it was not necessary for the Government to bring witnesses as to the underlying data at this time.

The Court: That's right.

Mr. McManus: So to expedite matters, if possible, I have no objection to the procedure if we could go ahead and have Mr. Finn explain what he did on the charts.

The Court: Oh, I see no reason why Mr. Finn should not explain what he did with respect to each of these three booklets.

Mr. McManus: I see.

The Court: And then I think I would be inclined to go along with Mr. Johnson's suggestion, that we then have the chart man testify as to what he did with respect to the charts. Then I will have a complete picture of what you propose to present. You will have made your offer, and then Mr. Johnson can go ahead with his cross-examina-
[fol. 2766] tion.

Mr. McManus: That is very fine, your Honor, if we can agree to that.

The Court: All right.

Mr. McManus: So that, if we may, your Honor, we all have copies of 801, 802 and 803, and I can see no purpose in my asking Mr. Finn directly about it if he could explain to your Honor and to the defendants what he has done on each chart.

Is that satisfactory?

The Court: I think that is the thing to do, unless—let me ask you this, Mr. Johnson: Are you questioning Mr. Finn's qualifications to put together data? I take it not.

Mr. Johnson: I will have questions with respect to his qualifications, but they are not going to the question of qualification to put together any particular paper.

The Court: I see. Well, the only point is at this point Mr. McManus is attempting to qualify the gentleman as a witness, as an expert witness, with expertise, if I may use that word, in his field of putting figures together. Now, do you question his qualification on that score?
[fol. 2767] Mr. Johnson: We get the problem that we have had a number of times here, that questions on voir dire as inextricably mixed up with questions on the examination.

The Court: Well, I just don't want Mr. McManus to be placed in a position where he has not laid sufficient background as to the qualification of this gentleman, so that you are going to make a motion on the ground that he is unqualified, to the embarrassment of Mr. McManus.

Mr. Johnson: No, sir; I did not have that in mind.

The Court: All right, that is all I wanted to know.

Mr. McManus: All right.

The Court: Whatever you have to do will go to the weight

of this and its admissibility, not to the question of whether he is at all qualified to testify on the subject.

Mr. Johnson: That is correct.

The Court: Very good.

[fol. 2768] Q. So, Mr. Finn, if you would just start with the first chart in folder A, which I believe is on page 3——

The Court: I take it this starts, now, with an index; does it?

Mr. McManus: Yes, your Honor, page 1 being an index, page 2 being section 1 of folder A, and then every page has a number at the bottom, and if Mr. Finn, before he explains a chart, will say what page he is on, I think we can all follow very clearly.

The Court: Are we referring now to Exhibit 801?

Mr. McManus: Yes, sir, 801, page 3, which is the first table in the book.

A. Well, on folder A, we have divided this folder into three sections. Section 1 has to do with the continental United States shipments of glass containers for 1955, '56 and '57.

The Court: When you said "continental United States shipments," do you mean shipments by Continental——

The Witness: No.

The Court: Oh, you meant shipment within the con-[fol. 2769] tinental United States?

The Witness: That's right.

A. (Continuing) And section 2, we have the continental United States shipments for metal containers; and in the third section, we combine glass and metal containers for the Continental United States shipments for 1955, '56 and '57.

Now, on page 3, this tabulation shows the continental United States shipments for all types of glass containers for 1955, '56 and '57, compared with the leading manufacturers in the industry.

The Court: It seems to me that one of the important questions is, where did the figurse which go into this schedule come from and how was the schedule made up?

The Witness: Yes, sir. At the bottom of this page, on page 3, we give a source. It says, "U. S. totals are from the Bureau of the Census, Facts for Industry, Glass Container Summary, Series M32G." Company totals are from the Glass Container Manufacturers Institute, Inc.

Now, the——

The Court: Tell us, when you say the Bureau of the Census, where in the Bureau of the Census, from what [fol. 2770] census sources you refer to here?

The Witness: Well, the Bureau of the Census monthly publishes a series which is entitled "Facts for Industry," and in——

The Court: I think, Mr. Finn, if I may interpolate, two people have to understand this. No doubt the basic material with respect to this, or at least a substantial part of it, has been given to the defendants. I have seen no basic material. This is the first time I have seen this chart.

What the government's burden is, in order to put this chart into evidence, is to convince me that this chart or schedule is an accurate schedule of what it purports to portray, and your testimony on the subject should be directed to giving me such information as enables me to determine that fact.

The Witness: The Bureau of the Census monthly issues a monthly publication, and they also have a summary at the end of a year, showing the production and the shipment of glass containers by various end-use categories. This information is obtained by Census from all of the manufacturers of glass containers in the United States.

The Court: Under the so-called confidential type of cen- [fol. 2771] sus reports; is that right?

The Witness: Yes, sir.

The Court: For want of a better name.

The Witness: Yes.

These publications are available to the public.

The Court: Now, the Bureau of the Census, "Facts for Industry, Glass Containers Series" so-and-so, is all one publication?

The Witness: That's correct.

The Court: By way of illustration, I thought, when I first

read this, you were referring to three separate publications.

The Witness: I am sorry.

The Court: All right. I am just trying to illustrate what your problem is on the stand.

The Witness: Yes.

The other source is from the Glass Container Manufacturers Institute, and those are documents that the government received from that institute on, I presume, a subpoena.

The Court: Well, those basic documents, what do they consist of? Have you seen them?

The Witness: Yes, sir.

[fol. 2772] The Court: What are they? What do they purport to be on their face?

The Witness: Those glass companies that were members of the Glass Container Manufacturers Institute had filed with the, if I may use it, GCMI their statistics on their volume of glass they shipped in the continental United States, and they also furnished GCMI with the amount they shipped in export.

We obtained summaries of these shipments from GCMI, and the information contained in this tabulation with respect to the three glass companies named therein were from those—were from those documents of GCMI. The totals, as I mentioned before, are from the Bureau of the Census.

The Court: Well, how do you arrive at the figure—the last figure in column 1—under "Volume," of 9,233,280 for all other manufacturers?

The Witness: That is the difference between the total for the three manufacturers and the total as published by the Bureau of the Census.

The Court: Let me ask you this——

The Witness: Yes, sir.

The Court: Do you know, if the Bureau of the Census has figures for Owens-Illinois Glass Company, whether [fol. 2773] their figure is the same as the figure given by the Glass Container Manufacturers Institute?

The Witness: I am unable to check that, because what

the Bureau of Census has is strictly confidential. We can't get that.

The Court: In other words, you just don't know?

The Witness: I don't know, sir.

Mr. McManus: Your Honor, may I interpost a question at this point?

The Court: Yes, certainly.

By Mr. McManus:

Q. Mr. Finn, during the course of our investigation of another merger matter, did we obtain figures from the Owens-Illinois Glass Company relating to their total shipments of glass containers?

A. Yes, we did.

Q. And did these shipments purport to be taken from copies of the reports that the Owens-Illinois Glass Company made to the Bureau of the Census?

A. Yes, they were.

Q. Were you directed, or did you compare the reports that they said were given to the Bureau of the Census [fol. 2774] with those that were furnished to us through GCMI?

A. Yes, I did.

Q. And what was the result of that tabulation?

A. Well, they were substantially the same.

Q. When you say "substantially," how much in error would they be—one per cent, 2 or 3?

A. Less than 1/10 of one per cent.

Mr. McManus: Thank you.

By the Court:

Q. Now, is there anything further you want to tell us about page 1A - page 3?

A. Well, I should mention, perhaps, that the Anchor-Hocking Glass Company here, their total includes their subsidiaries.

Q. All right.

A. Next is the American, a similar tabulation. You will note that the sources are the same, but that this tabu-

lation embraces food, non-food, beer and beverages, the volume of shipments for 1955, '56 and '57.

Q. Let me ask you this: If this includes food, non-food, beer and beverages, what does it not include?

A. It does not include wine bottles or liquor bottles.

[fol. 2775] Q. I see. Does it include milk bottles?

A. Yes, sir.

On page 5 the tabulation is for glass food containers. The source is identical to the——

Q. Where did you get the definition "food," or how is "Food," as used in this table, defined by you or by the sources from which you took this information?

A. Well, the Bureau of the Census has a category for glass containers as food. They have it broken down as to narrow-neck and wide-mouth food. This is a consolidation of that, plus another category, dairy products, and still another category of packaged tumblers.

Q. What?

A. Packaged tumblers.

Q. What is that for—jellies?

A. As far as I know, they are jelly glasses, and sometimes they put peanut butter in them; probably usable as a drinking glass when you have emptied the contents.

You will note that this food group I have mentioned here, that contains, included in the food group, food, nar-

[fol. 2776] row-neck, wide-mouth, dairy products and packaged tumblers.

The Court: Now, Mr. McManus, is it your intention to introduce or produce before me the Census Department's definition of these items?

Mr. McManus: Your Honor, if it is necessary, we will do that. It has been our position that the food classification has been followed throughout the industry for a number of years, and that at least the industry knows what goes into the food category.

The Court: Yes, that is very well, Mr. McManus——

Mr. McManus: If you, sir, would like to have a copy of that, we will obtain a copy of that.

The Court: I think you ought to let me have at some point a copy of the Census definitions so at least we will know what we are dealing with.

Mr. McManus: All right, sir.

The Court: And it seems to me that as a matter of orderly procedure, for the enlightenment of not only myself but also of some other appellate court that might happen to review this matter, you ought to have those in the record and marked as exhibits.

[fol. 2777] Mr. McManus: Yes, your Honor.

The Court: So the appellate court will have easy access to them and will be able to follow the thing throughout.

Mr. McManus: Yes, your Honor.

The Witness: Now, going to page 6, it is an identical—similar tabulation, showing beer bottles, returnable and non-returnable, for 1955, '56 and '57.

The Court: Incidentally, is there such a thing as a plastic beer bottle at the present time?

Mr. McManus: Not to the government's knowledge.

The Court: The returnable beer bottle or returnable soft drink bottle that I now see, is that also a form of glass?

Mr. McManus: Yes, your Honor.

The Court: But a different kind of glass, a lighter glass?

Mr. Johnson: Lighter. It is glass, but whether it is different——

The Court: But it is still glass.

Mr McManus: Lighter but more durable, your Honor.

[fol. 2778] Mr. Johnson: It is still glass.

The Court: All right. Go ahead.

The Witness: Turning to page 7, a similar tabulation involves the beverage containers, returnable and non-returnable.

By the Court:

Q. That is soft drinks, I take it?

A. Mostly soft drinks, yes. The sources are the same.

Q. That is made up in the same way?

A. The same way.

On page 8 is the non-food glass containers, and you will note at the bottom of this tabulation that these containers included in this non-food group are various categories used by both Census and GCMI, entitled "Household and industrial narrow-neck and wide-mouth; toiletries and cosmetics, narrow-neck and wide-mouth; medicine and health supplies, narrow-neck and wide-mouth."

Q. All right. Let's turn to the next.

A. Next begins a new section, and this is a section on metal containers. The tabulation shows the three leading companies——

The Court: May I ask you this——

[fol. 2779] The Witness: Yes, sir.

The Court: Have the two counsel for American and National Can anything before them from which they can follow this?

Mr. McManus: Your Honor, we could not turn that over to them because we have the problem of having some of Continental Can's statistics in our books.

We have no objection, but perhaps they do.

The Court: I knew that problem would arise, but do you have any objection to these two gentlemen following this on these tables?

[fol. 2780] Mr. Johnson: Well, sir, there is a problem of figures alleged for Continental Can. They are separated all through.

The Court: All right, perhaps it is unnecessary, in any event.

A. The U.S. totals for metal cans are from the Bureau of Census, too. At this point I might say the census figures are reported in tons of steel, and in these tabulations we have converted these tons of steel into units, in thousands of units, in metal cans. Now these conversion figures were derived from a publication put out by the Can Manufacturers Institute, in which they show the same identical figure as the Bureau of Census for tons of steel consumed in the manufacture of cans.

In addition to that, the Can Manufacturers Institute has a tabulation in which they give an estimate of the actual number of cans produced in the United States during a particular year.

Q. That is a production figure rather than a shipment figure?

A. I wouldn't be too sure of that, your Honor, whether it is a production or a shipment figure. I would have to check that.

[fol. 2781] We obtained a conversion factor by dividing this ton steel into the estimated number of actual cans

produced, and obtained some of these—obtained these conversion factors, and then we applied that conversion factor to the various companies for the types of metal cans produced.

Getting back to the source here, in the Bureau of Census figures were shipments from the Hawaiian Isles. We subtracted those figures from the Bureau of Census figures by using the data we had from American Can Company, which company has three plants located in Hawaii, and by that method we were able to get the continental United States shipments.

Mr. Johnson: If the Court pleases, I have been through the tables to which Mr. Finn is referring now.

The Court: Will you speak a little louder, Mr. Johnson?

Mr. Johnson: I have been through the tables to which Mr. Finn is referring now, this section relating to metal containers, and the figures being for 1955, '56 and '57, and that with respect to this group if there are copies to be made available to counsel for American and National for their use here I will have no objection. As I listen [fol. 2782] to Mr. Finn, I can understand that this is going to be very complicated to follow without having them in front of them.

The Court: It seems so to me, Mr. Johnson. I think it would be helpful if we had at least one copy for these two gentlemen.

Mr. McManus: I will sit over by them, your Honor, so that we have one available for them.

The Court: All right.

Mr. McManus: Could you tell me again, Mr. Johnson, which one you do not object to?

Mr. Johnson: Well, I am referring to those in this series, up through non-food containers.

Mr. McManus: Do you have a page?

Mr. Johnson: I think it is page 14.

Mr. McManus: This whole section; is that correct?

Mr. Johnson: Yes.

Mr. McManus: All right.

The Court: All right.

The Witness: Should I go to the next page?

By the Court:

Q. If you have nothing more to tell us about page 10, go on to page 11.

[fol. 2783] A. Page 11 involves the metal food containers. You will note that we have put in the types or end use categories in metal cans that are in this tabulation. I will read them. It includes fruit and vegetable; evaporated milk; other dairy products; fish and seafood; meat, lard and shortening; all other food and coffee.

These unit figures were arrived at in the same manner that I explained on the preceding page.

Q. All right, sir.

A. On page 12, the tabulation is for metal beer containers.

Q. That is the same basis; is that right?

A. Same basis.

Q. All right.

A. 13 is for soft drinks. We arrived at that by the same method.

On page 14 it is for non-food containers, and this contains pet food, oil and all other non-food.

Q. So that for all other non-foods the same sort of category was used in glass.

A. Yes, I would say——

Q. What, household, industrial?

A. Well, you can't tell by that category title. It seems to me—it appears to me it is a catch-all.

[fol. 2784] Q. I see.

A. If it is not classified in the food items or the others we have mentioned previously to this, it is probably placed in all other non-food items.

Now, going to——

The Court: Mr. McManus could I interrupt just a moment?

Is there any objection to Section 3, Mr. Johnson, as far as the American National Can?

Mr. McManus: I'm sorry, your Honor. It has glass in there, also, so I guess——

The Court: I think you'd better not.

Mr. McManus: —we had better not.

The Witness: Shall I continue?

The Court: Yes, please do.

A. (Continuing) Going to page 16——

Q. Well, 16, as I understand it, Mr. Finn, is simply a combination of figures in the one category and figures in the two category, put together, and percentages drawn from them; am I right?

A. That is correct, sir.

Q. In other words, you take the total glass for these years, the total metal for these years, you add them up and then you figure out the percentages ascribable to [fol. 2785] each of the companies?

A. That is the method we used.

Q. All right.

A. And we have done that for——

Q. You have done that for the various categories which you have mentioned?

A. Various categories.

Q. In each case, and these represent that sort of combination of figures.

A. That is correct, sir.

Q. All right, so much for——

A. That would be so much for folder A.

Q. —folder A.

A. Now, folder B shows a breakdown between the east and west markets for both cans and glass.

Q. Is that all that folder B does, is break this down geographically?

A. Yes, sir.

Q. Does it purport to break down the various categories of figures on a geographical basis?

A. Yes.

Q. In other words, it uses the same categories of figures and classifications as we used in A, and purports to break them down on a geographical basis?

[fol. 2786] A. That is correct.

Q. Now, how do you arrive at the—you have some notes here?

A. Yes, I do.

Q. Suppose you tell us how in general the geographic totals were arrived at?

A. Starting with glass first, we obtained from GCMI, as I mentioned previously, statistics on the shipment of glass containers, and that also included those companies who operated on the west coast. In addition to that, we secured directly from some of the companies that are not members or didn't report their statistics to GCMI, direct from those people, those letters or references to them which are mentioned on page 6.

Q. Would those two companies be American and National, among others?

A. These are glass companies.

Q. These are glass companies.

A. Yes, sir. The letters are—I can read the companies they are from.

Q. Well, they are the companies that were cited in the exhibit itself, I take it?

A. That is right.

[fol. 2787] Q. It is not necessary to repeat them.

A. Well, after obtaining these statistics furnished by those companies by letter, and for those companies that were operating on the west coast, who furnished us statistics through GCMI, we were able to arrive at the volume of glass shipments made by those plants located west of the Rocky Mountains. After doing that, we merely subtracted that from the continental United States total.

Q. And arrived at the eastern?

A. We arrived at the east.

In the metal containers, we found out through American Can's tabulations and Continental Can's tabulations that two plants were operated in the States of Colorado. Now, from the published statistics of the Bureau of Census, on a geographical area basis by states, or combination of states, we subtracted the shipments from those two plants from the census data for the mountain area, which was the geographical location published by the Bureau of Census and giving the shipments out of that particular area. We then arrived at a figure for the mountain states area, or states we have allocated to the west coast market.

Q. What states were put in the mountain states area?

[fol. 2788] A. Those were the states located west of the eastern boundaries of Idaho, Utah and Arizona.

Q. All right, and they were included in your test of what, or actually did include what?

A. Those were what we now—it was what we call the west geographical area.

Q. Now, the west geographical area, as was used in these charts or tables, comprises what states, plainly California, Oregon and Washington?

A. Yes.

Q. Now the next layer?

A. It is Nevada, Utah, Arizona, Idaho—I have left out one. If I had a map to refer to, your Honor, I could point them out very easily.

The Court: Have you got a map?

Mr. McManus: We will get one.

Your Honor, I guess it isn't here, but we defined the area and gave you a map.

The Court: Yes.

Mr. McManus: It is not here in the courtroom. I guess the clerk hasn't got that. I will get the map, your Honor.

By the Court:

[fol. 2789] Q. Is half of Montana here or not?

A. Oh, no half states.

Q. No half states. Well, go ahead, we will come back to it.

A. Well, after arriving at the volume produced in the mountain states, we added that to the total volume produced for the west coast states, that was mainly California, Washington and Oregon, and we have a figure for the western area of United States, and with that we subtracted from continental United States and arrived at an eastern total.

Now, the figures, total figures, in this tabulation are tied in with the ones in folder A.

Q. This is a further breakdown of the figures in folder A on the geographical basis that you suggest; is that right?

A. That is correct. Shall we go through it?

Q. I don't think it is necessary to go through it chart by chart, unless there is some special reason for it.

The Court: What is your view, Mr. McManus?

Mr. McManus: No, your Honor. We would like to offer them as they are. We just wanted to explain so that your Honor will understand.

[fol. 2790] The Court: Well, if all these are, are a breakdown by the east-west geographical area of the figures in folder A, as they have been described, then I see no necessity of going any farther at this point.

Mr. McManus: I see. That's right.

The Court: All right.

By the Court:

Q. Now let's go to folder C, 803.

A. Folder C, on page 2, gives a tabulation for the total shipments of metal containers by the three leading manufacturers, but it differs from tabulation that was in folder A, to this extent: that it excludes on line 2 metal containers shipped by captive plants.

Q. How do you ascertain what are captive plants and what are not captive plants?

A. My own general knowledge of captive plants, captive plants are those organizations that manufacture metal containers for their own use. In other words, the cans they make are used to put the product or the ingredients that this particular company makes.

Q. All right, I understand that, Mr. Finn, but where do the figures come from with respect to—where do the [fol. 2791] so-called captive plant figures come from?

A. Those are listed also in the Bureau of Census figures.

Q. By named companies or by categories?

A. No, just by this category. There is no——

Q. No identification?

A. No identification.

Q. Of what captives are?

A. That's right, sir; no identification. We have subtracted these captive plants volume or rather shipments from the continental United States totals, and we arrived at a figure showing the shipments of cans for sale in the United States. In other respects, this tabulation is very similar to the ones in folder A.

Q. All right, what is on page 3?

A. On page 3, this tabulation shows the production and shipment of crown caps by Continental can, compared to the United States totals, for the years 1955, '56 and '57. The source of this material was from Continental Can production and shipment statistics, from DP2343 and through 2444, and 3297. U.S. totals are from the U.S. Department of Commerce, Bureau of Census facts for industry, enclosures for glass containers and crowns. All other manufacturers represent the difference in the totals [fol. 2792] for the United States of Continental Can.

Q. All right, 4?

A. Number 4 is 1957—1956 and 1957 production and shipment of vacuum, screw thread, lug, commercial closures made from tin mill products by White Cap and Hazel-Atlas Company in 1956. This shows the production and shipments of these types of closures in the United States, and which totals are from the Department of Commerce, the Bureau of Census, facts for industry, and their publication entitled "Closures for glass containers and crowns."

Q. All right. Now I take it the next chart is a breakdown of the—contains part of the figures, breakdown of the figures, contained on the previous chart, on page 5.

A. Yes, your Honor, but there is a slight difference.

Q. All right.

A. The chart on page 5 shows the production of vacuum type commercial closures for 1958 by White Cap, and the screw thread and lug type non-vacuum type closures by Hazel-Atlas.

The source is the same, from the Bureau of Census. [fol. 2793] In 1958 the census changed their method of reporting these closures, and that is the reason why we had to separate 1958 from 1956 and '57.

Going to number 6, this shows the number of dollar value items per packaging material in 1957 and 1958, and we have compared this to the net sales and operating revenues of Continental Can Company.

Q. Wait a minute. What do you mean by the value of packaging materials?

A. This is a statistic that is gotten out by the Modern Packaging Encyclopedia, and they have been putting it out for a number of years.

Q. What does it purport to include, the value of packaging material? I don't understand how you define packaging material in that sense?

A. Your Honor, I haven't tried to define it in here at all. This is merely——

Q. In other words, you have got a figure called "packaging material," from something called "Modern Packaging Encyclopedia"?

A. Right.

Q. And you have compared that figure with the net sales and operating revenues of Continental Can.

A. Yes.

[fol. 2794] The Court: So thus far, Mr. McManus, I have been able to follow what I might call suggested relevance and materiality of the figures, but I am totally unable to follow you on this one.

Mr. McManus: Your Honor, we understand that it is very difficult to figure out what the total market is for the packaging industry as a whole.

The Court: What do you include in the packaging?

Mr. McManus: Your Honor, we include everything——

The Court: Have you got this learned volume, this encyclopedia? Is it in court? Is it available?

Mr. McManus: We will get it for you, your Honor. We don't have it at the moment. I will have to get Mr. Finn or somebody else to get it for you. I will get it promptly.

The Court: Well, now, what sort of thing does it include? Suppose I want to buy Christmas wrapping, is that a packaging material?

Mr. McManus: Can I read off what it includes? The chart spells it out. It includes paper and paperboard containers, grocery and——

[fol. 2795] The Court: I see it. You don't have to read it off. This is an analysis of what it contains?

Mr. McManus: That's right, your Honor.

The Court: All cellophane; polyethylene, unconverted; aluminum foil; cooperage; fruit and vegetable packages; cigar boxes.

Mr. McManus: That's right, your Honor. It is a large industry, the third largest in the United States.

The Court: It seems to me not only a large industry but

one of the most fantastically diversified industries I have ever come across.

Mr. McManus: It is rapidly becoming less diversified, your Honor.

The Court: So if my daughters wrap up Christmas gifts, they use packaging materials, with holly and Christmas seals and those lovely red ribbons——

Mr. McManus: Your Honor, as I understand it, this is packaging for users to package products in, and it wouldn't just include your red ribbons. My only answer——

The Court: Suppose they sell wrapping paper to retail stores.

[fol. 2796] Mr. McManus: It would include that, your Honor. It would include that. Your Honor, I admit that this is all that is available. It is published annually by the——

The Court: I know it is all that is available. I am not, Mr. McManus, being critical of the fact that it is too little.

Mr. McManus: The area or the statistics?

The Court: I mean, I am not saying that you haven't got enough in here. All I am saying is that you have got everything in here but the wrappings of the kitchen stove or the kitchen sink, or both.

Mr. McManus: Your Honor, my only answer——

The Court: Is it your theory, Mr. McManus, that this thing is a line of commerce?

Mr. McManus: Yes, your Honor.

The Court: I have heard no evidence whatsoever on that subject yet.

Mr. McManus: Yes, your Honor.

The Court: Are we to expect any evidence on that subject?

Mr. McManus: Your Honor, this is all the material that we do have indicating the size of this industry.

[fol. 2797] The Court: And is this all the evidence that you do have indicating that this is what might be called a line of commerce within the meaning of Section 7 of the Clayton Act?

Mr. McManus: Yes, your Honor, if you are talking about evidence.

The Court: Well, that is what I am talking about. This

lawsuit is not going to be decided on the basis of a document called the Modern Encyclopedia of Packaging.

Mr. McManus: I see, your Honor.

The Court: Well, all right.

Mr. McManus: Your Honor, could I ask one question? Is that the last chart you have in your book?

The Court: I have something here called "Comparison of glass container plants east and west of the Rocky Mountains for the years 1920 to 1938, and January 31, 1960." Are you going to tell me about that?

Mr. McManus: Mr. Finn will.

The Court: I mean Mr. Finn.

The Witness: Well, this tabulation shows by states the glass container plants that were in existence in 1920, those [fol. 2798] in existence in 1938, and the number on January 31, 1960.

You will note on page 2 here that the source of this information is from the Temporary National Economics Committee publication, and for the year 1960 the data is from American Glass Review, Glass Factory Directory. On this page also we have some modifications of the data that is contained in this source material. We also have included plants that are now under construction or in the planning stage.

By the Court:

Q. Where does the data come from—plants now under construction or in the planning stage?

A. Well, it appears that I have neglected to put that in, your Honor. That came from the publication entitled "American Glass Review."

Q. In other words, the American Glass Review, you say, has plants under construction or in the planning stage listed also?

A. Periodically they put a——

Q. An addendum, sort of?

A. An addendum, sort of.

Mr. McManus: Your Honor: if I could interrupt at this time, I would like to show Mr. Finn the map so [fol. 2799] that he can——

The Court: Yes, let's find out what states we are dealing with now.

Mr. McManus: Will you name them to his Honor?

The Witness: The States of Washington, Oregon, California, Idaho, Nevada, Utah and Arizona, they are all the states that are——

The Court: Yes, I see. They are the states that are west of the Arizona-Utah-Idaho border—Eastern border?

The Witness: Eastern border.

The Court: We will take a brief recess at this point.

(Short recess.)

Mr. McManus: Your Honor, those are the tables which Mr. Finn compiled. We will now go to Exhibit 800, which was put together by Mr. Tolton.

(Witness excused.)

JULIUS H. TOLTON, called as a witness by the government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Tolton, by whom are you employed?

[fol. 2800] A. I am employed by the Antitrust Division of the Department of Justice.

Q. And for how long a period have you been employed by them?

A. Approximately 12 years.

Q. And what is your title in that division?

A. My title is business economist.

Q. And do you have any major economic degree?

A. Well, I have an undergraduate degree which included economic study.

Q. Now, are you familiar with Government's Exhibit 800?

A. I am. I compiled it.

Q. And was that exhibit prepared under your direction?

A. Yes, it was under my supervision.

Q. And did you——

The Court: You had a staff working with you on that?

The Witness: I did, your Honor.

The Court: But you directed the staff?
The Witness: I did, yes, your Honor.

Q. And you took the basic data from the footnotes and applied it in chart form?
[fol. 2801] A. I did.

The Court: From the what——
Mr. McManus: Referred to in the footnotes; the basic data referred to in the footnotes.
The Court: I see.

By Mr. McManus:

Q. Much as Mr. Finn did with the tables?
A. I did, yes.

Mr. McManus: Your Honor: we would like to qualify Mr. Tolton merely on the same basis that we qualified Mr. Finn; just that he——.

By the Court:

Q. Well, tell me this: what has been your general experience in the compilation of charts or translating figures into chart form?
A. Well, your Honor, going back, in college I took several courses in statistical——
Q. Where was that?
A. University of Washington. And following that time, or shortly thereafter, I was employed by the Department of Justice, and I have dealt with you might say, figures and industry studies and various things which took into account much statistical work for the past 12 years.
[fol. 2802] Q. Have you testified in court with respect to charts?
A. I have previously.
Q. How many times?
A. Well, previously in the Brown Shoe case.

By Mr. McManus:

Q. And that was the United States v. Brown Shoe Company that was tried out in St. Louis, Missouri?

A. It was.

Q. And you compiled much of the statistical data for that case?

A. Yes. I have compiled statistical data that was used in court prior to that time, but never testified to it.

Q. I see. But in that case you compiled much of the statistical data and also testified with respect to it?

A. Yes.

Mr. McManus: Your Honor, we would like to follow the same procedure with Mr. Tolton as we did with Mr. Finn, if there is no objection.

The Court: All right.

Mr. McManus: The pages in Government's Exhibit 800 are numbered, starting with the index, from 1 right on, [fol. 2803] through.

By the Court:

Q. First of all, Mr. Tolton, let me ask you: are your charts based on figures in the tables that were testified to by Mr. Finn?

A. Most of them, yes.

Q. Will you point out to me the instances in which they are not?

A. Yes. The first page is the index page, as previously described, and the second page—well, it defines some terms, I guess would be the briefest way to explain it.

Mr. McManus: Would you speak up just a little bit, Mr. Tolton.

The Witness: Yes.

A. (Continuing) Page 3 starts into the section "Glass Container Shipments Into the United States," and page 4 begins the first chart.

This chart, called the glass container shipments, 1955, "Total Domestic," "Leading Four Companies" and "All Others" and "Hazel-Atlas Share," is material that conforms with Mr. Finn's statistical book A, table 1 A. It conforms to that in its entirety.

[fol. 2804] Q. I take it the same thing can be said—now you come to narrow-neck and wide-mouth, or you come to the various breakdowns of the types—"Glass Shipments." Is that glass container shipments?

A. Yes, that's right, your Honor. I would rather hold up going into that because the following chart, which is "Total Narrow-Neck," actually is part of 1 A of the statistical tables, because Mr. Finn combined both narrow-neck and wide-mouth together, so to that extent it does not conform in its entirety as to the statisical tables.

Q. You have taken the figures out of his total figures of wide-mouth and narrow-neck, you pulled the narrow-neck figure?

A. Yes, your Honor, both the Census Bureau and the GCMI figures were broken down in the same categories, broken down into the areas of narrow-neck and wide-mouth, and these conform in that respect to the Census Bureau and the way the GCMI figures were broken down.

The second chart deals with total narrow-neck, the same sources as have been previously expressed with the tables.

Should I continue on, your Honor?

[fol. 2805] Q. Yes.

A. Page 6 is the next table, which deals with food, narrow-neck, as the category was expressed in both the "Facts for Industry" and the Census, and the Glass Container Manufacturers Institute figures.

Page 7 deals with medicinal and health supplies, narrow-neck.

Page 8 deals with chemical, household and industrial, narrow-neck.

Page 9, toiletries and cosmetics, narrow-neck.

Page 10, beverages, returnable.

Page 11, beverages, non-returnable.

Page 12, beer, returnable.

Page 13, beer, non-returnable.

Page 14, liquor.

Page 15, wine.

And then we get into the wide-mouth category. Total wide-mouth is on page 16, and, as I expressed before, this would be part of the table A 1 A, if I may express it that way. That is page 16.

Then food, wide-mouth, page 17.

[fol. 2806] Page 18, medicinal and health supplies, wide-mouth.

Page 19, chemical, household and industrial, wide-mouth.

Page 20, toiletries and cosmetics, wide-mouth.

Page 21, dairy products. And that is the end of that section 1 dealing with glass containers under those categories.

Page 22 has the title page "Metal Container Shipments in the United States."

Page 23 expresses the data for American Can, Continental Can and National Can, named in each of the charts in group 2, was secured individually from the above firms.

Page 24 begins the metal can shipments series. The title is "Metal Can Shipments, 1955, Total Industry, Leading Three Companies and All Others, Continental Can's Share."

Now, this incorporates all of the tables, all of the table 2 A B that Mr. Finn dealt with previously, and we have the same source that Mr. Finn's tables show.

Should I continue?

Q. Yes.

A. All right. Page 25 is fruit and vegetables, including [fol. 2807] juice.

Page 26 is evaporated and condensed milk.

Page 27, other dairy products.

Page 28, meat, including poultry.

Page 29, fish and sea food.

Page 30, coffee.

Page 31, lard and shortening.

Page 32, beer.

Page 33, pet food.

Page 34, oil, open top, one-quart and five-quart.

Q. Oil, open top—what sort of oil is that?

Mr. Johnson: Motor oil.

The Court: Motor oil. Thank you. It is just called oil—petroleum, presumably.

Mr. Johnson: Substantially. I wouldn't say 100 per cent.

A. (Continuing) Page 35, soft drinks.

Page 36, all other food, soup and baby foods.

Page 37, all other non-foods.

And page 38 we go to the chart book, series 3. The title is "U. S. Metal Container Shipments and Continental Can Participation by Regions, and U. S. Glass Container Ship-
[fol. 2808] ments and Hazel-Atlas Participation by Regions."

Page 39, the first chart in this series, total metal container series and Continental Can participation for 1955, all types; total U.S., billions of units, and we have the same sources as were previously, expressed by Mr. Finn. This follows the A book in the tables, table 2 A B in its entirety.

Page 40, total metal container shipments and Continental Can participation, all types, west of the Rockies, and this conforms to tables in the B series, 4 A. It is on a unit basis.

Page 41 that follows is the description, or the notes applicable to the chart previously mentioned, page 40.

Q. Isn't that in essence a duplication of the notice which was submitted on his charts?

A. Yes, certainly in substance, and it may be pretty much word for word.

Page 42 is total metal container shipments and Continental Can participation in 1955, all types, east of the Rockies, and this conforms to the table series B 3 A.

Page 43 is the notes applicable to the previous chart, page 42.

[fol. 2809] Page 44, total metal container shipments and Continental Can's participation, 1955, for food. This is the total U. S. in billions of units, and this conforms to our table series A, table 2 C.

Page 45, total metal container shipments and Continental Can participation for 1955, food, west of the rockies. This conforms to the table B series, 4 B, the individual table.

Page 46 is the notes applicable to the chart on the previous page, 45, as it applies to the chart.

Page 47, total metal container shipments and Continental Can participation, 1955, food, east of the Rockies, and this conforms to the table series B, table 3 B.

Page 48 is the notes applicable to the chart previously mentioned on page 47.

Page 49, chart, total metal container shipments and Con-

tinental Can participation, 1955, non-food. This is the total U. S., and this conforms to table series A, table 2 B—2 F. I am sorry.

Page 50, total metal container shipments and Continental Can participation, 1955, non-food, east of the Rockies, in billions of units, and this conforms to our table B series, the [fol. 2810] 3 E table.

On page 51 are the notes applicable to the chart on the previous page, 50.

Page 52 we go into the total glass container shipments and Hazel-Atlas participation, 1955, all types; total U. S. in billions of units, and this—well, this is part of B 7 A in the table series, and the sources—the sources here are from the Facts for Industry and interrogatory 13 by the Hazel-Atlas Company.

Now, page 53, total glass container shipments and Hazel-Atlas participation, 1955, all types, east of the Rockies. Now, this conforms to the table series B, table 5 A.

Page 54 is the notes applicable to the previously mentioned chart on 53.

Page 55 is the total glass container shipments and Hazel-Atlas Glass participation, 1955, all types, west of the Rockies, and this conforms to the table B series, table 6 A.

Page 56 is the notes applicable to the previous chart on page 55.

And page 57, also—well, it lends itself, or assists in the making up of the chart on page 55. That is source data.

[fol. 2811] Page 58, total glass container shipments and Hazel-Atlas participation, 1955, food, total U. S., billions of units, and this is part of the B table series, 7 C.

Page 59, total glass container shipments and Hazel-Atlas participation, 1955, food, west of the Rockies. This conforms to the B table series, table 6 C.

Page 60 and 61, I might say, are the notes applicable for the sources of the chart previously mentioned on page 59.

Page 62, total glass container shipments and Hazel-Atlas participation, 1955, food, east of the Rockies, and this conforms to the table series B, table 5 C.

Page 63 is notes applicable to the previously mentioned chart on page 62.

Page 64, total glass container shipments and Hazel-Atlas

participation, 1955, non-food, total U. S., and this conforms in part to the table series B 7 F.

Q. Where does the rest of the data come from?

A. Well, your Honor, I would have to look at that. It [fol. 2812] would only take me a moment to distinguish as to what portion it was. In other words—well, no, I shouldn't say that until I have looked at the tables themselves. Would you like me to do that?

Mr. McManus: What table does it conform to?

The Witness: Well, it is part of table B 7 F. I think I have a copy.

A. (Continuing) Your Honor, table B 7 F shows not only glass container shipments but also metal container shipments, and then combines them, and we only use that portion which pertains here to glass container shipments.

Q. All right.

A. Page 65, the chart is total glass container shipments and Hazel-Atlas participation in 1955, non-food, east of the Rockies, and this is the B chart series, table 5 F.

Page 66 is the notes applicable to the previously mentioned chart on page 65.

Page 67 starts a different grouping, group 4, and this is historical growth of metal and glass container shipments expressed as index numbers and shown as a trend.

[fol. 2813] The chart on page 68 has as its title "Historical growth of metal and glass container shipments expressed as index numbers and shown as a trend" for all types of glass and metal containers. The years 1939-1958, and the index 1939 equals 100 for those numbers expressed on the right and left, the right and left side of the chart.

The numbers at the bottom are the years 1939, a midbreak, 1948, and 1958, with the intervening years shown only as a dashed line there at the bottom.

The source for these was the glass containers, the totals, U. S. totals, 1939 through 1956, is from GCMI—well, I guess an annual report—1957, page 47, and the 1958 is from the Bureau of Census glass container summary, 1958, series M32G.

The metal cans for the U. S., totals, 1939 through 1956, from the Can Manufacturers Institute, I'd say annual sum-

mary, March, '49, page 6, and their 1947-1956 CMI—well, summary, I'd better say it that way—page 12, 1948, and then they had another summary, which was 1948 to 1957, and we used page 10 there. The 1958 was from the Bureau of Census, metal can summary, 1958, series M34D.

And page 69 is the supporting data—well, supporting [fol. 2814] data that was extracted and developed in order to make the chart on the previous page, and I think the same—the sources there expressed are the same as those mentioned on the previous page.

On page 70 we have "Historical growth of metal and glass container shipments expressed as index numbers and shown as a trend" for food, the food line, 1940-1958, in glass containers. That was expressed—and also in metal containers. This chart has on its left and right side the index numbers, ranging from below a hundred here to—it is up to 340. At the bottom of the chart are the years 1940 to 1958, with a dashed line showing—representing each year in the series.

The following page gives the supporting data for the chart mentioned on page 70, and we have as our sources for glass containers and food, 1940 to 1956, from GCMI summary data, and it is page 47.

Mr. McManus: Excuse me, your Honor.

The Court: Yes.

Mr. McManus: Much of this data is just the chart form of the tables which were explained to you, and I don't want to interrupt, but I thought that perhaps you would like it if Mr. Tolton would just explain the rest of them, the ones [fol. 2815] that are different from the chart forms.

The Court: I think that is true in all these other ones.

Mr. McManus: Well, some of the others are taken from different surces, and those I thought would be better if he explained to you.

The Court: Mr. Tolton, if you will refer to the ones that come from different sources than from Mr. Finn's tables, if you will give us the data regarding those, I think it would be better.

The Witness: Yes, your Honor.

Now this is a different series. This is a different data,

certainly different from what appears in the tables—well, I guess substantially, anyway.

By the Court:

Q. All right, point out where you use data different from those that are set forth in the tabulation?

A. All right. Well, as I expressed, the data for the glass containers was from the GCMI—1940-1957 was from the GCMI manufacturers. Glass Containers Manufacturers Institute, I guess it is, annual summary of 1957, page 47, and 1958 data was from the Bureau of Census' glass container [fol. 2816] summary of 1958, series M32G.

Metal cans, food, was, in 1940 to 1951, was from the quarterly containers and packaging, in the spring 1952 issue, page 36, table 16. 1952 to 1958 is from the Bureau of Census of metal can summaries, 1952 to 1958, series M34D.

Q. In other words, quarterly containers and packaging is Bureau of Census material, again?

A. Yes. Let me say this: At least it is Department of Commerce, which in part, I presume, was broken down and made up by the Bureau of Census. It has the imprimatur at least of the Department of Commerce.

Well, the following page expresses the source data that was previously mentioned, primarily.

Now we are going over to chart, series V, metal and glass container shipments, and this whole series, if I may look at it and note it a moment here, conforms to Mr. Finn's tables, so I think we can eliminate that for the time being.

Q. Yes.

A. Now, series VI was not derived from any of the tables, so I will go into that presently.

[fol. 2817] On page 84 is the title for this chart, series VI, "Continental Can Metal Division and Hazel-Atlas Division Common Customer Sales."

Page 85, the first chart of this series is "Continental Can Metal Division and Hazel-Atlas Division Common Customer Sales 1956-1957 total common customers," and the source for this chart was in answer to Government's interrogatory.

Q. What do you mean by "common customer"?

A. In which both Continental Can Metal Division and

Hazel-Atlas Division sold items of glass and cans in their respective organizations to the same customer or the subsidiary within the firm. In other words, there would be listed the firm name and there might be subsidiaries, but we included any of the subsidiaries in the whole firm name.

Page 86, "Continental Can Metal Division and Hazel-Atlas Division common customer sales 1956-1957," and this was the value of the common customer sales, and this is from the answer to the interrogatory.

Page 87, "Continental Can Metal Division and Hazel-Atlas Division common customer sales 1956-1957 (percent of common customer sales), and that includes——

[fol. 2818] By Mr. McManus:

Q. Mr. Tolton, would you explain what that percentage is, per cent of what?

A. Well, that is the——

Q. What does the 81.4 per cent relate to in column 1957?

A. Well, in other words, the total common customers would be a hundred per cent, of which the value—at least on a value basis, as you see on page 86, previous page, if you added the total value as in 1956, the $147,437,000 represents 81.4 per cent of the total sales within that period, while the $33,000,000 represents 18.6 there.

Does that answer it?

Q. Yes.

A. Chart, series VII is also—does not appear in the tables, and this is titled on page 88 "Tin can and other tin-ware industry." Now this expresses the tin can and other tin-ware—excuse me. Page 89, going to the first chart, "Tin can and other tin-ware industry," the number of firms and gross sales of industry by groupings, based on the firm asset classification.

By the Court:

[fol. 2819] Q. Where did you get the data for that?

A. This, your Honor, came from the Internal Revenue Service, in their Division of Statistics, which we have here.

Q. Internal Revenue Service?

A. Yes, your Honor. They have a Division of Statistics, of which they—well, they compile a series of statistics—that is, it is a Division of Statistics.

Q. How do they go about compiling those, and where do they get the data? I haven't heard about those before.

A. Well, basically, your Honor, from the——

Q. Tax returns?

A. —from the tax returns, in which the firm not only makes its tax return, but it also incorporates balance sheet and profit and loss data.

Mr. McManus: Your Honor, in the room back there we do have copies of the basic data. They are under the blue seal, and all that kind, but if you would like to look at it when Mr. Tolton is almost finished, we can get it.

The Court: I won't look at it at this point.

Mr. McManus: We will be glad to make it available.

[fol. 2820] The Court: I think you had better put up a red flag at least on this one.

Mr. McManus: Yes, your Honor.

A. (Continuing) Well, utilizing that data, we were able to make this breakdown from that, the information furnished by the Internal Revenue Service.

The first chart dealt with number of firms and gross sales of industry, and that was page 89.

The second chart in this series has as its title "Tin can and other tin-ware industry number of firms and gross sales of industry by groupings based on firm asset classification," and this was also part of the information derived from the Internal Revenue Service, or at least compiled from data from the Internal Revenue Service. That is page 90, and that concludes that series.

Page 91 we began the chart series VIII, which has to do with domestic acquisitions of Continental Can Company in the container and related product field. On page 90—I beg your pardon—page 92 was the chart, of which its title is "Domestic acquisition of Continental Can Company in the container and related product field," and on the left is the product field, and going from left to right [fol. 2821] at the top indicates the decade within which the acquisitions were made, and the source for these, for this chart, was the submission of Continental Can Company in connection with FTC study of acquisitions, which I think is Government's 785 and 786, Government exhibits; and then we also used the annual reports of Continental Can Company, Moody's Industrials, and the Continental Can

proxy statement of October 26, 1956, to compile that chart.

On page 93 we begin chart series IX, "Shipments of commercial closures of vacuum and non-vacuum types, screw thread, lug and crown caps in the United States."

I might say, your Honor, these follow our statistical tables, conform to them, I should say.

The next two tables—charts on page 94 and 95 are part of the tables, series C, of Mr. Finn's, and that concludes the charts.

Mr. McManus: Your Honor, that would be our presentation before the offer, and I assume that probably because the tables are basic, if any cross-examination would be done we would start probably with Mr. Finn.

The Court: Yes.

Mr. McManus: Also, before we get into this, I understand [fol. 2822] that Mr. Austern has a question.

The Court: Excuse me, Mr. Austern.

Mr. Austern: With your Honor's permission, neither Mr. Goldberg nor I have been seeing these charts, we have been hearing the testimony, and we should like respectfully to have inquiry made to clear up something that we couldn't understand simply by hearing.

Section 2 on the metal charts, on pages 25 through 36, we heard the witness testify to what I believe to be a breakdown on metal can shipments, U.S., showing Continental's share, and then it said "by three companies." May we respectfully ask that inquiry be made as to whether each of the three companies are shown on those charts, which we haven't seen, or whether the aggregate of the three companies?

The Witness: It is the aggregate, Mr. Austern. There is no individual data shown for American Can or National, individually.

Mr. Austern: Well, in the light of the understanding as between the Government and American, and, as I understand, between the Government and National, there was to be an aggregation of the various census categories, such as lard, shortening, pet food, and so forth. As I under- [fol. 2823] stand what the witness said, your Honor, there is an aggregation within the census category of American and National's share.

The Court: There is some in the chart.

Mr. Austern: I haven't seen the chart, your Honor.

The Witness: The aggregate would have all three, American, Continental and National.

Mr. Austern: Then you show, as I understood your testimony, Continental's share?

The Witness: Yes.

Mr. Austern: So that one could readily deduce——

The Court: What the total of American's and National's share is.

The Witness: Yes, as a total. You wouldn't, individually, as a company.

Mr. Austern: May we, with your permission, consider whether that is a rather oblique approach to something that I am not sure I understand. I should like to study it until tomorrow. I now understand what his Honor means.

The Court: All right.

Mr. McManus: Did you want Mr. Finn to now take [fol. 2824] the stand?

The Court: I think, in the light of this, do you want to postpone the cross-examination until tomorrow?

Mr. Johnson: It would be more convenient, if that suits your Honor,

The Court: It does seem to me that we have gone through this stuff this afternoon, and I cannot imagine that we will very much profit by 15 minutes this afternoon.

Mr. McManus: Also, your Honor, if we could use those 15 minutes in just discussing with you in chambers, as I explained before?

The Court: Yes, you can come in.

Mr. Austern: Without burdening your Honor, may I inquire of the witness whether on those charts, to which I adverted, beginning on page 25, Section 2, are there any categories in which either American or National alone manufactured the can?

The Witness: Well, I would have to look at the basic data before I could give you a concrete answer.

The Court: No, we are not talking about the basic data at the moment. We are talking about the *basic data at* [fol. 2825] *the moment. We are talking about the* chart.

The Witness: Well, there is nothing on the chart that would show.

The Court: Is there anything on the explanatory data annexed to the chart which would show?

The Witness: There would not be.

Mr. Austern: Is there anything on any of your own other data which perhaps might indicate as any one of the blocks or boxes that you have in your charts that American makes it and Continental doesn't?

The Witness: No, not at all.

Mr. Austern: This is somewhat different, sir.

Mr. Goldberg: May I ask one question?

The Court: Yes, Mr. Goldberg.

Mr. Goldberg: Those particular charts that Mr. Austern was referring to, are they reflected in the tables in, is it B?

The Witness: Well, A or B, whichever——

Q. A or B. In other words, this is the—the chart merely pictorializes the actual data that is shown in table B; is that it?

The Witness: Well——

[fol. 2826] Mr. Goldberg: Or do you go beyond what is in the table?

The Witness: I don't know how to answer that. Well, just for instance, I mean, to cite you an example, if I might, we have on page 25 "fruit and vegetables, including juice," of which we have the leading three, American Can, Continental Can, National Can, and we have then an aggregate there, then "all others"; then Continental Can's share. Now this does take in part of the A table series, table 2C.

Mr. Goldberg: May I put it another way? Are there tables in either A or B or C, whichever this is derived from, that would be broken down into the fruits and vegetables, as such?

The Witness: I think not as such.

Mr. McManus: They are not tables that were broken down.

Mr. Goldberg: I see. Then this is a further splintering of the tables that were there.

The Witness: To that extent, yes.

Mr. Goldberg: As to these groups of charts that Mr.——

The Witness: What I am saying is, these follow primarily the census categories, I mean, as such.

[fol. 2827] Mr. Goldberg: That I know, yes, sir.

The Witness: Well, Mr. Finn's tables in many instances.

do not. They follow more of what we might call a line of commerce, or something like that.

Mr. Goldberg: No, Mr. Finn's tables cover the four aggregates, four categories or groupings that Mr. Austern referred to.

The Witness: Yes.

Mr. McManus: That is correct.

Mr. Goldberg: And this then is a splintering of a breakdown of those tables into the census categories.

The Witness: Yes, that's right.

The Court: But not beyond the census categories.

The Witness: No, not beyond it; that's right.

Mr. Austern: Excuse me. Just so——

The Court: As I understood if, gentlemen, there was no objection to overall figures for the year based on the census categories, and provided it is not broken down regionally beyond east-west.

Mr. Austern: May I suggest, sir——

The Court: Is that correct, or am I wrong?

Mr. Austern: I think not, sir. The understanding between the Government and these two non-parties to the case [fol. 2828] is that the material in the census data may be aggregated by food, beer, soft drink and non-food, and each of those, United States and east and west. What appears to have happened here is that that understanding has been completely honored in the statistical tables. Now, whether it has or has not been fully honored in the charts adverted to, which we haven't seen, I am not quite clear. I am clear that the category of food, if the Court please, has been broken down and fragmented into at least four categories, and I am equally clear that the category of non-food has been broken down into three segments. Now what I have to parse out, and I would like not to burden the Court, but do it overnight, is whether the breakdown of the agreement——

The Court: Is detrimental.

Mr. Austern:—is detrimental when we are married to this other company as a total. I'm not quite clear on it, but I simply want to be clear as to what was on the chart we haven't seen.

The Court: You might bear in mind I have no matrimonial jurisdiction.

All right, gentlemen, we will take a recess to tomorrow [fol. 2829-2846] morning. In the meantime, I will see counsel in the robing room with the reporter.

Good night.

* * * * * * *

[fol. 2847] Leo V. Finn, resumed.

The Court: I think it would be just as well, Mr. Clerk, to lock the door.

Now, you have been sworn, sir. You remember you are under oath.

The Witness: I do, sir.

Cross-examination.

By Mr. Johnson:

Q. Mr. Finn, your work in preparing these tables was not purely mechanical work, was it?

A. No, sir, not purely mechanical.

Q. It involved the selection of statistics, did it?

A. Yes, sir, it did.

Q. It involved organization of them?

A. Yes, sir.

Q. Some adjustments of them?

A. Yes, it did.

Q. And it involved an appraisal of the statistics?

A. To some extent.

[fol. 2848] Q. And it involved analysis of the statistics, did it not?

A. Yes.

The Court: Involved what?

Mr. Johnson: Analysis.

A. Yes.

Q. You said you had been with the Department of Justice in the Antitrust Division, I believe, for 22 years.

A. That's right.

Q. How long, sir, have you been a business economist for the Department of Justice?

A. When I first started in in the department, that title wasn't used. They had a title called "expert."

The Court: That is a very good title.

A. That was a Civil Service Commission title as distinguished from a Department of Justice title. I was an expert for about five years until I was——

Q. During that period of time what did you do?

A. I worked on cases and investigations, and for a good part of that time I was assigned to the temporary National Economic Committee.

Q. What happened after the five years?

[fol. 2849] A. I was sort of drafted for the administrative section of the department, another division, and I spent probably 12 or 13 years as an administrative officer for the——

Q. What did you do there?

A. Well, I was in charge of all the housekeeping chores of the division, principally for the budget, the finances of the division, the non-professional personnel, under the supervision of the administrative agency; just a ramification of duties that we seemed to take all the duties that did not belong to the legal section.

Q. During that period of time, then, you did no investigation nor statistical work for the division; is that correct?

A. Only in connection with the budget.

Q. It was purely a housekeeping aspect?

A. That's right, sir.

Q. That account——

The Court: Let me ask you this, Mr. Finn: during that period, did you have under your supervision gentlemen who were called experts or business economists or held titles of that nature?

The Witness: Not while I was in the administrative [fol. 2850] —an administrative officer.

The Court: You did not supervise that work?

The Witness: Not the type of professional personnel that you speak of.

The Court: All right.

The Witness: No, sir.

By Mr. Johnson:

Q. Then, after that, did you become a business economist?

A. Yes, I did.

Q. And when was that?

A. It was about 19—the latter half of 1955.

Q. And that is the work you have been doing since?

A. That's correct, sir.

Q. What did you do, sir, before you joined the Department of Justice?

A. I was employed in an ice cream company.

Q. In Washington, D.C.?

A. In Washington, D.C

Q. Were you doing accounting or statistical work there?

A. Yes.

Q. Which?

[fol. 2851] A. Statistical work.

Q. Statistical work?

A. Yes.

Q. Did you take formal statistics courses in school?

A. I didn't major in statistics, no, sir.

Q. Did you take any statistics courses?

A. Yes, I did.

Q. Do you remember what textbook you used?

A. No, I do not.

Q. When did you take such a course?

A. 1932, '33.

The Court: Where did you say that you got your university level or college level education?

The Witness: I got it at the school that was then called Columbus University in Washington, D.C., which is now, as I understand, a part of the Catholic University. It is no longer in existence.

Q. Have you ever had anything published in the field of statistical analysis?

A. No, I have not.

Q. Are you a member of any professional statistical association or society?

A. No, I am not.

[fol. 2852] Q. Mr. Finn, are you familiar with a little

book by Darell Hough entitled "How to Lie with Statistics"?

A. I have heard of it.

The Court: How to what?

Mr. Johnson: "How to Lie with Statistics."

Q. Whether you are familiar with it or not, will you agree with me that in the handling of statistics, it is often possible to get different results from the same set of statistics?

A. A different interpretation of them, yes, sir.

Q. And do you know that professional statisticians have developed a body of disciplines that attempt to make the presentation of statistics less misleading?

A. I don't know that.

Q. You are not familiar with the statistical disciplines whatsoever; is that right?

A. That's right.

Q. So you are saying that you never heard of the problem of full disclosure in captions on tables; is that what you are saying?

A. Irrespective of whether I have heard of it or not, that is what I always attempted to do.

[fol. 2853] Q. So you know——

A. To give a clear and concise caption at the top of the table.

Q. So you know of the problem, then?

A. Yes.

Q. Do you know that rules have been developed with respect to full disclosure of sources of tables?

A. There perhaps are. I have never read anything on the subject particularly, but any time that I make a table up I try to give, there again, a clear and concise source of the table.

Q. Do you know that standards have been developed with respect to the full disclosure of all adjustments made in statistical tables?

A. There perhaps are. I am not familiar with that.

Mr. Handler: Will the witness speak up, your Honor. It is awfully hard to hear.

The Court: Yes. Will you talk up, Mr. Finn.

Q. And will you agree with me that if a full disclosure of adjustments is made, the tables can be misleading?

Mr. McManus: I object, your Honor. This is getting a [fol. 2854] little far afield, and that is such a general statement that I object as to form.

Now, if Mr. Johnson could be a little more specific I would have no objection, but that is like asking how far does the sun shine.

The Court: Well, I don't know if he is in a position to disagree or not.

Mr. McManus: I am not sure that anyone is in a position to understand it, your Honor. That is why I object. It is so broad in form.

The Court: Let me say to the witness right now that if at any point he doesn't understand a question or feels unable to answer it directly, he may say so.

Mr. Johnson: I withdraw the question.

By Mr. Johnson:

Q. Do you know that professional statisticians have developed rules with respect to consistency in comparisions, so as to avoid comparing dissimilar items?

A. I don't know.

Q. Do you know that rules have been developed with respect to the consistency and definitions of universals use?

A. I don't know that.

[fol. 2855] Q. When you prepared these tables, you intended that the Court should rely on them, did you not?

A. Yes, I did.

Q. And you did not intend that the Court should go back into the background material and determine for himself what you had done, did you?

A. No. As I mentioned earlier, I tried to make the tables as clear and as concise as possible.

Q. When did you start preparing these tables?

A. I don't remember the date.

Q. Do you remember the year?

A. It was after receipt of the material from GCMI.

Q. You don't remember what year that was?

A. No, sir.

Q. Was it as much as two years ago, three years ago?

A. I don't remember the date.

Q. You just don't remember. Did you prepare all of these tables yourself?

A. I had assistance on it.

Q. Who assisted you?

A. A statistical clerk we have in the section.

Q. One clerk?

[fol. 2856] A. One clerk.

Q. You and one clerk prepared all of it; is that correct?

A. Oh, from time to time we had temporary help.

Q. Who asked you to prepare it?

A. Mr. McManus.

Q. What were your instructions?

A. Well, I didn't particularly get instructions.

Q. What were you told to do?

A. To prepare these tables and show the can and market shipments, and the combined shipments of both. Also the——

[fol. 2857] Q. Of both what?

A. Of cans and glass, and the breakdown of the east-west market of cans and glass, and consolidation of those. Also, the tabulations that are found in folder C.

Q. Were you told, in words or substance, that you were to try to get Continental Can's share as high as possible?

A. No, sir; I was not.

Q. Did you try to get it as high as possible in the preparation of these charts?

A. High as possible? I used the figures as I found them.

Q. You used them just cold, without paying any attention to what the results would be; is that correct?

A. We—we didn't alter the figures any to get any higher percentage.

Q. Did you select figures to get higher percentage?

Mr. McManus: Your Honor, I object to that. I don't know how you can select figures to get any different percentages than what they are. I always thought 2 and 2 added up to 4 and 4 and 4 added up to 8. He said he didn't alter the figures.

[fol. 2858] The Court: But 4 and 2 add up to 6.

Mr. McManus: That is correct, but there has been no

showing he made any arbitrary slection. He is asking him if he has changed them around.

The Court: Mr. McManus, that is what Mr. Johnson, I presume, is getting at, whether he made any arbitrary selection or exclusion of given items which might affect the result.

Isn't that what you are asking?

Mr. Johnson: Yes, sir.

Mr. McManus: Your Honor, I can understand that on specifics, if he wants to ask about specific tables, on that I have no objection, but you ask a man who has prepared a hundred tables if he has arbitrarily excluded——

The Court: Mr. McManus, this gentleman is an expert witness, or offered by the government as an expert witness, on the question of the preparation of these statistics.

Mr. McManus: That is correct; in preparation of these statistics.

The Court: He is not a witness who is likely to be trapped, and if any witness in my court is likely to be trapped I am probably not going to let him be trapped. He is an intelli-
[fol. 2859] gent witness. He can take care of himself. If he can't answer the question I am sure he will say so. If he can answer it, I would like him to.

Mr. McManus: All right, sir.

The Court: I will overrule the objection.

Mr. Johnson: Would you read the question to the witness?

(Question read.)

A. I didn't alter the figures at all to get the percentage.

Q. You said that. I asked you if you selected the figures to get a higher percentage?

A. I don't know how to interpret your question, particularly the word "select."

Q. You are saying now that you can't answer that question; is that right?

A. That's right.

Q. Were you asked to get figures relating to California, figures of any kind relating to California?

A. Yes, we attempted to.

Q. What did you do to get those figures, or in an attempt to get those figures?

A. We couldn't get them out of the Bureau of Census.

[fol. 2860] Q. What did you try to get from the Bureau of Census?

A. We tried to get the shipments of metal cans and shipments of containers on California.

Q. How long did you spend in this project?

A. Well, we spent some little time. We never gave up.

Q. But the end result of your effort was that you did not get any material on California; is that correct?

A. That's right, sir.

Q. Did you try to get separate statistics relating to hermetically sealed heat sterilized food?

The Court: I didn't get that last. Is it hermetically sealed what?

Mr. Johnson: Hermetically sealed heat sterilized food.

A. Yes, we made a lot of efforts in that direction.

Q. Just what did you do?

A. Oh, we sort of investigated about every source we could think of.

Q. What were the sources you could think of?

[fol. 2861] A. Well, principally, it was in the National Canners Association, we had the discussions with them. I talked on the phone with them quite a bit. We—there again we tried to get the material out of Census. They had none. There were any numerous sources. We even tried to—I don't recall what other organization we tried to get material out of, but it was—we made every effort.

Q. You finally concluded that there were no such figures to be had; is that correct?

A. That's right—not to my knowledge.

Q. And you concluded that after this extensive investigation that you have described?

A. Yes, sir.

Q. Did you try to get any figures relating to frozen food containers?

A. No, I did not.

Q. Why didn't you?

A. I was only concerned with cans and glass.

Q. I see. Your instructions specifically excluded everything except cans and glass; is that correct? And I should add the closures to which you have referred in your tables?

A. Yes, after our conversations on the staff level, my [fol. 2862] instructions were to prepare the cans and glass statistics.

Q. So you never tried to get any statistics on anything other than cans and glass and the closure material; is that right?

A. Well, let me say this: We sort of explored everything about Continental Can that we could.

Q. Did you try to get figures for rigid aluminum foil containers?

A. No, we didn't.

Q. Did you try to get figures for folding boxes for food?

A. I don't recall whether we got that information through a set of interrogatories or not.

Q. And if I understand you correctly, you made no attempt to get information relating to containers for frozen food; is that correct?

A. That's right.

Q. Will you turn your attention, Mr. Finn, to table 3C?

A. What folder?

Q. 3C.

The Court: You are now referring to folder C?

Mr. Johnson: It is page 4 in 803.

[fol. 2863] The Court: 803, yes. All right, I have it. It is entitled "1956 production and shipments of vacuum, screw thread," and so forth.

Mr. Johnson: Yes, that is the one.

The Court: All right.

Q. I understand from the caption on that table, Mr. Finn, that that is limited to closures made from tin mill products; is that correct?

A. Yes, sir.

Q. Why was it so limited?

A. Well, in these years 1956 and '57, the top sealed vacuum closures with a lug thread were included with the vacuum type caps.

Q. Yes, I realize that.

A. Yes.

Q. My question was——

A. Well, I was attempting to compare the White Cap production and shipments and Hazel-Atlas to what was shipped by the entire industry that made tin mill products.

Q. What did you understand was meant by "tin mill products"?

A. Well, closures made out of tin, as commonly known.

[fol. 2864] By the Court:

Q. Well, now, wait a minute. What do you say tin is commonly known as, tin plate?

A. Tin plate; and they have—I don't know whether black plate is used to make closures or not, but there are——

Q. Black plate would have been included as a product of a tin plate mill?

A. That's right.

Q. When you say "tin mill products," you really mean tin plate mill products; is that right?

A. That's right, sir.

Mr. Johnson: Will you mark that for identification, please?

(Marked Defendants' Exhibit U for identification.)

Mr. McManus: Do you have another copy?

Mr. Johnson: No, I don't.

Mr. McManus: Could you tell me, are you going to refer to one specific part or all?

Mr. Johnson: I will refer to several parts of it.

Mr. McManus: Well, your Honor, I don't know how I am going to follow it. He has got a thousand figures on that [fol. 2865] thing. Doesn't he have another copy? I always thought we were supposed to have two copies when we were going to discuss exhibits.

The Court: That is right.

Mr. McManus: Two copies of every one.

The Court: That is what I thought.

Mr. Johnson: Let me say that this is indicated as a source material for this chart, and I would have assumed——

The Court: Is it? Let me see what it is.

Mr. McManus: Your Honor, we have no objection to it. I just need a copy.

Mr. Johnson: Well, I would assume that the government would have available the source material here. They knew this cross-examination was coming on.

Mr. McManus: We obviously do, your Honor. But——

The Court: Well, isn't this referred to, "U. S. totals for Department of Commerce, Bureau of Census, series M34H-07"? That is referred to right on the chart.

Mr. McManus: That's right, your Honor. All I am asking for, will he give us a copy or will he give us time to get [fol. 2866] our own copy?

The Court: Where is your own copy?

Mr. McManus: Probably in the back.

The Court: Have you got a copy here?

Mr. Tolton: I think we have one.

The Court: All right, let's have one.

Mr. Johnson: This problem will keep on arising.

The Court: In other words, it may be your intention, Mr. Johnson, to refer to any of the source material that is described here.

Mr. Johnson: Yes, sir.

Mr. McManus: All right.

The Court: And Mr. McManus should be prepared to have that source material available.

Mr. McManus: All right, sir.

The Court: All right.

By Mr. Johnson:

Q. Is this document, Defendants' Exhibit U for identification, the document referred to as the source for this table 3C?

A. Yes, it is.

Q. Now, your table 3C shows a line "total U. S.," does it not?

[fol. 2867] A. Yes, it does.

Q. Now, is that total the sum of lines 4 and 9 of the Facts for Industry Report, which I showed you, which is Defendants' U for identification?

A. What year are you speaking of?

Q. Either '56 or '57. Let's look at '57. It is line 4.

A. Line 4.

Q. It is entitled "tin mill products," is it not?

A. That's right.

Q. And line 9 is entitled "vacuum friction types."

A. That's right.

Q. And that total then for 1957 is the sum of lines 4 and 9; is that correct?

A. That's right.

Q. And it does not include anything referred to in line 5, which is headed "aluminum," is that correct?

A. That's right.

Q. Does not include anything that is referred to in line 10, "other types," is that correct?

A. That's right, sir.

Q. Does not include anything that is referred to in line 13, "molded plastic caps"?

A. That's right, sir.

[fol. 2868] Q. Does not include anything that is included in line 18, "milk bottle closures," is that correct?

A. That is correct, sir.

Q. Does not include anything that is referred to in line 24 as "home canning closures for glass containers," is that correct?

A. That is correct, sir.

Q. Why did you select those two lines?

A. For the comparability of the tabulation.

Q. Comparability of what?

A. In comparing the closures of White Cap and Hazel-Atlas to the total U. S.

Q. Why did you think they were comparable?

A. Well, we—White Cap, we understand, did not make any of these other types that you have been mentioning here.

Q. You understood that; is that correct?

A. Yes, sir.

Q. Did you know? Had you made inquiry as to whether they did or did not?

A. Well, I think perhaps in all of this document somewhere we had that information.

Q. How about Hazel-Atlas? Did it make any of those?

[fol. 2869] A. We knew that Hazel-Atlas made screw lug types.

Q. Did you know that in the Census reports, to which you refer in your footnote, that Hazel-Atlas had reported aluminum closures?

A. Had reported—no, I did not.

Q. Did you know that in those Census reports, to which

you refer, that Hazel-Atlas had reported home canning closures, I might say in large quantities?

A. You speak of home canning closures?

Q. Yes, sir.

A. As distinguished from tin mill products and what other products?

Q. Home canning closures, as referred to in this Facts for Industry on line 24.

By the Court:

Q. What do you understand "home canning closures" includes in Facts for Industry?

A. Well, home canning closures are largely made of tin mill products. I presume they are made of others.

Q. Those would be the screw on tops for various types of home canning jars; is that right?

A. That's right, sir.

[fol. 2870] Q. Are there any other types included within the home canning closures there, that you are aware of, besides the screw on tops?

A. I think Hazel-Atlas made some out of some different type of metal. I am not too sure about it.

By Mr. Johnson:

Q. Now, why did you exclude from your table plastic closures?

A. Well, plastic closures, from the information we had, were not made by White Cap or Hazel-Atlas.

Q. So you were trying only to relate this to the closures made by White Cap or Hazel-Atlas; is that what you are saying?

A. That's right.

Q. So when you have on your table 3C a per cent of U. S. total, and you give a figure for 1957 of 20.6 per cent, that per cent is nothing except of the parts that are made by Hazel-Atlas and White Cap?

A. That is correct, sir.

Q. So that percentage has no relation to the total United States production of closures; is that correct?

A. That's right.

Q. And is it not fair to say, sir, that you have arbitrarily

[fol. 2871] excluded from this table plastic closures, milk bottle caps, home canning closures, all of these other things except lines 4 and 9 only?

A. We have excluded those items. We made only comparison with tin mill products.

By the Court:

Q. Did you exclude them arbitrarily?

Mr. Handler: Exclude what?

The Court: "Arbitrarily," I think was the phrase in the question.

Q. Did you exclude them arbitrarily or not?

A. We made this chart for comparability of comparisons.

By Mr. Johnson:

Q. Well, having excluded all of those other things, what do you think this chart shows?

A. This chart gives you an idea of the volume of closures made from tin mill products that Continental now enjoys.

Q. Now, in table 4C, the following table, you have made similar selections, have you not?

A. Yes, sir.

Q. As I understand it, on table 3C you added together screw thread and lug types and vacuum types, but you [fol. 2872] didn't add them together on 4C, is that correct?

A. That's right, sir.

By the Court:

Q. Let me ask you this, Mr. Witness: The phrase or the line in 4C, which is "U. S. production and shipments of vacuum type closures," what relationship does that line, regardless of year, bear to the figure "total U. S." on chart 3C?

A. Your Honor, in 1956 and 1957 the Bureau of Census lumped together all the top seal vacuum closures, the lug thread and various other types. In 1958 they changed their method to include merely the vacuum type closures. They eliminated or placed in some other category the lug thread and screw threads. So that for '58 we were able to

get a better figure for the vacuum type closures, and in making comparison between U. S. total and White Cap.

Q. Well, if you are going to make chart 4C project chart 3C into chart 4C, why are there available in the Bureau of Census, Facts for Industry, that you used here, the figures on screw thread and lug types made from tin mill products for the year 1958?

A. Your Honor, I think on line 3 here we have "U. S. production shipments of screw thread and lug type closures." [fol. 2873] Q. I see. All right.

A. The top figure, the "U. S. production and shipment of vacuum type closures," have been—are recorded separately in this particular year.

Q. So here you compare the White Cap production under "vacuum type tin mill products" with the total U. S. production and shipment of all vacuum type closures, and you compare the Hazel-Atlas with screw thread and lug type closures, tin mill products, total U. S. production; is that right?

A. That is correct.

By Mr. Johnson:

Q. And that is all you do in that table, is it not, in those percentages?

A. I didn't understand your question.

Q. And that is all you do, that is it. The percentage reported for White Cap under that table is simply a total of the amounts reported on line 9, that is, under the heading "vacuum cap," in Facts for Industry?

A. That's right, sir.

Q. And the heading, Hazel-Atlas percentage and U. S. total is simply the percentage referred to in line 4, that is, [fol. 2874] screw thread and lug tin mill products, is it not?

A. That's right.

Q. And if you had added any of the other different types of closures, referred to in this Facts for Industry, you would have gotten different percentages, wouldn't you?

A. That's right.

The Court: All right, Mr. Johnson, have you completed your examination on these two exhibits?

Mr. Johnson: I have one detail question I want to ask him. Then I will be through.

The Court: Well, I think we will take a brief recess at this point.

(Short recess)

[fol. 2875] Q. Mr. Finn, would you look at table 3 C again, right in the middle of the page. There is White Cap Company, and following that are figures, and then there is another line "Reported under vacuum (friction) type."

A. Yes, sir.

Q. Do you know what that second—what the figures on the second line represent?

A. Second line?

Q. The line that says "Reported under vacuum (friction) type."

A. That is terminology from that report that they found in the Bureau of the Census.

Q. But as far as you know, both of those lines represent vacuum closures, do they not?

A. Yes, I think that's correct.

Mr. McManus: Excuse me. I would like to object to the form. Both of what lines? Would you state specifically?

Mr. Johnson: The line that is captioned "White Cap Company" and the line that is captioned "Reported under vacuum (friction) type."

The Court: In other words, the figure for 1956 production, 460,597, without any explanatory words, and 1,747,483, [fol. 2876] "Reported under vacuum (friction) type"; is that right?

Mr. Johnson: Yes, sir.

By Mr. Johnson:

Q. Do you know the difference between the various types of closures that are referred to in this Facts for Industry bulletin?

A. I have a general knowledge, sir, which I gained from working on the case. I am not a real technician.

Q. You say you are not a real technician?

A. I am not a technician.

Q. Do you have any background in closure manufacture at all?

A. I didn't get the first part of the——
Q. Do you have any background in closure manufacture?
A. No, I do not.
Q. Or selling closures?
A. No, sir.
Q. Or cans?
A. No, sir.
Q. Or glass containers?
A. No, sir.

[fol. 2877] Q. Did you notice the physical exhibits that Mr. Danbom produced here the other day, those that were on the table here for several days?
A. I did.

The Court: They are still here, in the bookshelves.

Q. Those that are in the cabinet?
A. Yes, sir.
Q. Did you by any chance notice that the majority of those containers which have screw type closures on them were closed with plastic containers?
A. I didn't take particular notice of that——

Mr. Handler: Pardon me, plastic closures.
Mr. Johnson: Yes.

Q. You had not noticed that, had you?
A. I didn't take particular notice of it.
Q. Would you turn, Mr. Finn, to section 1 of folder A, the caption of that table. What do you mean by "shipments"?
A. Shipments generally mean completed sales or—and would include perhaps in some instances consignment sales or, in the glass industry, it generally means that when it is shipped from a plant to the warehouse.
Q. You think it does include shipments from plants to [fol. 2878] warehouses; is that right?
A. I think it does.
Q. Do you know whether it does?
A. I am not too clear on it, no, sir. I don't recall at the present time.
Q. Does it include exports?
A. We have tried to exclude exports.
Q. Have you excluded them from this table?

A. To the best of our knowledge, we have excluded them, yes.

Q. So you think they are excluded from this table; is that your answer?

A. Yes, sir.

Q. In the caption of that table, you refer to leading manufacturers.

A. Yes, sir.

Q. When you say "leading manufacturers," do you mean leading in assets?

A. No. As used here it would mean the amount that the leading manufacturers of glass containers—the volume of glass containers.

The Court: The volume of production?

The Witness: The volume of production, the volume of shipments. Either one.

[fol. 2879] Q. So it doesn't mean dollar sales?

A. No, it doesn't.

Q. And it doesn't mean in assets?

A. No, sir.

Q. Now, sir, would you tell me which company you regard as the fourth leading manufacturer in the industry as you have defined it?

A. The fourth leading?

Q. Yes. You have listed here three. Could you give me the fourth?

Mr. McManus: Your Honor, I would object to that. We are going way beyond the scope of the tables. I am sure that Mr. Finn has other data that he could probably produce which would show, or at least attempt to show, what is the fourth.

The Court: It seems to me, Mr. McManus, that if you have selected three manufacturers here, Owens, Anchor and Hazel-Atlas, it is perfectly legitimate cross examination to find out what he considers the fourth. I will overrule the objection.

A. I think it is perhaps Knox. I might add one other company that is near Knox, and through the years they have sort of been jockeying back and forth between who is fourth and who is fifth.

[fol. 2880] Q. What company is that?

A. I wouldn't be too sure, but I think it is Brockway.

Q. Where did you get your information as to which were the leading companies as you have defined it?

A. From GCMI, the statistical data we obtained from them.

Q. From GCMI itself; is that correct?

A. That's right.

Q. No other source?

A. No, sir. If I may add, the word "leading" is my terminology.

Q. I appreciate that it is your terminology.

Now, what did you intend his Honor to gain, what impression did you intend him to gain, from the use of that term?

A. I didn't—I had to use something in the titles, and I picked this.

The Court: Your definition of "leading" as used in this chart, 1 A: Largest in terms of volume, of production? Would that be your definition of "leading"?

The Witness: Yes, a combination of production and ship-
[fol. 2881] ments.

Q. A combination of them; is that what you say?

A. Yes, sir.

Q. When you saw the figures from GCMI on which you based your decision as to what you thought were the leading manufacturers, did you see any figures for Wheaton Glass Company?

A. No, Wheaton doesn't report to GCMI.

Q. Did you see any figures for Armstrong Cork Company?

A. No; they don't either.

Q. Do you have any idea whether Wheaton Glass Company or Armstrong Cork Company is as large as or larger than any of the three companies named here?

A. Well, from our study and general knowledge of the industry that we were able to gain and what we have read about it, we felt that Armstrong—neither Armstrong nor Wheaton were as big as the three I have included here.

Q. So your decision to name these three, then, was based on your feeling; is that correct?

A. My general knowledge.

Q. You have never seen any figures of Wheaton or Armstrong, have you?

[fol. 2882] A. Production figures on glass containers, no, I have not.

Q. So, except for your feeling about them, you have no information as to whether or not they are larger or as large as any of the three companies named here; is that correct?

A. I have never seen any figures on Wheaton or Armstrong, no, sir.

Q. Does the number of containers sold by a company in any way reflect the size of the containers?

A. No, sir.

Q. Does it in any way reflect the dollar volume of containers sold?

A. These tabulations do not reflect any dollars.

Q. You have a line here "All other manufacturers." Do you know how many other companies are included in that caption?

A. Not precisely. I would say between 35 and 38.

Q. That would be your estimate; is that right?

A. That is my estimate.

Q. From your work in this case. You base your estimate on your work in this case?

A. That is right.

[fol. 2883] Q. Going back to Armstrong and Wheaton, did you ever look at the material furnished to the Department of Justice by Emhart Manufacturing Company and introduced here in June?

A. Oh, I probably did look at it, yes.

Q. You did not observe that Armstrong and Wheaton were among the larger in terms of number of glass manufacturing machines of Emhart make?

The Court: That what?

Mr. Johnson: That they are larger in terms of the number of machines, forming machines.

Mr. McManus: Your Honor, I would like to object to that question, and to another question asked, since in a number of questions here Mr. Johnson is assuming facts not proven. And in this question, I object to the form. He talks about larger. I don't know if he means the size of

the machine or number of the machines, and I think the question is totally unclear and ambiguous.

The Court: I think I would reframe it, Mr. Johnson.

Mr. Johnson: All right.

Q. Did you know that the material submitted by Embart Manufacturing Company to the Department of Justice [fol. 2884] showed that Armstrong was the fourth in the number of IS sections, glass container machines, and that Wheaton was the fifth?

A. I took no particular notice of that, no, sir.

Q. So that you did not consider that at all in determining which were the leading companies?

A. No, I didn't, for this reason: I couldn't tell from that document how many of these machines were in actual operation.

Q. Nor how much they produced?

A. Nor could you tell the production efficiency of those machines. So I did not consider it at all.

Q. Looking at the line headed "All other manufacturers," in the percentage reported of 45.8 for 1957, can you tell how much of that percentage is accounted for by the fourth leading company as you have defined it?

A. The fourth company?

Q. Yes.

A. Not precisely, but I would say roughly about 5 per cent.

Q. On what do you base that estimate?

A. I am thinking in terms of Knox Glass.

Q. You are thinking of Knox. You are not thinking of [fol. 2885] Armstrong or Wheaton?

A. No, sir.

Q. Are Armstrong and Wheaton included in that "All other manufacturers"?

A. Presumably they are, because that figure there is the difference between the total U. S. and the three companies I have listed here.

Q. Now, you used the term "All types of glass containers." What do you mean by that? What does it include?

A. It includes all of those in the categories that are published by the Bureau of the Census.

Q. Does it include vials?

A. I don't think it does include vials.

Q. Are Kimble Glass Company's figures included with those of Owens-Illinois?

A. I have no way of telling whether a subsidiary of Owens like Kimble is included in the report that they make to the GCMI.

Q. You just plain don't know?

A. Presumably—I have no way of telling, no, sir.

The Court: Do you know whether or not Kimble made a separate report to GCMI?

[fol. 2886] The Witness: I do not know, sir.

By Mr. Johnson:

Q. Are packaged tumblers included in your category "All types of glass containers"?

A. Yes, sir.

Q. Are re-use tumblers included?

A. Re-used?

Q. Re-use tumblers.

A. You mean the initial manufacture of a tumbler?

Q. Yes, sir.

A. They are, too.

Q. Home canning containers, are they included?

A. Yes, sir.

Q. Are carboys included?

A. I presume they are. I have no knowledge as to all types of containers that are reported to GCMI by the various manufacturers.

Q. Again, you just don't know; is that correct?

A. That's right.

Q. Are salt and pepper shakers included?

A. I don't know.

Q. Is scientific glassware, such as Erlenmeyer flasks, included?

[fol. 2887] A. I don't know.

Q. Are glass piggy banks included?

A. I don't know.

The Court: Glass what?

Mr. Johnson: Piggy banks.

The Court: Piggy banks.

Q. Are wine and liquor decanters included?
A. As distinguished from wine and liquor bottles, sir?
Q. Yes.
A. I don't know that.
Q. Are nursing bottles included?
A. I presume they are.
Q. Again you don't know?
A. I don't know.
Q. Would you turn, sir, to table 1 B, the next table? Apparently something is omitted from this table that is in the preceding one; is that correct?
A. Yes, sir.
Q. What has been omitted?
A. Omitted from this table are wine and liquor bottles.
Q. You don't call wine and liquor bottles beverage glass [fol. 2888] containers; is that right?
A. They are in a separate category.
Q. Why were they excluded from this table?
A. There wasn't—well, they are included in the preceding table.
Q. They are included in the preceding table?
A. That's right.
Q. Why were they left out of this one?
A. Well, this table is a consolidation of the food, non-food, beer and beverage category.
Q. Yes, that is what it says.

By the Court:

Q. Let me ask you this: What is the significance of food as you understand it, food, non-food, beer and beverage, with wine bottles and liquor bottles excluded?
A. Your Honor, this table here is merely a consolidation of the food, non-food, beer and beverage tables.
Q. You did that because that is what you were told to do; is that right?
A. I did that because I thought it would be clear to understand this entire tabulation if I had a total in here for the food, non-food, beer and beverage.
[fol. 2889] Q. Well, let me ask you this: Presumably, then, on the first line on table 1 A, if you deduct the first

line on table 1 B from table 1 A, you get the number of wine and liquor bottles; is that correct?

A. That's right.

Q. Which would amount to roughly 2,120,000-odd; is that right?

A. That's correct.

Q. Not two million. Two billion.

A. Two billion.

Mr. Johnson: I don't know if I still have an answer to my question.

By Mr. Johnson:

Q. Why did you exclude liquor and wine from this table?

A. Well, it ties into other tables that we have in there, and they are in the metal can field. There are no items of cans.

Q. Oh, that is the reason why you exclude them; is that right?

A. That's right.

Q. Did you leave out milk bottles?

A. No, milk bottles are there.

[fol. 2890] Q. Are there milk bottles included in this table 1 B?

A. Milk bottles are in table 1 B.

Q. Are catsup bottles in 1 B?

A. Catsup bottles are in 1 B.

Q. Are toiletries and cosmetics containers in 1 B?

A. They are in 1 B too.

Q. So you left out liquor and wine but included these others; is that correct?

A. Liquor and wine are left out of 1 B but are included in 1 A.

Q. Do you know what the purpose of table 1 B is?

A. I think I mentioned it. It is merely a consolidation of the tables which follow.

Q. Why is it offered? Perhaps I should address that question to counsel, why it is offered.

The Court: I think that is a question that is addressed to counsel and not the witness. It is not the witness' func-

tion to testify as to why it is offered. If you want to ask Mr. McManus, you may ask him.

Mr. Johnson: May I ask Mr. McManus?

The Court: Surely.

[fols. 2891-2892] Mr. McManus: Your Honor, as I testified here before—I did not testify—as I outlined before in our case, we admitted that whiskey is not sold in a metal container. Actually I said that it is against the law to do it. Frankly, I am wrong. But we are still sticking by that statement of mine that there is no whiskey sold in metal containers. The law does not specifically say you can't, but to our knowledge there has never been any whiskey sold, legal whiskey, I should say, your Honor, in metal containers.

There is probably a lot of white lightning, with which I am somewhat familiar, being from the South, sold in metal containers. That is the reason we excluded it and that is the reason we excluded the alcoholic beverages, including wine.

Now, in the other areas here, food, non-food and beverages, we argue that these products are in competition with metal cans. That is the reason we excluded wine and liquor.

The Court: All right, then, Mr. Johnson. We will take a recess at this point until a quarter after 2. We will check at that time.

(Recess taken until 2:15 p.m.)

[fol. 2893] AFTERNOON SESSION

2:25 P.M.

LEO V. FINN resumed.

Cross-examination Continued.

By Mr. Johnson:

Q. Just before lunch, Mr. Finn, we were talking about table 1B. I think you said that you had eliminated wines and liquors from this table because you regarded them as not interchangeable with metal containers; is that right?

A. Yes, that's right.

Q. And you also said that you had included containers for fresh milk in this table; is that correct?

A. Yes, sir; that's right.

Q. Would you tell me what container, what metal container, you regard as interchangeable with a glass container for fresh milk?

A. Well, perhaps there isn't any. We put all of the items, food for human consumption, in the food category.

Q. Does that complete your answer?

A. Yes, sir.

Q. Do you know of any estimate as to what per cent of all glass containers made in the United States are [fol. 2894] made for wine and liquor?

A. What per cent?

Q. Yes.

A. Offhand, I don't know, sir.

Q. Looking at table 1C, this table, I understand from your heading, is designed to include all glass food containers; is that correct?

A. Yes, sir.

Q. And this table is not limited to containers for products that are heat sterilized, is it?

A. No, sir.

Q. And it is not limited to containers for products that are vacuum sealed, is it?

A. No, sir.

Q. Are home canning containers included in this table?

A. Yes, they are.

Q. Do you know of any metal container that is interchangeable with home canning containers?

A. No, I do not, sir.

Q. Look at table D. Here, if I understand correctly what you have done, you have added together both returnable and non-returnable beer bottles; is that correct?

[fol. 2895] A. That is correct, sir.

Q. Does the Bureau of Census add those types of containers together?

A. No, they are reported in separate categories.

Q. If I understand the effect of this table, you are adding together bottles which are used only once with bottles which are used 20 or 25 or more times; is that correct?

A. That is correct.

Q. And the total of those bottles would be two, one bottle used once will count for one total?

A. That's right.

Q. And the bottle that is used 25 or more times will count for one, will it not?

A. That's right.

[fol. 2896] Q. And on table 1 E, on the following page, you have done the same thing, haven't you?

A. The same thing, yes.

Q. Does the Bureau of the Census do this?

A. No. They have two categories.

Q. Now, you called this "beverage containers." What do you include in the term "beverage containers"?

A. Well, it is principally soft drinks.

Q. Anything else?

A. Carbonated and non-carbonated beverages.

Q. Water?

A. Carbonated water?

Q. No; just plain drinking water.

A. Plain drinking water? I have never seen any plain drinking water.

Q. You have never seen plain drinking water sold in a glass container?

A. In a beverage container?

Q. In any glass container.

A. We are speaking of beverage containers, aren't we.

Q. My question, sir, is drinking water, sold in glass containers included in your table E?

A. I have seen them in carboys yes.

[fol. 2897] Q. Would they be included in your table 1 E, whether they are gallons or half gallons or carboys or what?

A. Oh, I don't know the size, sir.

Q. Are they included?

A. I don't know.

Q. How about apple juice?

A. Apple——

Q. Is that included in your table 1 E?

A. I don't know.

Q. Grape juice?

A. I don't know that.

Q. Now, looking at table 1 F: does that table contain

everything that is left after you have taken out 1 C, 1 D, 1 E and wine and liquor?

Mr. McManus: Your Honor, I would like to object to this question only on this ground: I think the source data indicates what it includes, and I object to having to call on the witness' memory, if it excludes something that may or may not be in there.

The Court: Overruled.

The Witness: Could I have the question?

Mr. Johnson: Would you read it, please.

(Question read.)

[fol. 2898] A. 1 F is all non-food glass containers. Yes, sir, that is exclusive of those preceding tables.

Q. Would you turn now to folder B—I am sorry. I want you to go instead to section 2 of folder A. That will be the table following the one we were last looking at.

A. Yes.

Q. Table 2 A——

The Court: I may say, for the benefit of counsel for American Can, that the second section of A deals with metal cans and the figures concern your client.

Mr. Austern: Thank you, your Honor. That was the table, I believe, we were privileged, Mr. Goldberg and I, to look at on Thursday. And, with your Honor's permission, if I can look at it again, it would be helpful.

Mr. McManus: Could he come down here for the moment and sit with us, your Honor?

Mr. Handler: I will sit with him.

By Mr. Johnson:

Q. The caption in table 2 A B refers to all types of metal containers. What do you mean, sir, by "metal containers"?

[fol. 2899] A. I mean by "metal containers" what is spelled out in the Facts For Industry. I just forget the exact wording, but it is a metal container that is less than, I think it is, 28 gauge tin.

Q. Does it include aluminum containers?

A. No, it does not.

Q. Does it include metal collapsible tubes?

Q. No, sir.

Q. Does it include pails?

A. Pails?

Q. Yes.

A. Some types of pails.

Q. Is there any limit on the size of the container that is included in this table?

A. I don't believe there is. Well, I withdraw that. I am not—I don't know, sir.

Q. You mean there is no way that we can tell from this term "metal containers" what you included within it; is that right?

A. Are you speaking about size?

Q. About anything. You have said it does not include aluminum. Does it include any other type of metal container?

A. Well, I don't think it includes a heavy gauge steel [fol. 2900] container.

The Court: You mean steel drums?

The Witness: Steel drums.

Q. It does not include steel drums?

A. No, sir.

Q. When you say "metal containers," you mean something, but it is not clear from the table what you mean; is that right?

A. Well, it is the generally accepted type of container that is mentioned in the Facts for Industry.

Q. Generally accepted by whom?

A. I presume within the industry.

Q. Would you expect that his Honor would determine that from the fact of this table?

A. No, not from this document, sir. Perhaps from the underlying data, though, the source material.

Q. And I think you said this morning, in answer to my question, that you would not expect his Honor to go back and examine the underlying material, didn't you?

A. I don't recall that.

Q. Are captive manufacturers included in this table?

A. In the totals, yes, sir.

[fol. 2900a] Q. Captive manufacturers are included?

A. Yes, sir.

Q. Now, in the heading of this table you refer to leading manufacturers in the industry, and I suppose by "the industry" you mean whatever this concept of metal containers is; is that right?

A. That's right.

[fol. 2901] Q. And since the term "metal containers" isn't clear, why, we can't tell any more than that what the industry is that you're talking about?

A. Well, as I mentioned before, the Bureau of Census defined somewhat the industry is.

Q. This table doesn't even say that it is taken from the Bureau of Census' definition of the industry, does it?

A. No, sir.

Q. Now you refer to the leading manufacturers. You name three companies. How do you determine that those were the leading manufacturers in whatever this industry is?

A. Well, one, it is generally accepted knowledge in thinking that American Can, Continental and National Can are the three leading manufacturers in the industry.

Q. And that is all you have to go by, is some generally accepted knowledge?

A. Well, there is a lot of writing, been a lot of writing on it, yes, sir.

Mr. McManus: Your Honor, I hope now that the defendant is not going to cross-examine Mr. Finn on things that he has already answered in his answer to the government's complaint, in which he admits that Continental [fol. 2902] is the second largest producer of metal cans in this country.

Q. You have nothing other than what you call "generally accepted knowledge" to determine what are the leading companies in this industry that you are talking about?

A. That's right.

Q. Do you know how large, in terms of volume of production, Campbell's Soup Company is?

A. No, I don't.

Q. Do you know whether they are as large or larger than some of the companies referred to as the leading manufacturers in your table?

A. Yes, I have heard.

Q. What have you heard?

A. Well, I have heard that they are probably larger than National Can Company.

Q. So you know or at least you have information that these are not the three leading manufacturers, as you have used the term?

A. These are the three leading companies, to my knowledge, that have cans for sale.

Q. And that we are supposed to learn from the face of this table; is that correct?

[fol. 2903] A. No. I think perhaps other—there may be other documents in the record.

Q. You had set some percentages up here.

A. Yes, sir.

Q. To show that these companies have the percentages of the leading companies of the industry. Now you say that perhaps other companies would go in there; is that right?

A. I didn't say that; no, sir.

Q. Well, what did you say about Campbell Soup?

A. I said perhaps they are larger than National Can.

Q. How about Sherwin Williams Paint Company, are they larger than National Can?

A. From all I have heard, I don't think they are.

Q. How about Carnation Milk, are they larger than National Can?

A. Same would be true there, from all I have read.

Q. Have you ever seen any figures of Campbell's Soup, Sherwin Williams, Carnation Milk or Pet or Borden's?

A. I haven't seen any volume of production of canned figures. I have seen dollar volume figures.

[fol. 2904] Q. Dollar volume of their entire business; is that right, sir?

A. That's right, sir.

Q. But you wouldn't be able to say now whether they are larger or not as large as National Can; is that right?

A. Which ones do you speak of?

Q. Any of those I have named, are they as large as——

A. I think I said that Campbell's Soup was larger than National Can.

Q. How about Crown Cork and Seal? Have you ever seen their figures?

A. I haven't seen their recent production or shipment figures on volume of cans, no, sir.

Q. You wouldn't have any idea where they would rank in size; is that true?

A. Except in general knowledge and what I have read, that they're fourth largest.

Q. Fourth largest what?

A. Can company.

Q. We are now getting confused. A moment ago I thought you said that Campbell's Soup might be the third largest. But then you put Crown after Campbell's Soup. [fol. 2905] A. Perhaps I should qualify my statement by saying fourth largest can company that has cans for sale.

Q. How about Sherwin Williams, do they sell cans?

A. I think to some extent they do.

Q. What do you mean by "some extent"?

A. Well, they used some production, I understand, for paint, their own production for paint.

Q. Then they sell outside, also?

A. Yes, they do.

Q. Do the figures on this table include exports?

A. There are no figures given in the Bureau of Census statistics for export cans, that I know of.

Q. So you are saying they are not separated out?

A. They are not separated out, yes, sir.

Q. So if there are any exports, this table includes them; is that correct?

A. That would be a fair statement.

The Court: But you did deduct the Hawaiian Islands shipment?

The Witness: Yes, sir.

The Court: Why is that?

The Witness: We tried to confine this table strictly to [fol. 2906] continental United States. Those cans that are made out there are used out there. With respect to were there any cans, I think, that are made in the United

States and shipped elsewhere, for instance to Puerto Rico, I have—we have no knowledge of that.

Q. Well, did you deduct cans that were shipped from the United States to Hawaiian Islands?

A. No, we did not.

By the Court:

Q. Tell me about this Hawaiian Island deduction. I don't quite understand that. What did you deduct with respect to Hawaii?

A. These deductions made from Hawaiian Islands were —excuse me, your Honor, what book are we looking at?

Mr. Johnson: Looking at 2AB.

Q. 2AB, as I understand it. I see a footnote here: "Source Bureau of Census," and so forth, "less Hawaiian Island shipments."

A. Oh, yes, sir. Those shipments from Hawaiian Island are for the American can companies that are located in Hawaiian Islands. We deducted those from the total United States figures to get a continental United States total.

[fol. 2907] Q. In other words, those were the cans manufactured by American Can in Hawaiian Islands?

A. That's right, sir.

By Mr. Johnson:

Q. Now, during this period cans were manufactured in Hawaii by at least one company for its own use, were they not?

A. What year do you speak of, sir?

Q. 1957, at least.

A. I think that's right.

Q. And probably '56?

A. Perhaps in '56, too.

Q. Did you deduct those?

A. I can't recall whether we did or not. I would have to refer to my work papers. I don't recall.

Q. You know you deducted the American cans.

A. Yes, I know we did that.

Q. You can't recall whether you deducted the local self-manufacturer?

A. I can't recall we did. I assume we didn't though, because we didn't——

Q. You did not?

A. Did not.

[fol. 2908] Q. You know you didn't, don't you?

A. Well, I would say—I would like to look at my work papers first—I feel sure that we didn't. I say that because I don't think we had any volume for any self-manufacturer in Hawaii.

Q. Did you try to get them?

A. I don't recall.

Q. Continental Can does not have plans in Hawaii, does it?

A. No, it does not.

Q. So the effect of deducting Hawaiian production, for whatever reason you deducted it, would increase Continental's share of the balance, would it not?

A. If we eliminated Hawaiian Islands?

Q. Yes.

A. Yes, sir.

Q. Is that why you deducted Hawaii?

A. Oh, I would say the reason why we deducted Hawaii, we made these tables, Continental United States, to show principally in the areas in which Continental does business.

Q. Why didn't you deduct the State of Maine?

A. We don't have any statistics on that.

Q. How did you get the Hawaiian Islands statistics?

[fol. 2909] A. From American Can Company.

Q. Couldn't you get the State of Maine figures from the same place, from the companies involved?

A. Well, I didn't know all the companies that were manufacturing cans in the State of Maine.

Q. What I am trying to get at is your rationale in deducting the Hawaiian Islands. You say that you wanted to limit it to the continental United States?

A. That's right.

Q. Why did you want to limit it to the continental United States?

A. To the area that Continental Can sells cans.

Q. Do you know whether Continental Can sells cans to Hawaii or not?

A. It is my understanding they did not.

Q. Do you have any reason to believe that it doesn't?

A. Well, the only reason I have to believe that they don't is the cost of shipment of cans from continental United States out to the Hawaiian Islands would practically forbid it.

Q. Forbidden by whom?

A. Not forbidden. The costs would be excessive to ship [fol. 2910] cans out there.

Q. That is a determination you made; is that right? You really don't know anything about it, do you?

A. No, I said I was not a technician at this. I am trying to give you the best answers I can.

Q. You have given me now the best explanation you can give for deducting Hawaiian Island figures; is that right?

A. I gave you, yes, sir.

Q. Mr. Finn, would you look at the note on table 3AB, referring to source, sources given, United States total, from the Bureau of Census?

A. 3A?

Q. I am sorry. 2AB, the same table we have been looking at.

A. Yes.

Q. The source says, "United States total from the Bureau of Census, facts for industry." The totals given, I understand it, are those in the first line of the table for 1957, 41 million figure?

A. Yes, sir.

[fol. 2911] Q. Now, that is not literally true, is it, that you found that figure in the Bureau of the Census Facts for Industry?

A. No, that is not.

Q. Now, these tables, all together, contain a great number of figures, thousands of units of metal containers, do they not?

A. They are all in units.

Q. All through the tables there is a great number of them?

A. Yes.

Q. Will you agree with me that every one of those tables,

without exception, is an estimate made by someone other than the United States Department of Commerce; every one of the unit figures——

A. Every one——

Q. —referred to in these tables is an estimate?

A. I think that is perhaps right.

Q. And they are not estimates made by the United States Department of Commerce?

A. You were walking away, I didn't hear you.

Q. They were not made by the Bureau of Census or any part of the United States Department of Commerce?

A. The unit figures, no, sir.

[fol. 2912] Q. Will you tell me where those unit figures come from? You can concentrate, if you like, on the total volume figure for 1957.

A. You are speaking about the 41 million?

Q. 41,529,266,000.

A. Your question was how——

Q. Where did that figure come from?

A. Well, that figure is from the Can Manufacturers Institute.

Q. Is it from the Can Manufacturers Institute, or did you create it?

A. No. That is from Can Manufacturers Institute.

Q. Maybe I have misread your note, and I didn't read that as being a reference to Can Manufacturers Institute. There is an explanation there of how it is done. Do you say that you just copied that note from some Can Manufacturers Institute material, or did you do something else?

A. These total figures—I would like to refer, your Honor, to a document that I have here, if I may.

The Court: Yes.

A. I can't recall.

The Court: I see no reason why the witness cannot re-
[fol. 2913] fresh his collection from a document.

Mr. Johnson: No, I don't either.

The Court: Assuming that these documents were used by you or referred to by you in the course of the preparation of the tables.

I think if you can find the rest of that source material, you might save yourself some time.

A. Yes. That figure is derived by us, because we had to subtract the Hawaiian Island shipments.

Q. How did you get that figure?

A. By conversions. We converted the short tons of steel in Hawaiian Islands—well, we used an overall conversion figure for the continental United States in arriving at that figure.

Q. Well, I am not sure if we can understand what you mean when you talk about a conversion figure. Do you know how the production of metal container companies is reported to the Bureau of the Census?

A. Yes.

Q. In what units?

A. Yes. Generally they are on the base boxes of steel.

Q. Do you know what a base box of steel is?

A. Well, it is a base box of tin plate. It has various [fol. 2914] weights.

Q. It has various weights, you say?

A. It has various weights.

Q. Do you know the range of weights of a base box?

A. No, I am not familiar with all this.

Q. Do you know how many sheets of tin plate are in a base box of tin plate?

A. No, sir.

Q. All right. You say that the companies report in base boxes, and your figures here are clearly not in base boxes, are they?

A. No, they are not.

Q. All right. What happened to those base box figures?

A. They are converted into tons.

Q. On what basis are they converted into tons?

A. Well, there are various converting figures used, depending on the categories in which the tin is used.

Q. Well, at this point, Mr. Finn, maybe you would tell us what categories the companies report to the Bureau of the Census in? Will you do that?

A. Yes.

[fol. 2915] The Court: You remember we got a Census report that would give that, the various categories. What about that form you produced the other day; do you remember?

Mr. Austern: Off the record, I left it on your desk, sir.

A. The categories are fruits and vegetables (including juice), evaporated and condensed milk, other dairy products, meat, including poultry, fish and seafood, coffee, lard and shortening, soft drinks——

The Court: Let me ask you this, Mr. Witness: I show you a green form. Does that contain the categories the Census Bureau uses, that you are just referring to?

The Witness: Yes, sir, it does.

The Court: All right. Let's have that marked in evidence at this point so we know what we are talking about. This is courtesy of Mr. Austern.

(Defendants' Exhibit V received in evidence.)

By Mr. Johnson:

Q. All right. With that, then, Mr. Finn, may we go back to our problem of converting these base boxes into something else.

The Court: Just so we understand one another here, [fol. 2916] Mr. Finn, I take it there are 13 different categories in the Census reports; is that right?

The Witness: I believe that is right, sir.

The Court: All right. Those are the 13 categories shown on Defendants' Exhibit V.

By the Court.

Q. Now, will you try to take this conversion factor and explain precisely what you did?

A. Well, your Honor, it wasn't necessary for me to convert the base boxes of steel into tons of steel. The Can Manufacturers Institute does that for you in their publication. So I used the tons of steel as outlined in their book, which is identical to the conversions used by the Bureau of the Census, that is to say, even though the Bureau of the Census statitistics are reported on the base boxes of steel —base boxes of steel, they also give you a conversion factor there so you can convert it into tons. This was done for us by the Can Manufacturers Institute.

Q. Well, I will tell you: what I would like to know is precisely what the method or the process is by which you come out with—I presume that on 2A and B, the figure

[fol. 2917] of all types of metal containers, 41 billion-odd, under 1957, that means individual units of containers, is that right?

A. That's right, sir.

Q. Now, what I want to know, not being a mathematician or a statistician, but being a simple-minded fellow, what happens when you get this base boxes of steel consumed in the manufacture of cans out of, let's say, the Census reports, and you want to arrive at how many cans that is? What do you do?

A. Well, as I mentioned before, the Can Manufacturers Institute puts out this publication in which they give you all of the tons of steel used in making cans in each of these categories. They not only give you that but they give you——

Q. Wait a minute. You have got to go a little more slowly, because I am not following you.

A. Yes, sir.

Q. Just what is this publication of the—you see, I have never heard of this before except looking at a table. Mr. Johnson studied it, counsel for both sides studied it, and you are familiar with it. But I have come to this with a blank mind, and all I know is that I see certain figures. I [fol. 2918] know there are certain figures regarding base boxes, or whatever the name is—base boxes of steel—and I suddenly find here 41 million metal cans.

Now, you hold my hand and take me gently through this and show me what happens. Will you do that?

A. Yes, sir.

Q. All right. You start off with base boxes.

A. You start out with base boxes of steel——

Q. Now tell me, first off, so we get this plain, what are base boxes of steel?

A. They are sheet steel shipped to the can companies by the steel companies in boxes.

Q. I see. Bit sheets of steel in boxes?

A. That's right.

Mr. Johnson: In varying——

Q. How many sheets are there in a box?

The Court: Does anybody know?

A. It depends on the weight.

Mr. Johnson: The number of sheets depends on the weight?

The Witness: No, I think the number of sheets are the same. I just don't know what—how many there are the present time.

[fol. 2919] By the Court:

Q. You see, I am a funny fellow. I like to picture something.

Now, how big are these things?

A. I don't know.

Q. Would they be as big as the counsel table or would they be as big as this book?

A. I think a description, if I may—as I say, I am not a technical man, but I think they are a couple of feet square at least.

Q. A couple of feet square at least?

A. Yes, sir.

By Mr. Johnson:

Q. But you have never seen one; is that true?

A. No. I have seen pictures of them. I have never actually seen them.

By the Court:

Q. Let me ask you this: How much would a base box of steel for the purpose of making cans weigh? A base box of these sheets.

A. Well, they weigh from 88 pounds up.

Q. Up to how many?

A. I don't know, your Honor. I would say about 250 pounds. I am not too sure.

[fol. 2920] By Mr. Johnson:

Q. Do they range downward, below 88 pounds, also?

A. Oh, I think they do make some below 88 pounds, but generally——

Q. So you have a considerable range of weight?

A. Yes. Yes. Well, if I may go on, these base boxes——

By the Court:

Q. Now, I have already got another question.

Here is a report of base boxes of steel. Now, if the base boxes of steel vary in weight from 88 to 200 pounds, how do you arrive at any normal base on which to build?

A. Well, we——

The Court: If counsel think these questions are silly, why, just tell me.

Mr. Johnson: No, sir, they are not.

Mr. McManus: Perhaps, your Honor, I could help, if I may. I don't want to testify, but I have a copy of Facts for Industry here which indicates on the front—and this was the source data—that they collect this data on base boxes of steel and they convert it to short tons even on their own report, and on the front it says, "Base boxes for short ton of steel," and then it says "Fruits and vegeta-
[fol. 2921] bles," and the sum is 21.4. If we are sort of talking in the dark, if you would like to take a look at this——

The Court: Oh, I am talking in the dark.

Mr. McManus: You may want to take a look at this.

The Court: I have never seen this material.

Mr. McManus: Yes, your Honor.

By the Court:

Q. In other words, see if I have got this now, Mr. Finn, there are different weights of base boxes of steel that are used for different kinds of cans; is that right?

A. That's right, to make cans.

Q. So that if you took your fruit and vegetable category, you would get 21.4 base boxes of steel per short ton of steel, whereas if you took pet food, you would get 24, let's say. I am reading from this pamphlet.

A. That's right.

Q. All right. Well, now, tell me what you do then? You first take the base boxes of steel, and, if you have a fruit and vegetable category, you take the number of base boxes and you divide it by 21.4; is that right?

[fol. 2922] A. That's correct, sir.

Q. And then you get the number of short tons of steel?

A. That's right.

Q. Now, having the short tons of steel, how do you get the next step, which I hope is the next step, which is how do you translate that into units?

Mr. Johnson: Before we go on to that, may I ask a couple of questions at this point?

By Mr. Johnson:

Q. Do you know where the Census gets their conversion factor?

The Court: No, no, Mr. Johnson. Let me finish this, and we will go back to that. I just want to get the complete process in my mind, and then you can go back.

Mr. Johnson: All right, sir.

By the Court:

Q. All right. We have got the short tons of steel. Now, how do you take the short tons of steel and translate it into actual items, can items?

A. Well, as I mentioned, the Can Manufacturers Institute gives you an estimate of the actual number of cans [fol. 2923] which might have been produced from each of these categories. So——

Q. In other words, if you took a short ton of steel, it would, according to these figures that you have got from the Can Manufacturers Institute, produce so many fruit and vegetable cans, it would produce so many evaporated and condensed milk cans, etc., etc.; is that right?

A. Yes, sir. That is their estimate. I mean, they are able to estimate how many cans were used from that tonnage.

Q. In other words, what do they say, for instance, with respect to fruits and vegetables? How many cans, that is, units, individual cans, would a ton of steel make for fruits and vegetables?

A. Well, we figured 93—9,399 cans. 9,349 cans.

Q. That is what they say. Is that what the Can Manufacturers Institute says?

A. That is our figure, your Honor, by taking the tonnage in that category and dividing it into the estimated number of cans they say was produced, so we come out with an average.

Q. Oh, I see. In other words, the Can Manufacturers [fol. 2924] Institute doesn't come up with a figure in which he says one ton of steel will manufacture 9,000 cans plus. What you do is take the number of tons in the category and divide it into the total number of units in the category; is that right.

A. That's right.

Q. Yes.

A. And I come out with an overall average of cans in that particular category.

Q. And you do the same thing for evaporated and condensed milk, coffee, beer, the various categories; is that right?

A. Well, since we merely have a food category, we take the total food. In other words, it would include for fruit and vegetables, evaporated and condensed milk, other dairy products, meat, fish and seafood, lard and shortening, and we found out that a total of so much tonnage was used to make those cans. Then we go to——

Q. Wait a minute. The tonnage you got from converting the Census base box figures into tons of steel; is that right?

A. That's right.

[fol. 2925] Q. That is where you got the tons.

Now, where did you get the individual can units?

A. The estimate—the individual can units are from the Can Manufacturers Institute.

Q. I see. The individual can units are from the Can Manufacturers Institute?

A. That's right, sir.

Q. Well, let me ask you—one minute, now. Just let us take 2 C, "Metal food containers." According to this figure, according to this table, taking the year 1957, there are 25,379,000,000-odd metal food containers?

A. Yes, sir.

Q. Can you find that figure anywhere in the Can Manufacturers Institute reports?

A. Not that precise figure.

Q. What figure do you find there for that category for the year 1957?

Mr. Johnson: Well, there isn't any such category, is there?

The Witness: Total food?

Mr. Johnson: Yes.

The Witness: There is a category for total food, and in [fol. 2926] that, your Honor, we included coffee. There is a total actual number of cans made for food that is furnished by can manufacturers.

Mr. Johnson: You say a total number actual?

The Witness: It is called the actual numbers of cans which might have been produced from the amount of steel consumed.

By the Court:

Q. Well, now, what is the figure—I take it that you do that because the category food in the Can Manufacturers Institute does not include coffee; is that right?

A. That's right, sir.

[fol. 2927] Q. Whereas the Census people do include it as coffee, do they, or they don't—I see, you just included it as coffee under food?

A. We put coffee under food.

Q. All right. Now what is the figure that the Can Manufacturers Institute has for total volume of food containers produced in the United States for the year 1957?

A. They have for total food, they have 24,936,310,000, and to that we added coffee, which was 904,438,000. We come up with a figure of 25,840,748,000.

Q. Now that would be the Can Manufacturers' estimate of the number of individual food containers, metal food containers, so-called, produced in the United States in 1957.

A. That's right.

Q. Now——

A. If I may say something, your Honor?

Q. Yes, sure.

A. Now, we know the tonnage that was made, that was consumed in making those cans.

Q. Yes.

A. So we merely divide the tonnage into that estimate of those 25 billion cans and we come out with a figure of [fol. 2928] so many cans per ton.

Q. Yes. But this is the tonnage, the tonnage is taken

from the Census reports, isn't it, or is a translation from the base box figures in the Census reports, in tonnage?

A. Well, your Honor, I have really two sources. It is really the Census or the Can Manufacturers Institute, and they use the same figures.

Q. That is what I am getting at. What I want to know is, is this the Can Manufacturers Institute figure in here, or is it the Census figure? Because it doesn't seem to me —I may be wrong on this—that the Census figure can be translated into actual units of cans without referring directly to the Can Manufacturers Institute figure, which estimates the actual number of cans produced anyway. Am I right on that?

A. Your Honor, the tonnage that you can convert from the Census base boxes of steel by those conversion figures into tons are identical with the tonnage figures that are given in the Can Manufacturers Institute report. But they go a step further. They take that tonnage and convert it into actual number of cans which might have been produced from that tonnage.

Q. Well, look, now let me follow. If the Can Manufac- [fol. 2929] turers Institute took the Census tonnage or the Census tonnage converted from base boxes——

A. Yes.

Q. —and translated it into so many units that might have been produced, why is their figure different from yours? It would seem to me, Mr. Finn, that by a simple mathematical computation the figures would have to come out the same. I don't understand the difference. I grant you, the difference isn't all that enormous. I am just trying to understand this.

A. Well, we have excluded the Hawaiian Islands from our figures. They haven't——

Q. Oh. So if you took the Hawaiian Islands tonnage that you have excluded and added it to the 25,379,074,000, then you would come out with the same figure that the Can Manufacturers Institute comes out; is that right?

A. That's right.

Q. All right. So that what we are really doing here is taking the Can Manufacturers Institute estimate of what the total units produced in the United States were for 1957; isn't that right?

A. That's right.

[fol. 2930] The Court: We will take a recess at this point.

(Recess)

The Court: All right, Mr. Johnson.

Cross-examination Continued.

By Mr. Johnson:

Q. Shall we go back over some of this, Mr. Finn? Going back to the first conversion, the conversion from base boxes to short tons, I think in referring there to fruit and vegetables, you said a factor of 21.4 had been used, as shown by this Facts for Industry sheet; is that correct?

A. Yes, sir.

Q. Do you know where that figure of 21.4 came from?

A. Bureau of Census.

Q. Do you know what assumptions it is based on?

A. No, sir.

Q. It is based on some assumptions, is it not?

A. I am not——

Q. Well, you don't understand it to reflect an actual number of tons, do you?

A. No, I wouldn't think it would.

Q. And when the conversion is made from base boxes, which you have said varied in weight, to short tons, a [fol. 2931] figure is reached which is an assumed figure, is it not?

Mr. McManus: I object, your Honor. We are offering it as a Bureau of Census figure, not an assumed figure. That is what is in the Bureau of Census.

The Court: Well, Mr. Johnson is trying to find out, as I understand it, on what basis the Bureau of Census arrived at this conclusion. Now, if nobody knows——

Mr. McManus: And the witness says he doesn't know how they did it.

Mr. Johnson: He says he didn't know, and I am pressing him as to whether or not he doesn't understand it is an assumed figure?

A. I presume it is an assumed figure.

Q. Could it be anything else than an assumed figure?

A. Well, it is an assumed figure that has been used for many years.

By the Court:

Q. Don't you suppose, Mr. Witness, that at some time somebody sat down with a pencil and paper, or went to a plant, or did something to arrive at a probable figure? [fol. 2932] Anyway, they didn't pull this out of the air, do your suppose?

A. No, sir; they did not. I think this figure was arrived at back in the second World War, before the War Production Board. Now I am not too sure of this. Historically speaking, I think it was either the Can Manufacturers Association or the can companies in conjunction with the government figured out that maybe this was a figure to arrive at, to get the amount of steel needed during the war by these companies when they were allocating steel.

Q. When the problem of steel allocation was of some considerable importance.

A. That's right. And it has been used in existence for some number of years. I haven't checked it to see whether or not they are identical, but I think they are.

The Court: All right.

By Mr. Johnson:

Q. And it has been used for quite a few years?

A. Yes, sir.

Q. As far as you know, has it been adjusted to give effect to changes in common sizes or weights of containers?

[fol. 2933] A. As I mentioned, I haven't checked that at all, going back a number of years.

Q. All right, sir. Now getting a tonnage of steel used on this assumed basis, do you know how Can Manufacturers Institute gets its estimate of number of cans which might have been produced from that estimated number of tons of steel consumed?

A. No, I don't know how they arrived at that.

Q. Somehow they get an estimate.

A. Yes, sir.

Q. But you don't know what it is based on; is that correct?

A. No, sir.

Q. You don't know whether it assumes certain sizes or whether it assumes certain amount of weight?

A. No, sir. I have never delved into that with them at all.

Q. Now looking again at 2AB, the table we have been working on——

A. 2AB?

Q. Well, sir, I believe we probably do better by going to table 2C, the next following one. There you will see in the first column for 1957 a figure for Continental Can. Will you tell me how you got that figure?

[fol. 2934] A. We multiply the tonnage for Continental Can by the conversion factor that I previously mentioned we arrived at through the Can Manufacturers Institute.

The Court: Are those Continental Can figures out of their Census report?

Mr. Johnosn: Continental Can, like other companies, reports its base boxes.

The Court: In other words, it is a base box—let me ask you this: As far as the Continental figures are concerned, you take the base box figure shown on their Census reports, do you?

The Witness: Yes, sir.

The Court: And then you convert it to short tons, and then you apply the Canners Institute conversion factor.

The Witness: That's right, sir.

By Mr. Johnson:

Q. Well, is that quite right? I want to focus on that last conversion factor and how you got that. Did you not take the sum of all of Can Manufacturers Institute's converted figures and add coffee, and then create a conversion factor from that?

A. Yes, that's right.

[fol. 2935] Q. So that you aggregated them and created a conversion factor from that?

A. Yes.

Q. And you aggregated them without regard to the company's product mix?

A. That's right.

The Court: Without regard to what, Mr. Johnson?

Mr. Johnson: The company's product mix.

Let me try again to clarify it.

The Court: Yes, I understand. It is clear to me.

Q. Do you know if Can Manufacturers Institute ever followed that procedure?

A. No, I do not.

Q. Do you know that they didn't ever follow that procedure?

A. No, I do not.

Q. Do you think that procedure is statistically sound?

A. It is the best available.

Q. Is that the answer to my question?

A. It is the best available. That is all I could find.

[fol. 2936] Q. You agree with me you are taking things of different weights and creating an average out of them, aren't you?

A. I am taking the reported statistics from the Bureau of Census and reported statistics from Can Manufacturers Institute, and as I mentioned, I get a conversion factor, and I have applied it to the various reports made by each of these companies.

By the Court:

Q. Well now, just let me take an example. Let's suppose—I am not saying this is a fact—but let's suppose for purposes of this discussion Continental Can made in their food products nothing but baby food. If I remember the baby food tin, the baby food tin is a small tin, as compared with, let's say, the tomato, the canned tomato, or the canned peas. Would you say that if Continental Can Company produced nothing but baby food tins, this conversion factor of the Institute would be appropriate to determine the number of units that Continental Can produces?

A. No, I wouldn't, your Honor, because you got, you got to really apply a little reasonableness to your statistics. These companies, first two companies, we know make

all kinds of cans. If they just made baby food, I don't [fol. 2937] think I'd use this.

Q. All right. Then what you are saying, I take it, Mr. Finn, is that in view of the fact that as you consider that Continental Can Company made a general line of food containers, you thought that the conversion factor—a line which was generally representative of the industry, you thought that that conversion factor would be appropriate; is that right?

A. I do, sir; that's right.

By Mr. Johnson.

Q. And in doing that, Mr. Finn, you added in to this aggregate a figure relating to, for example, other dairy products, which is 148 billion units, estimated by CMI?

A. Dairy products are in the food category, yes, sir.

Q. So that becomes a factor in your conversion rate?

A. Yes, sir.

Q. Then you used a conversion rate so built up to compare American Can and Continental Can and National Can; is that correct?

A. That is correct.

Q. Regardless of whether those companies might have [fol. 2938] made containers for other dairy products, or evaporated condensed milk or not?

A. That is very true.

Mr. McManus: Your Honor, we have been referring to the CMI book so much, do you think we could make an offer of that document for the purpose of underlying data? Mr. Hughes refers to it and the witness.

The Court: I certainly wouldn't mind looking at the thing. I think it ought to be marked for identification at least at this stage. I would like to see one of them.

Mr. McManus: All right, sir.

Would you please mark this with whatever the next Government's Exhibit number is.

(Marked Government's Exhibit 1202 for identification.)

Mr. Johnson: Are you offering it?

Mr. McManus: Yes, I am.

The Court: I will reserve on this offer, just as I am reserving on this whole line of testimony.

Mr. McManus: Yes, sir.

The Court: As this is being marked for identification, have you got a copy for me?

[fol. 2939] Mr. McManus: Yes, sir.

The Court: Thank you.

All right, you go ahead, Mr. Johnson.

By Mr. Johnson:

Q. You will agree with me, will you not, that this conversion that you have made is one which you have never seen anyone else use?

A. Yes, sir.

Q. Something that you created for your own purpose, isn't it?

A. I haven't seen it anywhere else used.

Q. Why did you add coffee to the food list as set up by CMI?

A. Well, we had staff discussions on that particular question. We determined or felt that for the purpose of making these comparisons, that coffee should be in food. It was—some people take coffee as a food and some people say it's a beverage. So for the purpose of these statistics we merely put it in the food line.

Q. Did you include pet foods?

A. Pet foods?

Q. Yes.

A. No, sir.

[fol. 2940] Q. Why didn't you include those?

A. Well, I think I mentioned earlier that food, the food category we used was food for human consumption.

Q. I want to go on now to table 3A, and before I get into that, Mr. Finn, can you tell me how the glass container companies report their figures to the Department of Commerce, Bureau of Census?

A. You are speaking about categories?

Q. Yes, can you list the categories in which they report?

A. Yes. They have food, bevera[illegible]e——

Q. Well, they don't start that way, do they? Don't they have a broader category?

A. You want the—the categories are first given all types, a total. Then you have direct exports, and then you have domestic. Then you have domestic by type, and they start with narrow neck first, and they give you food; medicinal and health; household and industrial; toiletries and cosmetics; beverage returnable; beverages non-returnable; beer returnable; beer non-returnable; liquor; wine; and then they start with wide mouth total, and under that they have food, which includes fruit jars and jelly glasses; medicinal and health; household and industrial; toiletries and [fol. 2941] cosmetics; dairy products; and packer's tumblers.

Q. Now, those categories are very different from those that we saw used for metal containers, are they not?

A. Very decidedly, sir, yes, sir.

Q. Now looking at table 3A, as I understand it, this purports to be a combination of glass container shipments and of metal container shipments, to show the total glass and metal container shipments; is that correct?

A. That is correct, sir.

Q. And those unit figures have been built up, as you have described it here this afternoon.

A. That is correct, sir.

Q. Did you ever see any other attempt made to compare glass and metal container shipments in the United States?

A. I never have.

Q. The Bureau of Census doesn't do it, does it?

A. No, sir.

Q. And as far as you know, no trade association does it?

A. That is correct.

[fol. 2942] Q. Something as that, that as far as you can tell that no one ever saw the point in doing before?

A. I have never found any statistics on that at all.

Q. Look at table 3D, will you, sir? There you have made an attempt to compare shipments of glass and metal beer containers for the several years, and after Continental Can Company in the year 1957 you have a percentage of 38.6; do you find that figure?

A. Yes, sir.

Q. Would you conclude from that figure that 38.6 per cent of all beer that was sold in containers in 1957 was sold in containers manufactured by Continental Can?

A. In glass and metal containers, sir?

Q. Would you conclude that?

A. This—I wouldn't conclude it was all beer sold, no, sir.

[fol. 2943] Q. What does that figure stand for?

A. This beer—this figure shows that all the glass and metal containers sold to——

The Court: You are excluding beer in cans and draught beer, are you not?

Mr. Johnson: Yes, sir.

The Court: Well, that is what you were about to say?

The Witness: That, your Honor, and, in addition to that, as Mr. Johnson framed his question, beer is sold in bottles that were sold in years previous to this particular year. In other words, returnable bottles are used many times over, so therefore beer sold in this particular year——

The Court: All right. I think you have got a point there, and I think you better reframe your question.

By Mr. Johnson:

Q. Did you conclude from that figure that 36.6 per cent of all beer sold in containers in 1956 was sold in containers manufactured by Continental Can Company?

A. No, sir. This 38.6 per cent shows the containers sold [fol. 2944] in this particular year for beer purposes.

The Court: It has nothing to do with the returnable beer bottle which is used a number of times?

The Witness: That's right.

The Court: So that as far as the returnable beer bottle is concerned, Continental Can might, for all one knows, have sold 20 million of those and they were all in use 20 times, so you would yet 400 million of those that wouldn't figure in this at all.

The Witness: That's right, sir.

The Court: Or 380 million, anyway.

The Witness: Yes, sir.

By Mr. Johnson:

Q. Had it occurred to you, Mr. Finn, that that might be the reason why the Bureau of the Census has all these years carefully separated into returnable and non-returnable bottles?

A. Well, they perhaps were separated for somebody else's use. These statistics are used by a lot of people.

Q. The Bureau of the Census has never added them, has it?

A. Never added them, no, sir.

Q. You set about to add them?

[fol. 2945] A. I consolidated them, yes.

Q. And then you get a percentage out of that consolidation?

A. Yes.

Q. Now, will you agree with me, Mr. Finn, that with respect to all of these section 3 tables I could get different totals and different percentages by using different conversion factors?

A. Oh, yes, sir.

Q. That I could get different totals and different percentages if I used different leading companies?

A. I don't understand that question.

Q. Well, you have separated out here six companies which you call the leading six companies. If I used other companies and called them the leading companies, like Campbell's soup, for example, I would get different totals and I would get different percentages, wouldn't I?

A. I think you would.

Q. And I would get very different totals and different percentages if I made different assumptions with respect to the average size of containers also, wouldn't I?

A. Yes, if you had those statistics, yes.

[fol. 2946] Q. Going back to this beer figure on table 3 D, if you had used an assumption of the number of times returnable beer bottles were used and included that, the figure attributable to Continental would be far lower than it is, would it not?

Mr. McManus: I object to that, your Honor. Is he stating a fact there?

The Court: Well, he is asking whether or not that is a fact.

Mr. McManus: All right.

A. I can best answer that question by saying that we don't—nowhere in these statistics do we take into consideration the re-use of a container after it has once been filled. Beer bottles returnable would fall in that category. These bottles are sold or shipped or shipments made during this particular year.

The Court: Gentlemen, since we have marked for identification this annual report of steel and tin consumed in metal cans, I think we ought to have one, at least, of the Facts for Industry marked for identification. We have referred to it a number of times.

Mark it as a government's exhibit.

(Marked Government's Exhibit 1203 for identifica-
[fol. 2947] tion.)

By Mr. Johnson:

Q. Well, sir, what does that figure of 38.6 per cent mean to you?

A. Well, it means that the containers, both glass and metal shipments for that particular year that were sold for beer purposes—that is how many Continental—the percentage of Continental's share of that particular market.

Q. Turning now to folder B, would you tell me, first, what you attempted to do in preparing those tables?

A. The folder B is very similar to folder A, and, in addition, it has a breakdown between the East and West markets; at least, the glass and metal containers sold east of the Rockies and metal containers sold west of the Rockies.

Q. Now, I understand you eliminated Hawaiian can shipments from these tables; is that correct?

A. That's correct.

Q. Did you eliminate Hawaiian glass shipments?

A. Are you speaking about shipments made from the continental United States to the Hawaiian Islands?

Q. Or manufactured in Hawaii, if any were manufac-
[fol. 2948] tured there?

A. If the glass were shipped to the Hawaiian Islands, we assumed that it was not exported.

Q. That it was not exported?

A. Yes, that's right.

Q. Not exported from where?

A. Well, it wasn't included in the total. It wasn't included in the total of exports of glass shipments, as referred to in the sentence.

Q. Let me see if I understand you. There are breweries in Hawaii that use glass containers, are there not?

A. Yes.

Q. And they get those glass containers from somewhere, which may be the United States?

A. Yes, sir.

Q. Now, as I understand what you have done, you have excluded cans which might have been used in the Hawaiian Islands but have not excluded glass containers used in the Hawaiian Islands; is that right?

A. We excluded cans made in Hawaii.

Q. You attached some magic to the fact that they were made there?

A. If a can was made in the United States and shipped [fol. 2949] to the Hawaiian Islands, they would be included in my figures.

The Court: Let me ask you this: That would depend on which set of figures they were in; that is, whether they were east or west of the Rockies would depend on the plant that made the shipment; is that right?

The Witness: That's right.

The Court: But if they were shipped from, let's say, St. Louis to the Hawaiian Islands, it would be included in the east figure. If they were made in San Francisco, let's say, and shipped to the Hawaiian Islands, they would be in the west figures?

The Witness: That's correct, sir.

By Mr. Johnson:

Q. Well, I am still somewhat mystified at what you have done here. You are trying to compare cans and glass, trying to compare can and glass shipments, and, as I understand it, you have for some reason that I have not yet got, eliminated cans that were manufactured in the Hawaiian

Islands but not eliminated glass containers that were used in the Hawaiian Islands, is that right?

A. It is a distinction. The cans were manufactured in [fol. 2950] Hawaii. The glass were not.

Q. Is that the reason you eliminated the cans and did not eliminate the glass?

A. The cans—we included in our glass shipments all, irrespective of where they went, exclusive of those in the category of exports. Now, they could have gone—some could have gone to the Hawaiian Islands. That glass is made on the West Coast.

Q. And, in fact, you know that some of it did go there?

A. Probably did. Probably.

Q. I am having some trouble with this. What I still don't understand is why you would eliminate those cans which were made in Hawaii and did not eliminate those glass containers which were made by manufacturers in Hawaii. You did not eliminate those cans which were shipped into Hawaii and did not eliminate glass containers which were shipped into Hawaii. I understand that you say you eliminated cans because they were made in Hawaii. Why did you?

A. Well, I think the cans made in Hawaii were not shipped over to the continental United States in an empty fashion. They were shipped in here filled, and Continental [fol. 2951] had had no plants in the Hawaiian Islands. We eliminated the Hawaiian simply to cover the territory that is served by Continental Can.

Q. Going back to my earlier question, you know, do you not, that Continental Can has no can plant in the State of Maine, don't you?

A. Oh, I didn't know unless I referred to some list.

Q. But that didn't occur to you, to take that into consideration?

A. To eliminate——

Q. To elimimte the State of Maine?

A. No, I had no knowledge that Continental does not sell in Maine.

Q. I must say I am still in the dark as to why you eliminated the manufactures by American Can in Hawaii. Let me try something else.

The Court: Now, the question is, it is now 4:30, Mr. Johnson. How much longer have you with this witness?

Mr. Johnson: I have quite a bit more.

The Court: In other words, if I took another 15 minutes tonight it would not help us too much?

[fol. 2952] Mr. Johnson: No, it wouldn't, I am afraid, sir.

The Court: Now, gentlemen, I think this is fairly slow stuff, and I think it would be well if we took a recess now.

When you say "much more," Mr. Johnson, on the basis of your experience today, how much longer will you take? You not only have this witness but you have the chart man, too.

Mr. Johnson: Well, I suppose it would take the forenoon with this witness, and, if we can speed it up with the next one, I don't know——

The Court: All right. Gentlemen, we will take a recess until 10:30 tomorrow morning.

(Adjourned to October 11, 1960, at 10:30 a.m.)

[fol. 2953] New York, October 11, 1960, 10:30 a.m.

Trial resumed

The Court: This morning, the same rules will apply as applied yesterday in connection with the closing of the courtroom except for those whom I named yesterday, but I want to be sure that Mr. Austern arrives, gets in if he arrives.

Mr. Hughes: I was going to say that our three delegates haven't arrived either.

The Court: All right. Well, if you will keep an eye on the situation, Mr. Clerk, we will leave the door open for the present.

LEO V. FINN resumed.

Cross-examination Continued.

By Mr. Johnson:

Q. Mr. Finn, when the Court rose last evening, we were discussing the matter of the exclusion of certain Hawaiian [fol. 2954] figures, and I wasn't getting too far as to why they had been excluded, so I should like to ask a few more questions on that.

As I recall it, sir, you said that figures that were excluded were those of American Can Company; is that correct?

A. That's correct.

Q. However, the figures for cans produced in Hawaii by others than American Can were included; is that correct?

A. They are included, yes, sir.

Q. And the principal——

The Court: In other words, that, as I recall it, 92 million units or number of units for 1957 was only American Can, and there were other cans produced in Hawaii by corporations other than American; is that correct?

The Witness: That's right, sir.

Q. And the principal producer other than American out there is Hawaiian Pineapple, is it not?

A. I understand it is.

Q. Hawaiian Pineapple is one of the biggest fruit packers in the world, is it not?

A. I think so.

[fol. 2955] Q. And so we are not talking about anything insubstantial here. We are talking about the containers for substantially the whole pineapple pack, isn't that correct?

Mr. McManus: Your Honor, he is testifying to facts that have not been proved here, and I am not sure that that is actually a fact. If he is asking him a question——

The Court: He is asking him a question based on a supposed statement of fact: is this the fact?

Mr. McManus: If it is understood that he is not testifying here——

The Court: Well, if he is testifying here, I am not going

to take his testimony, so you don't have to worry about that.

Mr. McManus: Fine.

By Mr. Johnson:

Q. In any event, anything that Hawaiian Pineapple produced for its own use is included in your figures?

A. Yes, they are.

By the Court:

Q. Have you got any idea, Mr. Witness, in rough terms, round them, how many units of cans Hawaiian Pineapple [fol. 2956] produced in the year 1957?

A. No, sir, I do not.

Q. Do you know whether it was larger or smaller than the number of cans produced by American Can in Hawaii during that year?

A. As to the exact figure, I do not know, but I feel very sure it is much smaller.

Q. Much smaller?

A. Yes, sir.

Q. When you say "much smaller," would it be half as much?

A. I have no way of determining.

The Court: I see.

[fol. 2957] Q. What is the basis for your understanding that it is much more?

A. American Can has three plants out there. I am under the impression that Hawaiian Pineapple only has one.

Q. So you are measuring it by the number of plants?

A. That's right.

Q. Do you know anything about the size of the plant?

A. No, I do not.

Q. Did you try to get figures from Hawaiian Pineapple?

A. I don't recall whether we did or not.

Q. You were just content to include Hawaiian Pineapple in the figures and exclude American Can; is that correct?

A. Well, we didn't have—I didn't have figures for the other company out there.

Q. Did you try to get them?

A. As I say, I don't recall. I am not—I was not the only one on the staff. I think we tried to get off a lot of figures from a lot of different sources and have been unsuccessful in variou places we tried. I just don't recall that particular [fol. 2958] incident.

Q. So the best you can do on this is that you do not know whether you tried to get Hawaiian Pineapple figures or not?

A. I don't recall.

Q. Would you turn back, Mr. Finn, to folder A, table 3E?

A. 3E?

Q. Yes. Can you tell from that table what percentage of soft drinks, beverages, packed in the United States in any year, were packed in containers made by Continental Can Company?

A. Well, no, sir, you couldn't tell from this statement.

Q. In the last column on that table, after Continental Can Company, there is a figure of 6.2

A. Yes, sir.

Q. What does that figure represent?

A. That figure represents the glass container shipments and the metal container shipments as a per cent of the total soft drink and beverage container shipments in the United States during that year.

Q. Under the heading "metal container shipments," after Continental Can, for 1957 there is a figure of a hun- [fol. 2959] dred million, is there not?

A. That's right.

Q. Are those returnable or non-returnable containers, do you know?

A. The metal can shipments?

Q. Yes.

A. Well, generally speaking, they are not returnable.

Q. You say "generally speaking." Is there any exception in that? Why do you qualify your answer?

A. There may be some returnable. I don't know enough about that, if they are. But generally speaking, I think they are all throwaway metal cans.

Q. If you look in the first column under "glass container

shipments," there is a figure following Continental Can of 8,640,000.

A. Yes, sir.

Q. Do you know whether those are returnable or non-returnable bottles?

A. Well, they would include both.

Q. They would include both?

A. Yes.

Q. So here again you have added containers that are used once with containers that are used many times; is that [fol. 2960] correct?

A. We have added these together, yes, some of the containers, returnables and non-returnables.

Q. Would you look down under 1955 to Hazel-Atlas Glass Company?

A. Yes, sir.

Q. Do you find the figure 576,000?

A. Yes, sir.

Q. Do you know whether those are returnable or non-returnable bottles?

A. Offhand, I don't know.

Q. Now, will you look in the last column. After those figures for Hazel-Atlas Company in 1955——

A. Yes, sir.

Q. You have a blank.

A. Yes, sir.

Q. Why the blank?

A. Well, I think the figure will come out less than one-tenth of 1 per cent.

Q. The percentage is just too small to be shown; is that correct?

A. Yes.

Q. Is it correct then that that figure of 6.2 per cent, shown for Continental, would be substantially the same whether [fol. 2961] Continental Can's manufacture of glass bottles for beverage purposes was included or not?

A. I don't believe I understand your question. That 6.2 per cent represents both the glass containers and the metal can shipments.

By the Court:

Q. All right, the question is quite simple, really. How much would the percentage be reduced if you eliminated glass?

A. Well, it wouldn't be reduced too much.

Q. How much do you think it would be reduced? Work it out for me so I can follow.

A. I think it is about 6 per cent,

Q. In other words, it would be two-tenths of a per cent, roughly, more or less?

A. Roughly speaking.

The Court: Yes.

By Mr. Johnson:

Q. For the year 1955, the sum of the percentages attributable to Continental Can and to Hazel-Atlas Glass Company would be absolutely unchanged if you left out Hazel-Atlas would it not?

A. That's right.

The Court: As a matter of fact, you did leave out Hazel-[fol. 2962] Atlas in '55.

Mr. Johnson: Hazel-Atlas is included in the list.

The Court: Yes.

Mr. Johnson: But not in percentages.

The Court: Yes, but it isn't included in the percentages.

Mr. Johnson: But there is no percentage.

By Mr. Johnson:

Q. Of the 8,640,000 containers, glass containers, shown for Continental Can in 1957, do you know what percentage of those were returnable bottles?

A. Offhand, I do not. It is consolidated here.

Q. If this table shows anything, it shows that Continental Can's production of glass containers for soft drinks in 1957 was greater than Hazel-Atlas' production of soft drink containers in 1955, does it not?

A. Yes, it does.

Q. Turn back for a moment to the preceding table, which is 3D.

The Court: 3C?
Mr. Johnson: 3D.
The Witness: 3D.

Q. Here in 1957 the figure given for Continental Can [fol. 2963] metal beer containers was three million six, is it not?

A. Yes, sir.

Q. Were all of those non-returnable containers?

A. I would say definitely, yes.

Q. In the first column you have a figure of 17 million glass containers for beer; do you know whether those were returnable or non-returnable?

A. Offhand, I don't know, sir.

Q. The figure in the last column, following Continental Can, for 1957 is 38.6. I wonder if you could do the same for me as you did in the preceding table? Tell me how much that percentage would be changed if you left out glass containers?

A. Well, I can tell you offhand. It wouldn't be very much. There wouldn't be very much change there.

Q. Very tiny change; would it not?

A. Yes, very tiny change.

Q. Now, sir, would you look at table 3B in that same book.

The Court: D?
Mr. Johnson: B.

Q. Will you tell me what this table purports to be?

[fol. 2963a] A. Yes, sir. This table is consolidations of table 1B and 2AB.

[fol. 2964] Q. Yes. And what does it contain?

A. This is the glass and metal, food, non-food, beer, soft drink and beverage containers for 1955, '56 and '57.

The Court: Let me ask you this, Mr. Witness: What is excluded from this table, if anything?

The Witness: The wine and liquor bottles, sir.

The Court: The wine and liquor. I see.

By Mr. Johnson:

Q. Is that the only thing that is excluded from it?

A. Yes. That's the only thing that is excluded.

Q. So this table, as I understand it, represents all metal containers, however you define them; is that correct?

A. That's right.

Q. And it includes all glass containers except those that were used for liquor and wines?

A. That's right.

Q. And from that you draw a percentage; is that correct? [fol. 2965] A. That's correct, sir.

Q. Did you know that Hazel-Atlas Glass Company was a substantial producer of wine and liquor bottles?

A. Wine and liquor bottles?

Q. Yes.

A. I think they are.

Q. It shows from the Census materials you had, doesn't it?

A. I don't recall the exact figures, but they do make a substantial number of wine and liquor bottles, yes, sir.

Q. I am somewhat confused about this. I wish you would tell me again why you exclude wine and ilquor bottles.

A. Well, there is no comparable category in the metal cans to wine and liquor bottles.

Q. Do you know that Hazel-Atlas Glass Company was not a producer of milk bottles?

A. I think that's right.

Q. That also showed in the Census materials you worked with, didn't it?

A. Yes, sir.

Q. Now, let us see what you have done here. You have excluded one type of glass container that Hazel-Atlas [fol. 2966] made, and you have included a type of glass container that Hazel-Atlas did not make. You have made your comparisons on that inclusion and exclusion; is that correct?

A. Mr. Johnson, I have made the comparisons of all foods, non-foods, beer and beverages. I did not single out any particular or exclude any particular thing.

Q. In other words, except wine and liquor, which you singled out for exclusion?

A. Well, there were no comparable categories in the metal cans.

By the Court:

Q. Let me ask you this, Mr. Finn: Turning to 3 A, 3 A includes everything, doesn't it?

A. Yes, sir, it does.

Q. So there is a table here including all the containers?

A. Yes, there is.

Q. Including milk bottles and beer bottles and wine and liquor bottles and everything else?

A. Yes, sir.

Q. As far as you were able to ascertain?

A. Yes, sir.

[fol. 2967] Q. Now, on table 3 A down in '55, I assume that you included all the production, or shipment, rather, by Hazel-Atlas of milk bottles, wine and liquor bottles and everything that they shipped by way of glass containers; is that right?

A. Yes, sir, in this table are all types, metal, glass and plastic, irrespective of their end use.

Q. All right. Let me ask you this: Take table 3 B. Do you know how the figure of 25.5 per cent next to Continental Can, listed against Continental Can for the year 1957, would be affected if you included in the totals of glass container shipments all the wine and liquor, which would bring it up to 20,153,088, and included in that, in the Continental Can figures, all the wine and liquor glass bottles that they sold through the Hazel-Atlas Division?

A. Well, your Honor, on page 3 A we have included the wine and liquor bottles, and it does show a difference in the percentage of those glass and cans. When I have excluded——

Q. I see. In other words, what you have done on table 3 A is just what I said?

A. Yes, sir.

Q. I see. And that would change the percentage ascribed [fol. 2968] to Continental Can from 25.5 to 24.8, or a total of 7/10 of a per cent?

A. That's correct, sir.

The Court: I am frank to say, Mr. McManus, I don't see what table 3 B is supposed to establish as compared with table 3 A or what possible significance it can have.

The Witness: Your Honor, may I answer that?

The Court: Of course. Surely.

The Witness: Your Honor, 3 B was really put in here because there is a consolidation of these other tables. It makes——

The Court: In other words, this is the first table of a series of breakdowns?

The Witness: That's right. It makes it easier to follow through these tabulations.

The Court: I see. All right.

By Mr. Johnson:

Q. Now, 3 A, like your other tables where you made these consolidations, has added returnable containers and non-returnable containers, has it not?

A. Yes. We have added them both together.

Q. Mr. Finn, the Court yesterday asked you some questions with respect to the makeup of these unit figures for [fol. 2969] cans, and asked you to suppose that Continental Can was making only baby food cans, and asked you if your formula would be appropriate on that assumption. As I read the transcript last night, it seemed to me that you did not entirely get the point of his Honor's question, and I would like to go over again just what you did to get a figure using the figures—for example, the figure on table 3 C.

The Court: What page is that, Mr. Johnson?

Mr. Johnson: 18.

The Court: No, the transcript page.

Mr. Johnson: In the transcript, page 2936.

Q. I would like you to look at the first figure under the heading "Metal container shipments, food containers, 1957" on page 3 C, the figure of 25 billion-and-something.

A. Yes, sir.

The Court: 379 million.

Mr. Johnson: Yes, sir.

Q. Now, first, I think you will agree with me that you did not get that figure from Can Manufacturers: is that correct?

[fol. 2970] A. That's correct.

Q. Then, if I remember what you said, you took Can Manufacturers Institute's figure of the number of containers which might have been made from the tin consumed in all of the several Census categories to which you referred, those being the food categories plus coffee; is that correct?

A. That's correct.

Q. Then you divided that total by the total number of tons of steel consumed by all of the reporting companies for all of those categories; is that correct?

A. That's correct.

Q. And all of the reporting companies in this instance included companies making cans for their own use, including Campbell's Soup Company, Borden's, Pet Milk, Carnation, did it not?

A. Yes. You are speaking now of the total?

Q. Of the total.

A. Yes, sir. You are right.

Q. Still talking about that figure at the top of the column?

A. Yes.

Q. Now, the cans made by those companies, Campbell's [fol. 2971] Soup, Borden's——

The Court: You are talking about these captive companies?

Mr. Johnson: These particular captive companies, Campbell's Soup, etc.

Q. Those cans are smaller than the fruit and vebetable cans, are they not?

A. I think they are.

Q. Now, as a result of your division as you have explained it, you got a conversion factor, and you applied that conversion factor, I think you said, to the tons of steel which Continental had used and those tons of steel had

previously been converted from basic boxes; is that correct?

A. That's correct.

Q. Now, isn't it true that the larger the number of small cans which were made by companies other than Continental, the larger would be the estimate of the number of cans made by Continental?

A. I don't believe I follow your question.

The Witness: Would you read it again, Mr. Reporter.

Mr. Johnson: All right, sir. This gets a little complicated.

[fol. 2972] Q. Let me give you an example. Assume for the moment three companies. One company, A, made 10 cans out of one pound of steel. Company B made 10 cans out of one pound of steel. And company C made four cans out of one pound of steel. What would be your conversion factor in that case?

A. Well, the conversion factor——

Q. Can you answer that question?

A. —would be the total——

Q. Can't you answer that question?

Mr. McManus: I think he was getting ready to answer it, if you will leave him alone.

The Court: He was going to answer it.

Q. Go ahead.

A. We would use the conversion factor for all three companies, if we were interested in an industry total.

Q. Well, if I understand what you did, and you have just agreed with me that that is what you did, you would add together the number of cans made by those three companies, would you not?

A. That's right.

Q. And so you would get 24 cans made through three pounds of steel, wouldn't you?

[fol. 2973] A. Yes, sir.

Q. And your conversion factor would be eight, the way you have done it here, wouldn't it?

A. That's right.

Q. Now, just change the assumption a little bit. Take the same three companies. The first company made 15 cans out of one pound of steel, and the second company

made 15 cans out of one pound of steel, and the third company made six cans out of one pound of steel. What would be your conversion factor in that case?

A. Well, we would do the same thing.

Q. What would your conversion factor be?

A. Well, it would be the total of the three companies divided by three.

The Court: Twelve?

The Witness: Twelve.

By Mr. Johnson:

Q. So don't you agree with me that the larger the number of small cans that are included in your conversion factor, the larger will be your conversion factor?

A. Yes.

Q. And so the larger the number of small cans that you have included made by others than Continental, the [fol. 2974] larger will not be the unit figure assigned to Continental, will it not?

A. Yes.

The Court: Now, wait a minute. That is——

Mr. Johnson: I am sorry, your Honor. It is a little bit——

The Court: Wouldn't that be assumed? I think you have got to redefine your question. Let me have the question.

By Mr. Johnson:

Q. Isn't it true that the larger the number of small cans which were made by companies other than Continental, the larger will be the number of cans assigned to Continental?

[fol. 2975] The Court: Only, I think, Mr. Johnson, assuming that Continental doesn't make even smaller cans than the other fellow.

Mr. Johnson: Yes, I agree with that. He has already indicated, however, that the cans of the companies included within his totals were manufacturers—of small cans.

The Court: Were some manufacturers of small cans.

All right, go ahead.

By Mr. Johnson:

Q. Now, those companies, the milk companies and the soup companies——

Mr. Handler: Was the question answered?

The Court: Well, I think that what happened was, I broke in and we had a colloquy between Mr. Johnson and myself. I think we will consider the question withdrawn momentarily.

Mr. Johnson: Well, I am sure this becomes very important. I am afraid I will have to go back.

The Court: All right, I was just trying to get the record straight so that you can move forward from there.

Q. If you assume, as his Honor said, that the cans [fol. 2976] manufactured by the soup companies and the milk companies are smaller than those manufactured by Continental, then is it not true that the more of those small cans which are included in your formula, the larger will be the estimate of the number of cans made by Continental?

Mr. McManus: Your Honor, before he answers, I would like to know is there any proof going to be offered on this? I mean, I don't mind him going off in this never never land and discussing these theoretical problems with Mr. Finn. But if that is——

The Court: Mr. McManus, if he has been going into the never never land, I haven't been there with him.

Mr. McManus: All right, sir, I will be quiet then.

Q. Can you now answer that question?

A. Mr. Johnson, these figures I have, these conversion factors I have taken, came from the Can Manufacturers Institute. They worked up these.

Q. Mr. Finn, these conversion factors do not come from the Can Manufacturers Institute. We established that yesterday. You have added together some aggregates used by Can Manufacturers Institute, have you not?

[fol. 2977] A. The units are from Can Manufacturers, and so is the tons of steel that was consumed to make these cans. We merely did a division, one into the other, and came out with a conversion figure, which was applied in this case.

Q. And you——

A. Now, I don't know all the ramifications that the Can Manufacturers went into to arrive at these figures. I so stated that yesterday. I don't know whether some companies make large cans or small cans or what size particular cans they make. I think I testified here yesterday that the three companies that we have in here make a general line of cans.

Q. Yes, but that has no bearing on this problem.

The Court: Well, now, look, don't get into arguments with the witness, Mr. Johnson. You ask him questions.

Mr. Johnson: All right, sir.

Q. Let me get the answer to this question: Is it not true, Mr. Finn, that the conversion formula that you created out of the CMI figures is a formula which is not used by CMI?

A. That's right.

Mr. Johnson: I wonder if we could go back and have [fol. 2978] the reporter read my last phrasing of the question with respect to the inclusion of small cans, to which I don't believe I have an answer as yet.

(The question was then read as follows:

"Q. If you assume, as his Honor said, that the cans manufactured by the soup companies and the milk companies are smaller than those manufactured by Continental, then is it not true that the more of those small cans which are included in your formula, the larger will be the estimate of the number of cans made by Continental?")

A. It may change the total or the percentages in some manner.

Q. You can't answer the question yes or no?

A. No, I can't.

Q. Will you refer to G1202 for identification? I want to refer you to page 11. In the center of the page you find the total food 24,000,900,000, do you not?

A. That's right, sir.

Q. And to that figure you have added coffee.

A. Yes.

Q. In the following line. And that is the figure from which you worked in order to establish a conversion

[fol. 2979] factor for your all good table; is that correct?

A. That is correct.

Q. And in so doing you used the aggregate of each of those categories rather than the individual conversion rate for each category; is that correct?

A. That is correct, sir.

Q. Now page 11 is headed, is it not, "Actual number of cans which might have been produced from the amount of steel consumed"?

A. That is correct.

Q. Now, will you look at page 10? That page is headed, is it not, "Number of No. 2 cans which might have been produced from the amount of steel consumed"?

A. Yes, sir.

Q. And that page has a similar set of categories—the same set of categories as page 11, does it not?

A. Yes, it does.

Q. Now, if you will look——

The Court: Tell me this: What is a No. 2 can, if anybody knows that? What size is that? Roughly, is it the standard sort, the can I always think of primarily as a can of tomatoes, is that a No. 2 can, or a can of peas, is [fol. 2980]that a No. 2 can? Or is that over-simplifying it?

Mr. Johnson: I understand it is roughly in the neighborhood of a pint.

The Court: All right.

Q. Now, would you agree with me that from these two tables the number of cans which might have been produced has been calculated in two different ways?

A. Yes, sir.

Q. If you look on page 11, following the fruit and vegetable category for 1957, you see a figure of thirteen billion nine for the so-called actual number of cans.

A. Yes, sir.

Q. And on the other page, on the computation of No. 2 cans, there is a figure of just over 13 billion.

A. Yes, sir.

Q. Would that indicate to you that the fruit and vegetable cans, referred to on page 11, are fairly close to the size of a No. 2 can?

A. Yes, it would.

Q. All right, sir. Now, if you look at the next figure on page 11, the figure following evaporated and condensed milk, you find a figure of three billion some-

[fol. 2981] thing?

A. Yes, sir.

Q. On page 10, following evaporated and condensed milk, you find a figure of less than two billion; is that true?

A. That is correct.

Q. Would that indicate to you that the evaporated and condensed milk cans were substantially smaller than the No. 2 cans?

A. Yes, it would.

Q. Now the same thing is true with respect to other dairy products, is it not?

A. I think the opposite would be true.

The Court: The opposite is true.

Mr. Johnson: That is correct.

Q. Now, except for the fruit and vegetables and all other food, evaporated and condensed milk is the largest item that goes into that total, is it not?

A. Yes, sir; it is. It is the third largest item.

Q. Have you seen Mr. Tolton's charts on the amount of evaporated and condensed milk containers manufactured by others than American, National and Continental Can?

[fol. 2982] A. I have seen them, but I don't recall the details, or anything like that.

Q. I refer to the third table under category II in Government's Exhibit 800 for identification.

The Court: 1955 evaporated and condensed milk?

Mr. Johnson: Yes, sir.

Q. That table indicates, does it not, that over 80 per cent of the containers for evaporated and condensed milk were manufactured by others than American, Continental and National Can?

A. Yes, sir.

Q. And those are the small containers that we are referring to on page 11 of Government's Exhibit 1202 for identification; is that correct?

A. Yes, that is the figure of 3,181,207,000.

Q. So that by including those small cans in the aggregate figure from which you obtained your conversion figure, you have increased the number of cans assigned as manufactured by Continental Can, have you not?

The Court: Will you answer that question?

A. In that particular category, we have.

Q. And that is the same category that you have used [fol. 2983] all through these tables to get this hypothetical figure of number of cans manufactured, is it not?

A. When I spoke of category, I meant the evaporated milk category.

Q. It affects all of the figures, does it not?

A. Yes, it would.

Q. It affects every one without exception?

A. Yes, it would.

Q. I think you indicated yesterday that you had some reason to believe that Campbell Soup Company might be the third largest can company in the United States; is that correct?

A. That's right, sir.

Q. Now you know that Campbell's Soup Company manufactures these small soup cans in practically endless quantities, don't you?

Mr. McManus: Your Honor, I object to that terminology.

The Court: Sustained.

Q. You know that they manufacture more soup cans than any other type of can, do you not?

A. They put out a lot of soup cans, yes. They manufacture a lot of them, products.

Q. You know that the soup can is smaller than the [fol. 2984] No. 2 can, do you not?

A. Yes, sir.

The Court: There are various sizes of soup cans.

The Witness: I think what Mr. Johnson was referring to was Campbell's Soup can. They generally are of the same size, but there are other can manufacturers—other soup companies that put them out in various size cans.

Q. Just so we clear up one minor point: The Can Manu-

facturers Institute, whatever else they do, does not compute any figures for individual companies, does it?

A. I have never seen it.

Q. In the published material that we have been working with?

A. No, sir.

Q. Now looking again at Government's 1202 for identification, which is the Can Manufacturers Institute Bulletin from which you have computed some of your formulas, did you observe the rather odd way in which the Bulletin's table was headed, "Actual number of cans which might have been produced from the amount of steel consumed"? [fol. 2984a] A. Yes, sir.

Q. Did it occur to you to wonder why it was phrased that way?

A. Well, it would indicate to me that it was an estimate. [fol. 2985] Q. Did it indicate to you that it was an estimate?

A. Yes, it does.

Q. Is it not true that there is no estimate of number of cans in any category produced in this document?

A. It indicates to me it is their best estimate.

Q. Doesn't it indicate simply that that is the number of cans which might have been produced and that it is not even an estimate of the number that were produced?

A. Well, I would say it is still an estimate.

Q. You find no difference between a statement of a number which might have been produced and an estimate; is that right?

A. The terminology is different, but I think that you can read into either one of them that it is an estimate.

Q. Well, are the computations on page 10 an estimate? That is headed "Number of No. 2 cans which might have been produced from the amount of steel consumed."

A. Well, that is an estimated assumption that all steel was consumed and placed in No. 2 cans. It is still an esti- [fol. 2986] mate.

Q. So you would say that that is an estimate, that it was an estimate on page 10 of the number of No. 2 cans which were produced; is that right?

A. Can I see that a minute? I mean, I am confused—you are referring to the table on page 10?

Q. Page 10, that's right.

A. It is still an estimate of the cans which might have been produced from the amount of steel consumed, No. 2 cans.

Q. An estimate of those which might have been produced, yes.

A. Yes.

Q. It is not an estimate of the number that were produced, is it?

A. That's right.

Q. Nor is page 11 an estimate of the number that were produced, is it?

A. To that extent, no, it is not.

Q. In short, there is no estimate in this book as to the number of cans that were produced, is there?

A. That were produced?

Q. Yes.

[fol. 2987] A. No, sir.

The Court: All right. We will take our morning recess.

(Short recess.)

The Court: Before you resume, I have a couple of questions I would like to ask Mr. Finn.

By the Court:

Q. Mr. Finn, on table 2C, in folder A, you will first note—wait a minute. We have got them mixed up. I will take mine, and this is yours.

I note on the last line of that note you say unit shipments were estimated on the basis of 9,237 food cans per ton for '55, 9,254 food cans per ton for '56, and 9,248 food cans per ton for '57. Can you account for the variation in those three years between the number of food cans per ton used? Why should it be different from year to year?

A. I presume, sir, the Can Manufacturers Institute changed their computations from year to year. We divided those out and we got that variation each year.

Q. But you have no explanation for that variation?

A. No, sir.

Q. You don't know how it came about or what caused the [fol. 2988] variation?

A. No, sir, I did not delve into that with the Can Manufacturers Institute.

Q. Now let me ask you another question: Is there any reason why you could not have prepared these tables in terms of base boxes?

A. Well, your Honor, I couldn't very well compare base boxes of steel to units of glass containers.

Q. Well, certainly with respect to the cans that is, the canning part, is there any reason why you couldn't have prepared the tables dealing with canning on base boxes of steel so as to show, for instance, a comparison between what might be called the three or four or five leading people in the industry?

A. I think, your Honor, you will find that in our chart tabulations, where both the metal cans are by tons of steel and the glass containers are by gross of units. So we have done that in the chart tabulations.

Q. But the reason why you went through this conversion process was in an attempt to get figures which could be compared with and were of the same general unit as in the glass industry?

A. That is correct, sir.

[fol. 2989] The Court: All right.

By Mr. Johnson:

Q. You gave one possible explanation of why these conversion figures varied from year to year, and you attributed it, as I understand it, to possible changes in the methods of the Can Manufacturers Institute.

A. That's right.

Q. Is there not another possibility, that that change results from your using a statistical method that Can Manufacturers Institute never uses?

A. Well, I used the same method in each of the three years, and I came out with a different conversion factor for each of those years.

Q. Yes, you did, and you added together all of these aggregates. You added together all of these categories?

A. Yes, sir.

Q. And you got from that a conversion factor?

A. Yes, sir.

Q. And that is a method, I understand from your earlier answer you agree with me, that Can Manufacturers Institute never uses?

A. No; the conversion factor, no, sir, they never use it.

[fol. 2990] Q. So the change in figure from year to year can be the result of a different product mix, can it not?

A. I don't know what to attribute the difference to.

Mr. Johnson: Your Honor, during the recess I have picked up from some of the defendants' proposed exhibits Defendants' Exhibit 113 for identification, which is a No. 2 can. I am informed it holds approximately 22 ounces.

The Court: That would be the normal can of peas, wouldn't it, or something of that sort? It is a very common fruit and vegetable container.

Mr. Johnson: Defendants' Exhibit 105 for identification is a soup container, that we have referred to, which holds about 10 ounces.

The Court: For instance, that would be, as you understand it, roughly what Campbell's soup would be packed in?

Mr. Johnson: Yes, sir, that is what I believe from their use of the term as a typical Campbell's soup can.

And Defendants' Exhibit 122 for identification is a can of evaporated milk, holding about 13 ounces.

[fol. 2991] The Court: Of course, a condensed milk can is much smaller than that.

Mr. Johnson: Yes, sir.

The Court: Or one type is, anyway.

Mr. Johnson: One type is much smaller than that, yes, sir.

The Court: All right. Thank you.

Mr. Johnson: During the recess, my colleagues asked me to go back to table 3D once more——

The Court: All right. That is the beer container?

Mr. Johnson: That is the beer containers.

The Witness: 3B?

Mr. Johnson: 3D—showing the percentage, the caption

says, of leading manufacturers of beer containers for 1955, '56 and '57.

By Mr. Johnson:

Q. Now, in the last column under the heading "Per Cent" following "Owen-Illinois Glass Company," you see the figure of 5.6 per cent?

A. For Owens-Illinois Glass?

Q. Yes.

A. Yes, sir.

[fol. 2992] Q. Now, Owens-Illinois is the largest glass container manufacturer in the United States, is it not?

A. Yes, sir.

Q. And large quantities of beer—a large quantity of beer is sold in glass containers in the United States, is it not?

A. That's right.

Q. Now, sir, I ask you what relation that 5.6 per cent for the largest glass container manufacturer bears to the 38.6 per cent indicated for Continental Can?

Mr. McManus: Your Honor, I think we are getting repetitious here. He has stated, I think a number of times, that this chart indicates the initial sale of either a metal can or a glass container. He is not concerned with what Schlitz Beer does when they get the bottle back from the consumer.

Now, if the defendants want to put a chart like that in, that is all right with us. We will point out the errors in that. But he has stated repeatedly this is the initial sale by the manufacturer of this container to the consumer. That is all that chart shows.

[fol. 2993] The Court: I understand. Go ahead. Will you answer the question, please?

The Witness: Yes.

A. This is the initial sale of beer bottles sold in this particular year, 1957, by Owens-Illinois. It has no relation to the quantity of beer that is——

The Court: That wasn't what he asked you. As I understand it, he asked you what relation this bore to the beer container sales of Continental Can.

Isn't that right?

Mr. Johnson: That's right.

The Court: It is the relation that 5.6 per cent bears to 38-some-odd.

The Witness: That's right.

The Court: What percentage is 5.6 to 38, roughly?

The Witness: Well, it's about a seventh.

The Court: About 1/7.

By Mr. Johnson:

Q. Would you conclude from that that Owens-Illinois beer container production was 1/7 that of Continental Can?

A. Yes, it is 1/7 of the containers.

Q. Do you find any meaningful relationship in those [fol. 2994] figures?

A. I did, yes, sir.

Q. What meaningful relationship do you find there?

A. Well, the meaningful relationship that I find there is that during that particular year, of the containers sold for beer, Continental sold 38.6 per cent and Owens-Illinois sold 5.6 per cent of them.

Q. Now, if you were to apply a usage factor——

Mr. McManus: Your Honor, I am going to object to applying any usage factor. He didn't do it. We didn't do it and we have been over it.

The Court: No. I will overrule the objection.

By Mr. Johnson:

Q. If you were to apply a usage factor to beer containers manufactured by Owens-Illinois Glass Company, what would happen to the per cent attributable to Owens-Illinois?

A. Well, I presume it would be way up, but I have no way of telling. I haven't done that in this particular case.

Q. Not as a matter of presumption that it would be way [fol. 2995] up, is it?

Mr. McManus: Your Honor, he doesn't know.

The Court: I don't understand how the usage factor can be applied to Owens-Illinois. Owens-Illinois sold so many bottles. It may be that the particular volume of Owens-Illinois sales, because they were selling a re-usable bottle, was very much larger than this percentage indicates.

Mr. Johnson: I am trying to point out the fallacy of comparing returnable containers with non-returnable containers.

Mr. McManus: I object to that, your Honor. There is no fallacy at all. We are talking about initial sales here.

The Court: I don't know whether there is a fallacy or not. I intend to find out. We are exploring that fact.

Will you tell me, Mr. McManus, what the cost of a reusable beer bottle is as compared with a can?

Mr. McManus: I believe I can—well, I can say this, your Honor. It is my impression—I would have to check it and I think I could—that the can is more expensive.

The Court: Then the reusable beer bottle?

[fol. 2996] Mr. McManus: That is my impression. Now, I could be wrong.

The Court: All right.

Mr. McManus: I don't know. I would have to check.

The Court: If that be so, I don't know how the can people stay in business in the beer industry, but maybe they do. If you get a bottle which is re-usable 25 times and your can costs just as much as the re-usable bottle, the economics of this whole deal rather puzzle me.

All right. We are dealing with economics.

Mr. McManus: I am not arguing that, your Honor.

Mr. Johnson: I suggest, sir, that the matter of markets and customer preferences have something to do with that, as I have indicated in my pretrial statement.

Mr. McManus: Your Honor, if he wants to put that in his case, that's fine, but I don't think it is appropriate at this time.

The Court: All right.

By Mr. Johnson:

Q. Will you turn, Mr. Finn, to folder B. I think we had [fol. 2997] started to look at this last evening, and I may have asked you this question and, if I have, I am sorry I have to ask it again: to what the general approach of folder B is.

The Court: Oh, we have been through that a number of times, Mr. Johnson.

Mr. Johnson: Have we, your Honor?

The Court: I think that is quite clear.

Mr. Johnson: There is a division east and west of the——

The Court: Oh, no. I thought you were talking about 3B in folder A.

Mr. Johnson: No, sir. Folder B.

The Court: Folder B. I beg your pardon.

A. I mentioned yesterday that folder B was similar to folder A but was a breakdown between east of the Rocky Mountains and west of the Rocky Mountains for both glass and cans, and the combination of those two.

Q. Looking at table 1A of folder B, the caption of that, I gather, relates to all types of glass and metal containers east of the Rockies for 1955?

A. Yes, sir.

Q. And under the heading "Glass container shipments," [fol. 2998] there is a figure?

A. Yes, sir.

Q. A figure of 17 billion-odd?

A. Yes, sir.

Q. Will you tell me how you got that figure?

A. Well, the Bureau of the Census gives metal can shipments by tonnage in various geographical areas of the United States.

Q. Well, I was directing my attention first to the glass container column.

A. Oh, I am sorry, sir. Well, this data was obtained from the GCMI material for those companies who had plants operating on the West Coast. In addition to that, we sent out a letter and received letters from other companies who were either not members of the GCMI or who do not report to GCMI, and they furnished us material with respect to the shipment of glass containers from their West Coast plants. We totaled those figures, and attributed all that production to plants located west of the Rocky Mountains. We subtracted that from the census of the total figure for the continental United States and arrived at the total figure for the east side of the Rocky Mountains.

[fol. 2999] Q. All right. Then the figure in the next column, the figure of thirty billion-odd, under the heading

"metal container shipments," will you tell me how you got that figure?

A. The Bureau of Census report metal can statistics on tonnage basis, and they also give you geographical areas in which these shipments are made. By adding the Pacific and mountain states areas together, and from that we took the Hawaiian Islands—I should say that the Pacific area also includes Hawaiian Islands—from that we subtracted the Hawaiian Islands, plus the plants of American Can and Continental Can located in the State of Colorado, which is one of the states in the geographical area of census in the mountain areas.

Q. When you say you subtracted Hawaiian Islands, you subtracted the same portion of the Hawaiian Islands that you were referring to before; is that correct?

A. That is correct.

The Court: Only the American Can production.

The Witness: Only the American Can production.

A. (Continuing) By subtracting the Hawaiian Islands for the American Can, and the American Can's production in Colorado, and the production of Continental Can in the [fol. 3000] same state, we arrived at a figure for that west coast area in the United States. We took that figure and subtracted from the continental United States figure all metal cans and arrived at the east of the Rocky Mountains area. That is briefly what we did.

Q. How did you get units out of it?

A. By applying the same conversion factors where appropriate.

Q. In other words, you went through the same process that we have been discussing here this morning, did you?

A. Yes.

Q. Will you turn to table 2A in folder B. This table purports to relate to all types of metal and glass containers west of the Rockies for 1955, does it not?

A. Yes, sir.

Q. Under the heading "metal container shipments," following the name Continental Can, there is a figure of two billion two hundred seventy-seven million; do you see that figure?

A. Yes, sir.

Q. How did you get that figure?

A. Well, that is the figure for those plants of Continental [fol. 3001] Can operating in the west of the Rockies, less that Colorado plant I spoke of.

Q. What Continental Can plants did you regard as west of the Rockies? Can you name them?

A. I can't name them.

Mr. Johnson: Your Honor, I am sorry to have to go into this figure, but the difficulty I have here is that I am not able from any material that we have to reconcile this figure. I would like to ask that the witness be directed to bring in his working material so that we can find out what this figure came from.

The Court: Have you your work papers here, any of them?

The Witness: I have some of them out there, your Honor.

The Court: In other words, this type of figure, which relates to Continental, the defendant here, is of some significance, and I am going to permit Mr. Johnson to go into the question of how this was arrived at. If you want to get any data now together I will be glad to give you an opportunity to do so, Mr. Finn.

Mr. McManus: May I ask a question, your Honor.

The Court: Yes.

[fol. 3002] Mr. McManus: We have a little bit of a problem here, as I see it, in that at least at the present time Mr. Finn should be warned that in this chart there are work papers that might include American or National.

The Court: I understand that. I would gather that there would be that possibility, and we can deal with that problem.

Mr. McManus: Fine, your Honor.

The Court: But I think the work papers ought to be here, and he may be able to refresh his recollection and go through them, so as to inform Mr. Johnson as to how he arrived at this figure of 277,000,000, for example.

Mr. McManus: Yes, sir.

The Witness: Yes, sir; I will be glad to.

The Court: All right, we will take a brief recess now and give you five minutes to get those papers together. Or

would you rather—all right, what we will do, if it is going to take you a little time to assemble——

The Witness: Your Honor, I don't know how far they want to delve into this thing. I hate to do this thing under pressure.

[fol. 3003] The Court: Well, you have got to do it under pressure, because the pressure is on.

But in any event, what I will do now, I will take a recess to 2 o'clock, give you a chance to go through some of your papers and try and prepare yourself on this.

Mr. Austern: Your Honor.

The Court: Yes, sir.

Mr. Austern: If the Court please, as I heard this discussion, if these questions are going to relate to where the witness attributed the base box reported shipments from a particular plant of either company, geographically, in other words, if it is going to deal with where did you put plant X, east or west, and will not get into the numbers of the plant, I don't think there will be any difficulty as far as these work sheets are concerned.

The Court: Very good, very good. Thank you.

But in any event, you will get this material together and we will resume at 2 o'clock.

Now once that is done, Mr. Johnson, where do we go from here, and where do you envisage a terminal point?

Mr. Johnson: I have a fair amount of material left on [fol. 3004] this witness. It has gone much slower than I thought it would this morning.

The Court: Well, it seems to me that at the rate we are going, if you have a lot of material, I have got to rise at 4 o'clock this afternoon because of the Trinity religious service on the courts.

Mr. McManus: Do you want that on the record?

The Court: Yes, nothing wrong with that.

Mr. McManus: Fine.

The Court: It isn't as if I was saying I was going out to a corner saloon.

Mr. McManus: I realized that after you said it, your Honor.

The Court: So that I would like it, if you can finish with this witness this afternoon, Mr. Johnson, before 4 o'clock.

Mr. Johnson: I will make every attempt to.

The Court: Very good.

(Luncheon recess to 2 P.M.)

[fol. 3005] AFTERNOON SESSION

2 P.M.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. McManus: Your Honor, before Mr. Johnson starts, there are two matters that I could take up with you that will only take a moment.

The Court: Fine.

Mr. McManus: We do have this problem, in that, as I told you, there is a Dr. Hughes from Wesleyan University, who is going to attempt to put four of our plastic charts in evidence, and apparently we have stipulated them, I understand, with the defendants about the basic data, what the people if called would testify to. He has come down a number of times, and we have been unfortunate in not being able to get him on.

What I would like to do, if we could agree upon a time certain to put him on—because I have taken him away from his——

The Court: All right. We will put Dr. Hughes on at 10:30——

Mr. McManus: Unfortunately, your Honor, Thursday is such a bad day for him. He has apparently got a faculty meeting or something. I don't know if they think Mr. [fol. 3006] Tolton's time will run over Thursday——

The Court: I will ask Mr. Johnson. How much besides Hughes have you got on Thursday, Mr. McManus?

Mr. McManus: I would think, other than Dr. Hughes, it would be an hour at the most. It would be an offer of documents, which I think wouldn't take over an hour. It might be less, but I would think not over that.

The Court: I would say that we are going to take the rest of the afternoon with this gentleman. I would not think that Mr. Johnson would be occupied all day with the man on charts. Maybe he would.

Mr. Johnson: I don't know. I would hope not, but I don't know.

The Court: Well, I would hope not, too, Mr. Johnson.

Mr. Johnson: Some of this is pretty slow.

The Court: But if you've got an hour, let's say, and Mr. Johnson takes the chart man, I have then got to rule on these various charts after I hear them all. I suppose we can say, although it seems to me we are proceeding at a more leisurely pace than I had hoped we would here.

[fol. 3007] Mr. McManus: That is right.

The Court: —if you could have everything finished but Hughes, then we could put Hughes on on Friday morning. But I am not going to have then, if we do that, I am not going to hear argument on Friday, because Mr. Handler has asked for a day, and I propose to give him an uninterrupted day. The subject matter is of that importance. So we will go as long as we can on Friday, as long as we've got material to occupy us, and then we will start arguments on Monday.

Mr. McManus: All right, your Honor.

Mr. Johnson: While we are talking about time, your Honor, when would you like to hear argument on the open question of the documents relating to prior acquisitions?

The Court: Well, I would presume that we could hear that on Friday. In other words, my theory is that between now and Friday, we ought to have the plaintiff's case complete, with all the rulings that are necessary to make it complete, and if there is argument on that subject, on the prior acquisition question, it would seem to me that we can probably hear that on Friday.

Mr. McManus: Yes, your Honor.

[fol. 3008] Mr. Hughes: Your Honor, I think it would be helpful, too, if the government would let us know in advance which of the remaining documents they intend to offer, because just the mechanical task of getting them out and refreshing ourselves on them takes a little time, and it would expedite it if they would give us some indication.

The Court: I think that is a reasonable request.

Mr. McManus: Yes, sir.

Mr. Hughes: When could we have that?

Mr. McManus: Will someone be in your office tomorrow morning?

Mr. Hughes: Yes.

Mr. McManus: If I can't get it to you before tonight, I

will give it to you early in the morning. Will that be satisfactory?

Mr. Hughes: Yes.

Mr. Handler: Your Honor, this is a minor matter that you might want to take off the record or not—I don't know—but this has to do with the argument.

The Court: I don't think we need this on the record.

(Discussion off the record.)

[fol. 3009] The Court: Back on the record.

Mr. McManus: Mr. Finn went back and checked some of his basic data and came to the conclusion that in certain of the charts west of the Rockies there probably is an understatement of Continental's position. Now, I don't think that should really seriously hamper the further cross-examination of Mr. Finn, because he will explain, and I assume the defendants want to know, how he arrives at these figures, and we returned these figures over to defendants, as you recall, last May, one of the purposes being so we could get together on errors of this nature, or at least I understood that to be one of the reasons. They apparently missed it, or at least did not call it to my attention. So if it is possible, if we could continue on with Mr. Finn on cross-examination, and any errors that might be made we would be glad to correct them and give them to the defendants tomorrow, which I understand is an off court day.

Is that satisfactory?

The Court: I take it you will have some redirect of Mr. Finn?

Mr. McManus: Yes, your Honor.

The Court: All right.

[fol. 3010] Mr. Johnson: Well, do I understand the suggestion to be that at this point we are going to get another set of amendments to these tables?

Mr. McManus: Your Honor, as I said, my understanding was that you did not want to concern yourself with additions or subtractions, or errors in additions or subtractions, and that was one of the reasons you directed me to give these tables to the defendants. The defendants have never called to my attention any error that he might have made in addition, and we made two obvious ones, one previously which we corrected in these tables, and this one,

which they should have noted, and I think probably have, but have not called to my attention.

Now, we don't intend to change the approach to these tables or the basic tables. We do believe that we have in the west coast understated their position, which may affect the east coast. I am not sure. But we would like to at least have the tables accurate, and that is what we would propose to do.

The Court: Let me put it this way: If you desire to make corrections of the tables because of mathematical errors in the table, then I think that you ought to have prepared [fol. 3011] some sort of piece of paper which illustrates precisely what the correction is and what the net result is on the particular figure, and see that the defendant gets that tomorrow morning, and then take it up on redirect with the witness.

Mr. McManus: All right, your Honor.

Mr. Johnson: I want to call your Honor's attention to the fact that we did have a certificate of a Certified Public Accountant furnished to us, stating that these computations were correct.

The Court: Well, I am unable to judge at this point just what the nature of the error which Mr. McManus is.

Mr. Johnson: I understand that, but I did want to call that fact to your attention.

The Court: All right.

Mr. Johnson: With that then, some of the lines of questioning that I intended to go into will have to go over until I see what the nature of these corrections are.

The Court: No, I think we will go right ahead.

Mr. Johnson: I will go ahead on other things.

The Court: No, I think you will go right ahead. I want [fol. 3012] to know if there are any errors in these charts, and I think if you are prepared to bring out any errors in there I wouldn't change my procedure one jot or one tidbit.

Mr. Johnson: All right, sir, I can go a certain distance.

The Court: I would go just as far as I would before, myself.

Mr. Johnson: All right.

LEO V. FINN, resumed.

Cross-examination Continued.

By Mr. Johnson:

Q. Mr. Finn, we were looking at table 2A in folder B, and we were looking at the figure of two billion, two hundred seventy-seven million, under "metal container shipments." Would you tell me which plants of Continental Can you took into consideration in arriving at that figure?

A. Yes, sir. The plants at Portland, Oregon; Oakland, California; Stockton, California; Wallawalla, Washington; Los Angeles, California; San Jose, California; Seattle, Washington; and Sacramento, California.

Q. That is all?

A. That is all.

Q. You did not include the plant at Terminal Island, in California?

[fol. 3013] A. No, we left that one out.

Q. Is that the nature of the mistake that Mr. McManus was talking about?

A. That is the error.

Q. Were the figures for Terminal Island left out entirely, or were they put east of the Rockies?

A. No, they were left out of the west coast.

Q. They were left out of the west coast?

A. Yes, sir.

Q. But were they added to the east of the Rockies?

A. No, sir.

Q. Do I understand you to say then that in correcting these figures there will be no changes made for the east of the Rockies?

A. Mr. Johnson, I naturally haven't had a chance, an opportunity, to look over all the figures in east side. The west side is, as I say, we left out a plant there. It might affect the east. At the present time I don't think it does, but I would like to have an opportunity to recheck that.

Q. Now, Mr. Finn, in making the computations relating to American Can and National Can, you have done the same form of computations that you did with respect to Continental Can; is that correct?

[fol. 3014] A. Yes, sir.

Q. With respect to those, I think you are aware that I have never seen the basic figures from which you worked? Do you know this arrangement under which we have been working?

A. Yes, for American Can and National Can.

Q. Can you tell me, Mr. Finn, any way by which I could ascertain from this material whether you might have made the same kind of mistake or other mistakes on the American Can or National Can material?

A. If you didn't have the basic material, no. I don't see how you could.

Q. And the accountant checked it out and said everything had been done right?

A. The accountant checked my figures. He didn't go beyond or back of my work sheets.

Q. Your figures are now disclosed to be wrong.

A. Yes, we left out plant there on the west coast.

By the Court:

Q. Well, let me ask you this: Take American Can. As I understand it, you have got figures from the Census Bureau on American Can which were disclosed; is that right?

[fol. 3015] A. Yes, sir.

Q. And did the accountant, the impartial accountant, who did the checking, did he have access to those on a confidential basis, too?

A. Well, no, sir, he checked my work sheets, sir.

Q. Let me ask you this: what are your work sheets? I don't understand it.

A. My work sheets show the plants that we used to arrive at the west coast market. With due respect to the accountant, he did not go beyond my work sheets.

The Court: Let me ask you this—this is a general question—am I correct, gentlemen, in assuming that everybody knows what plants American Can has in various parts of the country? There is no doubt about that, is there?

Mr. Johnson: No secret about that, I believe.

The Court: So we are not treading on dangerous ground when we find out how many plants American Can has in a certain number of western states, are we?

Mr. Austern: Excuse me, sir. Perhaps I can solve your problem very quickly.

Mr. Johnson: Before you do, Mr. Austern, your Honor, I wonder if this isn't a matter that we should talk to you [fol. 3016] about in chambers?

The Court: All right, maybe it would be just as well. As a matter of super precaution I suppose so.

(The following took place in the robing room.)

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: I take it, Mr. Johnson, for instance, you are anxious to find out what plants he included within the American Can total for the west, are you?

Mr. Johnson: I have a more difficult problem than that. I assumed that the witness would testify that he included in the west those plants which are in the west. I believed that he would have testified the same thing this morning with respect to Continental Can, and it was only because I had some means of checking—at least if not means of checking, of inability to reconcile the figures—that I could determine that there was something wrong with that.

The Court: Mr. Johnson, you can't tell me that Continental Can Company does not know where all the plants that American Can has on the west coast are.

Mr. Johnson: I do, sir. I think you probably missed my [fol. 3017] point. It is easy to determine where the American Can plants are, but there is no way that I can tell from these figures whether he has actually treated American Can plants west of the Rockies or not, as distinguished from his saying he has.

The Court: I see.

Mr. Johnson: His table purported to show that he had treated all Continental Can plants west of the Rockies as being west of the Rockies. I could determine——

The Court: Then you asked him for a list of plants, and he listed the plants, and you said, "Where is the Terminal Island one?" And he said, "It isn't here." All right.

Mr. Johnson: He said that because I focused on the problem of there being something wrong with it. I am not able to focus on the American Can plants.

The Court: Suppose you asked him what American Can plants he included in the west coast figures.

Mr. Johnson: I would get a figure which I would have no way of checking.

The Court: All right. It seems to me that there is a perfectly simple way of checking, and that is to take this [fol. 3018] data, cover the parts that contain any figures at all and simply see what the list of plants is.

We are not dealing here, it seems to me, Mr. Johnson, with a fellow who is deliberately concocting figures out of the air.

Mr. Johnson: I am not so much concerned at this point about his concocting figures as to what he has done by being able to check this one point. I disclosed that his figures were wrong and that he had not done what he said he had done, that is, he had not treated all Continental Can plants which are west of the Rockies as east of the Rockies.

The Court: As west of the Rockies.

Mr. Johnson: As west of the Rockies. I am sorry.

The Court: What is your proposal? What do you desire to do with respect to the cross-examination?

Mr. Johnson: I dont know how to solve the problem short of seeing American Can's figures.

The Court: I am not going to let you see American Can's figures. That is out. So you better devise some other system.

Mr. Johnson: I don't think I have anything else to offer. I think, however, that the best I can do, then, is leave the [fol. 3019] inference that there is no reliability in these figures.

The Court: That may be. I think you can also proceed to find out what American Can plants be included.

Mr. Johnson: I can do that, yes.

The Court: And I think that you can also ask him to show on his notes, on the work papers that he used on this thing, where all those plants are listed, and I think that can be done without disclosing anything, except the names of plants which you already know, and it will not affect American Can at all.

Mr. Johnson: The method by which he has arrived at these figures is too complicated to make that feasible. I can never state from these sheets what he has done, as I understand it.

Here are the west coast plants, starting with Los Angeles.

Maybe there is no purpose being served putting this on the record, since it won't show——

The Court: All right. Let us go off the record.

(Discussion off the record.)

Mr. McManus: Your Honor, if we could go on the record——

The Court: All right.

[fol. 3020] Mr. McManus: I would like to state one thing which may be of some help. Mr. Finn grabbed my arm before I came in and said he wanted to make a correction in one of the answers that he had given, I believe to either Mr. Johnson or you, in which he was asked if the Certified Public Accountant, Mr. Hook, had seen the basic data from American and National.

The Court: Yes. I asked him that question.

Mr. McManus: Yes. And he said, no. And he grabbed me by the arm when we came in, and he said he wanted to correct his statement, that for American and National he had handed the basic data, and the Certified Public Accountant had worked off the basic data for him, but not for Continental, and the reason he had given him his work sheets for Continental was because he had the work sheets, and they could check, as obviously they had here, and made an error on their computation.

So the addition that was done by Mr. Hook for American and National was done by the Certified Public Accountant.

The Court: That has been checked, in other words, by the Certified Public Accountant.

Mr. McManus: From the basic data.

[fol. 3021] The Court: And certified—from the basic data—that it is correct mathematically.

Mr. McManus: Yes, your Honor.

The Court: All right. That only means, then, it seems to me, the problem is whether the proper basic data was included, and if we are going into that, then plainly Mr. Johnson is entitled to ask him whether or not, in the basic data, what plants did he designate as west coast plants.

Mr. McManus: He will be glad to answer that.

The Court: He will be glad to do that. He can show them on the work sheets, without trespassing as all, as I see it—and I am waiting to hear an anguished protest from

you, sir (addressing Mr. Austern)—without trespassing on the toes of American Can Company.

Mr. Austern: As has been amply illustrated uptown, your Honor, the role of a non-partisan neutralist is difficult.

First, this is not my problem alone but also that of Mr. Goldberg, who unfortunately is not here. Secondly, up to this last explanation, I was baffled. I had understood that your Honor had directed that the use made of the data furnished by Continental and American was to be independently checked.

[fol. 3022] The Court: That is right.

Mr. Austern: Now, so long as they had made a division, east and west, I had assumed up to a few minutes ago that the division of these factories and their numbers, east and west, had been done. Now, as I understand the statement of counsel as opposed to that of the witness, it had not been done. I am not clear on that.

The Court: Yes. As I understand it from Mr. McManus, it has been done. Now, we will re-verify that under oath by the witness and permit him to correct his answer, if that is appropriate.

Mr. Austern: By that same token, I appreciate my brother Johnson's problem that having checked something by additions and subtractions both horizontally and vertically and through this tortuous conversion, he has ascertained to his own satisfaction that something was in the wrong place, and I sympathize with that problem.

I know of no way in which he could perform that same operation on either National's or American's figures without having the numbers and adding them horizontally, vertically, aggregating and going through this conversion. That presents the dilemma.

[fol. 3023] I have only this suggestion, and that is that somebody reexamine what this accountant is supposed to have done, and if his certificate does satisfy your Honor that——

The Court: Is there a certificate from the accountant?

Mr. McManus: Yes, your Honor.

The Court: Let me see it.

Mr. Austern: I have never seen it.

The Court: Let us have a look at the accountant's certificate right now.

Mr. Austern: Off the record——

(Discussion off the record.)

The Court: Back on the record.

According to the accountant's audit opinion, which is going to be marked for identification, at least, because we may be referring to it, the accountants, Messrs. Samuel R. Hook & Company of Washington, say:

> "We had for basic first information schedules submitted by the American Can Company and National Can Company to the United States Government, listing shipments from various plants in the continental United States and Hawaii, in quantity of base boxes and by type of can for each of the years 1955, 1956 [fol. 3024] and 1957. We assume that the base box figures for Continental Can had been furnished to the government and are as shown in the plaintiff's statistical tables."

So there is a difference between the accountant's knowledge of the Continental figures, which come from the papers shown to them by the government, and the American Can and National Can Company figures which result from the basic data itself.

"We did not have similar schedules"—as the accountant says—"from Continental Can as were furnished by American Can and National Can."

So it seems to me that if one is prepared to say that the CPA, an independent CPA, did a competent, professional job, there are various ways on cross-examination of dealing with the question of groupings of figures or plants or types of categories and plants, without ever going to the figures themselves, because assuming that the grouping is correct, then it follows a fortiori that the mathematics are correct. Now, is there anything wrong with that?

Of course, per contra, if the groupings are incorrect, the mathematics are a fortiori incorrect also.

[fol. 3025] Mr. Johnson: Well, sir, I will ask the witness a couple of questions about this, and we will get on as best we can.

The Court: All right.

Now, we will do this when we go in. I will have the clerk mark this. You gentlemen, of course, have copies.

Mr. Johnson: I have a copy. I think it may be in the file.

Mr. McManus: If not, I think we have another one, if you need it.

(The trial thereupon resumed in the courtroom.)

The Court: Gentlemen, I hold in my hand what is the original of a report by Samuel R. Hook & Company, Certified Public Accountants, Washington, with respect to certain audits that they did at plaintiff's statistical tables, including an analysis of shipments of metal containers east of the Rockies and west of the Rockies for the year 1955. Do you want to mark that as a government's exhibit for identification?

Mr. McManus: That is perfectly satisfactory, your Honor.

(Marked Government's Exhibit 1204 for identification.)

[fol. 3026] The Court: Now, Mr. Witness, I asked you before we took this recess or adjourned to the robing room whether Samuel R. Hook & Company had had before them in checking your statistical tables the schedules submitted by the American Can Company and National Can Company to the United States Government, listing shipments from various plants in the continental United States and Hawaii in quantity of base boxes and type of cans for the years 1955, '56 and '57. Your answer to that, as I recall it, was no and that they only had before them your working papers.

Is that a correct answer?

The Witness: No, your Honor. I was under the impression that you had mentioned Continental Can. They did not have the data that was obtained by the government in response to a subpoena. They did have the underlying data from American Can and National Can.

The Court: Those were the so-called Census reports that you are talking about?

The Witness: Yes, sir.

The Court: For the three years, 1955, '56 and '57; is that right?

[fol. 3027] The Witness: That's right. Yes, sir.

The Court: All right. Go ahead, Mr. Johnson.

By Mr. Johnson:

Q. Mr. Finn, looking at table 1A in folder B, under the heading of metal container shipments, there is a figure relating to American Can Company shipments of metal containers east of the Rockies. Do you see that figure?

A. Yes, sir.

Q. How was that figure arrived at?

A. Do I understand you mean totals, sir?

Q. No. The figure relating to American Can Company.

The Court: 12,056,000,000.

Mr. Johnson: Yes, sir.

A. Oh, that's from the basic data of American Can.

Q. Now, this——

A. And applies only to the plants located east of the Rocky Mountains.

Q. How were the plants of American which are east of the Rockies selected?

A. By their geographical location.

Q. Was this figure arrived at by building up the totals [fol. 3028] of the American Can plants east of the Rockies or was it arrived at, as I thought you testified this morning, by deducting the figures relating to the west?

A. No. The totals are the plants, plants east of the Rockies and by plants west of the Rockies.

Q. I understand that, sir, but I was under the impression—and I may be wrong—that you said this morning, with respect to Continental Can, that the total for east of the Rockies was obtained by deducting the production of shipments of plants west of the Rockies from the total. Is that what you said this morning?

A. I could have, but there would be two ways that you could obtain that.

[fol. 3029] Q. Which did you do?

A. I don't recall. I think we did it by plants.

Q. You think you did it by plants?

A. Yes, sir.

Q. Would you look at the note in the front of folder B? I direct your attention to the third paragraph, under the heading "note applicable to the metal can tabulations in sections 3 and 4 of folder B."

A. Well, I have to stand corrected, sir.

Q. Having read that note, you conclude, do you, that the figure for east of the Rockies was arrived at by subtraction process?

A. Yes.

Q. I understood from the audit report, referred to as G-1204 for identification, that the audit report, or that the audit, in checking material, says that it was done the other way. Will you look at the first full sentence on page 2?

A. Yes, sir. He, I think, was applying, was referring to American Can and National Can, which he has audited here.

Q. But your note at the beginning of these tables refers to all of the companies, does it not?

[fol. 3030] A. Yes, there is no qualification on the companies in my note, sir.

Q. Am I to conclude, sir, that you did it one way and the auditor checked it another way?

A. That could be possible.

Q. Would you tell me which of American Can's plants you regarded as west of the Rockies?

A. They have a plant in Stockton, San Diego, Harbor, California; Oakland, Los Angeles, California; San Jose, Pacific, which is located in California; Portland, Sacramento, Seattle—I think that is all.

Q. Salem? Do you treat Salem as east or west?

A. Salem? I don't find a Salem listed on my list here?

Q. You don't find Salem on your list?

A. No, sir.

Q. The ones you have listed are the only ones that you treated as west of the Rockies; is that correct?

A. That is correct.

Q. Which of National Can's plants did you treat as west of the Rockies?

A. Sunnyville, California; Los Angeles, California; San Leandro, Modesto. They have a plant listed here for [fol. 3031] Stockton, but they produced no—at which they produced no cans in 1955.

Q. What did they produce at Stockton?

A. Sir?

Q. What did they produce at Stockton?

A. I say, they listed no cans produced at Stockton.

Q. They listed no cans?

A. That's right.

Q. Now, Mr. Finn, since apparently you constructed these figures one way and the accountant constructed them another way, I have no way of checking whether you were working on the same thing, have you?

A. You have no way of checking?

Q. Yes.

A. No, I don't suppose you have.

The Court: You mean apart——

Mr. Johnson: Absent seeing the underlying material, yes, sir.

The Court: No, absent seeing the underlying material and absent the accountant's report.

Mr. Johnson: I have just established with the witness that the accountant did it one way and he did it another.

[fol. 3032] Mr. McManus: Your Honor, I think it appropriate at this time that we know what the results were. Did they check out the same? I think that is important.

Mr. Johnson: I am prepared to accept the answer that I have. The witness agrees with me that I am not able to check from this material whether material was accurately done or not.

The Court: You mean whether the accountant did it accurately.

Mr. Johnson: The witness——

The Court: All right, I think we will accept that you can't tell whether the accountant did it accurately or not.

Mr. Johnson: The witness agrees with me that the accountant did it one way and that he did it another.

Isn't that correct?

The Witness: Yes, that could be correct.

Mr. McManus: Your Honor, I don't know why we are

playing here. What we are trying to find out is did they both come out the same? I mean, you can check figures six different ways, and presumably if they both come out the same the figures are accurate. I don't know why [fol. 3033] we have to beat around the bush.

Q. Do you know whether American Can has a plant in Salem or not?

A. At the present time?

Q. At the present time or at the time of these figures?

A. I said it didn't appear on my—on this particular list here.

Q. So therefore it is not included in your west, at any rate; is that correct?

A. That's right.

Q. And if American Can has a plant in Salem, wherever Salem might be, it does not appear with your west of the Rocky figures; is that correct?

A. That's right.

Mr. Johnson: Excuse me one moment.

The Court: Can counsel for American Can tell us where, which Salem, if any, American has a plant at?

Mr. Austern: Is this for the information of the Court or am I testifying? I am somewhat embarrassed.

The Court: The Court will take any information of that nature that you can give us.

[fol. 3034] Mr. Austern: The only Salem that I know of, sir, in which a can plant exists is Salem, Oregon.

The Court: Salem, Oregon.

I take it counsel for neither of the parties are inclined to question.

Mr. McManus: The only thing is, would he further mind telling us how long that has been in existence?

The Court: Do you know that?

Mr. McManus: And was it on his original list?

Mr. Austern: I find it on the list of '56, furnished to the government. I find it on the list of '57. I find it on the list—not on the list of '55.

The Court Thank you very much.

Mr. Austern: My role as a witness is an unaccustomed one, your Honor.

The Court: You are doing all right.

Mr. McManus: Could I have a clarification of what period of time Mr. Johnson was asking about when he asked about Salem?

The Court: No, not at this time. If you want to bring that out on redirect, that is your privilege.

[fol. 3035] Mr. McManus: All right, Judge.

By Mr. Johnson:

Q. How did you treat the plant of American Can Company at Ogden? Did you treat that as east or west?

Mr. McManus: Your Honor, could we have a time period, please?

Q. In the preparation of these totals we are talking about?

Mr. McManus: But for what period of time? These tables refer to different dates.

The Court: Well, he is asking about the tables, generally. If there is some exception to be made with respect to different years, the witness can tell us about it.

Mr. McManus: All right.

A. The Ogden plant is located in the mountain area states, and the Ogden plant would also be in the west market.

Q. That is in addition to the list you gave me earlier; is that correct?

A. Yes, sir; that is correct.

Q. Are there any other plants you want to add to that now, or subtract from it?

A. There is another plant located in the mountain area, [fol. 3036] Denver, which was——

Q. Which I think you told us earlier you had subtracted from the west?

A. Yes, that is included in the east.

Q. I so understood. Mr. Finn, would you now turn to table 2A?

The Court: Before you leave that, Mr. Finn, you testified that you did not have on your list of plants west of the Rockies a plant in Salem, Oregon; is that correct?

The Witness: That's right, sir.

The Court: Did you not have that on your list for any of the three years these tables cover here?

The Witness: No, sir. It is on a list for 1956 and 1957.

The Court: But not on the list for '55.

The Witness: No, sir.

By Mr. Johnson:

Q. Will you look at table 2A, Mr. Finn? This is a table for all types of glass and metal containers west of the Rockies for 1955. Under the heading "glass container shipments," there is a figure of 2,109,000,000. Are the shipments of Gallo Wine included in that figure?

[fol. 3037] The Court: On which table? Excuse me.

Mr. Johnson: This is 2A, in folder B.

The Court: Thank you.

A. Gallo Wine is not in this.

Q. Gallo Wine is not included?

A. No.

Q. Why is it not included?

A. It was a captive plant, and we had no data from them, and I don't think it was in existence in 1955.

Q. Table 2 in that same book refers to shipments of glass and metal, non-food west of the Rockies. Would I be correct, Mr. Finn, if I concluded that both a one-ounce perfume bottle and a five-quart oil can would be included in this category, if they were made west of the Rockies?

A. Yes, sir; it is all—all types of glass, both, metal, in the non-food category would include all those.

Q. Will you look at table 1F, which is a glass and metal non-food category for east of the Rockies for 1955?

A. Yes.

Q. In the first column is the figure given for Hazel-Atlas [fol. 3038] Glass Company. Does that figure include home canning jars?

A. Yes, sir.

Q. Home canning jars made by Hazel-Atlas are included as non-food jars; is that correct?

A. Oh, I'm sorry. I was looking—I saw food. No, the home canning jars would be under category of food.

Q. Are they in this instance? If you aren't sure, is there any way you can check it?

A. Well, I haven't checked. I could check back on it.

Q. Can you do that, sir?

A. Well, I could, but it would take a little time. You see, we are dealing in units here.

I can't tell now precisely whether it is in food or is in non-food.

The Court: All right, let's go, let's move forward.

Q. So I am left without an answer as to whether it is in food or non-food; is that right?

The Court: Yes, that's right.

A. Yes, that's right, sir.

Q. How about the home canning containers of Kerr, in-
[fol. 3039] cluded in the table for west of the Rockies? Are they treated as food or non-food?

A. Kerr made no home canning in 1955 in the west coast?

Q. I see. You are sure of that?

A. It is not listed on the letter they have from them.

Q. And that is the only information you have?

A. That's right.

Q. You don't know though, do you, whether they included their home canning jars as food, included that with that figure that you have from them?

A. No, I do not.

Q. Now, Mr. Finn, would you turn to table 2C. This is in your folder C, which is Government's 803 for identification. What does that table purport to be.

A. 2C purports to be production and shipments of Crown Caps by Continental Can Company compared to the United States total for the years 1955, '56 and '57.

Q. Down at the bottom, toward the bottom of the table, there is a line headed "all other manufacturers." Can you tell me who are included in that category?

A. Well, I don't have the list before me, but it would be companies like Crown Cork and Seal and Anchor-Hocking,
[fol. 3040] Guttman—I don't recall the rest of them.

Q. Did you compute the percentage for any of the others?

A. No, sir.

Q. Can you tell me whether they are larger or smaller, or any of them are larger or smaller than Continental?

A. I don't know.

The Court: Wait a minute. I don't follow your question. Are you referring to the line on 1C?

Mr. Johnson: 2C. I'm sorry.

The Court: I'm sorry. All right.

Mr. McManus: I would like to object to the form of the question, your Honor. He asked Mr. Finn if any of the companies were larger.

In what way do you mean larger, Mr. Johnson?

Q. You have computed in that table, as I understand it, for 1955 Continental Can production, Continental Can per cent of total for the United States of shipments as 17.1 per cent. Do you know what if any companies in the United States, producing and shipping Crown caps, have a larger percentage of shipments than that percentage?

A. I don't know. I have never seen any data from [fol. 3041] those other companies.

Q. Did you try to get any data from the other companies?

A. I don't recall.

The Court: From all that appears here, Mr. Finn, as far as I can see, there might be four companies in this field—might be five companies in this field, who are all larger than Continental; is that right?

The Witness: Could be, your Honor.

Q. Does this table include exports?

A. I don't think that the data we got from Census lists exports. It doesn't distinguish between exports and domestic consumption.

Q. Do you know if the Continental figure includes exports?

A. No, I do not.

Q. Would you turn now to table 1C in that same exhibit. Can you tell me what that table is?

A. This is a continental United States shipment of metal containers for sale by the three leading manufacturers, excluding metal container shipments by captive plants, and this is in short tons of steel consumed.

Q. Now what is the purpose of excluding captive plants from this table?

[fol. 3042] A. Oh, to show the volume of metal cans that are for sale in the United States.

Q. I think you testified earlier that Sherwin Williams

manufactures cans both for its own and sells cans on the outside; is that correct?

A. That is correct.

Q. Are Sherwin Williams cans included in this table?

A. I have no way of telling. You see, I have no underlying data with respect to this table.

Q. So you don't know whether or not Sherwin Williams cans have been included or excluded from this table?

A. Since these are Census statistics, I presume they are in there.

Q. But you can't tell me how they are treated?

A. No, sir.

Q. We have testimony here earlier that a subsidiary of Hunt Foods sold cans for its parent company. Do you know whether those cans are included or excluded from this table?

A. I presume they are included. I have no way—I do not have the underlying data of all the companies that are included or in this tabulation.

[fol. 3043] A. 5 D?

Mr. McManus: D.

A. This says, "Comparison of Glass Container Plants East and West of the Rocky Mountains for the Years 1920, 1938, and January 31, 1960."

Q. Why did you select 1920 as the starting date?

A. That was the only information I could find available in that particular year.

Q. In that particular year?

A. Well, I started as far back as I could.

Q. What is the magic about 1920?

A. It was the first year given in this tabulation I was able to find.

Q. Were you trying to find the earliest year possible? Is that what you were trying to do?

A. Not necessarily so.

Q. Well, sir, in the record in the Hartford Empire case, there was a tabulation going back to 1885. Why didn't you use that?

A. Well, this tabulation was all set out for me in the

TNEC hearings. It started with 1920 and it ended with 1938.

Q. And that is the only reason for choosing 1920?

A. I believe so.

[fol. 3044] Q. Are you saying, sir, you can't tell what this percentage figure relates to? You have a per cent under the heading "Continental Can for 1956," 37.6 per cent. Do you know whether that is a per cent of a total that includes Sherwin-Williams and United Can & Glass? Or is it a per cent of a figure that excludes it?

A. Well, I presume if a company sells cans that it makes and at the same time uses some, they give a breakdown to the Bureau of the Census of the volume they have used and the volume they haven't, that they have sold. I presume that is the method of treating that.

Q. And that is your presumption. That's the best you know it?

A. Yes, sir.

Q. Mr. Finn, will you turn to table 5 D.

Mr. Johnson: Your Honor, I apologize, but there is nothing I can do except go through a mass of details to show what has been done on these pages.

Q. (Continuing). What is that table, Mr. Finn?

A. The title of this table is the "Value of Packaging Material"——

Q. No. I am referring to 5 D.

[fol. 3045] Q. Do you know when prohibition went into effect?

A. I have a general idea. My father happened to be in the brewery business at the time.

Q. About when?

A. Sir?

Q. About when?

A. About 1917—it was '17 or '19.

The Court: Well, it was '17 first, statutorily, as I recall, and then it was '19, constitutionally.

By Mr. Johnson:

Q. Do you think that event would have any bearing on the existence of glass container companies shortly after 1920?

A. I really don't know.

Q. On your note to this table, Mr. Finn, you say that you eliminated Pennsylvania Glass Products Company because the company doesn't manufacture containers in any large quantity; is that right?

A. Yes, sir.

Q. Do you have any information as to how many or what particular amount Pennsylvania Glass Products Company manufactured containers?

[fol. 3046] A. I think we have the statement from the owner, Pennsylvania Glass Products.

Q. Am I to conclude from your answer that you don't know how many containers they manufactured?

A. Precisely, no, sir.

The Court: Let me ask you something, Mr. Witness. In statement 5 D, you referred to information from the Pennsylvania Glass Company.

Has that information been made available to the defendant?

Mr. McManus: I am not sure if it has or not, your Honor, but we will be glad to, if we have not.

The Court: I mean, this chart—what about Mr. Johnson? Have you had available to you this investigation of concentration of economic power hearing?

Mr. Johnson: I have available the TNEC report.

The Court: I see.

Mr. Johnson: I do not have available the material to which Mr. Finn just referred. However, let me ask some questions about this, and maybe I will get at what I want without that.

The Court: All right.

[fol. 3047] By Mr. Johnson:

Q. Mr. Finn, this table is essentially a comparison of the number of plants at three different periods, is it not?

A. That's right.

Q. And that is what you were trying to do, trying to compare the number in 1920 and the number in 1938 with the number in 1960?

A. Yes, sir.

Q. Now, this table does not purport to show anything about the size of plants, does it?

A. No, sir.

Q. Or anything about production?

A. Nothing in production.

Q. Capacity?

A. Nothing about capacity.

Q. Now, you eliminated from the 1960 list some companies because you say they did not manufacture containers in any large quantity?

A. Yes, sir.

Q. Did you eliminate any companies from the 1920 or 1938 list for that reason?

A. No, I did not.

Q. Did you try to find out whether any of the companies [fol. 3048] included in your 1938 or 1920 listing were either insignificant or inactive?

A. I attempted to find out something about them, but I was unable to.

Q. Did you read this TNEC source book to see what it said about them?

A. No, I don't think I did.

Mr. Johnson: Will you mark this book for identification?

(Defendants' Exhibit W marked for identification.)

The Court: May I ask, Mr. McManus, what is the purpose of 5 D? Why is it offered? What is it intended to show?

Mr. McManus: Your Honor, we believe it shows not only the number of plants but it also shows the number of operating companies in 1960, and that they have decreased from 80 in 1920 to 29 in 1960, and that this is an industry which is gradually becoming more concentrated in four hands. Although——

The Court: Is that the purpose?

Mr. McManus: Yes, your Honor.

The Court: It seems to me, Mr. McManus, an awfully sketchy way of showing this. Well, anyway, go ahead.

[fol. 3049] Q. Is Defendants' Exhibit W for identification the TNEC source book to which you referred?

A. Yes, sir.

Mr. Johnson: Does your Honor wish to see it?

The Court: Not at this point, no.

Q. Now, if you will look at——

By the Court:

Q. Let me ask you this: Suppose between 1938 and 1960 25 companies which had formerly purchased glass containers set up plants of their own for glass container manufacture. Would that be reflected in any way in this figure, in this chart, 5 D?

A. Well, I can't tell in 1920 or 1938. It would be in 1960.

Q. Well, I note that Gallo Glass Company has been eliminated in 1960 because you say it does not sell glass containers.

A. Yes, sir, it was in the Glass Factory Directory, from which I made this particular column up, but I had noted here, I have eliminated it because it did not sell glass containers.

Q. Did you mean to say that as you reviewed the Glass [fol. 3050] Container Directory for 1960 it only has 29 companies in it?

A. Well, they don't give it by companies, sir. They give it by plants.

Q. Then they list 87 plants in operation?

A. Eighty-seven plants.

Q. How do you arrive at 29 companies?

A. We did that by listing the companies and their subsidiary companies under them. We eliminated the subsidiaries and just counted the major companies.

Q. Well, now, you did that. Where did you get the information from?

A. Well, we got it from several sources, sir. For instance, Anchor-Hocking, here, all through here I have

mentioned Maywood, they had two plants in Baltimore. Carl Lowry and Swinburn Bros., they are subsidiaries of Anchor-Hocking, and we just treated Anchor-Hocking as just one company.

The Court: All right. I believe we have had some testimony on Anchor-Hocking.

Mr. Johnson: Yes, sir.

By the Court:

Q. That is Anchor-Hocking. What did you do with other companies? You didn't have testimony——.

[fol. 3051] Mr. Johnson: Perhaps, your Honor, I could ask some questions as to how this table was constructed. Perhaps we will get some answers.

The Court: All right.

By Mr. Johnson:

Q. His Honor referred to Gallo Glass Company, which you say you excluded from the 1960 list.

A. Yes, sir.

Q. And you excluded it because you say it does not sell glass; is that the idea?

A. That's right.

Q. Page 808 of your source book, Defendants' Exhibit W for identification, containing the list of glass plants, indicates a company operated by H. J. Heinz Company at that point.

A. Yes, sir.

Q. Do you know whether H. J. Heinz Company ever sold glass?

A. No, I do not.

Q. But H. J. Heinz Company is included in your 1920 and 1938 list, is it not?

A. Yes.

Q. Now, in your 1960 list, your notes indicate that you counted the Wheaton Companies as one company; is that [fol. 3052] right?

A. Yes, sir.

Q. Do you know how many companies you counted the Knox Glass group as, in 1920 and 1938?

A. In 1938 they were counted as seven companies.

Q. And if you will look at page 810 of your source book, you will see a footnote at the bottom of that page, will you not, which says that they are consolidated in one table for GCA statistics?

A. Yes, sir.

Q. So in 1960, you reduced the companies in existence by counting related companies as a group, and in 1920 and 1938 you increased the number by counting related companies separately?

Mr. McManus: Your Honor, I object.

The Court: Objection overruled.

Mr. McManus: May I explain my objection?

The Court: No.

Mr. McManus: He did not—I don't believe he testified that——

The Court: No.

By Mr. Johnson:

Q. Is that correct?

A. That's correct. But I think somewhere in the TNEC [fol. 3053] hearings you will find that Mr. Underwood, who was then president of Knox Glass Company, stated that these were merely associated companies, and from that we gathered that they were independent companies.

By the Court:

Q. Well, now, what puzzles me, Mr. Witness, is this: In making up this table, were you making judgments on whether companies were in combination or were independent or were affiliated or were subsidiaries or not? Were those your judgments?

A. No, sir, they were staff judgments.

Q. They were staff judgments. In other words, your staff sat there and decided for itself whether companies were independent companies or were subsidiaries or were affiliated or what they were?

A. Not my staff, sir. It was the government staff.

The Court: All right. The government staff.

By Mr. Johnson:

Q. And the government staff decided that they would count the Knox companies in 1938 as seven companies and the Wheaton companies in 1960 as one company; is that correct?

[fol. 3054] A. That is what was decided, sir.

Q. And this is what Mr. McManus means by the decrease of companies in the United States?

A. Well, there are some other points there.

Q. Well, we will go through some of those.

The Court: We will have to do it Thursday morning, gentlemen.

(Thereupon, an adjournment was taken until Thursday, October 13, 1960, at 10:30 a.m.)

[fol. 3055] New York, October 13, 1960, 10:30 A.M.

Trial resumed

Mr. McManus: Your Honor, before Mr. Johnson starts, Mr. Pedersen is here, sitting in for Mr. Austern, who was unable to come back.

The Court: All right.

Mr. McManus: I think, so that everything here will be clear, if he can explain his position—I am not sure by whom he is employed or where he is employed—so that everyone will understand that there is or isn't any objection to his representing Mr. Austern.

The Court: All right, Mr. Pedersen.

Mr. Pedersen: My name is C. R. Pedersen. I am a member of the New York Bar, and I am assistant counsel to American Can Company. I wanted that known to counsel, that Mr. Austern cannot be here today, and he suggested, with your Honor's permission and counsels' permission, [fol. 3056] that I be here in his stead, and subject to your Honor's provisions.

The Court: You have read the transcript?

Mr. Pedersen: I have read the proceedings in your robing room twice, and I understand the conditions under which I am here.

The Court: And you will undertake the same obligations that he undertook at that time?

Mr. Pedersen: Yes, your Honor.

The Court: Very well. Any objections, gentlemen?

Mr. McManus: No objection.

Mr. Johnson: No objection.

The Court: Very good.

Now, what chart are we starting with this morning, or what table, Mr. Johnson?

Mr. Johnson: We are continuing with 5D.

The Court: 5D. Thank you.

Mr. Johnson: However, your Honor, before I begin, I think I should tell you that yesterday, about lunchtime, we were furnished with a list of additional documents that the plaintiff intends to offer on its case, and the list runs in excess of a hundred documents, and I think that that may [fol. 3057] have some bearing on the question of time.

The Court: Yes.

Mr. McManus: Your Honor, when we say "additional documents," I think 97 or 96 of those have already been marked right here.

Mr. Johnson: That's right.

Mr. McManus: They are not new documents.

The Court: I understand that. These are not documents in addition to those that have already been marked, but you intend to offer roughly a hundred additional documents which have already been marked for identification.

Mr. McManus: That's right, sir.

The Court: Very good.

All of which takes a certain amount of time.

Mr. McManus: Yes, your Honor.

LEO V. FINN resumed.

Cross-examination continued.

By Mr. Johnson:

Q. We were talking about table 5D, Mr. Finn, and I was directing your attention to the fact that from the 1960 list you had omitted certain glass companies, which you said did not manufacture glass containers in any large quantity. Now, did you exclude any companies from either the 1920 [fol. 3058] or the 1938 list for that reason?

A. No, I did not, sir.

Q. Now, if you will look at page 806 of Defendant's Exhibit W for identification, which you have identified as the document referred to in your source material, under the heading "Indiana" you will find the name of Hart Glass Manufacturing Company, will you not?

A. Yes, sir.

Q. And that means then that that was included in your account of companies for 1938, doesn't it?

A. Yes.

The Court: What is the name of that, Hartford?

Mr. Johnson: Hart, H-a-r-t, Glass Manufacturing Co.

Q. Now, if you will look on page 621 of the same volume, which is a volume from which you were working, you will find that someone by the name of Mr. Day was testifying, and he says that someone made a suggestion to him, and I quote: "We go out and buy a couple of broken down glass factories." Do you see that quote in the testimony in this source book?

A. Yes, I see it.

[fol. 3059] Q. Then someone asked him something about those glass companies, and he says, and I quote: "I have some notes on a letter taken at the meeting and they were the Hart Glass Company, Dunkirk, Indiana, and another one." See that testimony?

A. I see that.

Q. So that apparently included with your 1938 companies was at least one company that was indicated in your very source material as a broken down glass factory, was there?

A. I included the Hart Glass Company, yes, sir.

Q. But you excluded insignificant companies or companies that you thought were insignificant from the 1960 list; is that correct?

A. Yes, sir; I eliminated several companies here, which I said did not produce in any large quantities, containers.

Q. Now, did you try to find out whether any of the other 1920 or 1938 companies were insignificant?

A. No, sir.

Q. You didn't even go through the rest of the source book to find out whether any others were?

A. I glanced through the source book. I didn't see that particular reference you have.

[fol. 3060] Q. Did you know that the table from which you worked, page 806, had some indication of which companies were less than a hundred thousand gross per year?

A. Yes, I noticed that.

Q. Did you notice that several of the companies which went out of business in the '20s were companies which were indicated as having a size of less than 100,000 gross per year?

A. Yes. I noticed tha .

The Court: Is that a hundred thousand gross of containers?

Mr. Johnson: That's right.

The Court: Is that the figure?

Mr. Johnson: That's right, yes, sir.

The Court: You are not talking about dollars?

Mr. Johnson: No, sir. A hundred thousand gross of containers.

By Mr. Johnson:

Q. Now, on page 806 of your source material you will find under "Illinois" a reference to Chicago Heights Company, will you not?

A. Yes.

Q. The Chicago Heights Company is included in your [fol. 3061] table for 1938; is that correct?

A. Yes, it is.

Q. Now, if you will look back on page 875 of your source material, you will find testimony by Mr. Levitt. Mr. Levitt

is testifying, and he says, and I quote, "The Chicago Heights plant is a very small operation, a hand-blown plant."

Now, notwithstanding that, you included it in your 1938 table; is that right?

A. The 1938 and the 1920 tables were never—were not adjusted by me in any respect.

The Court: You just took what was in the tabulation——

The Witness: That's right, sir.

The Court: —of the hearings of the Temporary National Economic Commission?

The Witness: That's right, sir.

By Mr. Johnson:

Q. Now, you say, however, that you tried to do some adjustments, in 1960 at least——

A. Yes.

Q. —by putting together companies and their subsidiaries; is that correct?

A. That's right.

[fol. 3062] Q. Did you try to do that for 1920 or 1938?

A. No, I did not.

Q. In other words, if the source material showed a company and its subsidiary, that was two for 1920 and 1938?

Mr. McManus: I object, your Honor. He just testified he made no adjustment. I think he would have to look at the TNEC for that.

Mr. Johnson: All right. We will do that.

Q. If you look at page 806 of your source book, New York, you will find a company listed for Olean. Do you see that?

A. Yes.

Q. The Acme Glass Company?

A. Yes.

Q. Did you include that in your 1920 and 1938 lists?

A. That's right.

Q. As a separate company?

A. That's right.

Q. Now, near the end of that column you will find a note. Do you see that note with reference to the Olean Company?

A. Yes, I do.

[fol. 3063] Q. And that note is No. 10, I believe, isn't it?

A. Yes.

Q. Now, let's look at note 10. The note 10 says——

A. Thatcher Manufacturing Company.

Q. In other words, that is a subsidiary of Thatcher Manufacturing Company; is that correct?

A. Well, it has reference to Thatcher, and I presume it is a subsidiary.

Mr. McManus: What does the note say?

Mr. Johnson: It says Thatcher Manufacturing.

Mr. McManus: It doesn't say if it is a subsidiary or not.

Mr. Johnson: No.

By Mr. Johnson:

Q. Would you conclude from that whether it was a subsidiary or not?

A. Well——

Mr. McManus: I object, your Honor. He has no basis for concluding one way or the other. He copies from the report. He said that a number of times.

The Court: Well, in the third list he drew certain conclu-

[fol. 3064] sions, the 1960 list.

Mr. McManus: There is no question about that, your Honor.

The Court: All right. I am going to permit the exploration of what his mental process was in making up the third list, and the only way he can do that is to go through the first and second list.

Q. What did you think that note referring to Thatcher Manufacturing Company meant?

A. Well, to me it meant that Thatcher had an interest in the plant.

Q. You did not pursue it beyond that?

A. No, I did not.

Q. It didn't excite your curiosity at all as to whether it should be counted as one company or two companies?

A. Well, I couldn't tell whether they had a controlling interest or just an interest, but they had reference to Thatcher, and——

Q. You did not think to make inquiry of anyone——

Mr. Johnson: I will withdraw that.

Q. You did not make inquiry about it; is that right?

A. No, because this tabulation is gotten up by a now [fol. 3065] defunct association.

Q. The Thatcher Manufacturing Company is still in existence, isn't it?

A. That's right.

The Court: Tell me, the National Temporary Economic Committee, which I am not familiar with, except as I have heard about it on this trial, was that a committee of congressmen or industrialists or what? What is the committee?

Mr. Johnson: If your Honor would let me try to answer that, I will say this; The Temporary National Economic Committee was a committee that was created by Congress consisting of representatives of Congress and representatives of the various departments of the Executive Branch. It was a joint committee——

The Court: Legislative and Executive?

Mr. Johnson: Legislative and Executive—which held extensive hearings on many aspects of the American economy during the period roughly 1938-1939.

By Mr. Johnson:

Q. Now, Mr. Finn, I want you to look at the lower right-hand corner——

The Court: Another thing: How big was this body?

[fol. 3066] Mr. Johnson: The whole committee?

The Court: Yes.

Mr. Johnson: It was a large committee: representatives of the Department of Justice, the Treasury Department, the Securities and Exchange Commission and the Federal Trade Commission—at least those I recall—sat representing the Executive Department.

The Court: Then an appropriate number of congressmen, I take it?

Mr. Johnson: And a large number of congressmen sat on it. Senator O'Mahoney of Wyoming was, I believe, the chairman of the committee.

The Court: Now, this document, which is Defendants' W

for identification, I gather from the title this does not purport to be a report of the committee, does it?

By Mr. Johnson:

Q. Do you know, sir?
A. Reported?

By the Court:

Q. No. I say I assume, if there was a committee—and I have never known a committee that did not make a report [fol. 3067] at some point—that this committee did make a report, did it not?

Q. There have been some very numerous monographs made of the hearings of this committee, and they were made by individuals who served as staff members of the committee, and also some of the Executive Department representatives made reports on it. But as to whether or not there is an existing report made—I don't know——

Q. In other words, you do not know whether the committee itself ever drew any conclusion from these somewhat extensive hearings that it held or made any findings as to what the facts it was supposed to investigate were? Were there any——

A. I can't answer that, sir.

The Court: And the table, what page is that on, Mr. Johnson? Can you find the table for me? What is this—an exhibit?

Mr. Johnson: I would call that whole document, your Honor, the equivalent of a transcript of hearing, I believe.

The Court: I would suppose so.

Now, how did this table get in? Who prepared it? Where did it come from?

[fol. 3068] The Witness: I think the preceding pages, your Honor—it was transmitted to the TNEC by the Glass Manufacturers Association. They prepared it for that committee.

The Court: All right.

By Mr. Johnson:

Q. Now, you don't have any idea of how that table got in there?

A. No, sir. The one in the——

Q. The one in the TNEC report.

A. No, I do not.

Q. I want to direct your attentiion to table 5 D, in the lower right-hand corner where there is the bold figure of 29.

A. Yes.

Q. And that follows the caption that says, "Number of Companies Operating Plants."

A. Yes, sir.

Q. The other column indicates that that is the number on January 31, 1960; is that right?

A. Yes.

Q. So your intention with that figure is to inform the Court, is it, that on January 31, 1960, there were 29 and only 29 glass companies in the United States operating [fol. 3068a] plants—glass container operating plants; is that right?

A. That's right. If you consider my adjustments I made on the preceding—on the following page.

[fol. 3069] Q. All right, sir. Now, I would like you to go through and name those 29 plants for me one by one, 29 glass container manufacturing companies?

A. There is the Owens-Illinois Glass Company.

Q. Will you go slowly enough so that I can take them all, please? All right, sir.

A. Anchor-Hocking Glass Company; the Hazel-Atlas Division of Continental Can; Knox Glass Company; Brockway Glass Company; Thatcher Glass Manufacturing Company, Incorporated; Ball Brothers Company, Incorporated; Metro Glass Company, Incorporated; Obear-Nester Glass Company.

Q. I'm sorry. Before you leave Metro, is that the same as National Dairy Products Corporation?

A. Yes, sir.

Q. Go ahead, sir.

A. Obear-Nester; Maryland Glass Corporation.

Q. Is that the same as Warner-Lambert?

A. Yes, sir.

Glass Containers Corporation.

Q. Glass Containers Corporation. Is that the same as Hunt Foods, do you know?

A. I think it is.

Fairmount Glass Company; Foster-Forbes Glass Com-
[fol. 3070] pany; Glenshaw Glass Company; Pierce Glass Company; Oil City Glass Company; Laurens Glass Works; Chattanooga Glass Company; Diamond Glass Company; Liberty Glass Company; Latchford Glass Company; Northwestern Glass Company; Armstrong Cork Company; Star City Glass Company; Arkansas Glass Company.

Q. Excuse me one moment. Is Star City a member of another group?

A. You might find it under National Bottle.

Q. National Bottle Corporation. What is the next one after Star City?

A. Arkansas Glass Company; Underwood Glass Company; Alexander Kerr Company; Lamb Glass Company; Wheaton Glass Company.

Q. That is all?

A. Yes.

Q. And those were the only glass container manufacturing companies that you could find in the United States today; is that right?

A. Those are the reference to the 29 companies.

Q. Where did you get that list?

A. From the American Glass Review, Glass Factory Directory—1960.

[fol. 3071] Q. Did you try to check it out with anything else?

A. Oh, I had previous directories. They issue them annually.

Q. When I asked you the other day, with reference to one of your tables, how many companies were included under the caption of "all other manufacturers," in addition to the three companies referred to on that table, you gave an estimate of between 35 and 38, and I refer to page 2882 of the minutes. That would be, adding the other three, a minimum of 38 companies, would it not?

A. A minimum of 38 companies?

Q. You said that you estimated that there were between 35 and 38 included in "all other manufacturers"?

A. Yes, sir.

Q. And there were 3 stated separately on the page, were there not?

A. Yes.

Q. So that would mean at least 41 companies, wouldn't it?

A. Well, what I meant to say was the fact that there were three companies preceding, there were about 35 others. I [fol. 3072] mean a total of 35-37 companies.

Q. Not 29?

A. I was just trying to recall. Yes, there is this distinction: when I mentioned that I was also including subsidiaries belonging to other companies of this 29.

By the Court:

Q. But didn't you tell me, sir, that subsidiaries were listed separately, at least in a number of instances, in the 1938 list?

A. Well, I meant—Mr. Johnson points out here one, that Orleans Glass, which presumably Thatcher had an interest in. As I mentioned, I did not alter the 1938 or——

Q. I understand that, Mr. Finn.

A. Yes, sir.

Q. I had understood from the previous testimony with respect to the Temporary National Economic Committee hearing, that in some instances at least there was one group of at least three companies which were listed separately in that and in a footnote were shown to have some connection with another company, whether by way of subsidiary or interest or whatnot; do you recall that?

[fol. 3073] A. Yes, sir. I was talking about Knox.

Q. There were three there, and one, four, was Orleans. Now that is at least four. Do you know of any others that were treated the same way in the 1938 list?

A. No, sir; I do not. Going back to Mr. Johnson's——

Q. Do you know whether the Gallo Glass Company—was the Gallo Glass Company in existence in '38, do you know?

A. No, it was not.

Q. Was not. But the Gallo Glass Company is not included in this list of yours?

A. That's right, sir.

By Mr. Johnson:

Q. However, the Heintz Company was included in 1938?

A. Yes, as shown by that list.

The Court: Is it true that the Heintz Company at that time was a captive company, in the same sense that the Gallo Glass Company was a captive company, do you know?

The Witness: I have no knowledge.

Q. Now, Mr. Finn, in your count of 29 companies, did you [fol. 3074] include Arrowhead and Puritas Waters Company?

A. No, I did not.

Q. Why didn't you?

A. Frankly, I didn't know anything about them. I never saw them listed.

Q. Why did you exclude Bartless-Collins Company?

A. I don't know whether they are—Bartless-Collins? Bartless-Collins, I don't think, was listed either.

Q. Listed in what?

A. In American Glass Review.

Q. So you just blindly relied on American Glass Review; is that right?

A. Well, that is my source material, sir.

Q. Why did you exclude Castle-Hanson Corporation?

A. Well, we at that time didn't have any knowledge it was functioning.

Q. At what time did you not have any knowledge that it was functioning?

A. When I prepared this.

Q. Do you know that Mr. Cheney testified that Castle-Hanson Corporation was a member of GCMI?

A. Well, I just found that out.

Q. You didn't see fit to correct this chart?

[fol. 3075] A. Well, I haven't corrected this, no, sir.

Q. Why did you not include Glass Products Company, of Vineland, New Jersey?

A. They didn't appear in the directory either.

Q. Why did you not include Goodman-Kleiner Company, of New York?

A. They didn't appear.

Q. Why did you not include Jeannette Glass Company?

Mr. McManus: Your Honor, I object. Is he purporting to read off companies that are operating as glass companies? I have no knowledge. These might be rubber companies. And, also, there is no foundation laid that they are glass companies.

The Court: Now, look, the man who is supposed to be laying a foundation is your witness. The objection is overruled. This witness is supposed to know about this thing. If he knows about them, all right. If he doesn't, then he never heard about them and they are susceptible of being shown that they're operating glass companies, and his table is no good.

Q. Why did you not include Jeannette Glass Company?

[fol. 3076] A. Jeannette?

Q. Yes.

A. They are not listed as a glass container company.

Q. Why did you not include McCoy Glass Company?

A. I don't think they were listed either, sir.

Q. Why did you not include Puerto Rico Glass Corporation, of San Juan, Puerto Rico?

A. Well, this is confined just to the continental United States here. I didn't list them at all.

Q. Why did you not include Universal——

By the Court:

Q. Do you know whether or not the 1938 list was confined to the continental United States?

The Witness: They only listed those states that I have here.

By Mr. Johnson:

Q. Why did you not include Universal Glass Products Company, Parkersburg, West Virginia?

A. Well, they're a subsidiary or controlled by Star City.

Q. You think that--you say that Universal is controlled by Star City?

A. Yes.

[fol. 3077] Q. And that is the reason you exclude it?

A. Did not include it.

By the Court:

Q. Was Universal listed on the list put out by the American Glass Review?

A. Yes, sir; they were.

Q. But you eliminated Universal?

A. That's right.

Q. Despite the fact they were on that list?

A. That's right, sir.

By Mr. Johnson:

Q. Now, in preparing your table and coming to the conclusion that there were 29, only 29, glass container manufacturing plants in the United States, did you check the admissions made by the government in this case in response to the defendants' request to admit?

A. No, I did not.

Q. You didn't even go to that trouble?

A. No, sir.

Q. Now, Mr. Finn, if I may, I would like to turn to table 5C.

The Court: Frankly, Mr. Johnson, at this point there has been, as far as I am aware, no proper foundation laid [fol. 3078] for the admission of table 5C, and I wouldn't at this point waste any time cross-examining about it. At the present writing I do not intend to admit it.

Mr. Johnson: But I would very much like to expose what this witness has done with 5C, your Honor. It has a bearing on the statistical methods that he uses.

The Court: Well, make it relatively brief. I don't propose to spend relatively considerable amount of time on this table, at this stage of the game.

Mr. Johnson: All right, your Honor, I will do that.

Q. The caption of 5C refers to the value of packing materials, Mr. Finn, does it not?

A. Yes, sir.

Q. Do you know whether those are cost figures or sales figures?

A. I do not.

Q. Do you know whether they represent sales at all, or whether they represent production?

A. Well, it is given in the dollar figure.

Q. Still could be a dollar figure and be production figures, could it not?

[fol. 3079] A. Oh, yes.

By the Court:

Q. Is this table reproduced in the same form in which it appears from Modern Packaging Encyclopedia, issued for 1960, or is this something that you made up from individual items in that Encyclopedia?

A. Your Honor, it is in the same form down through line A there. I think it is three-quarters of the way down.

Q. In other words, these figures——

A. The top.

Q. —from "container or material" down through and including line A?

A. Yes, sir.

Q. Is listed—I say "listed"—is taken—let's put it that way—is taken from the so-called Modern Packaging Encyclopedia?

A. That's right.

By Mr. Johnson:

Q. Do you know whether those figures which are given as the value of packaging material relate to the United States or to some other area?

A. I think they are confined to as much of the United States as it is possible to do.

[fol. 3079a] Q. You say they relate to the United States, do you?

A. Yes.

Q. That is your conclusion?

A. I presume so, sir. There is no explanation given for that question in the source material.

[fol. 3080] Q. Now, without going into detail, his Honor commented on what all of these various packaging materials are. I notice that towards the bottom of the sheet you have made some adjustments. Will you tell me what those adjustments are?

A. At the extreme bottom?

Q. Yes.

A. Well, these were items here which we concluded that were not strictly within a packaging and container field.

The Court: You thought these were not within the line of commerce you were trying to establish; is that right?

The Witness: Well, we didn't think they had too much significance in the—rather, did not have a place in this table that is above here, but we didn't think that, for instance, the item of reconditioned barrels and drums should belong in here, so we made that adjustment.

Q. And just what did you do? What was the nature of the adjustment? I mean, just tell me mechanically what you did.

A. I mean, we deducted from the total on line A. We came out with an adjustment.

[fol. 3081] The Court: The adjustment on line C?

The Witness: That's right.

A. (Continuing) And we took the annual net sales and operating revenues and we got a percentage.

Q. Then the whole purpose of this table——

The Court: How do you know, for instance, Mr. Finn, that these figures in the Packaging Institute—whatever it is called, this Packaging Encyclopedia—are annual net sales and operating revenues?

The Witness: Oh, I don't know that, sir.

The Court: In other words, you don't know whether or not you are comparing Continental's annual net sales and operating revenues to annual net sales and operating revenues of the industry or some entirely different standard, do you?

The Witness: That's right, sir.

By Mr. Johnson:

Q. Where did you tell the Continental Can annual net sales and operating figure that you prepared?

A. That's from the annual operating reports of Continental Can, 1957 and 1958.

Q. Did you read those reports at all?

A. Yes.

[fol. 3082] Q. Did you look in those reports to see what those annual net sales and operating revenues were——

A. Yes, sir.

Q. —composed of?

A. Were composed of?

Q. Yes.

A. Yes.

Q. Did you know that they included Canadian sales?

A. Yes, sir.

Q. And you dared compare this figure, which you say—of the packaging industry, you say, of the United States, with Continental Can including Canadian sales?

A. That is what is done here.

Q. And you did it?

A. Yes.

Q. And you are prepared to tell the Court that you did?

A. I say that is what has been done.

Q. Do you think the Court could conclude that from this?

A. Well, I didn't go into the explanation of what all is in that annual report, sir. I said these were the annual net sales and operating revenues of Continental Can. I didn't [fol. 3083] qualify where they were——

Q. Do you know that Cuban sales were in there?

A. Yes, sir.

Q. Did you know that Continental Can's defense sales were in there, non-container defense production?

A. Oh, yes, sir. Everything is in there, I presume.

Q. Sales with woodlands were in there?

A. Yes, sir.

The Court: Sales from what?

Mr. Johnson: Woodlands.

The Court: You mean forest lands?

Mr. Johnson: Yes, sir.

Q. Did that include that?

The Court: May I see that? Do these facts appear from the face of the report that you are alluding to now, Mr. Johnson, such items as you say, woodlands, defense production?

Mr. Johnson: Canadian sales are disclosed.

The Court: Show me that. Show me the item of Canadian sales, will you please? Either one will do.

Mr. Johnson: The '57 statement shows, on page 20, a [fol. 3084] statement of consolidated income.

The Court: All right. Let me look at that.

Mr. Johnson: Yes, sir. The inside cover shows the operating subsidiaries of Continental.

The Court: All right.

By Mr. Johnson:

Q. Did you try to get a breakdown of Continental Can's sales and operating revenues from anyone?

A. Not for this purpose, no, sir.

Q. Now, in making your adjustments, without going into details on that, I notice that one thing you deducted from what you regard as the total value of packaging materials, you deducted packaging machinery; is that right?

A. Yes.

Q. Did you know that Continental Can was a large manufacturer of packaging machinery?

A. I knew they made machinery. I didn't know how much it was.

Q. You knew that they made packaging machinery?

A. Yes.

Q. But you did not make any attempt to adjust the other side, that is, the figure you compared with your total?

[fol. 3085] A. No, sir.

The Court: I think we have gone far enough on this, Mr. Johnson.

Q. Mr. Finn, I have just a couple of other general questions here.

Referring back to your tables, in which you computed what you called the number of units of metal containers manufactured, those figures and every one of those unit figures could not have been constructed without relying on Can Manufacturers Institute material that we have been discussing here in the last several days; is that not correct?

A. Yes, sir. That was the only source I had.

Q. The defendant in this case asked the government during the pretrial proceedings a series of interrogatories. Did you help answer those for the government?

A. Yes, I helped answer a limited number of them.

Q. Would you recall interrogatory 6, in which the defendant asked for the total sales in dollars and in units of

metal cans sold in the United States for each of the years 1953 to 1956, inclusive? Do you recall that?

[fol. 3086] A. No, I don't recall.

Q. Did you ever look at the answers to those interrogatories?

A. Yes, I have.

Q. Did you know that in answering that interrogatory, there was included some figures, and next to them was this note:

> "These figures were estimated and published by the Can Manufacturers Institute, Inc. and the plaintiff has no way of verifying their accuracy"?

Did you know that that was in there?

A. Well, I don't recall this, no, sir. I assisted Mr. McManus in giving him some information, sir.

Q. The government put that warning note on its response to interrogatories, but you did not see fit to put any such warning note on any of your tables, did you?

Mr. McManus: Your Honor, I object. In our underlying data on CMI, there is no question but that these are estimates, but we consider these the best estimates and the best way of doing it, to convert them to units. That is obviously a note that these are estimates of CMI.

The Court: Well, the witness will answer the question.

[fol. 3087] The objection is overruled.

Mr. McManus: I am sorry, your Honor.

The Court: Do you have the question, Mr. Reporter?

(Question read.)

A. Well, I think I explained rather fully how we arrived at these figures in the pages from time to time.

(Defendants' Exhibit X marked for identification.)

The Court: Exhibit X for identification, I take it, is the interrogatory and the answer to which you just referred?

Mr. Johnson: Yes, sir.

Mr. McManus: I would like the record to show, your Honor, that there is no indication here of the date these were answered.

The Court: That can easily be ascertained.

Mr. McManus: Yes, your Honor, but it is not on the exhibit.

Mr. Johnson: Would you stipulate, Mr. McManus, that Defendants' Exhibit X for identification contains a true copy of defendants' interrogatory 6 and a true copy of plaintiff's answer to interrogatory 6(b)?

[fol. 3088] Mr. McManus: I will so stipulate, subject to a motion to strike in the event that it is not accurate.

The Court: This has not been offered, anyway.

Mr. McManus: Yes, your Honor.

Mr. Johnson: I do want to read again that last sentence in the record.

Mr. McManus: Your Honor, is he going to offer this?

Mr. Johnson: No, sir, not at this point.

Mr. McManus: I mean, reading into the record from a document which is not in evidence.

The Court: It seems to me a very reasonable point.

Mr. Johnson: He has stipulated it is correct.

Mr. McManus: But it is not in evidence.

The Court: If you are going to stipulate that it is correct, you either put it all in or not at all.

Mr. Johnson: Very good, sir. I will reserve on offering it.

[fol. 3089] The Court: Yes.

Mr. Johnson: Does your Honor want to see it at this point?

The Court: No.

Mr. Johnson: I have no further questions of this witness at this time, subject to this: that I have not as yet seen—they are here but they were not here when I started cross examining this morning—the corrections that were referred to on Tuesday.

Mr. McManus: Excuse me. Could I have a clarification of what those corrections are, your Honor? If he is talking about the corrections to the tables——

The Court: Yes.

Mr. McManus: —we delivered those to his office yesterday evening, as soon as we had made the computations.

The Court: What time yesterday evening?

Mr. McManus: Well, it was late yesterday evening, your Honor, around 6 o'clock.

The Court: Well, I would say that Mr. Johnson wouldn't

have had an opportunity to look at those between 6 o'clock yesterday and this morning.

Mr. McManus: May I say something about that, your [fol. 3090] Honor?

As I said before, I feel a little put out about bringing this up at this time because this is taking up time of the Court for things that should rightly have been worked out between counsel. We admit that we made a mistake by not including Terminal Island, California in west of the Rockies. One of the reasons why, going back, as I observed, is that the statistician was working from a copy of a document furnished by Continental Can Company, subject to a motion to produce. The information Terminal Island, California was handwritten. Someone, before giving it to the government—I am sure unintentionally—had clipped the "l" off, so it was "Terminal Island, Ca.," but not understanding that, the statistician interpreted that to be Terminal Island, Georgia—G-a. We did not know. Maybe we should be more careful.

It was quite obvious to the defendants that we had not included Terminal Island, California in our documents for five months, your Honor. In addition to that, they pinpointed it right on the nose when they questioned Mr. Finn.

Now, the only reason I am saying that is that we are [fol. 3091] wasting this Court's time in quibbling over things that amount to one, two or three per cent corrections on documents, some which amount to only 1/10 of one per cent, and we did call our statisticians up from Washington yesterday, spent all day and had those corrected.

I am sorry for the error, your Honor, but I think part of the onus is on the defendants for not calling that to our attention——

The Court: I am not ascribing any blame to anyone at the moment. All I am saying is that there are certain alterations by reason of errors in a table. Now, it is not infrequent that there is some error in as complicated and lengthy tables as these.

Nobody is remotely suggesting that the error was made purposely.

Mr. McManus: Yes, your Honor.

The Court: It is there, and Mr. Johnson will have a right to look at the correction.

Mr. McManus: Now, your Honor, if I could just ask you how you would propose that we make the changes in the documents which your Honor has?

The Court: I haven't seen them.

Mr. McManus: I know, your Honor.

[fol. 3092] The Court: I haven't seen what you supplied the defendant.

Mr. McManus: We have——

Mr. Johnson: Your Honor, before we leave this point, in view of Mr. McManus' statement, I feel impelled to say——

The Court: Look, Mr. Johnson, if you are going to go into further explanation, none of this is affecting the progress of the case at all. All I am concerned with is whether there are figures that need correction at this point. If they do, all right.

Mr. Johnson: I understand. But I did say in pretrial proceedings, the point I want to make, that I was not able to reconcile these figures. Mr. McManus has had that information for months. The pretrial record will show that.

Mr. McManus: Your Honor, if I could show you—the changes in tables appear in folder B, and if I could show you how we—how at the present time we have penciled the changes in on that copy.

What we would suggest, your Honor, if you have no objection, and if the defendants have no objection, is that we would take those corrections and, rather than having the penciled corrections in there, Your Honor, if we could sub-

[fol. 3093] stitute the pages subject——

The Court: No. I think it would be, frankly, much better all around to have the present charts marked for identification with the corrections in pencil or ink, as the case may be. Then the record is clear on the corrections that were made, and I think that is part of the record.

I am not saying there is any great significance to be attached to it, but I think it is better to have it done that way.

Mr. McManus: All right, your Honor. Any way that is satisfactory to the Court.

I presume it would be satisfactory to ink them on your copy and initial them——

The Court: Yes; as long as the other side gets a chance to see what the corrections are and has checked the figures, then the corrections can be made in ink on the copy in evi-

dence and on my copy and on the copies of counsel, but I do think that when you make a correction in charts of this nature, the substitution of pages only serves to confuse rather than clarify, unless you can follow the process all the way through.

Now, have you got any redirect?

[fol. 3094] Mr. McManus: Yes, your Honor.

The Court: How long is your redirect going to take?

Mr. McManus: Well, your Honor, I am not exactly sure, but I think not over a half hour.

The Court: Well, suppose we take our morning recess now, and I won't have to interrupt your redirect.

Mr. McManus: Yes, your Honor.

(Short recess.)

The Court: All right, Mr. McManus.

Redirect examination.

By Mr. McManus:

Q. Mr. Finn, in your computations, I believe you testified on cross examination that you attempted to limit your metal can statistics to the continental United States shipments, shipments from continental United States; is that correct?

A. I did.

Q. And you attempted to exclude Hawaiian production?

A. Yes, sir.

Q. And you were able to exclude American Can but you were unable to exclude Hawaiian Pineapple's production; is that correct?

[fol. 3095] Mr. Johnson: I object to that question. He testified he did not try.

The Court: I will overrule the objection.

A. I was able to exclude that in American Can, but not the other.

Q. Now, if you had been able to exclude Hawaiian Pineapple's production, what effect, if any, would that have had on Continental Can Company's share in these charts relating to continental United States, and east and west of the Rockies?

The Court: Let me ask you this: Didn't you tell us you did not know what Hawaiian Pineapple's production was?

The Witness: That's right.

Mr. McManus: He did, your Honor. He said he didn't know and therefore he didn't exclude it.

The Court: If he doesn't know what its production was, how can he possibly testify to what effect it might have in the figure.

Mr. McManus: Your Honor, just this: Mr. Johnson made much of the fact that Hawaiian Pineapple's production was fairly important. If he could have excluded that—that was included—excuse me, their production was included in the [fol. 3095a] Continental United States, the 48 states, because we were not able to exclude it.

[fol. 3096] The Court: Yes, but who knows? Is there anything in the record to show what Hawaiian Pineapple's production was?

Mr. McManus: No, your Honor, there is not.

The Court: From what we know, Hawaiian Pineapple's production might have been a billion units a year.

Mr. McManus: Assume that point, your Honor, if it were a billion units per year and were not included, what effect—I am asking Mr. Finn what effect that would have had on Continental's percentage in the charts that we have here?

A. Well, if I was able to exclude Hawaiian Pineapple, it would have increased the percentage share of Continental Can.

Q. So that the percentage here——

Mr. McManus: I withdraw that.

The Court: Let me follow this, Mr. Finn. Somebody has lost me along the way.

By the Court:

Q. If you had excluded whatever production Hawaiian Pineapple had, you say it would have reduced the continental United States total?

A. Yes, sir.

[fol. 3097] Q. And therefore would have increased by some amount, you don't know how much or how little——

A. No, sir.

Q. —the percentage that you attributed to Continental Can?

A. Yes, sir.

The Court: All right.

Mr. McManus: Now, your Honor, previously hereto you asked in regard to the classifications of food, non-food, beer, soft drinks, and so forth, if there was any material which defined what should be included in those groups, and I said I would attempt to obtain such underlying data.

I have here Government's Exhibit, marked for identification 1205. I have only one copy, unfortunately, which I obtained from the Glass Manufacturers Institute, which in effect lists what is to be included within the various categories.

The Court: That is, in the Glass Container Manufacturers figures.

Mr. McManus: That is correct, your Honor.

Now, I would like to ask Mr. Finn about that, which I think has been covered, but I would like to just clear it up.

[fol. 3098] By Mr. McManus:

Q. Mr. Finn, in comparing the census returns, I think you testified before, of Owens-Illinois, you did have census returns on Owens-Illinois, I believe you testified here before?

A. That's right, sir.

Q. And you also had their returns to GCMI?

A. Yes, sir.

Q. And that was for what period, do you recall?

A. 1955.

Q. And in making that check, taking a category such as beer, what was your conclusion in regard to the figures? Were they the same or were they different?

A. They were identical.

Q. Is that true of other figures, Owens-Illinois, both census returns and GCMI?

A. Yes.

Mr. McManus: Your Honor, we would like to offer Government's Exhibit 1205 as an explanation of the products or type of products that go into the various classifications of census and GCMI.

The Court: Well, did this witness use that document in preparing these tables?

Mr. McManus: He used the GCMI data, your Honor. [fol. 3099] This is an explanation of what is to be included in each one of them.

The Court: What do you say, Mr. Johnson?

Mr. Johnson: This is a GCMI document, and of course, Mr. Cheney has been on here at some length. I would be willing to make no objection to this document on the ground that Mr. Cheney—I would be willing to not object that Mr. Cheney is not called to identify it if the government would be willing to make certain stipulations with respect to it.

The Court: Well, what are they?

Mr. Johnson: That reporting to the GCMI is voluntary; that the GCMI has no way of checking the classifications by its members into these various categories; that it does not actually police the classifications; and that the government has no information as to whether Hazel-Atlas Glass Company actually followed this classification.

Mr. McManus: Well, your Honor, up until the last one I am perfectly willing to stipulate to. I am not too clear on—maybe I would be willing to stipulate on the last one, but I am not too clear what Mr. Johnson means, about—well, I don't know what he means. If he would clarify that, maybe I would be willing to stipulate that.

[fol. 3100] Mr. Johnson: Well, all I mean is, this is a document that is put out by GCMI for the use of its members. I believe that Mr. Cheney would testify that he doesn't know whether his members follow it or not. I believe he would testify that he makes no attempt——

The Court: In other words, he asks his members to follow it, but the institute makes no check to see whether they actually do, and relies on the figures they supply.

Mr. Johnson: That's right.

The Court: All right, with that stipulation, which I think covers the situation, why, the document will be admitted.

(Government's Exhibit 1205 received in evidence.)

Mr. Johnson: I think at this point it might be helpful to know just what the purpose of this document is, what it is to be used for?

The Court: Well, its only purpose, as I understand it, is

to furnish explanation for the tables. Now, the table are not yet in evidence, and I haven't passed on the tables yet. I am admitting it in evidence now as a matter of mechanical [fol. 3101] convenience, so that if, as and when the tables are in, it will be in evidence for the purpose of casting some illumination on them.

That is the only purpose of this, isn't it?

Mr. McManus: Yes, sir; your Honor. You ask me if I would find something——

The Court: Yes, sir; all right.

By Mr. McManus:

Q. Now, Mr. Finn, you did testify that the reports by Owens-Illinois were identical. Did you have a chance to check any of the Hazel-Atlas reports to GCMI and to Census?

A. Yes, sir; we test checked those.

Q. And was there any appreciable error in those two sets of figures?

A. There were some errors, sir, or discrepancies, but they weren't too significant.

Q. When you say not too significant, could you give me the percentage of error, if any, approximately?

A. Well, I would say it was less than one *1* per cent.

Q. Now, you were asked yesterday about Campbell's Soup cans. What is the basis of your knowledge of the type of cans that Campbell's puts its soup in for sale to the public? [fol. 3102] A. Well, merely what I have seen Campbell's soups in, in the regular can, Campbell can. That is the extent of my knowledge about the Campbell Soup Company.

Q. You were also asked about the Sherwin Williams Company; are you familiar with that company?

A. I know of it.

Q. And do you have any idea of the size of that company?

A. Well, I understand it is one of the major paint companies in the United States, if not in the world. They still advertise it.

Q. And your knowledge of how they sell their products would be similar to your knowledge of how Campbell Soups sell their products?

A. That is correct.

Q. Could you tell me in what size, to your knowledge, in what size containers do they sell their products, paint products?

A. Well, paint comes in many size cans.

Q. What sizes?

A. I think from a half a pint up to a gallon, I have seen.

[fol. 3103] Q. And the gallon can is larger than the No. 2 size?

A. Oh, yes.

Q. To your knowledge, does the Bureau of Census report reuse containers for either beer or soft drinks?

A. Not to my knowledge.

Q. Now, if I could direct your attention to—do you have the chart book, the chart book that Mr. Tolton prepared?

A. No, I do not, sir.

Mr. McManus: I am referring to page 26.

The Court: You are talking of 800 for identification?

Mr. McManus: Yes, your Honor. It is Government's Exhibit 800 for identification, page 26.

Mr. Johnson: Will you give me the heading of that, please? I don't have pages in my book.

The Court: "Metal can shipments—'55. Evaporated, condensed milk, and so forth."

Mr. McManus: And it is in section 2.

Mr. Johnson: Thank you.

Mr. McManus: Do you have it, Mr. Johnson?

Mr. Johnson: Yes.

By Mr. McManus:

[fol. 3104] Q. Was that the chart that Mr. Johnson showed to you the other day during cross-examination?

A. I believe it was.

Q. And you were asked if the leading three producers produced 16.3 per cent of all evaporated condensed milk cans?

A. Yes, sir.

Q. Now on that same chart, what share is indicated by Continental Can Company?

A. 16.3 per cent.

Q. And in units, what is it for the leading three? Excuse me. This is in short tons.

A. This is based on short tons, and the leading three have 40,061.

Q. And of that percentage, of that group, what does Continental have?

A. Continental has 39,989 tons.

The Court: Are you drawing the conclusion, from these figures that of the production by the so-called leading three that Continental Can does it all except less than a hundred tons?

Mr. McManus: Yes, your Honor, of the leading three. I would like for you to draw the conclusion that of the leading three, Continental produces just about every one of [fol. 3105] them in evaporated and condensed milk.

Q. And you testified, or the defendants exhibited here, Mr. Finn, that evaporated or condensed milk cans are smaller than a No. 2 can?

A. I think they are.

Q. You were also examined by Mr. Johnson on the plants that you included west of the Rocky Mountains; is that correct?

A. Yes, sir.

Q. And you were asked to list those plants, and you did not list Salem, Oregon; is that correct?

A. That is correct.

Q. What year were you referring to when you omitted the Salem, Oregon, plant of American Can?

A. That was for 1955.

Q. And the charts which are broken down the way we are using them here, east and west of the Rockies, for what year are they concerned?

A. They are only for 1955, only for 1955.

Q. Now, you also testified, Mr. Finn, that you knew some of the companies who manufactured Crown caps, and you listed Crown Cork and Seal, Guttman and Anchor-Hocking. Is that testimony correct?

[fol. 3106] A. No, sir. I didn't mean to say Anchor-Hocking. I meant to say Armstrong Cork Company.

Q. In all of the charts for metal cans that you have prepared for the continental United States, you include—the percentages included in that are the percentages of captive plants, with the exception of chart 1C.

A. Yes. Our totals for the continental United States include all captive facilities. I had no way of excluding those.

Q. If you will go to folder C, chart 1C, or page 2 of Government's Exhibit 803?

A. All right.

Q. Now this chart is in short tons of steel consumed; is that correct?

A. That is correct.

Q. And what is the difference in this chart from the other chart that you have prepared?

A. Well, this is in short tons of steel consumed and the other was in units of cans.

The Court: In other words, the Can Manufacturers Institute conversion figures were not used in this?

The Witness: That is correct, sir.

Q. Is there any other difference in this chart from the [fol. 3107] other charts, Mr. Finn?

A. Well, through this particular one here I was able to exclude the captive facilities as they are reported in the Bureau of Census issues.

Q. And this chart—by "captive," will you tell me what you mean by "captive"? Who would it include, what type?

A. Well, when I speak of "captive," I think they mean the cans are used by the company manufacturing for their own use, to put their own products in.

Q. And could you give me an example of one of those companies, to your knowledge?

A. Well, the Campbell Soup Company.

Q. And the basic data here, in separation of charts which were for captive plants and for non-captive plants, does the Bureau of Census have data referring to reports which are for captive plants excluded and captive plants included?

A. Well, I presume their raw data contains——

Mr. Hughes: I didn't catch that answer.

Mr. McManus: He says he presumes their raw data.

Q. Do they also report in Facts for Industry or any of their other official publications the shipment of metal cans [fol. 3108] from captive plants?

Mr. McManus: I will withdraw that.

Q. What I am getting at, this chart is different from the other charts, you have indicated, because it does not include captive plants; is that correct?

A. My other—this chart does not include captive plants. They are separated out here.

Q. I see. Does the Bureau of Census publish information which separates the captive plants from the totals?

A. You mean by plant description.

Q. Not by individual plants. I am talking about the continental United States as a whole, including Hawaii?

A. Well, they furnish this information I have on page 2. They give you a total amount of steel that was used in captive facilities.

The Court: They have got a separate listing of that?

The Witness: Yes, sir.

Q. Now going to folder B, section 2A, that is page 5, it lists there glass container shipments.

A. Is this 2A?

Q. Yes, 2A in folder B, Government's Exhibit 802.

A. Yes, sir; I have it marked as page 15.

[fol. 3109] Q. Excuse me, I am sorry. It is page 15. And you have a total——

The Court: This is the schedule entitled "Continental United States Shipments of All Types of Glass and Other Containers West of the Rockies." Is that the one you are referring to?

Mr. McManus: That is the one we are referring to, your Honor.

Q. Now, looking under the totals for glass container shipments west of the Rockies, you have the figure in thousands of units, 2,109,165—which is really two billion units. Is Gallo Wine included in that figure?

A. No, sir, because this is in 1955, and they weren't in existence then.

Q. Mr. Finn, do you know if the Continental Can Company is a member of the Can Manufacturers Institute?

A. Yes, I do.

Q. And are they?

A. I have been informed they are.

Q. Going now to Government's Exhibit 803, which is

folder C, and turning to page 5, which is 4 C, chart 4 C—or, excuse me, table 4 C, and going down to the note in that [fol. 3110] table, Mr. Finn, could you explain that note to me?

A. Briefly, it says that in prior years the vacuum closures with the lug thread were included in another category.

Q. So that——

The Court: By the Bureau of the Census?

The Witness: Yes, sir.

A. And then in 1958 they separated them out. And, incidentally, my note should read a little differently here. In place of "prior to," it should read "in 1959 top-seal vacuum closures with lug thread are included with vacuum type caps."

Q. Now, going to chart 3 C——

The Court: And before that, they were not?

The Witness: That's right.

Q. Now, going to the preceding page, page 4, of Government's Exhibit 803, which is chart 3 C, do you have the Bureau of Census data from which that note was taken, Mr. Finn, if it was taken—was it taken from the Census data?

A. Yes, this was taken from the Census data.

Q. Do you have that information with you on that now?

The Court: That note is wrong, too, then.

[fol. 3111] The Witness: That note is wrong, too, and it should be changed to read——

Q. Do you have——

The Witness: —to read as follows: "For 1957 and earlier years, a significant quantity of this type of closure was reported as screw thread and by type of caps."

That is the footnote in the Bureau of Census report.

Q. So am I correct in assuming that, starting in 1958, you were able to separate out vacuum closures from non-vacuum type closures?

A. Yes, they were reported differently to the Bureau of Census in that year.

Q. Reported separately from the non-vacuum type?

A. Yes.

Q. Now, Mr. Finn, do you have available the Bureau of Census definition of metal containers?

A. Yes, I do.

Q. Now, on cross examination you attempted to give your definition of what you thought—of how you thought the Bureau of Census defined metal containers.

The Court: Isn't that in Government's Exhibit 1203 for identification, Facts For Industry?

[fol. 3112] Mr. McManus: Your Honor, I hope it is. I just want to make sure the record is clear on what the definition is. Have you got an exhibit here?

The Court: I have an exhibit, 1203 for identification, which is metal cans in 1958, which gives the coverage and a definition of metal cans. Is that what you are referring to?

Mr. McManus: Yes, your Honor, that is what we are referring to. I wanted to make sure we had the actual definition rather than Mr. Finn's offhand remark on what he recalled it to be.

Mr. Johnson: That is a definition of metal cans.

The Court: Yes.

Mr. Johnson: Not metal containers.

Mr. McManus: Excuse me. I stand corrected. Metal cans. Your Honor, we are offering that exhibit also, in addition to our other statistical data.

The Court: Now, I notice that this physical exhibit has a certain number of penciled notes on it and some excisions in pencil, which makes it look as if it had been used for [fol. 3113] working purposes—I can imagine it might have been—by Mr. Finn. I take it this is offered without any of the penciled material.

Mr. McManus: That is correct, your Honor. Any penciled alterations, corrections or additions, etc., should be excluded from any offer we are making. It should not be considered by the Court in any way.

The Court: All right. Well, I will take this to illuminate—only for purposes of illuminating this discussion that we have had for the record, only so we can understand what we are talking about, and I will accept it. It may be received in evidence for that purpose.

(Government's Exhibit 1203 for identification received in evidence.)

Mr. McManus: Your Honor, that is all I have of Mr. Finn.
Mr. Johnson: I have a very few questions.
The Court: I trust so.

Recross-examination.

By Mr. Johnson:

Q. Mr. Finn, Mr. McManus asked you about the effect of excluding Hawaiian Pineapples from your tables. Now, if you had composed your tables on a consistent basis and included American Can, the effect would be that Continental Can's percentage would be down somewhat, wouldn't it?
[fol. 3114] A. I mean, if I didn't attempt to eliminate the Hawaiian Islands.
Q. If you had not eliminated American Can from your tables, the American Can Hawaiian production from your tables.
A. It would have decreased Continental Can?
Q. Yes.
A. Yes, that's right.
Q. Mr. Finn, you said that you checked the Hazel-Atlas reports. Did I understand you to say that you checked the reports to the GCMI against the Census reports? Is that what you said?
A. Yes, sir.
Q. But you could not tell from that, could you, how Hazel-Atlas had treated any particular item?
A. No, sir. No, sir.
Q. You could not tell whether Hazel-Atlas had treated shampoo bottles, for example——
A. No, sir.
Q. —as medicine or toiletries and cosmetics, could you?
A. No, I couldn't.

The Court: It is in the Census data or in the Glass Con-
[fol. 3115] tainer Manufacturers Institute figures?
The Witness: That's correct.

Q. And that is true with respect to any end use that I might mention?
A. That is true.
Q. Now, you made a correction in your notes on 3 C and

4 C, but you did not mean to imply, did you, that vacuum caps were treated as screw type caps before 1958? Did you?

A. Excuse me just a minute, I will——

Q. Certainly.

A. The problem was that 1956 to '57 the twist-off-lid cap was included in the screw thread and lug type. Twist-off is generally now referred to as a vacuum cap, and it is over in the vacuum—in 1958, the Bureau of Census put it into the vacuum category.

Q. But they were vacuum caps in either year, were they, not?

A. Yes, that's right.

(Discussion off the record.)

Mr. Johnson: I have no further questions of this witness, and I will have no further questions resulting from the amendments that were made this morning.

[fol. 3116] The Court: Very good. All right. You may step down, Mr. Finn.

(Witness excused.)

The Court: Now, as a matter of procedure, I think before I rule on the charts—on these tables—it would be as well to have the cross examination on the charts completed, and then I can rule on the whole mass of material in appropriate fashion at that time.

Do you want to commence the cross examination now, Mr. Johnson?

Mr. Johnson: Whatever your convenience is. I am ready.

The Court: All right. Let's start on it, anyway.

Mr. McManus: Mr. Tolton, will you take the stand.

JULIUS H. TOLTON resumed.

Mr. McManus: Your Honor, I am not trying to limit Mr. Johnson, but, if possible, could we have any indication, if he knows, how long the cross examination might be?

The Court: Well, let's see if he can answer that question.

[fol. 3117] Mr. Johnson: I am afraid I can't at this moment.

The Court: I am afraid the last prognostication on this subject was not outstanding for its accuracy.

I would hope, myself, that he would finish with Mr. Tolton this afternoon.

Mr. Johnson: Some of these tables or charts are very detailed, and it is necessary to go into some of these deeply.

The Court: I am expressing a hope. I am not giving you a direction.

Mr. McManus: Your Honor, the only reason I am asking is that, as we informed you the other day, we have this gentleman coming in from out of town, and, if he was here and there was no objection, and if it was going to go on through Friday, we would like to interrupt and put him on the stand.

The Court: If your man from out of town arrives on Friday morning—that is, tomorrow morning—we will interrupt this cross examination and put him on.

All right, sir. You remember, you are under oath.

[fol. 3118] The Witness: Yes, sir.

Cross-examination.

By Mr. Johnson:

Q. Would you turn first, Mr. Finn, to your heading IV——

The Court: This isn't Mr. Finn any more.

Mr. Johnson: I am sorry. Mr. Tolton. I am sorry.

The Witness: I am ready, Mr. Johnson.

Q. The table is entitled "Historical Growth of Metal and Glass Container Shipments Expressed as Index Numbers and Shown as a Trend."

Will you tell me how you prepared that table?

A. Well, Mr. Johnson, we took the source data that we had available as listed on the following page of the—on page —the data——

The Court: Before you go to that, Mr. Tolton, explain this to me, will you please. I have got this marked as page 68——

The Witness: Yes, your Honor.

The Court: —which is the chart marked IV, and is that a

portrayal on page 68 of the material, of the figures, on page 69?

The Witness: Yes, your Honor.

The Court: That is a translation of the figures in chart [fol. 3119] form on 69 onto 68.

The Witness: Yes, your Honor.

Q. All right. Where did the figures come from?

A. Well, the basic data are expressed in the source material at the foot of the page. In the statistics pertaining to the glass, it came from the Glass Container Manufacturers Institute of 1957, page 47, 1958, and 1958 Bureau of Census figures, series 38-G.

Now, you will find the glass container figures conform to the source because the glass was expressed in gross. The column titled "Glass—U. S. Total" is the gross amount for those given years as it came out from the GCMI document.

Q. I notice that you use the GCMI material for some years, and the Bureau of Census for the last year; is that correct?

A. I think that is accurate, Mr. Johnson.

Q. Why did you use the GCMI some years and the Census in the last year?

A. Well, I don't have the GCMI document right here with me, but my reflection is that I think we used the final year or two from Census because the document did not show those two years. That is my thought right at the moment, but I— [fol. 3120] oh, excuse me. Well, as of that document we did not have the material for, I guess it was, 1958.

But the Census material relates to a larger number of glass manufacturing companies than the GCMI, does it not?

A. Just a moment. I have a later document here. I happen to have a 1958, and my impression is at the time the chart was made we must not have had this one available, but in reading over, I find that they conform exactly here.

For '57 and '58, if I may read in the gross amounts, in domestic we have here, 1957 reads 139,952 on the table accompanying the chart. The GCMI document, Glass Container Manufacturers Institute put out, page 46 has also 139,952. And for 1958, the figure in the chart, or the table accompanying the chart, shows 139,848, and the GCMI document shows 139,848, showing they are identical in that respect.

Q. Do you know if these index numbers are based on domestic or on total shipments?

A. They are based on the domestic total shipments, that's right.

Q. Both of them?

[fol. 3121] A. For both tables, you mean?

Q. No. For both glass and metal containers.

A. I could not be exactly sure with respect to the cans because we depended on the Can Manufacturers Institute for the figures in those early years, and I have seen nothing that says "exclusively domestic" on it. That is all I can say about it at the present.

The Court: Are you saying, Mr. Tolton, that with respect to the can figures, this is estimated No. 2 cans?

The Witness: Yes, that's right, your Honor.

The Court: And that is taken from the Can Manufacturers Institute material, at least for the earlier years, through 1957?

The Witness: That's right, your Honor.

The Court: Now, are you telling us that in some years this might have been just domestic production and it in some years might have been overall production? Or do some years include only domestic shipments and other years include foreign shipments, export shipments?

The Witness: Well, your Honor, I would not be certain about that in the earlier years at this time. All I can say is that from looking at Census material, the export is very [fol. 3122] small in relationship to the total. I was trying to think—well, I would hesitate to say exactly, but it was very small in relationship to the total, the export.

By Mr. Johnson:

Q. Why did you select 1939 as your beginning year?

A. Well, Mr. Johnson, there was a—in the cans of our CMI material, Can Manufacturers Institute material, the document that we—the oldest document we were able to get showed 1929, then 10 years later, 1939, and then came forward year to year, so we used 1939 as a starting point for a continuous number of years.

Q. Now, if you had used any other, say, for example,

1946, the result would have been entirely different, would it not?

A. It certainly could have been different, yes.

Q. Well, it would have been different, wouldn't it?

A. Yes, it would have been different.

Q. So the result you get from this table depends entirely on the start of it, does it not?

A. Overall, yes.

[fol. 3123] By the Court:

Q. Well, I don't pretend to be expert on tables, but suppose we drew a line between the figure 180 on the chart to a horizontal line from one 180 to the other 180——

A. Yes, your Honor.

Q. —and also drew a vertical line beginning with the year 1946. Now, if that were done, would that give, the way this chart is set up, a fair picture of the figures?

A. Of the post-war——

Q. Of the post-1946 figures.

A. No, they would vary then, because you would have then the figures of cans and metal. There is a zero point which the growth pattern would show.

Q. What I am getting at is that if I should black out on this chart everything that was not within the angle of the two lines that I spoke of, would that segment be an accurate charting of the trend, in your opinion?

A. Well, your Honor——

Q. Let me just show it to you——

A. I think I understand your Honor.

Q. Here. Draw a line, 180, and we draw another line [fol. 3124] roughly, 1946; say that is 1946. Would that be an accurate chart?

A. No, it would not.

Q. It would not?

A. It would differ, because you would have as a starting point—you see, the starting point we have in glass and cans is 100. We set 100. So that would move both in the relationship of 100 as an index number, and then they would work out from there.

Q. Would the spread be the same or different?

A. It probably would be different.

The Court: I see. That is what I wanted to get at.

By Mr. Johnson:

Q. As a matter of fact, Mr. Tolton, the trend lines might even cross and come out the other way, might they not.

A. I haven't gone through it, but it is possible, yes.

Q. Now, I notice that in these tables, you have used the total No. 2 cans, and using that magic phrase "which might have been produced from the amount of steel consumed."

A. Yes.

[fol. 3125] Q. Why did you use No. 2 cans?

A. Well, Mr. Johnson, the CMI material on which we based the early years that were drawn have information only in those early years on the No. 2 cans which might have been produced, so in order to be consistent we went all the way through on the No. 2 cans, the use of the No. 2.

Q. And if you had used the other type of computation that Can Manufacturers Institute made——

The Court: That is, the so-called actual number,

Q. —the so-called actual number which might have been produced——

A. Yes.

Q. —you would get an entirely different result, would you not?

A. Yes. I think generally the actual cans run higher in numbers than do the No. 2 cans because of the variety of types and sizes there are.

[fol. 3126] The Court: Well, if you started with a base, the spread would be the same as this, in terms, would it not?

The Witness: I think that's right, your Honor.

By Mr. Johnson:

Q. Is that right, Mr. Tolton?

A. I think it would be substantially the same. I couldn't state precisely. I mean, I would have to go against it in each instance.

Q. You mean if you started from a 1946 base?

A. Oh, I beg your pardon.

The Court: No, no, I didn't say that.

Mr. Johnson: Oh, I'm sorry.

The Court: I said, if you had used the actual cans which

might have been produced instead of the No. 2 cans which might have been produced, starting with a given difference, the resultant spread from that point forward would be approximately the same.

The Witness: I think that's right, your Honor.

Q. There is really no reason to believe that it would be approximately the same, is there?

A. Well, as I say, if you started in 1940, and we have in metal 119,444, as it stands here, and then—I mean 1939, [fol. 3127] excuse me—I would think that in the actual cans you would have a few more, I mean, but then that would be your base of 100, so that would continue all the way through. I mean, the only thing I could think of, over the years you might have some variance in the amount of actual cans used, I mean, as to the volume in a given field.

The Court: Unless the spread in the actual cans and No. 2 cans was precisely the same in every year?

The Witness: Yes.

The Court: That is, the relationship of the two figures was precisely the same.

The Witness: That's right.

The Court: That would of course be a variation.

The Witness: There would be a variation; that's right.

Q. To the extent that there were more small cans in late years, the variation would be greater, would it not?

A. If that is true, that is right.

The Court: All right, Mr. Johnson, we will not take a recess until five minutes after 2.

(Luncheon recess to 2:05 P.M.)

[fol. 3128] AFTERNOON SESSION

2:05 p.m.

Mr. Greenberg: Your Honor, before we proceed, with the Court's permission, I would like to take up just one matter with you.

Tomorrow morning, as we all know, Mr. Hughes will testify with respect to the plastic tables which have been marked

for identification. I have been informed by the Plax Corporation, who submitted plastic container statistics to us, which have been encompassed in the tables, that they wish counsel to be present.

However, I am cognizant of the fact that we have problems with confidentiality with respect to other plastic container company statistics, and I wonder if we may permit counsel for Plax to be present under the same sanctions that applied to Mr. Austern.

The Court: I think that when counsel for Plax arrives, we will then see what can be worked out and how far he is willing to go and how far anybody else is willing to go as far as entering into a similar arrangement that we have with counsel for American Can is concerned.

Mr. Greenberg: I think that's right.

[fol. 3129] The Court: All right.

JULIUS H. TOLTON resumed.

Cross-examination continued.

By Mr. Johnson:

Q. Mr. Tolton, we were working on this historical growth chart, and I think you had agreed with me that, if you used a different base, you could and would get different results, and I think I asked you whether the can line on this table wouldn't be entirely different if cans other than No. 2 cans had been used. Is that right?

A. It would be different, yes.

Mr. Johnson: Would you mark for identification this document, which is a Department of Agriculture bulletin entitled "The Vegetable Situation."

(Defendants' Exhibit Y marked for identification.)

Q. Defendant's Exhibit Y for identification, a Department of Agriculture bulletin, on page 24, contains this statement?

"In recent years there has been for most vegetables a very notable shift in canning, away from the once

popular No. 2 can toward the smaller No. 303 and the No. 300 sizes."

[fol. 3130] Now, to the extent——

The Court: What is the date of that publication.

Mr. Johnson: I am sorry. That is 1956—February, 1956.

Q. Now, to the extent that that——

Mr. Johnson: I withdraw that.

Q. Fruit and vegetables is the largest single canned food; is that correct?

A. That's right.

Q. To the extent that this statement is true, the number of cans referred to in your trend line would be unstated, wouldn't it?

A. Yes, that's right. That's right.

[fol. 3131] Q. Now, will you turn to the next following table and would you tell me briefly what this table is?

A. Well, with the use of the source material that is explained on page 71, or the chart on page 70, we endeavored to show the growth of metal and glass containers, expressed as these index numbers, for the period of year 1940 through 1958.

Q. And it is the same type of table as the preceding one.

A. It is, yes.

Q. It relates, you say, to food?

A. Yes, that's right.

Q. On the table following the chart, in your notes you indicate the categories that you have included with metal containers; do you see that at the bottom of the page?

A. Yes, I do.

Q. And in that listing you have included soft drinks as a food, have you not?

A. I have, yes.

Q. Were soft drinks included in the glass categories of food, also?

A. No, they were not.

Q. So you include soft drinks as a food for one purpose, [fol. 3132] but not for another; is that correct?

A. Yes, I had to.

Q. Soft drink cans you regard as a food; soft drink in bottles, not as a food?

A. Yes.

By the Court:

Q. Why did you do that?

A. Your Honor, in the early years soft drinks was included in the food line. That is the reason we did that. So to be consistent——

Q. Well, if it is included in the food line, why wasn't it included in the glass food?

A. It could have in that respect, your Honor, that's right. But I was hoping to stay as close entirely to the food field as I could, and the soft drinks line, apparently it hasn't been too heavy over the years in the metal can field. It has just come in in recent years.

Q. Well, was there any problem in eliminating under metal soft drinks?

A. Well, your Honor, the statistics included soft drinks for the early years.

Q. But you knew of no way to pull out the soft drinks?

[fol. 3133] A. I did not, in earlier years.

Q. Well, in earlier years, certainly in 1940, as I recall it, for all practical purposes the number of soft drinks in cans was minimal, if there were any; is that right?

A. That's right.

Q. When, when in the course of this yearly analysis were there first given separate figures for soft drinks in cans?

A. I can check on that. I think it was 1954, if I am not mistaken. Yes, it was 1954, 1954.

Q. One question here, so I make sure I understand your chart. Do these charts make any actual attempt to show the relative proportion of the food that is in cans and in glass? I mean, can you tell that, or is there any attempt in these charts to depict that?

A. Well, as of a date, I mean, which would be 1940 or 1939, establishing that as a date, then you would say relatively in a sense, "This has happened in cans; this has happened in glass," would be my interpretation.

Q. All right, you start off with 1940, and there were 17, as I understand it, 17 billion glass containers produced; isn't that right?

[fol. 3134] A. Well, that is in thousands of gross, your Honor.

Q. Thousands of gross?

A. That's right. It was shown that way in GCMI figures, so we retained that.

Q. All right, you have got thousands of gross there.

A. That's right. It would be 17,968,000 gross.

Q. Gross.

A. That's right.

Q. And what about the 102,083?

A. That is 102,000,000,083—102,000,000,083 gross.

Q. Oh, that is in gross, too?

A. That's right. We tried to make them comparable in that respect.

Q. I see. So then in terms of actual numbers, the number of cans used in the food industry at that point was considerably over five times the number of glass items?

A. That's right; starting from that base, that's right.

Q. But both of them are started with the same base of a [fol. 3135] hundred.

A. Yes.

Q. So that in essence there is no attempt here to show the proportion of glass in cans used in food?

A. Yes, in actuality, that's right.

The Court: All right, go ahead, Mr. Johnson. I am sorry to interrupt.

By Mr. Johnson:

Q. The food referred to here in this table is not limited to foods that are heat sterilized and hermetically sealed, are they?

A. That's right. I would say it encompasses more than that.

Q. Are cans for frozen products included in the can shipments?

A. I think not.

Q. You think not?

A. Let me just take a hasty look at it. Well, from the census categories, I do not see anything addressed to the frozen food as such.

Q. So I am to conclude that you can't tell whether cans

for frozen foods are included or excluded from this table; is that right?

A. That would be right.

[fol. 3136] Q. Now I want to refer to the item here at the bottom of the table, following the food chart, called "note." Will you tell me what the meaning of that note is?

A. This has reference to metal cans. We were concerned, to this extent:——

The Court: Where is the note? I don't follow.

The Witness: Excuse me. It is page 71, your Honor, and in the source material just underneath the table.

The Court: It is the third item in the source material?

The Witness: That's right; in the notes.

A. (Continuing) Mr. Johnson, we were addressing ourselves, because this thing was estimated No. 2 cans that we used as a basis, well—how—well, you might say accurate—that it might be—if we then referred back and related it on the basis of a tonnage basis, to see—taking 1940 year tonnage in metal cans before it was used for the factor to develop units, we then used the tonnage basis of, say, 1940 as the base, and went up year to year on a tonnage basis to see how it test checked against the index numbers, we [fol. 3137] developed on the basis of the units as cans and we found out that it was right within a very close range.

Q. These figures were developed from tonnage figures in the first place, weren't they?

A. They were, that's right.

Q. Wouldn't they necessarily be the same? How can there be any variation?

A. Let's see. Just a moment. Well—oh, I see—let's [illegible]. Wait a minute. There is this aspect of it. They [illegible]. In the use of the No. 2 cans, which was [illegible] from the tonnages, we had to establish a [illegible] on the CMI data, the number of units per ton [illegible], we developed a factor, which was 8,740 cans per ton, and we utilized that throughout, we utilized that throughout, in order to develop our No. 2 cans in the food field. So having set that up as a standard all the way through, we wanted to then see how that worked out in relationship when we used no units, but used the tonnage basis standing alone.

[fol. 3138] Q. Well, maybe I am missing something here.

A. All right.

Q. Do I understand from what you say now that you used yet a different conversion factor than Mr. Finn?

A. Yes. That's right, for the food field we did, that's right, because, you see, he addressed himself to actual cans. We were addressing ourselves to No. 2, estimated for this chart, for the reason that I explained previously, and so, in the food field, we could not go back in the earlier years and relate it to a unit total. So we had to, in that sense, develop a figure which turned out to be 8440 units, and we cast that for all the years per ton and used that in order to develop the unit totals.

Q. Well, without going through the laborious process of how you did it, is it correct, then, that you developed a conversion figure for use here which was not only different from Mr. Finn's figure, but also a conversion factor which Can Manufacturers Institute never used?

A. Well, I don't know how the can manufacturers develop their figures, but I have not seen this factor in any Can Manufacturers Institute book, if that is what you mean.

[fol. 3139] Q. What I am trying to get at is that this is a conversion factor which you created; is that right?

A. From CMI material.

Q. But it is not a conversion factor that they used; is that right?

A. Well, I don't know—I am not—I am sorry, I don't quite understand the distinction. That is what I am getting at. I am not trying to withhold or anything else like that. I just don't quite understand the question that you have asked.

Q. You did not find this conversion factor stated in any CMI literature; is that right?

A. That's right.

Q. And you computed by doing whatever you did——

A. That's right. From the CMI material, they had No. 2 cans, shipments—or, I mean, No. 2 cans which could be—I have forgotten just the exact terminology there. No. 2 cans. Then they had their tonnage that was used to make, so the division in that sense came from the CMI material, although it never was in existence as a figure in any of the CMI documents. That is all.

The Court: I thought in one table, the CMI documents did [fol. 3140] have the number of No. 2 cans which might have been produced. Was that just overall and not in terms of food?

The Witness: That broke down, your Honor, for a number of years back, but then in the early years they did not carry it in that way all the way back.

Q. And the CMI computations were not based on the food category as you defined it here; is that correct?

A. That's right, that's right.

Q. Mr. Tolton, I would like to go back to the beginning of your chart.

A. All right.

Q. And on the very first table——

A. Is this page 1 or page 4? I am sorry.

Q. It is page 4 according to the numbering system that I have got.

A. All right. Thank you.

Q. There you refer to the leading four companies.

A. Yes.

Q. What was your basis for selection of what you called the leading four companies?

A. It was from the GCMI material that has been fur- [fol. 3141] nished—explained previously.

Q. That is, number of containers manufactured or shipped?

A. That's right. Shipments of the number of containers.

Q. How did you determine that Knox Glass Company was No. 4?

A. Well, the unit totals in going down, Owens-Illinois, Anchor-Hocking, etc., in an overall category it fell into the fourth position.

Q. And in your case, as in Mr. Finn's case, you ignored Wheaton Glass and Armstrong Cork?

A. Yes. Those were two which apparently did not report to GCMI.

Q. You ignored any company that did not report to GCMI?

A. That's right.

Q. Why did you select four companies?

A. Well, it seemed to be reflective, probably, of a—I don't

say—somewhat of a breaking point between them and probably others that fell below it.

Q. And that is the only reason that you can give for selecting four instead of two or seven or nine?

A. Well, in reading generally industry literature—I [fol. 3142] mean, literature in industries—they develop threes and fours, and that sort of thing, categories. I don't know that that had any basis, but I have seen much of it, and it seemed to suggest itself as being kind of generally a breaking point from there on to those lower down.

Now, that isn't the whole, absolute truth. There is some fog about it historically.

Q. Sort of a pick-and-choose proposition?

A. Well, it could be.

Q. So on this top column, this big black column—black in my book, anyway——

A. Yes.

Q. —that shows the leading four, 60 per cent. That could just as well be leading five and some other per cent; is that right?

A. Yes, it could be possible, that's right.

Q. Now, looking at that top column, will you tell me how much of that top percentage is accounted for by Owens-Illinois Glass Company?

A. How much of the percentage? Just—well, am I supposed——

The Witness: Am I supposed to address myself to that, your Honor, as individual companies? That is the only [fol. 3143] question in my mind.

The Court: I don't hear any objection.

Mr. McManus: Your Honor, I think the only thing he is asking—I will assure him there is no problem on confidentiality.

The Witness: That's right.

The Court: If there is such a problem, I am counting on someone calling it to my attention here. I would not necessarily recognize it myself.

Mr. McManus: Your ruling is that any parties other than the defendant and the plaintiff here—your ruling is that this is not to be revealed outside the courtroom.

The Court: That's right.

By Mr. Johnson:

Q. May I suggest, Mr. Tolton, I am going to ask this question quite a number of times. Do you have working papers from which you can give us these figures?

A. Just a moment. I will have to look a little further. Perhaps I can——

The Court: What I would like to do at this point, so you won't be faced with this, Mr. Johnson, try to indicate to Mr. McManus what sort of material the witness should have and [fol. 3144] he can have it there. We will take a brief recess, so we won't have what may be a recurrent problem.

(Short recess.)

By Mr. Johnson:

Q. Now, Mr. Tolton, could you give me the figure attributable to Owens-Illinois in that top bar?

A. This is total domestic that you are speaking of?

Q. Yes, sir.

A. And this is the year 1955?

Q. The year that your chart has.

A. That is right. It is 34.4 per cent.

Q. Can you give me Anchor-Hocking?

A. It is 11.8 per cent.

Q. Hazel-Atlas?

A. 8.8 per cent.

Q. Knox Glass?

A. 4.6 per cent.

Q. Now, why did you add those together, Mr. Tolton?

A. Well, it lends itself to show the large companies and their proportions of the industry, as so stated in this chart.

[fol. 3145] By the Court:

Q. What did you say Hazel-Atlas was?

A. 8.8 per cent.

Q. Now, am I failing to follow something here? Why is Hazel-Atlas included in the leading four? 8.8 per cent. You have down here 9.6 per cent—you see it below down there. It is 8.8 and 9.6 above——.

A. I beg your pardon. I was reading in the wrong column. I will have to retract. Fortunately or unfortunately, I was reading in the 1956 column instead of the 1955.

Q. All right, let's get the 1955 column.

A. The '55 column is 34.2 per cent for Owens-Illinois; 11.6 per cent for Anchor-Hocking; 9.6 per cent for Hazel-Atlas; and 4.5 per cent for Knox.

The Court: All right.

The Witness: I thank you for calling my attention——

By Mr. Johnson:

Q. Your graphic method of presenting this data would completely obscure the fact, would it not, that Owens-Illinois was more than three times as large as the next—or about three times as large as the next largest glass con-
[fol. 3146] tainer manufacturing company?

A. Yes, because it addresses itself to all four, rather than to one.

Q. And you were satisfied to obscure that fact?

Mr. McManus: I will object to that.

The Court: I will sustain the objection.

Q. What do you mean by glass containers, Mr. Tolton?

A. Well, I meant what its meaning is addressed to in the sense of categories of glass containers in the GCMI materials.

Q. And you did not look any farther than that?

A. Well, I certainly looked in [redacted] publications that are read somewhat generally in the industry. But, as purported in the charts—reported in the charts, used these two means to develop the charts.

Q. And whatever they called a glass container, you called a glass container; is that right?

A. That is right.

Q. Did you include home canning containers in Hazel-Atlas shipments?

A. I did.

Q. Did you include packers' tumblers in Hazel-Atlas shipments?

[fol. 3147] A. I did.

Q. Would you look at the next table headed "Total Narrow-Neck" and would you give me the same kind of breakdown you gave me for the first bar of the other chart?

A. This is total narrow-neck in the year 1955. For Owens-

Illinois, 38.2; for Anchor-Hocking, 7.8; Hazel-Atlas, 5.8 per cent; and Knox Glass, 4.6 per cent.

Q. Can you give me the largest percentage of any company that is included in the next bar, the "All Others"?

A. The next one down is Brockway, which has 4.2 per cent.

Q. What is a narrow-neck glass container?

A. Well, it certainly is addressed to that way in the Census categories and in the GCMI categories, and I followed whatever they conformed to as meaning a narrow-neck glass container.

Q. Does it include green olive jars?

A. Green olive jars?

Q. Yes.

A. I presume, if they had a narrow neck, it would.

[fol. 3148] Q. You don't know?

A. No, I don't.

Q. Did it include milk bottles?

A. Well, we have a dairy products item. Let me just take a look and see whether that is a narrow neck or wide mouth.

Well, dairy products, which would include, I presume, milk bottles, would be in the wide-mouth area.

[fol. 3149] Q. All right, sir, would you turn to the next table and give me the same breakdown for the top bar?

A. This is food containers, narrow neck for the year 1955. Owens-Illinois, 43.3 per cent—well, the next one I have listed is Anchor-Hocking, 5.6 per cent; Hazel-Atlas is 7.8 per cent.

The Court: 7 and——

The Witness: 7 and eight-tenths. Your Honor, this has "7" here. It is a matter of rounding that did it, is all I can say.

The Court: I see, all right.

A. (Continuing) Hazel-Atlas is 7.8, according to this, and Knox Glass is 5.8 per cent.

Q. Will you give me the largest in the "all others"?

A. Thatcher has 5.6 per cent.

The Court: So that Thatcher has the same percentage here as Anchor-Hocking.

The Witness: That's right, your Honor. We endeavored

to—these four—to be consistent with them throughout, in the sense that they were the first four in their overall, and I think they are the first four in narrow neck field, and so [fol. 3150] we held to that consistently throughout.

The Court: Yes, I understand.

Q. So it doesn't necessarily mean that they are the first four, even as you have divided in each of these categories?

A. In every category, no, it doesn't mean that.

Q. Now this table headed "food," does that refer to all types of food?

A. Well, certainly all the food that is commercially processed, and home canning—I think those are generally—would be the major categories that would be in there.

Q. It is not limited to heat sterilized and hermetically sealed food products?

A. Not exclusively, no.

Q. It is not limited to that at all?

A. I say no then in answer to your question.

Q. Did you ever try to get any statistics relating to narrow neck glass containers, relating to or used in canning, as that term has been defined here before?

A. Well, I have looked into it, yes, Mr. Johnson.

Q. What did you do to try to get such figures?

[fol. 3151] A. Well, I think—let's see—well, I mean, the Census Bureau in its census of manufacturers puts out some statistics that would relate to the food packing field, of which they have in some years put out some items in glass and in cans. I don't know whether that exactly answers your question.

Q. Well, at any rate, you were not successful in getting any such statistics; is that right?

A. No, I wasn't successful.

Q. Now, would this table include containers for cider?

A. I could not answer offhand whether it does or not, whether that would be in a juice line or that would be a part—which would go to encompass the food field. I couldn't tell that.

Q. Would it include maraschino cherry jars?

A. I could not answer offhand.

Q. Salad oil bottles?

A. Well, I would have to hold to whatever the GCMI and

the Census Bureau has put into these categories. That is the means by which I operated.

Q. Well, would you have put tomato juice bottles here or under soft drinks?

A. Well, let's see——

[fol. 3152] Mr. McManus: Your Honor, I am going to object to that, in that he is asking him the same question.

The Court: I would be inclined to agree with you. He said he relied on the GCMI categories and doesn't remember the specific details of items going in one category or the other.

Q. Would you turn to the next table, please? This is headed medicinal and health supplies, narrow neck.

A. Yes, sir.

Q. Would you give me the breakdown for the first bar?

A. This is medicinal, health supplies for the year 1955. Owens-Illinois, 45.2 per cent; Anchor-Hocking, 2.2 per cent; Hazel-Atlas, 6.5 per cent; Knox Glass, 2.3 per cent.

Q. And the largest percentage in the "all others"?

A. Is Brockway, at 6.4 per cent.

Q. Can you define the term "medicinal health supplies"?

A. No, I couldn't without the aid of the Census Bureau.

Q. Would you answer me in the same way with respect to this table as you did in the preceding one, if I ask whether [fol. 3153] end products were included in this table or not included?

A. I would answer——

Q. In short, you don't know? Is that correct?

The Court: I think, in short, he relied on the GCMI categories and doesn't go beyond that.

Q. Would you turn now to the next table, and would you give me the same type of breakdown of the first bar, as to the percentages of the four companies named?

A. For the year 1955, chemical, household and industrial in the narrow neck field, Owens-Illinois, 37.2; Anchor-Hocking, 2.9; Hazel-Atlas, 10.9 and Knox Glass, 10.4

Q. The largest of the "all others"?

A. It seems to be Pierce Glass Company at 5.6.

Q. And again, so that I don't have to repeat the question each time, in so far as the specific end products are con-

cerned in each of these tables, if I were to ask you about various end products, you would give me the same answer, that is, that you relied on the figures as you got them; is that correct?

A. I would; that is right.

[fol. 3154] Q. All right, sir, would you turn to the next table, toiletries and cosmetics, and do the same thing for me?

A. Toiletries and cosmetics in narrow neck field, 1955: Owens-Illinois 18.1 per cent; Anchor-Hocking, 24 and no tenths per cent; Hazel-Atlas, 9.4 per cent; Knox Glass, 1.9 per cent.

Q. And the largest in the "all others"?

A. It is Foster-Forbes Glass Company, 4.0.

Q. All right, sir. Would you turn to the next table and do the same for me?

A. This is beverages returnable, 1955, and the percentages are for Owens-Illinois 44.7; Anchor-Hocking, 4.7; Hazel-Atlas, zero; Knox Glass 3.7.

Q. Largest of the "all others"?

A. It appears to be Laurens Glass Works, L-a-w-r-e-n-s, 10.5 per cent.

Q. Do you have the sixth company, also—I shouldn't say the sixth—the next largest in the "all others"?

A. It seems to be the Chattanooga Glass Company, at 9.9 per cent.

Q. Will you turn to the next table and do the same thing?

[fol. 3155] A. This is beverages non-returnable, 1955. The percentages are Owens-Illinois 70.8 per cent; Anchor-Hocking, 9.6 per cent; Hazel-Atlas 0.3 per cent; Knox Glass, .8 per cent.

Q. Largest of the "all others"?

A. Seems to be Foster Forbes at 3.8 per cent.

Q. All right, sir, will you do the same for the next table, the next chart?

A. Yes, all right. This is beer returnable for 1955. The first company here is Owens-Illinois, 36.1; Anchor-Hocking, 7.9; Hazel-Atlas, 0.2 per cent; Knox Glass, 2.3 per cent.

Q. And the largest of the "all others?"

A. Is Thatcher Glass Company at 12.2 per cent.

Q. Give me the next one in the "all others", the next largest?

A. Northwestern Glass Company at 6.5 per cent.

Q. Turn to the next table and do the same, sir?

A. This is beer, non-returnable, for the year 1955, with these percentages: Owens-Illinois, 34.8 per cent; Anchor-Hocking, 15.2 per cent; Hazel-Atlas, 1.0 per cent and Knox Glass, 3.2 per cent.

Q. The largest of the "all others"?

A. Obear-Nester, O-b-e-a-r N-e-s-t-e-r Glass Company.

[fol. 3156] Q. What percentage?

A. Oh, I beg your pardon. 9.6 per cent.

Q. And the second largest of the "all others"?

A. Thatcher Glass Company, at 9.1 per cent.

Q. Will you do the same with the next table?

The Court: Now, are you going to ask him to do this for all of them?

Mr. Johnson: Yes, sir.

The Court: All right.

Mr. McManus: Your Honor——

The Court: Isn't there some way this could be done without my sitting here and listening to a repetition of these?

Mr. McManus: If there is no objection, your Honor, we would be glad to have Mr. Tolton sit down and put it on our documents right along, as I have been doing, alongside of the companies, Owens-Illinois, whatever the percentage is.

The Court: It seems to me that would save a very considerable amount of time here.

Mr. Johnson: It's quite all right with me.

Mr. McManus: With the understanding that these questions have been asked and this was the answer that Mr. [fol. 3157] Tolton would give.

The Court: All right, I am going to instruct Mr. Tolton to put down on all the remaining charts, presumably in section 1 of the charts——

Mr. Johnson: And in the following section, section 2.

The Court: The following section 2 is American Can, Continental Can, National Can.

Yes, sir.

Mr. Pedersen: If the Court please, have we put in our figures by Census categories total?

The Court: Yes.

Mr. Pedersen: That was done?

The Court: Wait a minute. Yes, as to American Can and National Can, they are in by census categories, aren't they?

Mr. McManus: Mr. Austern indicated he had no objection as long as it was done on an aggregate basis. By that I mean total of all fruits and vegetables for 1955, and put the percentage down.

The Court: They are not actually in evidence, but they have been referred to in the charts that have been under discussion.

Mr. Pedersen: I had under that section 2 aggregated [fol. 3158] National and American Can, but figures are now in that separate those two companies.

Mr. McManus: Your Honor, as I recall, he did not agree to that. I think I would have to—he said he had no objection—I would have to look back at the record—where inadvertently it had been done, because National was not making cans of that type, which would show American Can's percentage, but I would have to look at the record to see if he did or did not object to this sort of thing.

The Court: I think you ought to find that out. My recollection is that he said it did not present a problem, but I am not positive of that, Mr. Pedersen, frankly, and I think you ought to refer back to the record with Mr. Pedersen.

Mr. McManus: Yes, your Honor.

The Court: (Continuing) While that is done, before that is done, so that we can straighten that out.

Mr. McManus: All right, sir.

The Court: Now, will it be advisable, in view of your future cross-examination, Mr. Johnson, to do that now?

Mr. Johnson: Well, for this purpose I don't need any [fol. 3159] thing except to get those percentages broken up.

The Court: I mean, I am trying to do this as we go along, on the theory that that will aid the progress of the cross-examination, if we have these done at the time, and presumably you intend to go on from there to something else; am I correct?

Mr. Johnson: That is right; and what I propose to do on the offer of these tables, these charts, is to object to any lumping of my client with any other people with whom it has no connection. What has been done in these charts, in every one of them, has been to take my client and group them, and this witness, I believe I have paraphrased fairly

what he said, arbitrarily grouped them with others. Now, I don't see why they should be grouped with others.

The Court: Well, all right, that is your own position. I am not so much concerned with that at the moment. I am concerned with the mechanics of what we are doing now. I suggest we do this: that the witness take and as rapidly as possible complete these section 1 charts, with the data that I have directed him to put down. Then you can find and discuss with Mr. Pedersen during that period the por-
[fol. 3160] tion of the record in which Mr. ——

Mr. McManus: Austern?

The Court: Yes, which counsel for American Can yesterday referred, yesterday or the day before, referred to this problem of lumping, and see what the record actually says, and see that Mr. Pedersen is informed with respect to that. When that is done, and if you can find that this does not present a problem, then he can go ahead and mark the American Can and National Can stuff. If it does present a problem, then I will hear Mr. Pedersen, and we can make an appropriate ruling. Let's do it that way now, mechanically, as rapidly as we can, so as to get that part of it out of the way.

I will take a brief recess for that purpose.

(Short recess.)

[fol. 3161] Q. Mr. Johnson: Your Honor, I would like to say at this time that I have no interest in any of American's or National's percentage figures for any purpose of cross examination. My objection to these tables is going to be based—to this portion of these tables, is going to be based on two things. One is the adding of my clients in with their competitors.

The Court: Yes.

Mr. Johnson: And, secondly, the obscuring of the fact that American is so much larger than Continental or, in the case of glass, that the others are so much larger. So that as far as I am concerned, if the government and American want to and can work out any arrangement by which these percentage figures can be furnished to your Honor and not to me, and ultimately, if necessary, that somehow they get into the record, I have no objection to that.

The Court: What do you say to that, Mr. Pedersen? Certainly you have no objection to my seeing them.

Mr. Pedersen: No, sir. I have no objection to your seeing them, and I don't think Mr. Greenberg has either, but I can't speak for him.

Mr. Greenberg: Your Honor, when we discussed this prob-
[fol. 3162] lem, we merely hypothesized as to what might happen on appeal, and we felt that those figures could be sealed and the characterization of one larger than the other covered in those terms.

The Court: Well, I think what I might do in order to complete the record is to let the figures, sealed, be handed up to me, and then perhaps, with respect to the tables, have a concession that the percentage of American Can in each of these total figures is substantially larger than any other—something of that nature.

Mr. McManus: Your Honor, I don't think we could stipulate to that, because at the present time, although American might be larger in some areas, they might not be in others, and I frankly don't recall what areas those are.

The Court: Well, would there be any objection, Mr. Pedersen, without our disclosing what the actual American figures were, to a statement along those lines applying to each chart?

Mr. Pedersen: None whatever, your Honor.

The Court: As long as there was no disclosure of the actual figures or the precise percentage.

Mr. Pedersen: No objection, your Honor.

[fol. 3163] The Court: Once I have the figures myself, I can relate them to the chart and make a statement for the record that I think will be sufficient for the purposes of the defendants without in any way prejudicing American Can.

Mr. Pedersen: That would be fine, your Honor.

The Court: All right. So I assume, gentlemen, that what will occur is that those figures will be worked out by the witness, will be shown to Mr. Pedersen, of course—oh, no, they can't be shown to Mr. Pedersen because then we proceed to disclose National and Continental to Mr. Pedersen. They will be shown to me and I will make some appropriate announcement with respect to it that I don't think will prejudice anyone. That will go in the record, and at the

same time the other figures will be sealed in the unlikely event that they ever become necessary.

By Mr. Johnson:

Q. Mr. Tolton, would you turn to the——

The Court: May I ask you this, on these tabulations, gentlemen. They are all done now in the first group of charts actually on the original exhibit in evidence. Very good.
[fol. 3164] Mr. Johnson: The original exhibit under discussion,

The Court: Yes, you are right. 800 for identification, not yet in evidence.

Q. Would you turn to the chart relating to food, wide-mouth.

The Court: That is page 17.

Mr. Johnson: I have a different numbering system since I am going by the old one.

The Court: Yes, page 55.

Q. Mr. Tolton, why did you include packers' tumblers with wide-mouth food containers?

A. Well, in the category of packers' tumblers were items that, well, such as peanut butter and other items like that, could be incorporated in the food field.

Q. The Census categories that we have been discussing do not include packers' tumblers with food containers, do they?

A. That's right. They carry them separately.

Q. So this is just your idea; is that correct?

A. Well, yes, in the sense that they are in the chart.

Q. And packers' tumblers are used for a great number [fol. 3165] of things, other than food, are they not?

A. I really don't know. I really don't know.

Q. For example, candles for religious use.

A. In packers' tumblers, you mean?

Q. Yes. Is that one of the big uses for them?

A. I am not familiar with it.

Q. You just added them into food without regard to what they were used for; is that right?

A. Yes. In conversation with others, we developed it, and that is it. I might add this, Mr. Johnson, that in the GCMI

tables, it is my understanding that Hazel-Atlas has included them in the food line, which is one reason why we went to the lengths we did.

Q. Do you know that they did?

A. Well, I assume a little—yes, it is true. It will only take a moment to look.

The most I can say here is packers' tumblers is not considered separately in the GCMI figures. I would better hold to that.

Q. Would you turn, Mr. Tolton, to the first table in your category II, headed "Metal Can Shipments." There is a note 1 that says that this total—that is, the total of short tons of metal can shipments—includes firms making cans for their own use.

[fol. 3166] A. Yes, that's right.

Q. Then you have selected three companies as the leading three companies?

A. Yes, that's right.

Q. Do you know whether those are the three leading companies in terms of tons of steel used in making metal cans in the United States?

A. From all that I have read and seen in industry surveys and that sort of thing, these are the leading manufactures who produce for sale.

Q. But not necessarily the leading three companies of the total industry, as you have defined it here; is that correct?

A. Well, if you are incorporating captive plants, I could not be sure.

Q. Well, you say that it includes captive plants, don't you?

A. You are right.

Q. Now, before I leave this section, Mr. Tolton, do you know if the Census Bureau publishes anywhere the end products which are included in these various end product categories?

A. I am not sure I quite understand you, but do you mean——

[fol. 3167] Q. Let me rephrase the question: Do you know if the Census Bureau anywhere publishes lists of the end products which are included in the various categories of either glass containers or metal cans?

A. Well, in the sense that it—like census of manufac-

turers in the canning field, there is an attempt to break it down into cans and glass, into some product items.

The Court: I do not think that is what Mr. Johnson asked you.

You were not asking about cans and glass, were you, Mr. Johnson?

Mr. Johnson: No, sir. I was asking about the end products which are included in the various groupings of glass containers for metal cans.

Q. For example, is there any place that I could go to determine from Census sources whether hair shampoos would be classified as toiletries and cosmetics or as health and medicine items?

A. I am not aware of any definitions that—I mean, that would define it in terms that way, no.

Q. Would you turn to the next section?

A. Three, that is?

Q. Yes. I believe you have a different category grouping [fol. 3168] in these charts than you do in section 2; is that right?

A. That's right. One is in tonnage and this is in units.

Q. There are also different groupings, are there not?

A. Yes, sir.

Q. Why are they different?

A. Well, these conform to our tables. The others conform exclusively, I guess I might say, to the Census categories.

The Court: These are simply, as you put them in, Mr. Tolton, talking about group 4, visual presentations of the material entailed; is that right?

The Witness: In large measure, your Honor. There might be a little divergence here from chart to chart, but I think in large part that is right.

By Mr. Johnson:

Q. Now, these tables are made up by this conversion process which Mr. Finn described to us; is that right?

A. That's right.

Q. And being so constructed, they ignore any difference in product mix in different parts of the United States, do [fol. 3169] they not?

A. Yes, if that is—that's true.

(Defendants' Exhibit Z marked for identification.)

Q. Is Defendants' Exhibit Z for identification the document which you referred to as your source material for the chart on page 29?

A. 39.

Q. 39?

A. 39. That's right.

The Court: What is that?

The Witness: This is Facts for Industry from the Census Bureau metal can survey for 1956, series M-75-D-06.

The Court: In other words, this is the same type of document for 1956 as 1203 is for 1959; is that right?

The Witness: That is right.

By Mr. Johnson:

Q. Now, if you will look at this Defendants' Exhibit Z for identification, you will see that the total shipments for 1956 were 4,700,000 tons. Do you see that?

A. Yes.

[fol. 3170] Q. In the upper left-hand corner?

A. Yes.

Q. And of that total tonnage, you will notice that 1,600,000 was in the fruit and vegetable category; is that right?

A. Right.

Q. So that would be about one-third for the country as a whole, would it not?

A. Roughly speaking, that's right.

Q. Now, if you will look on the next page, table 2 of Defendants' Exhibit Z for identification, you will see that the——

The Court: Have you got a copy of that for me, Mr. Johnson? Without it I can't follow your examination at all.

Mr. Johnson: Your Honor can use this one.

I am sorry, I should have referred to table 3 in my last question instead of 2. That is on the back of the exhibit.

The Court: All right. I have it.

Q. (Continuing) —you will notice there that the total for

fruits and vegetables in the West is 666,000 out of one million one.

A. Yes, I see.

[fol. 3171] Mr. Johnson: Do you follow that? There is a figure given toward the bottom of the page at Figure 3, your Honor, for the West.

The Court: Yes, I have it.

Q. So that indicates that about half of the tonnage in the West was for fruits and vegetables?

A. That's right.

Q. So that your method of treating the product mix as if it were the same all over the United States results in a distortion, does it not?

A. Not for the whole United States. For a region.

Q. Well, in making your table you have assumed that the product mix was the same for the whole United States, did you not?

A. Yes. But East, West, North and South are all added together to make the total product.

Q. The total?

A. The total, yes.

Q. With the result that you have assumed the same product mix throughout the United States?

A. Yes. To that extent, yes.

Q. Well, in this very large category of——

The Court: Now, wait a minute. In giving the total for [fol. 3172] the whole United States, you did not try to break it down into any particular differences in product mix in any given section of the country, did you?

The Witness: Well, we have like a food category, if I understand your Honor, where we have east and west breakdowns. I mean east of the Rockies and west of the Rockies.

The Court: Is that reflected on some of your tables here? Yes, I see it is. Now, I will go on further.

Is your question directed now at the first table, this general table?

Mr. Johnson: No, sir. It is the second one.

The Court: Oh, I see. All right.

By Mr. Johnson:

Q. And all through these east and west tables you have assumed a uniform product mix, have you not?

A. That's right. For this given class of food, beer—I guess I haven't gone that far in the charts, but I mean that sort of a breakdown. That's right.

Q. Would you look, sir, at the table headed "Total Metal Container Shipments, 1955, All Types East of the Rockies." [fol. 3173]

A. Yes.

Q. And following that, there is a table of notes.

A. Yes.

Q. And this gives some conversion factors. Are these new and different conversion factors from those we have been talking about here the last couple of days?

A. These are the same that appear in the tables.

Q. Are these the same conversion factors that appeared in the tables?

A. Yes, I would think that's right, yes.

Q. Can you say that they are or that they are not?

A. Well, let me take just one moment and I will verify that.

This is folder B and deals with the east-west breakdowns. And this is page 4 in folder B and has the breakdown "Food Containers, Beer"——

The Court: Page 4. What table is that?

The Witness: Just page 4. The instructions or notes.

A. Food containers, it has 9,237 in the tables and 9,237 in the chart sources. 10,161 for the beer containers; 10,161 in the chart source.

Soft drinks, 11,167; 11,167 in the soft drinks.

[fol. 3174] And non-foods, 7,681 in the table, and 7,681 in the charts.

Q. So they are the same?

A. Yes, they are the same.

Q. Would you turn now to your category VI.

A. VI?

Q. Would you tell me what this chart is supposed to be, looking at the first chart in the section?

A. From this document that was supplied to us from Continental Can, which was designated "Sales to Key Cus-

tomers and Suppliers for the Years '56 and '57," we looked into it as a series of breakdowns into metal containers. I think it has Hazel-Atlas by name and many other types of containers or packaging—whatever you want to call it—and wherever—and it shows the customer to whom they made sales, and from that, wherever it appeared from the metal—I guess the metal division or the metal container division—I would have to look at it precisely, in the Hazel-Atlas columns. There appeared a column "Customers"—Borden Milk Company, for example. If it appeared in the metal division and the Hazel-Atlas division, we considered that a common customer.

[fol. 3175] Q. Now, your note in this table says, "Source: In answer to government interrogatory."

Now, this document was never given as an answer to an interrogatory, was it?

A. I would have to check with other authority, but my impression is that here is a copy of the document which has had P-3079 written on it.

Q. Do you know the difference, sir, between an answer to an interrogatory and a document produced on motion to produce?

A. I am afraid—well, I have heard of both, but I do not know the technical, legal language.

The Court: Well, is or is not the source of this material VI an answer to an interrogatory?

Mr. Johnson: No, sir, it is not. It was produced on motion to produce.

The Court: And what was produced?

Mr. Johnson: The document referred to.

The Court: What is it?

Mr. Johnson: Would you mark this for identification, please?

(Defendants' Exhibit AA marked for identification.)

[fol. 3176] Mr. Johnson: Your Honor, I am about to go into a rather difficult cross-examination, and perhaps you would want to follow with Defendants' Exhibit AA for identification.

The Court: Now, it is understood, is it, that Exhibit AA for identification is a document supplied by Continental

Can to the government in response to what, a notice to produce?

Mr. Johnson: Yes, sir. It was not in answer to an interrogatory.

The Court: What did the notice to produce ask for, this specific document?

Mr. Johnson: No, sir; it did not. It was, if I may say, one of these typical antitrust motions to produce.

Mr. Johnson: I object to that, your Honor. I object to that slandering of the Antitrust Division.

The Court: All right.

Mr. McManus: I can tell you exactly what it was, if he can't.

The Court: All right, let's not get into this sort of controversy, gentlemen.

Tell me what they ask for.

Mr. Johnson: It was a very broad motion to produce, that [fol. 3177] was worked over here in this court several times, I believe, before your Honor was assigned to this case, as a result of which the defendant produced a very large number of documents, of which this was one.

By Mr. Johnson:

Q. Did anyone ever make any representation——

Mr. Johnson: I withdraw that.

Q. Is Defendants' AA for identification a document to which you referred in your note?

The Court: Without interrupting the flow of this examination, before we get to this somewhat complicated document, I'd like to understand, Mr. Johnson, if you can tell us, or the witness can tell us, just what these tables are supposed to show? I have read the original notes here, but let's take the first customer on page 1, which I will not name, I will not name him unless Mr. Pedersen will absent himself, but there is a figure 2, that is, for 1957, and then there is a figure 1 under "metal" and 1 under "fiber drum corrugated box"; what does that figure 2 mean under "fiber corrugated box" and 1 under "metal"?

Mr. Johnson: Well, without getting into a question which

I am going to have to refer to later, the question of round-
[fol. 3178] ing of figures——

The Court: Yes, well, this says——

Mr. Johnson: —I would indicate that one division sold a thousand dollars of merchandise.

The Court: That would be a thousand dollars of metal and a thousand dollars of fiber drum materials to that customer?

Mr. Johnson: That is right.

The Court: So that we go down here to customer 9, under 1957, there is a figure of 1963, that would mean that for that particular company, customer, during 1957, $1,963,000 worth of merchandise was sold, and it was all metal cans?

Mr. Johnson: All from the metal division.

The Court: All from the metal division.

Mr. Johnson: Yes, sir.

The Court: All right, that will give me a start anyway.

Mr. Johnson: I think that for a moment, your Honor, the witness needs to see that copy in order to answer my last question.

The Court: All right.

Mr. Johnson: Then we will give it right back to you.

[fol. 3179] Q. My question is, was this Defendants' AA for identification the document which is referred to in your note as the source of this table?

A. It is.

Q. Was any representation ever made to you, Mr. Tolton, that the information in this document was accurate?

A. Well, other than what appears on the second page here, as underscored by the sales department itself in its notes.

Q. Which indicates that there might be a considerable amount of inaccuracy; is that right?

A. Yes. There is a sentence here which says:

"This method of producing a Key Customer Report has the advantage of virtually eliminating manual errors in tabulating, but the data is still only as good as the basic information, which is dependent on accuracy of coding invoices."

Q. And do you know how figures were rounded in this document?

A. No, I'm not familiar with the rounding process, Mr. Johnson.

Q. Now, you will note throughout the document there are a number of figures, figure 1, which stands for a thousand [fol. 3180] dollars?

A. Yes.

Q. Now, do you know what figures were rounded to get that number?

A. I do not, no.

Mr. McManus: I object. There is nothing to indicate in this document to me that any of these figures have been rounded.

The Court: Well, it is quite plain to me that from just an examination of page 1, that you didn't sell precisely a thousand dollars worth, you didn't sell everything without any dollars less than a thousand and any cents.

Mr. McManus: I am not too sure how Continental Can sells, but I will take it.

The Court: Well, if that isn't so, you have got to show me differently.

Q. Did you make any inquiry about the rounding of figures?

A. No.

Mr. Johnson: Oh, I am sorry, I don't believe I had an answer to the last question.

(Record read.)

Q. Did you make any inquiries?

[fol. 3181] A. Not of Continental Can.

Q. Do you know whether sales were omitted entirely if they were less than $500?

A. I do not know.

Mr. McManus: Your Honor, same objection. I am not sure this document shows that anything has been omitted under $500.

The Court: Well, all he asked him is whether he knew or not.

Mr. McManus: I am sorry, your Honor.

The Court: Overruled.

Q. Now, if sales under $500 were omitted from this document, there might be a number of customers which were shown as common customers for one year and not for another, when for a fact there might have been nearly the same amount of sales in both years?

A. It is possible, yes, you know, if that is the breaking point, I mean, as you have suggested.

The Court: Let me ask you, let me ask Mr. McManus, please, what you say, Mr. McManus, the table on page 85 is designed to show?

Mr. McManus: It is designed to show, your Honor, that in 19—approximately at the time of merger, that Continental Can Company and the Hazel-Atlas—the metal divi- [fol. 3182] sion of Continental and the Hazel-Atlas division had approximately 200 key customers. That is my interpretation of it. It is a little bit under 200. I don't have the exact number here, your Honor, but it is approximately 200, and that in 1957 they had increased that, so that they were up over 200.

The Court: You mean there is no showing here as to how many key customers they both had? For all that appears here, they each might have had 25,000 key customers.

Mr. McManus: From these documents we ascertained that there are approximately 200 key customers, your Honor—excuse me, excuse me. Did I say "key"? If I did, I withdraw it—common customers. I have been using the wrong word.

The Witness: Within the key customer list.

Mr. McManus: Within the key customer list, there were 200 customers that would have been common customers.

The Court: Well, how many customers are there? Is there anyplace that shows it?

The Witness: It explains it in the——

Mr. McManus: In the succeeding——

The Court: I know the explanation is in there, but I am [fol. 3183] talking in the way of charts.

The Witness: You mean total customers? No, there is no chart that shows the total customers.

The Court: Or total key customers?

Mr. McManus: No, your Honor, no, but only in dollar value.

The Court: All right.

By Mr. Johnson:

Q. Now, do you know if there is a single instance shown in this document of a customer who became a customer of both the metal division and the glass division for the first time in 1957, in other words, who became a common customer of these two divisions for the first time?

A. In 1957?

Q. Yes.

A. I would have to go through the document to check it through.

Q. As I understand Mr. McManus, his interest in this chart is to show the increase in the number of common customers; is that a correct statement of what you think this chart is designed to show?

A. Well, it lends itself that way, yes. That is one of the facets of it.

[fol. 3184] Q. But you don't know offhand whether there is one single instance in this book of a customer who became a common customer for the first time in 1957?

A. I could by going through the book, I could tell.

Q. But you can't tell that from your chart?

A. No, I can't tell that from the chart; that's right.

Q. Now, can you tell me if the customers who are included in that column of the chart marked 1956 are the same customers as those included in the bar marked 1957?

A. No, because I couldn't tell whether a new one came in or an old one was lost, or just, you know, or how that works out.

Q. There might be entirely different people?

A. It is possible; highly improbable.

Q. Why do you say it is highly improbable?

A. Because I think you find as you go through that there are many that are common to both years, or a number of them.

Q. Now some of my questions are going to relate to the other tables in this group, also; and if you will look at the value of common customer sales, next table, I want to ask [fol. 3185] you if you made any analysis of the amount

which was sold by the metal division in 1956 to those customers, who accounted for the $178,000,000 in 1957?

A. You mean in the way of comparing them?

Q. Yes, sir.

A. No, I didn't in that respect.

Q. So that it is not safe to draw the implication from this that the persons who bought the $178,000,000 in 1957 are the same persons that bought the $147,000,000 in 1956, is it?

A. Without looking at the document, I couldn't be sure.

Q. And the same thing is true with respect to the glass container customers?

A. That is true.

Q. Is that correct?

A. Yes, sir.

Q. Now in making up your chart of value of common customer sales, did you give any effect to price increases?

A. Not over the two-year period, no.

The Court: These common customer charts bear no relation to what end use the common customer might put the [fols. 3186-3272] product, do they?

The Witness: No, your Honor, they do not.

The Court: For all that appears here the end uses for which metal or glass are sold to the common customer might be entirely different; would bear no relation one to the other?

The Witness: That is possible, yes.

Mr. Johnson: Now at this point, your Honor, in order to——

The Court: Well, at this point, Mr. Johnson, it is 25 minutes of 5, and it would seem to me that this might be an appropriate time to take a recess until tomorrow morning. However, if there is something that you want to finish up tonight, so that when we stop we don't leave something hanging in the air, maybe you can go ahead for awhile longer.

Mr. Johnson: No, this is a convenient place, as convenient as any.

* * * * * * *

[fol. 3273] JULIUS H. TOLTON resumed.

Mr. Kostelnik: Your Honor, since I believe any representation on our part is no longer needed, since I assume I am no longer exactly a welcome guest, may I be excused?

[fol. 3274] The Court: Yes, very good, sir. It is a little difficult to keep track of who is supposed to be here at any given moment, but I think now you are excused, and not only excused, but I must ask you to leave.

Mr. Kostelnik: Thank you, sir.

The Witness: If your Honor please, for just a moment, yesterday there was a problem in our chart book, the second section, which dealt with disclosing the shares or per cents pertaining to American, Continental and National Can, and as I understand, we were to reveal to you but not to the remainder, to the defense counsel, those shares as they appeared in the pages in the chart book, section 2.

So in order to bring that about, we have set them out in typewritten form, and this will be the Court's copy, and then we will have one for ourselves, and these will relate to the given pages named there as to the shares of American, Continental and National Can Company.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Well, first of all, we will mark this as a Court's exhibit.

Mr. McManus: That's right.

(Marked Court's Exhibit 13 for identification.)

[fol. 3275] Mr. Greenberg: I would like the record to show that we made an original and one copy, and no other copy.

The Court: Yes. I told you yesterday, after I got these confidential figures, which will be marked as a Court's exhibit and sealed for purposes of the record—at least at this time—I will try to relate these figures to the various charts in some manner that might be helpful in terms of solving the defendants' problems as to what the breakdown was.

I wonder if I can approach it this way: For example, let us take the chart on page 24, which is entitled "metal can shipments, '55", "total industry", "leading three com-

panies" and "all others" et cetera. I think I could say this to you—and I will ask for your comments after I make this statement—that the American Can's share of the red line or the top line denominated as "leading three", which amounts to 76 per cent, according to the legend—American has the largest share, Continental has the next largest share, which is not very substantially less than American's share, and the share of National Can is very substantially less than either of them.

Now, is that sufficient for your purposes, gentlemen?

[fol. 3276] Mr. Johnson: Yes, sir. I have no difficulty with that. I have, as I said yesterday, objections based on this method of treating these figures, that is, this method of portraying.

The Court: Yes. That is, you are not——

Mr. Johnson: I have no comment otherwise to make on it.

The Court: All right. I will do this chart by chart as I go along.

I will then go to chart 25, 1955 metal cans, fruit and vegetables. The share of American Can is the largest. The share of Continental Can is somewhat less than the share of American Can. The share of National Can is very substantially less than either of them.

With respect to 26, evaporated and condensed milk, as I understand it, the figure represents only Continental, and there are no figures for either American or National included.

Mr. McManus: Your Honor, this, if you will notice, is because looking at the chart—do you have it in front of you?

The Court: Yes.

[fol. 3277] Mr. McManus: Percentage wise it doesn't amount to a tenth of a per cent. In units there is just a little bit in difference.

The Court: All right. A shade is going to make no difference.

Mr. McManus: That is right, your Honor.

The Court: It does not appear on the list that was furnished to me.

Mr. McManus: That is right. In the units.

The Court: All right.

Now we go to 27. In 27, the share of Continental is largest. The share of American is less than that of Continental.

The share of National is very, very substantially less than either, a relatively small proportion.

With respect to 28, the share of American is considerably larger than the other two, and I think I can go so far as to say represents more than half of the total. Where I do not indicate that there is more than half the total, it means that there is less than half the total.

The share of Continental is considerably less than the share of American, and the share of National is minimal.

[fol. 3278] As to table 29, which is "fish and sea food", the share of American is largest and in excess of 50 per cent of the total. The share of Continental is considerably less than that of American and represents the balance of the total. There are no figures for National in that bar of the chart.

As to 30, "coffee", American has very much the largest total, considerably in excess of 50 per cent. Continental has all of the balance. There is no figure for National in that total.

As to 31, the figure of American represents by [redacted] largest proportion of the total and is considerably in ex[redacted] of 50 per cent. The share of Continental is very substantially less than that of American and accounts for all but a minimal amount of the balance, the minimal amount being ascribed to National.

With respect to chart 32, "beer", American has the largest total, which is slightly in excess of 50 per cent. Continental has somewhat less than American, and National has a total which is very considerably lower than either of the others.

With respect to chart 33, "pet food", the largest figure in that total is that of Continental. The figure of American [fol. 3279] is somewhat less than that of Continental, and the figure of National is somewhat less than American.

As to 34, which is "oil, open top", the largest figure, the largest proportion is that of Continental. The figure of American is slightly lower than Continental, and National has the balance, which is substantially smaller than either of the other two.

35, "soft drinks", American has the largest proportion of the bar total. Continental's total is somewhat less than

American's, and National Can's total is considerably less than that of Continental.

As to 36, "all other food, soap, et cetera", American has the largest total. Continental has considerably less than the total of American, and National has a minimal amount.

With respect to 37, American has the largest proportion of that total. Continental has considerably less, and National has substantially less than Continental.

All right, gentlemen.

Now, Mr. Clerk, will you be good enough to take Court's Exhibit 13 for identification and seal it.

[fol. 3280] The Clerk: Yes.

The Court: And put the title on the sealed envelope, so we will know what it is.

The Clerk: Yes, sir. May I ask one other thing, your Honor: what shall I do with it? Shall I have it impounded or put it in the vault?

The Court: It will be impounded. It will be held with the papers in the case. I do not think we will have to put it in the vault, I am frank to say. It can be left in your custody, Mr. Clerk, and you can do whatever you think will keep it safe, without going to extremes.

Cross-examination.

By Mr. Johnson:

Q. Mr. Tolton, just before we adjourned last evening, we were discussing the tables or the charts under VI in your book of charts. Do you have before you your source material, the volume which was identified as Defendants' Exhibit AA for identification?

A. I do.

Q. And would you look at page 127 of the source book? They are numbered on the upper left-hand corner.

A. 127?

Q. 127, yes. Do you find the heading there, "Union Carbide"?

[fol. 3281] A. Yes. I do.

Q. And under that there are certain subsidiaries of Union Carbide, are there not?

A. Yes. That is right.

Q. That entry shows sales of $1,000 by the Glass Division in 1957 to Linde Air Products, does it not?

A. Yes. That is right.

Q. Nothing in 1956; is that correct?

A. To Linde Air Products?

Q. To Linde Air Products.

A. Yes.

Q. And that entry also shows sales by the Glass Division in 1956 of $1,000 to Visking, does it not?

The Court: To what?

Mr. Johnson: Visking. It is carried over on the following page.

The Court: All right.

Q. (Continuing)—and it shows no sale by the Glass Division to Visking in 1957; is that correct?

A. That's right.

Q. The total indicated sales of the Metal Division for the Union Carbide for 1956 is $209,000; is it not?

[fol. 3282] A. That's right.

Q. Is that amount of $209,000 included with your 1956 total?

A. It is, because we considered only the parent company and did not go into the subsidiaries.

Q. So the $209,000 would be included?

A. Yes.

Q. Would it not?

A. Yes. That's right.

Q. And your table also includes the $428,000 of sales by the Metal Division in 1957; is that correct?

A. That's right.

Q. The result of including those two figures shows an increase of somewhat over $200,000 in your Metal Division sales between the two years; is that correct?

A. That's right.

Q. And that is reflected in your tables?

A. That would be, yes.

Q. The only reason that that increase of $200,000 is shown on your table is because of these two separate $1,000 sales by the Glass Division to separate subsidiaries of Union Carbide; is that true?

[fol. 3283] A. That's correct in this instance. That's right.

Mr. Johnson: Do you follow, your Honor?

The Court: Oh, yes.

Mr. McManus: Which chart are you talking about, if I may?

The Court: 86, page 86. Common customer sales, we are talking about.

Q. Now, will you look on page 44 of the source book; do you see the heading "Falstaff Brewing"?

A. Yes.

Q. Now that shows no sales by the Hazel-Atlas Division in 1956, does it?

A. That's right.

Q. And in the Metal Division column it shows sales in 1957 of about $16,000,000.

A. Yes, that's right.

Q. And about $13,000,000 in 1956.

A. That's right.

Q. Now isn't it true that the way you constructed your chart, that no part of the sales made to Falstaff in 1956 was included in your total metal division sales?

A. That's right.

Q. On your chart?

A. That's right.

[fol. 3284] Q. And isn't it true that the way you constructed your chart, all of the $16,000,000 for 1957 was included?

A. That's right; that's right.

The Court: Well, now, wait a minute. Let me go back.

These say that there was nothing included for Falstaff in '56; right?

The Witness: That's right; that's right.

The Court: And because Hazel-Atlas sold them a thousand dollars worth of merchandise in '57, you upped this whole total by almost $16,000,000; is that right?

The Witness: Yes, in relation to the metal, on the metal: that's right.

By Mr. Johnson:

Q. Now, sir, will you look at page 112 of the source book, under the heading "Sinclair Oil and subsidiaries," at the very bottom of the page. Now that shows Metal Division sales of $3,331,000 for 1956, does it not?

A. That's right.

Q. And the way you constructed your table, none of that $3,331,000 would be in your 1956 metal sales; is that correct?

[fol. 3285] A. That's right.

Q. Now you will see that the following year, 1957, metal sales indicated as $2,818,000.

A. That's right.

Q. For 1957. Were those $2,818,000 included in your '57 table?

A. They would be, yes.

Q. So the result of $1,000 sales by Hazel-Atlas division is that you increased the metal sales figure by $2,818,000.

A. That's right.

Q. Notwithstanding the fact that the Metal Division sales to Sinclair in that year were about half a million dollars less than they were in the preceding year?

A. That's right.

The Court: The preceding year's figure, $3,000,000 plus, was not in the '56 bar?

The Witness: That's right.

Q. Do you have any idea what products were sold by Hazel-Atlas to Sinclair Oil?

A. No, I don't.

Q. Do you know that Hazel-Atlas sold and sells other items, other than containers?

A. Perhaps. I would accept your word.

[fol. 3286] Q. Do you know that the Metal Division of Continental sells other things than containers?

A. Yes.

Mr. Johnson: Your Honor, I could go on, but I am aware of your admonition.

The Court: Yes. I take it that if you went on you would not be doing anything else than multiplying things of this nature.

Mr. Johnson: Yes, sir.

Mr. McManus: Your Honor, I would not like the inference to be made, because on redirect I think we can show that lots of these customers are a big bulk of common for each year. I am not saying that Mr. Johnson can't pick out ten, but I think going beyond ten, much beyond ten, would be very difficult. That is my point.

The Court: All right.

Q. Would you turn now, Mr. Tolton, to your chart under your heading IX. That is "United States shipments of screw, thread and lug type closures."

A. Yes.

Q. "Tin mill products."

A. Yes.

Q. Do you know if tube caps are made of tin?

[fol. 3287] A. What?

Q. Tube caps are made of tin? Are they tin mill products, I should say?

A. I wouldn't know, sir.

Q. So you wouldn't know whether or not they were included in this figure "U.S. total," is that true?

A. I wouldn't know other than what the census indicates.

Q. Would you look at the next table in that group? That is headed "Shipments of Crown caps."

A. Yes.

Q. In caption you have "the remaining segment of United States total." Will you tell me what you mean by that?

A. Well, the census figures give what you call a "U.S. total."

Q. Excuse me. "U.S. total" of what?

A. With respect to Crown caps.

Q. I see. So what you mean to say is "U.S. total of Crown caps"; is that what you mean to say?

A. That is what I had in mind.

Q. Would you turn to chart under section VII?

A. VII?

[fol. 3288] Q. How did you make up this chart? I am looking at the first chart in the section.

A. All right. The basic information was secured from the Internal Revenue Service? They have a Division of Statistics, which furnishes—well, not to everyone's use—but they call it their source book of information, which is open to scholars and other people who find it essential to use it.

They develop what they call industry statistics, generally following the classification or standard industrial classification for that which relates to industries, and in this instance this set of figures from them related to tin can and other tinware industry, as it is called.

Q. What do you understand that term to mean?

A. Well, I have the definition here about that, so I'd just as soon if I could refer to it.

Q. I have no objection.

A. I am reading now from "Instructions for coding industrial activity.

"Corporation income tax returns, Form 1120.

"U.S. Treasury Department—Internal Revenue Service—Statistics Division coding unit.

"May, 1956 (revised).

[fol. 3289] "Publication No. 287."

And I have on page 24, at the top:

"Major group 34—fabricated metal products except ordnance, machinery and transportation equipment."

Now, within that major group 34 there is a 340 group, called "Tin cans and other tinware," and that says, defines it:

"Tin cans: beer, oil, milk, ice cream and general line.

"Other tinware (except household and hospital utensils)."

That is the definition.

The Court: Mr. Johnson, I have to take a telephone call, so we will take a short recess.

(Short recess.)

The Court: I would like to have the last question and answer, please, repeat it.

(Record read.)

By Mr. Johnson:

Q. Will you look at the first table under section II of your chart.

A. First table?

Q. Under II of your chart book.

A. Oh.

[fol. 3290] Q. In the caption of that chart you refer to "total industry," do you not?

A. Yes, yes, sir; I do.

Q. Now, the "total industry" referred to there, and the industry referred to in the caption of the first table under VII are not synonymous, are they?

A. I will answer your question just in a second. What I am looking for is the standard industrial classification numbers associated with the census material. I know it is in the 34 grouping.

The Court: You are talking about census material?

The Witness: Yes. He asked me, in the sense of comparison there, to see whether it was synonymous, and I was trying to check through my charts for industry material here to see if there was the same 340 grouping there. That was what he was trying to do.

Mr. McManus: Your Honor, I think we are getting very technical. If Mr. Johnson is trying to ascertain if on page 89 "tin can and other tinware," if there is something included within that group that is not included back on page 24, which says "metal can shipments," the government is [fol. 3291] willing to stipulate that there well could be and there probably is.

Is that what you are trying to get, Mr. Johnson?

Mr. Johnson: Yes, sir.

The Court: All right.

Q. So that with that stipulation the reference to industry is defined in different ways, is it not?

A. Yes. I am sorry if I misunderstood you.

Q. Now, looking again at this table, the first one under VII, isn't it true that if a company is included as being in the industry which is defined as "tin can and other tinware industry," its total sales, whether of tinware or not, are included in your table?

A. That's right. The point drawn is, their primary operation is the——

Q. So that if a company made cans and something else, but if the Internal Revenue people decided that its principal

business was cans, all of its sales would be included in your figures in this table?

A. That is right.

[fol. 3292] The Court: Let me ask you this: Assume that a company made some other form of tinware than cans, and no cans. Would it still be included within this?

The Witness: If it follows within the definition.

The Court: If it falls within the definition?

The Witness: Yes, your Honor.

Mr. McManus: Excuse me. I don't want to interrupt, but are we referring back to page 89? Because you are talking about sales, and that's an asset.

Mr. Johnson: Unfortunately, this table was changed after I had the page numbers, so I do not have the page number.

Mr. McManus: Could you just give the definition of the title?

Mr. Johnson: Number of firms and gross sales in industry.

The Witness: It is page 89.

By Mr. Johnson:

Q. Now, if the Internal Revenue Service decided that a company's principal business was something other than [fol. 3293] making cans, but it made cans, would its sales be included in this table?

A. No, it wouldn't be incorporated in this classification.

Q. I think we have had testimony here that Sherwin-Williams Paint Company makes cans. Would its sales figures be included here?

A. I would think not. I would think if Sherwin-Williams primary sales were paint, it would probably fall into the paint category.

Q. Would the same thing be true of Campbell Soup Company?

A. Yes.

Q. Now, Crown Cork & Seal is the largest crown manufacturer in the United States, is it not?

A. I understand that it is.

Q. And it also makes cans, does it not?

A. I think it makes some.

Q. Are its sales included in these gross sales?

A. Well, I haven't studied Crown Cork & Seal enough to

know which its primary operation would be, but whichever it is, I assume it would fall into that classification.

Q. So you can't tell whether their figures are in here [fol. 3294] or not?

A. No, I can't.

Q. In the column to the right of this page, there is the figure 1407. Now, I understand from your legends that that relates to gross sales of firms having over $100 million in assets; is that correct?

A. That's right.

Q. Would Continental Can's sales be in that group?

A. It would.

Q. And would that 1407 include all of Continental's can sales?

A. It would.

Q. Paper, glass, metal, everything?

Mr. McManus: Your Honor, just a clarification. I think I may be wrong, but is that a sales figure on page 89, or is that an asset figure?

The Witness: No, that is a sales figure on page 89. It says by asset classification but deals with gross sales.

The Court: Grouping is by asset classification. The bar is a sales bar.

Mr. McManus: Thank you, your Honor.

[fol. 3295] By Mr. Johnson:

Q. Now, Mr. Tolton, you have told me that captive manufacturers——

The Court: Wait a minute, before we leave that subject.

By the Court:

Q. 1407 is 1,407,000,000?

A. That is right.

Q. And that would include, you say, all Continental sales?

A. It would, your Honor.

Q. Would it include all American sales?

A. Yes.

Q. I understood Continental—am I wrong on this, this figure?—that Continental's sales in the course of a year were in excess of a billion dollars.

A. That's correct, but this is for 1956.

Q. And I also understood that American's sales, at least at this point, were in excess of a billion dollars?

A. That's correct.

Q. But you say plainly, these two on the red bar in '56 include American and Continental?

A. That's right, and for each year previously.

[fol. 3296] Q. And you say that their total sales at that point, overall, including glass, cardboard, seals, everything, were $1,407,000,000, roughly?

A. That is right. That is round.

Q. Yes.

A. That is true.

By Mr. Johnson:

Q. Now, if I understand you correctly, you say that captive manufacturers, who make cans for their own use, whose principal business is something else, are excluded from this table.

A. That is right.

Q. And non-tinware sales are not included; is that right?

A. Yes, I thought you said other tinware.

Q. Now, with those inclusions or exclusions, this chart shows nothing about other can companies or about trends in the industry, does it?

A. Well, except by definition in standard industrial classification and how it was utilized by the Internal Revenue Service.

Q. All of the changes between these three columns, as far as you know, could have been accounted for by something other than can sales, could they not?

[fol. 3297] A. Only in the respect that still its primary operation was tin cans. That's the main thing. If it slipped over where it became more of some other type of thing, it would shift into——

Mr. Johnson: I don't think you understood my question. I wonder if I might have it again.

(Question read.)

A. Well, I still think I hold to my contention. I would say yes, as long as it didn't slip over then into having its

primary operation as something other than tin cans; that's all.

Q. All I am saying is, comparing these three columns, there are changes in those three columns.

A. Yes.

Q. All of those changes, from the first column to the second column to the third column, could be the result of increases in sales of things other than cans?

A. I am not trying to—I still hold to my contention. I mean, I agree it could happen as long as it didn't slip over into another category. In other words, let's say if Continental Can made $200 million of cans one year, and $100 [fol. 3298] million of other products, well, if its increase went to $300 million and somehow or other that was due to pasteboards, we will say, a great increase, then it would go over into the pasteboard industry.

Q. Let me clarify that. The difference between the bottom figure of the next-to-the-last column and the last column is 1459, is it not—no, I am sorry; is 459?

A. Yes, that's right.

The Court: 459 million.

Mr. Johnson: 459 million, that's right.

Q. Now, if a company that is included in the bottom part of both of those columns had increased its paper sales by $459 million between 1950 and 1956, and it still did not go out of its principle business, being can-making, all of that increase would be accounted for by that, would it not?

A. That would be true under that circumstance, that's right.

Q. Now, then, let me try something else. Suppose that a company had $400,000 in assets in 1946, in which of these columns would its sales be put?

A. It would be presumed—oh, well, in 1946 it would be in the top part of the column there, in the vertical line.

[fol. 3299] Q. Of the left-hand column?

A. Yes, that's right.

Q. Now, suppose that the same company had assets of $600,000 in 1956.

A. Yes.

Q. In which of the three blocks—I am sorry. If it had

assets of $600,000 in 1956. In which of the three blocks on the right-hand column would its sales be put?

A. It would be in the polka dot section there.

Q. In the second block from the top?

A. Yes.

Q. So, in other words, because that company had been successful in increasing its assets, your chart would show that the top block had decreased, would it not?

A. That's right.

Q. Now, Mr. Tolton, why did you select the years 1946 1950 and 1956 in making these charts?

A. Well, they were selected because 1946 was the first post-war year. '50 seemed to be about a mid-point, and '56 is the last information we were able to get from the Internal [fol. 3300] Revenue Service. They run about three years behind in their statistics of income.

Mr. Johnson: Would you mark this document, which is entitled "Corporation Income Tax Returns, Statistics of Income, 1956-57," as a defendants' exhibit.

(Defendants' Exhibit GG marked for identification.)

By Mr. Johnson:

Q. Defendants' Exhibit GG for identification is a volume that bears the imprint of the United States Treasury Department. Did you use this book in the preparation of your tables?

A. Well, ours was the original source book that was obtained from the Internal Revenue Service, that's right.

Q. I want you to look at page 135 of this book, which is the 1956-57 volume. You will note in the middle of the page the statement that "Beginning with 1951 a probability sample has been used as the basis of the tabulated data." Do you see that statement?

A. I see it there.

Q. Now, would that indicate to you that the Internal Revenue Service had adopted a different method of com- [fol. 3301] piling statistics between 1950 and 1956?

A. I notice here in an earlier year it says, "Beginning with 1951 a probability sample has been used as the basis

of the tabulated data," which would indicate that in prior years they had had a little different method.

Q. They counted one way before 1951—they had counted one way before 1951 and another way after 1951?

A. Yes. They had the experience of the previous years.

Q. So your table is based on two different methods of computing; is that correct——

A. In——

Q. —in that the probability sample has been used after 1951?

A. Yes, that's right.

Q. Now, the column on your left shows the total of 52 firms; is that correct?

A. That's right.

Mr. Hughes: On the right.

Mr. Johnson: I am sorry.

Q. The column on the right; a total of 52 firms.

Mr. Johnson: Will you mark for identification a volume [fol. 3302] entitled "Corporation Income Tax Returns, Statistics of Income, 1957 and 1958."

(Defendants' Exhibit HH marked for identification.)

Mr. McManus: What is that column—1946? Is that the one you are talking about?

Mr. Johnson: I am talking about 1956.

Q. While we are doing that, the column for 1950 indicates 86 firms. Is that correct?

A. Which column was that?

Q. The center column, 1950 column.

A. Eighty-six firms. That's right.

Mr. McManus: What chart are we on?

The Witness: We are on the same chart.

Mr. McManus: 89? All right.

Q. Now, I want to show you Defendant's Exhibit HH for identification, which is another volume, which bears the imprint "United States Treasury Department," containing statistics of income for 1957 and 1958. I want you to look at page 22——

Mr. McManus: Your Honor, I can't see the purpose of going into this. Does this refer to '57 and '58 income?

Mr. Johnson: It does, sir.

[fol. 3303] Mr. McManus: Our chart only relates to 1956, as far as I have been able to ascertain.

The Court: Yes, I know. But, because your chart refers to 1956 and stops there, that is no reason why he isn't, on cross, entitled to go into the material immediately before and after those years in order to test the validity of your chart.

Mr. McManus: All right, your Honor.

The Court: Overruled.

Mr. McManus: All right, your Honor.

By Mr. Johnson:

Q. If you will look at page 22, line 122, which shows "Tin Can and Other Tinware," looking at, first——

A. Yes, I have.

Q. Looking at the first column following that, which indicates the number of returns in that classification, for 1957——

A. You asked me how many——

Q. —will you tell me how many there are?

A. There were 96.

Q. There were 96 in 1957, so if you had carried your chart one year further, it would have shown that there were more companies than there were in 1950, would it not?

[fol. 3304] A. I assume so. I say that because whether the source book is different than this for some reason or other—that's the only exception I would have.

Q. Was that why you stopped at 1956?

A. I stopped at 1956 because that was the last they had in the source book data to offer us, and that seemed to be the year of the—that the merger was consummated, so that would be the reason.

The Court: How do you explain the fact, if at all, Mr. Tolton, that in 1950 there were, as I see it, 86 firms in this category, and in 1956 there were 52 firms in the category, and in 1957 there were 90-odd firms in the category?

The Witness: Well, the only thing I could think, possibly, is this: that there was the difference between primary op-

eration and whether Internal Revenue Service had additional information that there actually were more firms that made tin cans that wasn't their primary operation——

The Court: You just don't know?

The Witness: I just don't know.

By Mr. Johnson:

Q. Tolton, would you turn to your table under your caption VIII.

[fol. 3305] A. VIII? Yes.

The Court: This is the so-called prior acquisition documents?

Mr. Johnson: One of the prior acquisition documents, yes, sir. When I get through, I have a suggestion, or I would make it now, if you like, as to how to handle these.

My thought was that, since decision is being reserved on all of these tables, I could just as well complete my cross examination——

The Court: Oh, I think that's right, Mr. Johnson.

Mr. Johnson: —and this document can then be treated with the——

The Court: With the prior acquisition material that we will be dealing with perhaps on Monday.

Mr. McManus: Your Honor, could I say one thing, too, about this chart before we start?

The Court: Yes.

Mr. McManus: I agreed with defendants in a stipulation that their acquisition of a part or all of Fort Wayne Corrugated Paper Company was not to bear any relationship to this case, and I noticed the other day that in making up this [fol. 3306] chart that was placed on the chart.

Now, I would like to start for the record that we are willing to strike it or to state and ask you not to give any consideration to the fact that they might have acquired an additional interest——

The Court: Where does that appear—Fort Wayne Paper?

Mr. McManus: That is 1950, your Honor, and has to do with paperboard. It is the last one under that——

The Court: I see.

Mr. Johnson: Thank you, Mr. McManus.

The Witness: What other one was there? Was there——

Mr. McManus: That was the one.

The Witness: I see.

The Court: If that is so, I am going to take this Fort Wayne Paper Company and eliminate it physically from the chart at this time, so we are not bothered with that any more. Let me have your pen, please, Mr. Clerk.

Mr. McManus: Fine, your Honor. I am sorry that got on there.

The Court: All right. I have blocked out Fort Wayne [fol. 3307] Corrugated Paper Company from that chart.

By Mr. Johnson:

Q. Mr. Tolton, your caption relates to the container and related product field. What do you mean by the term "related product"?

A. Well, I think they make machinery and, if I am not mistaken, they have a machinery division and other things like that which would probably be used to, I mean, you know, make some of the products too that they sell, so I would consider that as part of the related operations.

Q. Well, sir, you made this table. Do you know whether you are mistaken or not?

A. Well, I think—I certainly have—I know I have knowledge that they purchased machinery and equipment and that sort of thing, I mean, through the merger program, or whatever you want to call it, through the years. I think that is—yes, I would say that is right.

Q. I want you to look down under the heading "1930s," the very last entry under that column. Do you see the name Canonsburg Coal Company?

A. Yes, I do.

[fol. 3308] Q. Can you tell me how that is related to the container field?

A. If I may have reference to the Government's Exhibit for identification 786, I think I can answer that.

Mr. Greenberg: I will give him the exhibits, your Honor, but I think Mr. McManus and I both agree we are getting into legal questions.

Mr. McManus: That is all right, he can answer that. There is no problem.

The Court: Let me ask you one thing before you go any

further. With the exception of the Fort Wayne Corrugated Paper Company, are there any domestic acquisitions of Continental Can Company, in the period covered by the chart, which are excluded from the chart?

The Witness: I am afraid I didn't quite understand.

The Court: Let me put it this way. This chart is entitled "Domestic Acquisitions of Continental Can Company in the Container and Related Product Field."

The Witness: Yes.

The Court: Now, I want to know whether the Continental [fol. 3309] Can Company, if you know, made any acquisitions during the '20s, '30s, '40s or '50s, with the exception of the Fort Wayne thing which we have just eliminated, which isn't shown on this chart.

The Witness: Well, I think we tried to exclude any acquisitions outside of the country.

The Court: All right. I understand that. This is domestic acquisitions.

Now, my question is whether there are any domestic acquisitions by Continental Can Company in the '20s, '30s, '40s or '50s which are not included in this chart, with the exception of the Fort Wayne.

The Witness: We tried to cover them all.

The Court: Then what is the point of putting in the "Container and Related Product Field"? Isn't this a chart of all acquisitions of Continental Can Company during this period?

Mr. McManus: Your Honor, could I answer that? Or are you asking the witness?

The Court: I am asking the witness at this point.

The Witness: Well, as near as I can say, your Honor—as near as we can tell, it slipped into this category or categories here.

[fol. 3310] The Court: As I get the impression reading the heading of this chart, to be perfectly frank with you, Mr. Tolton, there are some acquisitions that are not in this chart. But you say there is none as far as you know, except——

The Witness: In the domestic field, as near as I can.

The Court: In the domestic field. All right.

Mr. Greenberg: If the Court please, will the record show

that Mr. Tolton has before him an exhibit which is not in evidence. I just wanted to indicate that to you. It is G——

The Witness: 786.

Mr. Greenberg: G-786.

The Court: All right. What are we looking for at the moment.

Mr. Johnson: The relationship of Canonsburg Coal Company.

The Court: Oh, yes.

Mr. Handler: He is looking in the wrong place.

The Witness: I think that's right. 26. Thank you.

[fol. 3311] By Mr. Johnson:

Q. Now, sir, we have waited a long time for you to refer to your material. Will you tell us what relationship Canonsburg Coal Company has to the container field?

A. It says, "In January, 1934, Continental organized the Canonsburg Coal Company"——

The Court: What are you reading from?

The Witness: I am reading from Government's Exhibit for identification 786.

The Court: What page?

The Witness: Page 21—21 in the typed——

The Court: Typed 21?

The Witness: That's right. And it is No. 26 at the top of the page.

The Court: All right.

A. I will read the whole thing.

"In 1933 Continental purchased the Hazel Mines of Chartier Creek Coal Company"——

Q. Excuse me. Can't you answer the question without reading from this document?

A. Well, I wanted to get to the point. It says it is a subsidiary of Standard Tin Plate Company, to operate this property, and it was disposed of in 1941.

[fol. 3311a] I just went down the paragraph this way.

[fol. 3312] Q. You are reading about something, about mining rights covering 500 acres of coal, coal mining equipment; is that what you are reading about?

A. That's right, as a subsidiary of Standard Tinplate Company.

Q. And that was the Cannonsburg Coal Company?

A. That's right.

The Court: And as I read this number 26, it says "The coal mine was adjacent to the property then owned by Continental and was acquired as a source of supply to it"; is that right?

The Witness: I see that, yes, your Honor.

Q. Now, Mr. Tolton, under the column headed "1940s," there is a reference to Marco Chemicals, Inc.; will you tell me what relationship that has to the container field?

A. Well, that is also in this document. Do you know which number it is offhand, without my having to run through it?

Q. I do not, sir.

The Court: This appears to be——

Mr. Handler: It appears on typewritten page 29, and there is a new number 31. It is number 40, the top of the page.

[fol. 3313] A. It says "The company is engaged in the production of resins, plastic products and chemicals . . . is located in Sewaren, New Jersey." Then there is another one down there "and is the first step in entering the plastic field."

Q. And from that somehow you concluded that that was related to the container field?

A. Right. I'd have to say broadly, in the broad sense of the word, it is related.

Q. It is related?

A. Pardon?

Q. It is related to the container field?

A. Well, I can only say plastics ultimately have been made into containers. That is about as far as I could go on it.

Q. Do you know what kind of plastics Marco Chemical, Inc. was manufacturing?

A. No, I didn't.

Q. In whatever year it was bought?

A. I do not.

Q. When you referred to acquisitions in this table, you include acquisitions of machinery?

A. Yes, it did include machinery; that's right.

Q. So it is not all acquisitions of companies you are referring to?

[fol. 3314] A. Well, they were purchased from a company. I am not trying to quibble. I mean, that is—they had to buy them from somebody, and they bought them from a company, and it was the machinery purchased from that company.

The Court: I don't follow you, Mr. Witness. You mean to tell me that if Continental Can decided to acquire $5,000,000 worth of machinery from another company, it would be listed here?

The Witness: Yes.

The Court: Without purchasing the company?

The Witness: Yes, there is such instances.

The Court: All right, give me such an instance?

The Witness: Well, I think there is an Armour, if I am not mistaken—I just have to run down here.

The Court: Armour & Company, yes.

The Witness: So that was machinery, as I understand, and Owens-Illinois, that was machinery, or at least; at least I guess can making equipment from Owens-Illinois at that period of time.

The Court: That is when they bought the Owens-Illinois [fol. 3315] Can Division, wasn't it?

The Witness: Yes, that would it; that's right.

By Mr. Johnson:

Q. How about Clarkford Paper Company?

The Court: Suppose they bought in a year from some company in the open market $10,000,000 worth of machinery to refurbish a plant, and they ordered $10,000,000 of machinery from the XYZ Machinery Company to be made for it; would that be included here?

A. I would think not, for the reason that if XYZ Company made in its course of business machinery for them, that would not be related to an acquisition or acquiring of that type of thing.

By Mr. Johnson:

Q. Mr. Tolton, you have referred to a particular document here from time to time for information. Did you check the Department of Justice files for other information with respect to these acquisitions?

A. Well, I would say in the one that has been stricken there was some reference to it.

Q. I am not talking about that one.

A. Oh.

Q. I am not discussing that one.

A. All right. No, I don't think, I don't think I personally [fol. 3316] did. I don't think I did.

Q. You qualify that by saying you personally did; did you have it done for you?

A. No, I didn't. I put it this way: I came into the case a little later in the matter, and there had been some work done—well, I say work done, I mean, looking into the acquisition kind of program, I would say, and so to that extent I didn't personally look into these—into that element of it.

Q. Did you check the Department of Justice files to determine if the acquisition of any of these companies was encouraged by the Department of Justice?

Mr. McManus: Your Honor, I object to that question. I object to him asking a question which was put, because it is my position and the government's position that the Department of Justice doesn't encourage acquisitions. He has already said that he didn't look up any of this in the file.

The Court: That is your position, Mr. McManus.

Mr. McManus: Well, I would like to have it made clear for the record.

The Court: You say the Department doesn't encourage.

Mr. McManus: Yes.

[fol. 3317] The Court: All right, I will overrule the objection. You made your statement.

By Mr. Johnson:

Q. Will you answer the question?

A. Repeat it, please.

The Court: Yes, have it repeated.

(Question read.)

A. I did not.

Q. Mr. Tolton, can you tell me which of the companies that are named on this chart were subsequently sold by Continental Can?

A. No, I could not. I mean, I could develop it, but I could not at this time do it.

Q. What do you mean "could develop"?

A. Well, if I looked through materials that have been given us in this case, and all that, I don't know, perhaps I could locate such information if there is any, if there is any such sales made.

Q. But you didn't try to do that?

A. Pardon?

Q. But you didn't try to do that?

A. I would say not.

Q. You were content to leave the impression that all these companies had been acquired by Continental?

[fol. 3318] Mr. McManus: Your Honor, I object. I mean, Mr. Johnson is testifying here. I mean, he is answering.

The Court: The objection, Mr. McManus, is overruled. This is cross-examination.

Go ahead.

(Question read.)

Mr. McManus: Your Honor, I don't want to keep interrupting, but to questions of that type will I have a continuing objection?

The Court: Oh, yes, you can have all the objections you want. They are overruled.

Finish your question, Mr. Johnson.

Q. You were content to leave the impression that these companies had been acquired by Continental and retained by it; is that correct?

A. Well, that asks me for a state of mind, that is all I can say. But I am not—I wasn't content to leave them, although I did not look into it. Now if that can split a hair, that is about what happened.

Q. You think someone reading this chart would get that impression?

A. Well certainly what the chart says, these were acquisitions and it kind of speaks for itself, and that is as far as [fol. 3319] I can go.

Q. I see. These were acquisitions, and that was all.

A. All right.

Q. No other information. Mr. Tolton, how did you make these classifications, shown on the right-hand of the table?

A. On the left?

Q. Shown on the left-hand side of the table?

A. Well, from the documents that I utilized in order to draw it up.

Q. In the last column under "1950s," you have Bowes Industries, Inc.

A. In what one was that?

Q. Under the 1950s, under "flexible packaging."

A. Yes, I see it there.

Q. Will you tell me what Bowes Industries made?

A. Without the document G-785 I couldn't at this time, except that I assume it related to the—to the flexible packaging field.

Q. What would you call the flexible packaging field for this purpose?

A. Well, it could make polyethylene, it could make, oh, glassine, wax paper—those would be in the paper field, [fol. 3320] excuse me. I can't think of the principal one that DuPont makes.

By the Court:

Q. Well, let me ask you this: I understand that as far as I could see, from looking at Exhibit 787, the one you have been referring to, 786 or 787, as the case may be, that only goes up to the 1940s, doesn't it?

Mr. Handler: It is the next exhibit, your Honor.

A. There is another one, your Honor.

The Court: Is there another one?

Mr. Handler: Yes.

The Witness: 785 actually preceded this one and was for a later period of time.

The Court: I see.

The Witness: I was trying to think. Cellophane is what

I had in mind from DuPont, that sort of product, as part of the flexible packaging field.

By Mr. Johnson:

Q. Now you are referring to another document; is that the document from which you got your information with respect to Bowes Industries?

Mr. McManus: What is the number?

[fol. 3321] The Witness: Oh, it is Government's Exhibit for identification 785.

Q. So with that in front of you, can you tell me why you classified Bowes Industries, Inc. as a flexible packaging company?

A. The only one I could see in there, if napkins had something—has a flexibleness about them, that would be the only reason that it got in there.

Q. So that becomes your basis for classifying that as flexible packaging?

A. I am afraid that would be the only one there.

Q. In a field related to the container industry; is that correct?

A. Yes—well, there are others here that indicate it is in it, I think in the container field, but I meant——

Q. I see. What are they?

A. Well, there is plastic coated paper plates. Then there is napkins, plastic knives, forks, spoons and cups, and then purchase from outside suppliers for the purpose of resale.

Q. Which of those do you regard as related to the container field?

A. Probably the cups.

[fol. 3322] Q. I see a reference here in the 1920s to Penick & Ford. You really mean to imply that Continental Can acquired Penick & Ford?

A. Where is that located?

The Court: In the top upper left-hand square under the 1920s.

The Witness: Oh, I see it. G-786.

A. Well, this is on page 16 of G-786. It goes 16 and 17 in the typewritten figures. When you ask me this, I have to refer to page 17, Mr. Johnson.

"Penick & Ford sold its can business to Continental, because it felt that Continental could effect large scale economies in its operation, thus supply cans at lower cost than Penick & Ford have been able to realize. In this way Continental acquired an important customer."

Q. So that acquisition back in the 1920s was a part of Penick & Ford and not Penick & Ford; is that right?

A. Oh, in total, purchased the can business. Then I presume—yes, they had other business.

Q. Look down, Mr. Tolton, in the very last entry under 1940s, Vulcan DeTinning Company.

A. Yes.

[fol. 3323] Q. Do you know what the largest interest Continental ever had in Vulcan DeTinning was?

A. I think they had a 51-4/10 per cent stock interest, is my reflection at this time.

Q. That is what you think they had, is it?

A. Yes—well, I saw it in Moody's, and I saw it referred to in—not the per cent, precise per cent—but in the Continental's annual report.

Q. Do you know how much they have now?

A. I couldn't say.

Q. Would you look in the column 1950s, next to the last item, Tenco, Inc.; do you know what that company was?

A. I am looking for it. Just a moment.

Government's Exhibit 785, on page 6, shows Tenco, Inc. of Winona, Minnesota, and it was plastic pipefittings. That is all it is.

Q. Plastic pipefittings?

A. That's right.

Q. This is something you regarded as related to a product in the container field; is that correct?

A. Yes, in the "all other" category.

Q. I want you to go back to your caption again, and in the light of what you said a moment ago will you try to [fol. 3324] define for me what you meant by "acquisitions"?

A. Well, I think there is considerable debate. Probably what—merger or acquisition—but it would be the acquiring of the facilities or a major stock interest—I think those two probably would incorporate the two main areas, or prob-

able means of acquiring an interest, of which then you exact a degree of control.

Q. You know that Vulcan DeTinning Company is listed on the New York Stock Exchange?

A. You mean presently?

Q. Yes, sir; either under that name or some other name?

A. No, sir; I'm not aware, except your thought.

Q. Did you make any effort to ascertain whether it was so listed or not?

A. I may have seen it on occasion, but I couldn't readily say when or where I had seen it.

Q. Do you know that owners of over 10 per cent of the outstanding equity stock of any stock listed on the New York Stock Exchange are required to report their holdings to the Securities and Exchange Commission?

Mr. McManus: What period of time are you talking about?

[fol. 3325] Mr. Johnson: Any period of time since 1934 on.

Mr. McManus: No, I mean the question, what period of time was the question directed to?

Mr. Johnson: Any time.

Q. Did you know that they were required to report, that any holder of over 10 per cent equity stock of any corporation listed on the New York Stock Exchange is required to report its holdings to the Securities and Exchange Commission?

A. Well, I have certainly been in to the Securities and Exchange Commission, but I didn't know all the items which they had to, I mean, to make reportings and refer to. There is considerable amount of information they have to furnish the SEC.

Q. So you didn't try to get any information that might have been available with respect to these companies, outside of these few documents you have been referring to; is that right?

A. Well, I have looked into SEC records from time to time, yes.

Q. In connection with this preparation, the preparation of this table?

A. Well, as it relates to acquisitions, because they, they

[fol. 3326] made—well, I was trying to think back—Hazel-Atlas—sav, the Hazel-Atlas acquisition. They put out a prospectus and other material, of which they have to furnish the SEC, and I have looked at that data and the information from time to time, not in complete detail, but I have looked at it.

Q. Mr. Tolton, how much of this chart that we are discussing now did you prepare yourself?

A. Well, the whole chart was prepared under my supervision.

Q. And the information was gathered under your supervision?

A. Well, not wholly in the sense that some—some came into my province, I should say, after I came into this matter.

Mr. Johnson: May I have just one moment, your Honor?

The Court: Yes.

Mr. Johnson: To look at my notes?

The Court: Yes.

Mr. Johnson: I have no further questions of this witness.

The Court: Have you any redirect, Mr. McManus?

[fol. 3327] Mr. McManus: Yes, sir.

Redirect examination.

By Mr. McManus:

Q. Staying on page 92 of Government's Exhibit 800, that is the domestic acquisitions of Continental Can Company and data in related products field, the source of your information that you drew upon was the submission of Continental Can Company in connection with FTC study of acquisitions?

A. That is right.

Q. And the annual reports of Continental Can?

A. Yes.

Q. Moody's Industrials?

A. Yes.

Q. And Continental Can's proxy statement of October 26, 1956. Now, could you tell me what proxy statement that relates to?

A. I think that was the Hazel-Atlas one, I am not sure. It may have had other considerations, I am not—just one

moment. I have it right here and I can readily ascertain.

Within this proxy statement, which is Continental Can Company, Inc., "Notice of proxy statement of special meeting of common and preferred stockholders to be held October 26, 1956."

[fol. 3328] It has listed—well, I am just going to the index here, which precedes page 1, and the purpose of meeting is section 1. Section 2 is summary of terms of merger; section 3 business of Gair.

Q. That's right, Mr. Tolton. I just want to find out if that is the one that you used?

A. Yes, that's right.

Mr. McManus: Your Honor, I think I can cut this this redirect examination on this chart considerably by saying that some of the other data that we have offered, and which we are going to argue should be admitted on past acquisitions would explain in considerably more detail, in more detail than the chart, what was involved with the acquisition of the companies, and things of that nature. So if that data would go in, and when and if it does go in, it would explain in more detail.

I can see no purpose in going into that at this point.

The Court: All right.

Q. Now, you were asked the question if tube caps are made out of metal; do you know what tube caps are, Mr. Tolton?

A. I think as one who used them I might know.

[fol. 3329] Q. What would you consider a tube cap?

A. Well, it would go on like toothpaste or some such product as that.

Q. Would they be plastic or metal?

A. Well, I think I have seen them either.

Q. I see. So a tube cap could be plastic or it could be metal?

A. Yes.

Q. Depending on what type of tube cap you are looking at; is that correct?

A. That's right.

Q. Now going to Government's Exhibit 800 for identification, page 89, that deals with tin can and other tinware, and is based on sales figures there.

A. The gross sales, yes.

Q. Now Mr. Johnson indicated to you or showed to you a publication of Internal Revenue, which indicated that there were additional companies in 1957 that were doing other than what they were in 1956; is that correct?

A. Yes, that's right.

Q. Now I want to ask one more question: If a company fails to file an income tax return, would it be in this classification?

[fol. 3330] A. No, it would not.

Q. If a company was bankrupt and had no assets, would it be in this classification?

A. Well, let's see, bankrupt.

What I am getting at is this, they showed some that have net income and no net income. If they were still in operation and showed a loss, it would appear in here. Now if they were completely out of existence, it wouldn't show in here.

Q. Now, the next chart, page 90, I don't think Mr. Johnson asked you about that in any detail. Could you explain to his Honor what that is supposed to portray?

A. Well, the previous one aligned the companies on the basis of, or within those groupings on the basis of gross sales. This one was assembled on the basis of their total assets.

Q. And in this chart the figure 2, referring to the heavy black bar on the bottom part of the bar——

The Court: The red bar.

Q. —the red bar in the original, that is referring to companies, American Can Company and Continental Can Company?

A. That's right.

[fol. 3331] Q. And the same thing would be true in 1950?

A. Yes, the same would be true.

Q. And the same thing would be true in 1957?

A. That's right.

Q. In going to—Mr. Johnson asked you if you knew if the Department of Justice attempted to encourage any of these acquisitions in this Government's Exhibit 800, if you knew, and your answer—what was your answer?

A. I do not know.

Q. Do you happen to know if they tried to discourage any of these acquisitions?

A. Not——

Q. Other than the present one or Robert Gair?

A. Well, not specifically, except——

Q. You just don't have knowledge if they encouraged or discouraged; is that correct?

A. In this particular area, that's right.

Mr. McManus: Thank you.

That is all I have, your Honor.

The Court: All right.

Well now, gentlemen, it seems to me—have you anything further with this witness, Mr. Johnson?

Mr. Johnson: No sir.

[fols. 3332-3337] I wanted to ask your Honor's pleasure on how you want to consider these various documents?

The Court: Well, you may step down, Mr. Witness. Thank you.

(Witness excused.)

* * * * * * *

[fol. 3338] New York, October 17, 1960, 10:30 A.M.

Trial resumed

Colloquy Between Court and Counsel

The Court: Before we begin this morning, is there any reason, as you gentlemen see it, for having this hearing in camera?

Mr. Johnson: No, sir; I don't think so.

Mr. McManus: Not on the part of the government.

The Court: Very good.

Mr. McManus: Your Honor, it was my understanding that our procedure this morning was divided into three parts. The first was, the government was to offer its statistical data. The second was a discussion or argument on prior acquisitions; and the third part, the offering of additional documents that the government had indicated it would like to make an offer on.

[fol. 3339] The Court: That is as I understand it.

Mr. McManus: Now, the first part, your Honor, on the tables and charts, as I understood your instructions, the government was to offer these tables and charts, and the defendant was to make such objections or comments as they desired. Then the government would have a chance to offer them. Now, I presume the best way to do it is to proceed in the same sequence as we had heretofore, and the government now offers Government's Exhibit for identification 801, which is entitled "Folder A."

The Court: Well, now, didn't I gain the impression—I may be mistaken in this—that Mr. Johnson felt if the government offered all of its exhibits at the same time, that is, the chart exhibits, there might be a relation between them and it would be better from the standpoint of the presentation to have them all before the Court at the same time?

Am I correct in that, Mr. Johnson?

Mr. Johnson: Yes, sir. It is my understanding that they have all actually been offered.

The Court: I understand that, but I think the record [fol. 3340] will read better and more clearly if we repeat the offer now and then go on from there.

Mr. Johnson: Yes.

Mr. McManus: The government would like to offer, your Honor, Government's Exhibit 800, Government's Exhibit 801——

The Court: Wait a minute. Let's have those so I get them. Now, 800 is?

Mr. McManus: Excuse me, your Honor. Could I withdraw that and start with 801? That is the sequence we followed, because that is the table.

The Court: Yes.

Mr. McManus: Government would like to offer Government's Exhibit 801 for identification, which is also indicated as "Folder A"; Government's Exhibit 802 for identification, which is also marked "Folder B"; Government's Exhibit 803 for identification, which is also marked "Folder C"; Government's Exhibit 800, which is also marked "Plaintiff's chart book 1", and the government would also like to offer, your Honor, Government's Exhibit 1202, which is the underlying data for a number of these tables and charts.

The Court: Now let me ask you this: Does this include [fol. 3340a] the so-called plastic charts?

Mr. McManus: It doesn't, your Honor.

The Court: I think you'd better offer those at the same time.

Mr. McManus: The government offers Government's Exhibit 809, in addition, your Honor.

[fol. 3341] Mr. Handler: Your Honor, may I interrupt the proceedings a moment, please?

The Court: Yes, Mr. Handler.

Mr. Handler: I just came into the courtroom and received from government counsel a memorandum of law on prior acquisitions which I am going to try to read between now and the time that I get up to argue the point.

I would like to ask counsel whether they have written a brief on the motion to dismiss, because, if they do have one, I think they ought to give it to me now and not two minutes before the argument commences.

The Court: All right. What do you say to that, Mr. McManus?

Mr. McManus: Your Honor, we are going to have a little two-page memorandum in opposition to the brief that you handed us Friday evening, at the close, Mr. Handler, which I think we would have ready this evening. It is pretty much hornbook law—at least we assume it is—much as Mr. Handler's was.

[fol. 3342] The Court: I see. Well, I will be interested to receive that, but I don't really think that this is a subject that should take very much in the argument. As I see it, the government has offered six separate exhibits, which include the sets of tables on tin and glass, so called, the chart book, the Can Manufacturers Institute annual report and the plastic charts.

Now, there is nothing else that you are presently offering in the way of supporting data?

Mr. McManus: At the present time, that is right.

The Court: At the present time.

All right, Mr. Johnson.

Mr. Johnson: With that, then, I understand that we have before us the tables and the charts offered on the witnesses Finn, Tolton and Hughes.

Your Honor, statistics have a useful place in economic and business analysis, but in the hands of the unwary they become a trap, and in the hands of the unskilled they are positively dangerous.

[fol. 3343] The government here would have the Court believe that these witnesses merely took some data and performed a mechanical operation in putting it into tabular form, but that clearly is not so. Each of these three witnesses selected and adjusted and attempted to analyze data. Some of the data that have been presented here are based, in the first instance, at least, on census data.

Census data, handled by the Bureau of the Census, is handled by highly skilled experts. But even so, it is not without its difficulties, and in this connection I refer to a letter by the Director of the Bureau of the Census, which was quoted by the Court of Appeals in the Seventh Circuit in Federal Trade Commission vs. Dilger, 276 F. 2d 739, in which the Director of the Bureau referred to the necessity of making approximations in census reporting.

I wish to make it clear, however, that my objections to the material here presented are not based on difficulties with the primary census material. My objections go to the manner of the use of that material.

[fol. 3344] Also, my objections are not based primarily on the simple mathematical aspects of the material presented. It is true what I was able, by being able to focus on certain of the arithmetic, to uncover at least one major error, which was immediately corrected.

Now, in the areas in which I could not focus because of lack of access to underlying data, the errors, if any, go uncorrected and undetected.

Your Honor, I object to these tables and charts. It is really improper to dignify them by calling them statistics because they are misleading and false by virtue of the manner in which they have been constructed.

Data presented in the form of figures can be misleading in many ways. The government has no more right to present half truths than it has to present untruths.

In my law practice I do a considerable amount of securities work. I was once on the staff of the Securities and Exchange Commission. The securities laws are explicit in for-
[fol. 3345] bidding not only the use of misleading statements but in forbidding the omission of facts necessary to make the statements made not misleading. This is a sound principle and generally accepted throughout the law, and, your Honor, it is this principle, among many others, which the Department of Justice has here overlooked.

I do not exaggerate when I say that if a company, in selling its securities to the public, were to use in its selling literature data prepared the way the data here proffered have been prepared, the Securities and Exchange Commission would cause the officers of that company to be sent to jail and they would use the instrumentalities of this court to do it. Similarly, if a company were to use data prepared the way these data have been prepared in its advertising, the Federal Trade Commission would cause cease and desist orders to be issued, and they would enforce those orders through the United States courts.

The technique of selection and omission is clear throughout this material. For example, they omit American Can
[fol. 3346] Hawaiian production and say they do it because Continental doesn't manufacture it. They omit plastic caps because they say neither Continental nor Hazel made them. But when I ask why they include glass containers for fresh milk, which admittedly neither Continental nor Hazel-Atlas manufacture, they simply look astonished and say they don't see any reason why they should be included.

It is primarily the methodology, then, that I am concerned with. The government has chosen sometimes to cut their material, sometimes to stretch it, but it seems never to have occurred to them that an honest presentation should be a consideration.

I want to start my objections with tables 3 C and 4 C.

The Court: Are you now referring to 801?

Mr. Johnson: To 803.

The Court: 803. And give me those again. 3 C——
[fol. 3347] Mr. Johnson: 3 C and 4 C.

Your Honor will recall that it was disclosed on cross examination that these figures were chosen from among many in the underlying material. The extent or nature of the

choice, as in so much of this material, is not apparent from the face of the tables and would never have been disclosed except for cross examination.

As a result of the choice made, the figures which are presented are meaningless for the comparative purpose for which they were selected and the percentages which they set out are percentages which have no meaningful relationship to anything.

Now, sir, would you prefer that I continue or that I wait for rulings on specific documents or groups?

The Court: No, Mr. Johnson. I think the way to do this—I have kept on making notes on these specific charts to which you object, to which you specifically, specially object, as well as your general objection, and any such tables or charts [fol. 3348] I will refer to specifically when I rule.

Mr. Johnson: Very good.

The Court: Unless they are already included within some other general rule. So that we are now dealing with 3 C and 4 C of 803.

Mr. Johnson: My next objection, then, is to 2 C. By measuring Continental against all other manufacturers——

The Court: I am sorry, Mr. Johnson. You have got to go a little slower because I have to follow you.

You said 2 C——

Mr. Johnson: 2 C is also in 803, in folder C.

[fol. 3349] The Court: Right.

Mr. Johnson: Here, by measuring Continental against all other manufacturers and omitting to describe such other manufacturers in any way, the table gives a misleading impression of the position of Continental.

The Court: What do you think they should have done? If you were preparing such a chart, what would you show?

Mr. Johnson: At the very least, I would not, I believe, have tried, by computing a percentage for Continental of a total, I would not have limited it to that and given the impression, as I believe they were trying to do here, that Continental was the largest manufacturer in this field.

In connection with this, I turn to Exhibit 800, and I object to the two tables which are included in Section IX.

The Court: Section IX of?

Mr. Johnson: 800 is the book of charts.

The Court: I see.

[fol. 3350] Mr. Johnson: And my objections to those are the same as those to 2C, 3C and 4C. Your Honor will observe that they are related charts.

The Court: Now take the one on what I have marked on my copy as page 94, which shows that Hazel-Atlas in 1958 had four-tenths of the percent of what is alleged to be U.S. shipments of screw, thread and lug type closures.

Mr. McManus: Your Honor, just to correct the record, I think the percentage is 4.7.

The Court: Oh, I see, 4.7 per cent. I see that.

How do you say that is misleading?

Mr. Johnson: By the selection of the hundred per cent, which is the screw type and lug type closure, tin mill products, which your Honor will recall was picked out of this census material to the exclusion of all of the other material referred to.

The Court: Plastic, aluminum, and so forth.

[fol. 3351] Mr. Johnson: Yes.

The Court: Of course, I take it your position is these have to relate to some line of commerce.

Mr. Johnson: I think they are meaningless if they are just figures taken out of the air or selected.

The Court: What do you say is the closure type of commerce which the government is contending, line of commerce, which the government is contending here?

Mr. Johnson: I have so far not been successful in learning what it is.

The Court: All right, sir.

Mr. Johnson: I turn next to Table 5C in Exhibit 803.

The Court: Well, you don't have to argue with on Table 5C.

Mr. Johnson: Very well, sir.

The Court: Thus far, as far as I can see, there has been no basis established for the admission of 5C.

[fol. 3352] Mr. Johnson: I go on then to——

The Court: If after I hear Mr. McManus I should in any way change that conclusion, I will hear you on the subject then.

Mr. Johnson: Yes, sir.

I go on then to 5D, the next following table in 803. This is a chart assigned, Mr. McManus said, to show increase in concentration in the glass container industry. The cross-

examination disclosed that what it really showed were rigged figures. The material is taken from divers sources, adjusted in various odd indefensible ways, and the conclusion is finally reached—it is clear, I believe, that the witness himself did not believe it—that there were on January 31, 1960, 29 companies operating glass container plants in the United States.

The Court: As compared with 43 in 1938 and 80 in 1920.

Mr. Johnson: As the witness counted them; yes, sir.

I turn next to Folder A, which is 801. I am looking first [fol. 3353] at Section I of this exhibit, and Sections V and VI of Folder B, Exhibit 802.

The Court: Now, the ones in B are——

Mr. Johnson: V and VI.

The Court: V and VI.

Mr. Johnson: The first table there is headed "Continental U.S. shipments of all types of glass containers east of the Rockies for 1955 compared with the leading manufacturers in that section."

The Court: Yes, sir.

Mr. Johnson: Looking first at Table I(a) in this group, which is the first table in Exhibit 801 for identification, my objection here is directed principally to the misleading concept of "leading manufacturers." The witness admitted that he did not know whether or not these were the leading manufacturers, since he did not have access to data for the whole industry. The objection to the remaining tables in this group is somewhat different, in that I object to the man-[fol. 3354] ner of the groupings of the census categories by the witness, which he testified that he had—groupings had been created by him for his own purpose.

The Court will recall, for example, the omission of wine and liquor from I(b). None of the other tables in this group compares with census categories; and Tables I(d) and I(e) committed indefensible error of adding together returnable and non-returnable bottles, an error which the Bureau of the Census has consistently avoided in the presentation of its material.

In my next grouping——

The Court: And this specific objection now goes not only to Section I of 801, but Sections V and VI of 802; is that right?

Mr. Johnson: Yes, sir. They are tables which relate——

The Court: You are considering those are inter-related and your objection applies to all of them, the objections you just stated.

Mr. Johnson: Yes, sir; that is correct.

[fol. 3355] The Court: Very good.

Mr. Johnson: In my next grouping I include all of the tables and the charts which contain unit figures for metal containers. This includes Sections II and III of Folder A, Sections I, II, III, IV and VII of Folder B; that portion of Section III of the book of charts, Exhibit 800 for identification, which relates to metal containers.

The Court: In other words, this objection goes to all figures here which used a unit figure for metal containers of various types.

Mr. Johnson: Yes, sir.

There is one more, Section V of the chart book.

The cross-examination covered fully the weird statistical methods used in creating these figures. I want to remind your Honor that the witness testified that each and every one of these unit figures was based on his computations from the Can Manufacturing Institute material. He explained the method by which he got these figures. He started [fol. 3356] from a hypothetical figure to a number of containers which might have been manufactured from the tons of steel consumed. He misunderstood the nature of this figure. He regarded it as an estimate. Whereas it is clear from the underlying material that it has never been anything except a hypothetical number which might have been made.

The Court: Mr. Johnson, just what do you think that figure is? You say a "hypothetical figure"; what do you think the purpose of putting that figure in the Can Manufacturers Institute table is? What were they after?

Mr. Johnson: Well, sir, Can Manufacturers Institute was here on the stand and the government did not see fit to ask him about this material. For what it is worth I suggest that this material was simply publicity material, released for newspapers, of the kind that says, "If all automobiles were put end to end around the world, they would go around the world so many times," the sort of data we see every day. I think this material rises to no higher dignity than that.

[fol. 3357] They say a can company may use so many tons of steel. If they had used it in such and such a way it would have been enough to have made so many cans. I think examination of the material itself which has been offered here indicates that that is all it is.

The witness then, taking this material, created by himself a conversion factor. Bear in mind, Mr. Finn testified that he was not a statistician. He used a method which he admitted the Can Manufacturers Institute had never used; that he has never seen anybody else use; and not being a statistician he was not in a position to defend the statistical validity of it.

I say the method he used is completely indefensible. On examination it will prove to be an average of an average, which no statistician worthy of the name would use for any purpose.

He also testified that he had never been able to find in this material or elsewhere any method of computing the [fol. 3357a] number of units manufactured by Continental or can manufacturers. It is no argument, no worthy argument, to say that this was the best he could do. If it is no good, the best that a man can do is still worthless.

[fol. 3358] This material is presented with the obvious intention that it should be relied on by the Court, and it is intended that these percentages should be used. They would like your Honor to prepare an opinion that uses this material.

Your Honor would find that if you did that, you would be relying on material which is computed in an indefensible manner.

The witness—I withdraw that.

The government also has admitted that it has no way of evaluating the Can Manufacturers Institute's data or the methods of computation. With respect to that, I turn to sections 1 and 2 of the chart book, Exhibit 800 for identification.

The Court: 800. This is the chart——

Mr. Johnson: This is the chart book. These are charts, and as such they were prepared for the purpose of creating impressions and for that reason they are particularly susceptible to being misleading.

They are misleading, first, because of the use of the lead-

ing company concept. They are also misleading in the tech-
[fol. 3359] nique of adding together the percentages of several unrelated companies. This has to do, apparently, with something that the government is fond of calling oligopoly, a term which sounds very bad but which I have never been quite able to understand.

Why there should be any relevance in a lawsuit to the fact that two unrelated, vigorously competing companies should together have such-and-such a percentage of the market I don't know. I am not able to follow the theory of the concept involved, unless there is some kind of an implication that somehow the companies are acting in concert. That implication is clearly without any foundation in this litigation.

The Court: Well, there has been no showing in any part of the government's case, it is quite clear, that anybody here is acting in concert. That is, when I say "anybody here," any of the various companies in any of the industries are acting concert. At this point you don't make any such claim.

[fol. 3360] Mr. McManus: I do not, your Honor.

The Court: Very good.

Mr. Johnson: In connection with this group of tables, I also go back to the one remaining table in folder C, Exhibit 803 for identification, and refer to table 1C, the first table in this exhibit.

Here, again, the leading-company concept has been used without foundation, and the table also divides up the metal container industry and tries to separate out from consideration some of the most effective competition in that industry.

The Court: You are talking about the captive companies?

Mr. Johnson: Yes, sir.

I then turn to section 4 of the chart book, Exhibit 800 for identification.

The Court: All right, sir.

Mr. Johnson: In so far as the metal container line on these charts is concerned, it is also based on the hypothetical figures of Can Manufacturers Institute, but in this case, for [fol. 3361] reasons unknown to me, and unexplained by the witness, they have seen fit to use a different set of hypothetical figures, this time taking the——

The Court: This time because they used No. 2 cans instead of actual cans.

Mr. Johnson: They used the hypothesis that all steel used by can companies was made into No. 2 cans.

The witness also testified, your Honor will recall, that the figures would be different, that the lines would be different if they started from a different starting date.

Since 1939 has no meaning as far as I know in this litigation, the other end of the line has no meaning either. One could get lines to go in almost any way they like in a project of this type, depending on the starting point.

The Court: All right, sir.

Mr. Johnson: I go then to section 6 of the chart, Exhibit 800 for identification.

The Court: This is the common-customer sales.

[fol. 3362] Mr. Johnson: Government counsel should have known, even if the witness didn't, the difference between an answer to an interrogatory and a document produced on motion to produce. The indication here is that this material was taken in answer to an interrogatory, which is not true.

The interrogatory, of course, is a sworn answer. A document produced on a motion to produce——

The Court: You don't have to explain that.

Mr. Johnson: However, the cross examination indicated how these tables were constructed and they indicate how absolutely devoid of meaning they are.

The Court: Incidentally, was this basic document offered in evidence?

Mr. McManus: It was marked for identification by the defendants, your Honor.

Mr. Johnson: That is correct. It has not been offered.

The Court: The government does not intend to offer that?

[fol. 3363] Mr. McManus: Your Honor, I will tell you: I overlooked that. I really did intend to offer it.

The Court: It seems to me quite obvious that without that basic document these tables aren't worth anything.

Mr. McManus: At the present time it has a government's exhibit number.

The Court: I am not calling upon the defendants to offer that.

Mr. McManus: I understand that, but if, at the conclusion of that, I ask for permission to offer it——

Mr. Johnson: If offered, I have several other objections to make.

The Court: You might as well offer that. While discussing the common-customer tables, you better discuss table 2, because they go together.

What is the number of that exhibit?

The Clerk: Defendants' Exhibit AA for identification, [fol. 3364] your Honor.

Mr. McManus: We would like to give it a government's number, the next one.

(Government's Exhibit 1206 marked for identification.)

Mr. McManus: The government would like to offer, in addition, Government's Exhibit 1206 for identification.

Mr. Johnson: Going on, then, to the tables, the Court will recall that in the tables or charts, millions of dollars of sales were included in these tables as common sales, simply as sales of a thousand dollars or less by the other division of Continental, and these tables are probative of nothing.

In respect to the underlying material offered by the government, no adequate foundation of any kind has been laid for the receipt of this material. There is no indication of where it comes from, how it was prepared, what it was used for. It is just a document picked up with thousands of other documents pursuant to a motion to produce. There [fol. 3365] is no reason for accepting this document just returned up in the welter of all other documents. It is full of irrelevant material, material having no relation to this litigation whatsoever, and I very strenuously object to its admission.

This document, amongst other things, has been in the hands of the government for many months. It has never been marked for identification, has never been referred to in pretrial.

I turn, then, to section 7 of the book of charts, Exhibit 800 for identification. This is the material, the Court will recall, taken from Internal Revenue statistics.

Cross examination made it clear that part of this ma-

terial is based on count and part of it is based on sampling technique. It is completely misleading.

The Court will also recall what the results would have been if this material had been extended for another year. It is a case where the government apparently has offered [fol. 3366] this material to show what it calls concentration in the industry; and, incidentally, the industry here referred to is a different one than they have referred to elsewhere, but it proves no such thing. This is an example of the government's omission to state material facts necessary to make the facts stated not misleading. The government should have known if it did not what the results of adding 1957 in this material would be. They did not see fit to do so. They intended not to disclose that to the Court.

The chart under section 8——

The Court: That is prior acquisitions, and we will take that up when we discuss prior acquisitions.

Mr. Johnson: Yes, sir. It will be treated under prior acquisitions.

I don't know if I addressed myself particularly to Government's Exhibit 1202, which was the CMI booklet for which, again, the government has made no attempt to lay a foundation, notwithstanding that they had a representative [fol. 3367] of the CMI on the stand at a time when these tables had already been prepared.

Their remains, your Honor, the plastic tables and charts, which were included in Exhibit 809 for identification, and I am sure the Court retains a vivid recollection of those charts and the machinery of their preparation. They are utterly fantastic charts. They are based on nothing; they prove nothing.

Those, sir, are my objections to this material.

The Court: Well, I think we will take a recess before I hear Mr. McManus.

(Short recess.)

[fol. 3368] The Court: All right, Mr. McManus.

Mr. McManus: Your Honor, Mr. Johnson skipped around considerably, so there might be pauses as I try to work back and forth. But I will try to make them as brief as possible.

The Court: All right.

Mr. McManus: I would like to say first, your Honor, that the government made no attempt to make these figures other than what they are, and in fact, if we erred, we erred on the side of being conservative and against our own percentage figures. By that I might say, as I pointed out before, Mr. Johnson mentioned the Hawaiian production. We took out only American Can's Hawaiian production, on which we happen to have statistics. We left in the Hawaiian production of one or two of the plants out there of a company, on which we are not able to get information. By leaving that information in, that made the overall statistics higher, and consequently, Continental Can, who does not produce out there, it made their statistics lower.

[fol. 3369] The same thing, I might add, we did, your Honor, in regard to glass containers in some of these charts. We knew that Hazel-Atlas did not make milk bottles. It was quite obvious to everyone from the beginning they did not. However, we left the milk bottle statistics in, which as a result would make the overall statistical data larger, overall national figures larger, and Hazel's participation smaller. There is no secret about it. We pointed it out clearly on the charts.

Now, we did not include plastic tops. We will argue that they are not in our line of commerce.

We also would like to point out, your Honor, that there was no secret about that. We pointed out to the defendants what we included or excluded. If it was not clear on the table, it was abundantly clear to the defendants, because their statisticians came down to Washington about May of this year, and our people took them by the hand, table by table, and informed them of all the underlying data, and [fol. 3370] furnished them the underlying data where it was needed.

Now, we have not offered here, your Honor, every piece of underlying data, largely because we did not want to clutter the record any more than we already have.

In the case of sales to key customers and suppliers, we have now made an offer, and before the conclusion of my little discussion here I think perhaps it might be better to make an offer of the underlying data from Internal Reve-

nue Service, which I will probably do and explain why as I go along through my presentation.

If we could now refer to Tables 3C and 4C in Folder C, Government's Exhibit 803 for identification.

The Court: Yes.

Well, now, what do you say your line of commerce is?

Mr. McManus: Well, we say, your Honor, that the proper line of commerce is tin mill products, metal caps, which would include the caps, vacuum and non-vacuum, screw, [fol. 3371] thread and lug type in the categories that we have set out.

The Court: You say, for instance, that cans made of plastic——

Mr. McManus: Would not be in our line of commerce.

The Court: Cans made of aluminum?

Mr. McManus: Would not be in our line of commerce.

The Court: Now how does that square with——

Mr. McManus: Your Honor, I would like to——

The Court: I will hear you on this, but I am very puzzled by this point.

Mr. McManus: Could I say this at this time? These charts do more than just the line of commerce argument, insofar as competition between whether aluminum and plastic or plastic and metal compete. These charts, 3C and 4C, also show what we would argue are full line argument. 3C, for example, shows the percentage of metal caps that— [fol. 3372] of the metal cap line that we argue, the percentage they have of metal caps, that they have both in units and percentages, and in 4C it shows the percentage of vacuum type caps, which you will notice is up in the 60 per cent.

And, as we have had testimony here, these vacuum caps are used only in the food field. We intend to show, as we have argued here before——

The Court: Now, look, let's get to 4. We are going along too fast.

Mr. McManus: 4C, your Honor?

The Court: Yes, I am looking at 4C.

Mr. McManus: The White Cap Company, the percentage of U.S. total for 1958 in production, was 61 per cent, and in shipments was 60.6 per cent. Now that is the vacuum closures, your Honor, and we have had testimony in the record

that the vacuum closure is only used for food, and we intend to argue that this Hazel-Atlas acquisition is bad because Continental Can now has the White Cap machinery that we have talked about, the witnesses have talked about; they [fol. 3373] have 60 per cent production at the present time at least, or at least at the time in 1958, of all vacuum caps sold. They now furnish the glass containers, where the finish has to fit the cap perfectly, and also they have the facilities to furnish the paper board container, the corrugated shipping container, and it gives them a complete package, the shipping container. The testimony that we have is that it represented anywhere from 15 to 25 per cent of the cost of the ultimate container.

So this chart on 4C not only shows that, we would argue, competition between the 60 per cent of White Cap in the vacuum, but also in the screw, thread and lug type, which Hazel had 4 per cent. We are arguing that those two are properly in the same line.

The Court: 4 per cent of the metal.

Mr. McManus: Yes, sir.

The Court: There is nothing to show here what percentage they had of——

Mr. McManus: Plastic and aluminum; that is correct, [fol. 3374] your Honor.

So as I say, if you should feel that these charts were—well, we feel that this is a proper line, but even if you should decide that our metal closure line was not proper, these charts should go in to show the effect of the acquisition of Hazel-Atlas in being able to furnish this full line. So they should go in, on our argument, for two purposes—one, for our line of commerce argument, the elimination of competitors in the metal cap field, but also the full line argument, that I have indicated here before.

Now going to 2C, if I may, your Honor, we have never argued that Crown caps were in competition with screw caps or with vacuum closures. We have never argued that. In fact, I think we have said explicitly that although there may be occasional exchange, or used to be, or maybe still is, of Welch's grape juice, we do not think that they both should be put in the same line.

Now Mr. Johnson accused us that we intended to indicate [fol. 3375] that by these figures their company, their client,

Continental Can Company, was the largest producer of Crown caps in the United States. We have no such intention. It is quite obvious they are not. It is well known throughout the industry, and right even in their own report, which we are offering, their annual report, they state they are second. It is no secret that Crown Cork and Seal Company is a larger company. They are second. We do not have the statistics on the size of Crown Cork and Seal. We do know they are bigger, and if you would like me to give you the estimate that I believe they are in size, I will be glad to do it.

The Court: What do you say they are in size?

Mr. McManus: I would say, your Honor, that they are probably in the 40 or 45 per cent bracket.

We argue, your Honor, that this also goes in for our full line argument. Here you have the same type of situation. You have the crowns, you have the bottles, and you have [fol. 3376] the corrugated shipping container. Also, although I don't want to get into the acquisition argument, they gained this position; we are going to show through our documents, and we are going to argue they gained this position largely through acquisition of companies that were in this field.

The Court: All right. Now I think Mr. Johnson then went to 5C.

Mr. McManus: Well, your Honor, he went first to the chart, IX. I want to see if there is any difference that I might have to comment on as to that.

The Court: Yes. I don't think there is anything to be added much.

Mr. McManus: No, sir, your Honor.

The Court: In other words, if the tabulation is in, the chart is in, and if the tabulation is out, the chart is out.

Mr. McManus: I would think that would be correct.

I would not prefer to argue on 5C, 803——

[fol. 3377] The Court: I am going to exclude 5C. I see no foundation whatsoever for 5C.

Mr. McManus: I see.

The Court: So that with respect to 5C, the objection is sustained.

Mr. McManus: Your Honor, we now go to table——

The Court: The next thing is 5D.

Mr. McManus: —5D, that is correct, in folder C, Government's Exhibit 803.

Now, your Honor, I would like first to direct your attention to the number of companies in operation on January 31, 1960, that column, the right-hand column.

The Court: Yes.

Mr. McManus: We of course argue that the whole chart should go in, and although there might be some errors, that this is the best information available, showing the change from 1920 to 1960.

But directing our attention specifically to 1960, we believe here that it is clear; that it shows the number of companies [fol. 3378] operating plants in the United States, and that any caveats or changes are listed on the attached page, the second attached page.

The Court: Well, I am going to exclude 5D in total. I think that is a very misleading chart. There has been no proper foundation laid for it, in my judgment, at all, so I am excluding 5D.

That means, for the record, that as far as folder C, which is Government's 803 for identification, 5C and 5D of that folder, the objection is sustained and 5C and 5D will be excluded.

I may say that the fact that I am passing these other things without ruling on them does not indicate that I am either excluding them at this point or letting them in.

Mr. McManus: I understand that, your Honor.

The Court: I will come back and make rulings on these when you have completed your argument on these others, [fol. 3379] except for those which I specifically ruled out.

Mr. McManus: I understand, your Honor.

Now, referring to Government's Exhibit 801, which is folder A, and Mr. Johnson, I think, referred specifically to the chart, 1A—

The Court: Well, these are the glass, aren't they?

Mr. McManus: Yes, your Honor.

The Court: With respect to the objections on glass, that is, 801, Section I, 802, Sections V and VI, the objection is overruled and those will be admitted.

Mr. McManus: All right, your Honor.

The Court: I may say that because I admit a chart is no indication of the weight that is to be given to it. The ques-

tion of weight is entirely another matter, and a chart may go in, and I may give it little, if any weight.

Mr. McManus: I understand.

Your Honor, before we leave, although you are admitting those, could I just make one little statement at this point? [fol. 3380] One of the arguments was made that Armstrong and Wheaton were not excluded. I would like to refer to the fact, your Honor, that practically every glass container manufacturer that testified here was asked who were the leading companies in the field, and they listed up to the first four or five, and in each one of those Armstrong and Wheaton were never mentioned.

Mr. Hughes: Your Honor, just so we are clear, do I understand that your Honor has received all of the tables in Section I, folder A?

The Court: Yes, all of the tables in Section I, folder A, that is Exhibit 801, and all of the tables in Sections V and VI, of 802, which were treated as a group by Mr. Johnson.

Mr. Hughes: Thank you.

Mr. McManus: Now, your Honor, Mr. Johnson then referred to tables and charts that contain unit figures, and that was 2 and 3 of folder A, one, two, three, four and seven of folder B.

[fol. 3381] Mr. Handler: Repeat that, Mr. McManus.

Mr. McManus: My understanding was that Mr. Johnson referred to unit figures in charts, Sections II and III of folder A.

The Court: Which is 801.

Mr. McManus: Excuse me, yes, sir, which is 801, and to Sections I, II, III, IV and VII of folder B, which is 802.

The Court: I, II, III, IV and VII, my notes indicate.

Mr. Johnson: And also that portion of Section III.

The Court: Yes, the charts in Exhibit 800, which use unit figures.

Mr. Johnson: Yes, sir.

The Court: Now in connection with your discussion here, Mr. McManus, you may as well address yourself also to Exhibit 1202.

Mr. McManus: Yes.

Your Honor, I think there is not much need, although we referred to those, to be specific about any chart, because

[fol. 3382] basically the system arrived at or the methology used was pretty much comparable in each one, as I recall.

I would like to say this, your Honor, that CMI, Can Manufacturers Institute, which published this data, of course, represents the can manufacturers, of which the defendant here is one of the principal members, and has been for a number of years.

The Court: What do you mean by "represents the can manufacturers"?

Mr. McManus: Well, it is a trade association, your Honor, which is composed, perhaps I'd better say, of the leading can manufacturers, as we have had testimony here. We have had testimony that American, Continental, National and several others, a number of other companies, belong to that association.

The Court: Do you think that this defendant is bound by what the Can Manufacturers Institute says?

Mr. McManus: Let me say this, if I may, your Honor? [fol. 3383] I would say this—if I may comment, I would like to answer that in just a moment—this association is a somewhat different type of association than most of the trade associations that I have seen, and we have testimony here by the third largest manufacturer of cans, the president of that company, who is also an officer in that corporation. This corporation is not run by everyone getting one vote in deciding how this operation, this company, this association is operating. The larger companies get more votes and the middle companies get lesser and the smaller companies even get lesser.

Now, American, as I recall, and Continental fell into that upper bracket. I am not sure if National did. I think they did not, but they fell at least in the middle, and then the lower.

Now, a lot of work goes into the making up of this statistical data. They have a staff. It is quite obvious it is an expensive operation. They make up this publication, and there is testimony that they distribute it to their members. [fol. 3384] They have been doing this for years. That publication carries back over a number of years. It is our belief that it is relied upon by the industry, and I think you can conclude that if they didn't consider that this was the proper way of doing this, at least to give them some idea

of the number of cans made, they would long since have discontinued doing it and would long since have spent all the money gathering all this data and distributing to themselves and other members of the industry.

The Court: Now, what testimony is there in the record to lay, as you say, a foundation for 1202 for identification?

Mr. McManus: Well, your Honor——

The Court: Apart from the general testimony as to what Can Manufacturers Institute does generally? Is there anything in the record with respect to this document and how it was made up and by whom, and under what circumstances?

Mr. Handler: Which one is 1202?

The Court: It is the annual report of steel and tin con-
[fol. 3385] sumed in metal cans, Can Manufacturers Institute.

Mr. McManus: Your Honor, our argument would be that this is a business organization. They surely would not make up this type of data and distribute it to themselves if they thought there was no sound basis for doing this. There is no question but that this is a document which was put out by CMI. We did not put a man on the stand to——

The Court: You had the CMI fellow here, and you didn't ask him about this.

Mr. McManus: No, sir, your Honor, we did not. We think it is quite obvious that it is a—we are not arguing that this is not an estimate, your Honor. We are not arguing that. It says so right on the pages themselves.

The Court: Well, where does the data that is in here come from?

Mr. McManus: Well, the data that they use is the census data, and they in turn convert that into units for these various groupings. Now, the basic data, there is no question about.

[fol. 3386] The Court: The basic data is identical with the census data, and I think there is testimony in the record to that effect.

Mr. McManus: That is correct, your Honor. So all they have done here, these people, these members, these large members, all they have done is, they have used some system to convert that into this type of statistical unit. If they did not think it was a good estimate or fairly accurate estimate,

it would seem to me that they would not have spent all this money over the number of years, and they have been doing it for a considerable number of years on the No. 2 can basis, and they apparently think they have improved on it, because lately they have not only been doing it on the No. 2 cans for food, but they have added that actual category that we have been talking about, actual number of cans.

The Court: What do you think the phrase "might have been made" or "might have been produced" means?

Mr. McManus: Your Honor, I think it is an estimate. [fol. 3387] Your Honor, I think it is an estimate by a trade association that represents by far, by far, most of the can manufacturers in the United States. They surely would have more know-how, those members, in how to estimate the percentage, the percentage of cans that went into these various units, than anyone that I can possibly think of.

We are not asking you to take this on the basis that there isn't other ways of coming to this conclusion, or we are not asking you to consider that there were that number of cans actually made. It might vary a percentage or two or three or four. But we say that this is the estimate used by this very defendant's own trade association, of which they are one of the principal members and one of the highest voting members, or at least have more votes than anyone else except American Can and possibly Continental. They published this for years, and they continue to publish it.

We argue, your Honor, that that is the best unit information that is possible to get at this time. No one in the in- [fol. 3387a] dustry that I know of, I will agree, works on a unit basis. Census does it on base boxes of steel consumed; then converts it into tons. This association, of which the defendant is a principal member, decided to do it this way, and we agree with them, we think that this is a good estimate.

[fol. 3388] The Court: All right. So much for that.

Now, next the charts in sections 1 and 2. Well, I don't think the charts in sections 1 and 2, which are the—they are the glass charts, aren't they?

Mr. McManus: Yes, your Honor.

Mr. Johnson: Section 2 is metal containers.

The Court: Section 2—that is short tons, all of it, isn't it?

Mr. McManus: Yes, your Honor.

The Court: It doesn't need a conversion factor.

All right. I will overrule the objection as to charts 1 and 2, Exhibit 800, and they will be admitted.

(Charts 1 and 2 of Government's Exhibit G-800 for identification received in evidence.)

The Court: I will review these again, so we will have a complete set of rulings here on all these charts.

[fol. 3389] Mr. McManus: Then, your Honor, going to 800, section 4——

The Court: Now, wait a minute, 1C. 803, 1C.

Mr. McManus: Excuse me, 803, 1C.

The Court: 803, 1C, is the next thing that Mr. Johnson read.

Mr. McManus: Yes, your Honor.

The Court: That is on the theory that the captive companies are not in there.

Mr. McManus: Yes, your Honor. We offer this——

The Court: Now, tell me why you think the captive companies ought to be excluded.

Mr. McManus: The reason I think that, your Honor, is that these captive companies are not offering their cans for sale. It is our contention that you take a company like Campbell's Soup Company, which is a large manufacturer of soup cans, they are selling——

The Court: Are there any figures anywhere in the record on Campbell's Soup Company can manufacture?

[fol. 3390] Mr. McManus: No, your Honor. They don't give out those figures, and the Census does not publish them. There are other captive plants, and they lump them all together.

The Court: Is theirs a total figure for captive companies in the census?

Mr. McManus: The way they do it theirs is not. But you can take the figures of all can manufacturing plants and subtract the figure of captive plants manufacturing cans in the United States that we have in 1C.

The Court: You haven't put in the record anywhere what the total figure, including captive plants, would be.

Mr. McManus: Your Honor, may I have just a moment. I think it is in this chart. Could I check?

The Court: Let me see. I don't have it.

Is this shipments by manufacturers for their own use? Is that supposed to be captive plants?

[fol. 3391] Mr. McManus: That's correct, your Honor. I would like to correct my statement. Mr. Finn just indicated to me. Take 1957, where it indicates that in the continental United States there were 4,566,616 short tons of steel consumed. That would include for own use and for sale. Then we go down where it says "less shipments by manufacturers for own use," which is 632,859 short tons.

The Court: And then you take that as 100 per cent and take percentages of that?

Mr. McManus: Of the 3,923,757 short tons.

Now, I would like to point out, your Honor, that again we took a conservative approach, we believe, to all of our charts. This chart is the only one that is based on figures which exclude captive plants. All of the other data include captive plants, although we argue they are not in competition with Continental Can Company when they are selling their cans to themselves.

The Court: All right.

[fol. 3392] Mr. McManus: Now, we would argue, your Honor, that this would show—this is a concentration figure of companies which offer cans for sale. In other words, in this chart we argue, your Honor, that Continental's percentage has increased so that they are now up to 37.2. American also increased to 45.2.

The Court: All right.

Mr. McManus: But I would like to make it clear that all the other charts are not based on captive plant data, although we do believe that this is probably somewhat more realistic in that the other companies do not offer their cans for sale.

I would like to add also that this is based on census data.

The Court: Next is chart—section 4 of the charts, supposedly historical growth.

Starting off with this, I have no idea what this chart is supposed to prove or the purpose of it. It hasn't been made clear to me what, if anything, it does prove.

Mr. McManus: Maybe I should start with that, your [fol. 3393] Honor.

The chart in section 4 of Government's Exhibit 800, page

68, is entitled "Historical Growth of Metal and Glass Container Shipments Expressed as Index Numbers and Shown as a Trend."

Now, we start out with 1939 from the base of 100, and with this—what this chart is——

The Court: What has 1939 got to do with the present lawsuit?

Mr. McManus: Your Honor, it was the period just—I mean, it was the period further on——

The Court: It seems to me that, if anything, 1939 was a very curious year to choose because immediately thereafter we went into the war and the whole canning industry was adversely and abnormally affected by the shortage of metal.

Mr. McManus: That's correct, your Honor. We used this figure because this was the data the furthest back that we had. I believe that is the testimony.

Now, your Honor, the purpose of this chart is to show——

[fol. 3394] The Court: If, for instance, you used 1948, let's say, or 1946 as a starting point, your trends would be entirely different, wouldn't they?

Mr. McManus: I thought they would not.

The Court: I thought the witness told me, when I showed him this corner of the chart, that the trend would be quite different if you started off with 1946, let's say, as 100.

Mr. McManus: Well, what he was saying, your Honor, I believe, is that they would not be identical with this chart. That would be absolutely correct. But if you are talking about the trend, we are trying to show here that glass containers percentagewise, their shipments are increasing faster than metal cans. That's the purpose of this chart.

You would not come out with the same, exact figures, but I believe that if you or the defendants want to make up a chart that starts in 1948, the results would be entirely the same.

Now, whether the line would hit 282, or whatever it is, [fol. 3395] and the other one hit 24, I am sure it wouldn't, but there would be a spread, and the glass containers, their percentage would increase faster than that of metal cans. That is our firm belief.

Now, we do the same thing, your Honor, on page 70, which is the historical growth of metal and glass container ship-

ments expressed as index numbers and shown as a trend, and we do this, your Honor, for food containers.

The only purpose of this chart is to show that in the food field, glass containers have increased percentagewise much more rapidly than metal cans.

The Court: What do you say is the significance of that?

Mr. McManus: Well, your Honor, we aren't going to argue that there are not more metal cans sold for food than there are glass. It is quite obvious that they are. But it is our position to argue that the glass has been growing at an accelerated rate and as such is making inroads more [fol. 3396] rapidly into the food field than the metal cans percentagewise.

The Court: All right.

Now, we come next, if I understand it, to section 6 common-customer sale.

Mr. McManus: Now, I would like to say something about that, your Honor——

The Court: This is a bad one, in my opinion.

Mr. McManus: All right.

The Court: This is a very bad one.

Mr. McManus: For my side or the other side?

The Court: For your side. It is a very poor and misleading chart, to my mind. Unless you can convince me to the contrary, you can now argue with respect to 1206, but as far as these charts or any expression of what is in 1206, I have no confidence in them whatever, and I am going to exclude the chart.

Mr. McManus: I see. Your Honor, then directing my attention to Government's Exhibit——

[fol. 3397] The Court: You can argue 1206 now.

So that the record may be plain, Section 6 of Exhibit 800 are all excluded.

Mr. McManus: Your Honor, directing myself now to Government's Exhibit 1206, I would like to state a few things about this document which I think—where inferences, I think, may have improperly been made. We did say, your Honor, and it was an oversight and I take the responsibility, that it was an answer to an interrogatory. It wasn't. It was an answer to a government motion to produce.

The Court: What did you call for on the motion to produce?

Mr. McManus: In general, the names of customers and what they produced.

The Court: That was your request, relating generally to that?

Mr. McManus: Yes.

Now, the request was much broader than this document, no question about that. Or at least in my opinion it was, [fol. 3398] and I believe in the defendant's opinion.

As you recall, in trying to settle our differences over the requests of the government, we sat down in chambers and we tried to work out our differences as far as possible. This chart—or, excuse me, this table here, "Sales to Key Customers and Suppliers," was not included, as Mr. Johnson would like you to believe, in a group of a whole mass of documents which they turned over to the government. No, no, sir, it wasn't. This document, your Honor, was held back and handed personally to me by Mr. Johnson, and the reason he did that is because he says, "This information is highly confidential. I do not want it in the files of the Department of Justice just for anyone to read. This is a highly classified document," and as such I believe that Continental Can relies on it.

It says——

The Court: All right. I am familiar with it. I think that is enough of that. I get your position on that.

[fol. 3399] Mr. McManus: Of course, your Honor, we were referring to the first page, as to how the document is made up. That would be part of the basis of our offer, that it was made by the sales control document, and the first page indicates that it was so compiled.

The Court: Yes.

Now, next is section 7, and this time you have really got me. Section 7 of Exhibit 800.

Now, the very title of this table, to my mind, demonstrates that it is irrelevant. I am not going to take tables about tin can and other tinware industry in this case, and I am not going to take tables that are predicated on tin can and other tinware industry.

We are dealing with the container industry. If you have got figures about containers, I am willing to consider it,

but I am not willing to consider stuff of this nature, and I am going to exclude both of these.

[fol. 3400] Mr. McManus: Your Honor, before you do, may I make one short argument to explain the basis of these things and why we think you should take them in?

The Court: All right.

Mr. McManus: Our basic purpose is this, your Honor. This is for the purpose—excuse me. First, I would like to identify the documents that we are referring to as Government's Exhibit 800, and they are the charts in section 7 "Tin Can and Other Tinware."

Now, the only purpose—first, I would like to say, your Honor, we admit and the statistician has already testified, that this includes not only the tin can industry but also people that make tinware, and the only purpose of this chart is to show that in this industry, which includes additional people, the tinware people, that the American Can and Continental Can have for years, from 1946 through 1956, had by far the great bulk of the sales and by far the highest number of assets. They have been the dominating com-

[fol. 3401] panies. It only goes in for that purpose. It is a category which has been set up by Internal Revenue Service, and it includes a little more than the tin can industry. But even including other industries, Continental and American predominate, and we say that you should take it to show that even though we have expanded the overall universe, they are still the dominant companies.

Now, I would like to point out one other thing——

The Court: What about this argument by Mr. Johnson as to the omission of 1957?

Mr. McManus: I was just going into that, your Honor, and I would like to direct my argument to that, because Mr. Johnson has accused us of being misleading a number of times here, and I want to say that Mr. Johnson is misleading the Court, perhaps not intentionally, but the document he showed Mr. Tolton is not the document on which we based our statistics. This is put out by the Internal Revenue Service, and it gathers information, this document, for

[fol. 3402] scholars and people that are interested in tax and things of that nature, and it gathers data and puts it in here.

They refer to the actual studies that were made that we

have here, that they might occasionally use that as a source, or they may sometimes use that as a source. But they will use other stuff. They use Census and other things of that nature. We rely upon this——

The Court: What is that that you hold in your hand?

Mr. McManus: This is a study made by the Internal Revenue Service from the income tax returns—from the income tax returns of the various companies.

The Court: Has the other side seen that?

Mr. McManus: Yes, your Honor, they have. They have had copies of this for a number of months. Since last May, I believe.

The Court: And what is that entitled, that document that you hold in your hand?

Mr. McManus: This is from the source books of statistics [fol. 3403] of income. This is the statistics of income. This is put out, I believe, annually—annually. This is never put out until about three years after the material has been gathered. That is the only reason we had up through 1956.

There are other sources that this document relies on, and they can do it annually and they can make guesstimates out of it, but this is the reliable source information for the data which we have and what we plot our chart on. We start out with this basic data and finish with this basic data. If we had finished with this, we would come out with some other conclusion. But this is the basic data. We don't start out with this and finish with other documents which we don't consider to be accurate.

The Court: Are you going to offer that?

Mr. McManus: Your Honor, I was going to say that to be abundantly clear, we should show it to the defendants and [fol. 3404] give it a government's exhibit number. This has the usual seals, etc., of the Treasury Department confirming that it was so made by them.

(Government's Exhibit 1207 marked for identification.)

Mr. McManus: The government would also like to offer Government's Exhibit 1207 for identification. We would like to offer that into evidence.

The Court: Let me see 1207.

Mr. McManus: In addition to this——

The Court: Just a moment.

Is there anything in this material here that defines what tin cans and other tinware is?

Mr. McManus: Your Honor, we have a—I mean, Mr. Tolton read, I believe, from a different classification index which we could put in, if you thought——

The Court: Mr. Tolton read from it. What was the definition? Do you recall it?

Mr. McManus: Could I have him answer that, your Honor?

[fol. 3405] Could you indicate what that was, the definition of tin cans and other tinware?

Mr. Tolton: I read from the Internal Revenue Service document which defines the tin can and other tinware industry, and then it went into detail——

The Court: Where is that?

Mr. Tolton: I have it right here.

The Court: Let me see it.

Mr. McManus: Your Honor, while he is getting that, could I point out one other thing that shows that the statistics we compile would be somewhat different from what Mr. Johnson offers out of his book, and I will tell you why.

As the witness testified, our statistics refer to companies whose primary operation is the manufacture of tin cans and tinware. This could include captive plants whose primary operation could be paints, such as Sherwin-Williams. So that is the reason our figures would refer only to companies whose primary operation is the manufacture of cans.

[fol. 3406] Now, this could include companies whose operation is not that, but who incidentally might make cans for their own use or for other purposes.

The Court: That doesn't help us very much, Mr. McManus. Tin cans: beer, oil, milk, ice cream and other general lines. Tinware and household utensils.

That doesn't help me. It doesn't give me any really fair idea of what the industry is.

Mr. McManus: Well, your Honor, it would be our position that this chart would include the tin can industry, by that definition, and it would probably include other tin manufacturers.

The Court: I don't know, for instance, whether it includes frozen foods or not. For instance, the little cans that frozen orange juice comes in. Do you think that——

Mr. McManus: Oh, I most assuredly believe that it does, because that is a tin can. It would include any tin can.

[fol. 3407] The Court: All right, Mr. Johnson, I will hear you.

Mr. Johnson: I asked the witness that question, and he said he did not know.

Mr. McManus: And I think you asked me if I did, and I thought it does.

The Court: Well, that is a matter of opinion.

Mr. McManus: At any rate, your Honor, it includes the tin can and tinware industry. It includes more than our line of commerce, and I am willing to concede that that is quite obvious that it does. But what it includes in addition to tin can, it obviously, I think, includes all the tin can companies who make cans for sale, their primary operation. It includes some people who make tinware products which are not tin cans.

The Court: Is there any indication in the record, for instance, what proportion of American Can's production goes into tin cans? For all that appears in the record, 10 per cent of their production might go into tin cans, and 90 [fol. 3408] per cent into other tinware.

Mr. McManus: Well, your Honor, there is no question but that in our chart—if I understand you, in our chart there was no argument by Mr. Johnson that the two companies involved there were not American Can and Continental Can. He asked him questions about that himself.

The Court: Oh, I quite understand. That is why I am asking you about American Can.

Mr. McManus: Well, these are only—well, the asset figures, your Honor, of course—I will withdraw that.

Their sales figures, as I understand it, I believe the witness testified, referred only to their tin can production.

Mr. Handler: That is not so.

Mr. McManus: Isn't that true, or am I wrong? I am in error, your Honor. I will withdraw that. Excuse me, your Honor.

What he said, as I should have realized, is that that was their primary business, so obvious over 50 per cent of [fol. 3409] their sales, would have to be in cans or they would not be in that classification, and the same thing would be true of Continental. The same thing would be true of

any company on this list. Over half of their sales would have—their primary sales would have to be in tin cans or tinware.

The Court: Well, now, Continental is included in here.

Mr. McManus: Yes, your Honor.

The Court: I don't remember the figures, the Continental figures, but let's say 51 per cent of Continental's sales are in tin cans and 49 per cent are in other than tin cans, and let's suppose the same thing occurs in American Can.

Mr. McManus: Yes, sir.

The Court: That means if that were so—I don't know whether it is so or not—these charts would be completely misleading——

Mr. McManus: Well, all we are saying to show——

The Court: —in relation to the issues in this case.

[fol. 3410] Mr. McManus: Your Honor, I think what the charts show is in this whole industry, from 1946 on, both in sales and in assets, these two companies have been the dominant companies for that 20-year period, and I believe that they have expanded their share and some of the smaller companies have lost——

The Court: If I do let these in, I assure you the significance I attach to them is going to be minimal.

Is there anything else?

Mr. McManus: That is all I have to say on this group. If you would like us to go into plastics, Mr. Greenberg will——

The Court: I think I will take that after lunch.

Mr. Hughes: Your Honor, did you rule on 1207?

The Court: No, I haven't ruled on 1207, and I won't rule on 1207 until I hear from you gentlemen.

[fol. 3411] Mr. Greenberg: If the Court please before we recess for lunch I would appreciate one clarification. The only guidance I have from Mr. Johnson with respect to his objections to the plastic table are in essence that they are utterly fantastic and prove nothing. That really doesn't indicate to me what his objections are.

The Court: It indicates to me what his objections are, and I think it is your job to show that these charts have some validity and are admissible. That is your burden.

All right, gentlemen. We will take a recess until five minutes after 2.

(Recess taken to 2:05 p.m.)

[fol. 3412] AFTERNOON SESSION

2:10 P.M.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Greenberg: If the Court please, I believe the order of business at this point is defendant's general objections to Government's Exhibit 809.

The Court: That's right.

Mr. Greenberg: Turning first, sir, to table 2, the dollar sales, the dollar sales of each of the seven firms included within this table have been the subject of a stipulation which has been marked Government's Exhibit 925. Within this table we seek to compare each company's dollar sales with two universes. These universes received definition and consent by the parties in response to his Honor's statements at pages 3,204 and 3,241 of the transcript of proceedings of October 14, 1960.

The reason for the two universes is that defense counsel agreed to use Mr. Schillaci's estimate of what Plax considered——

The Court: Now wait a minute, wait a minute. They [fol. 3413] didn't agree to use this. They agreed that if you took Mr. Schillaci's figures and had them projected, you would reach a certain result.

Mr. Greenberg: That is correct, your Honor.

The Court: All right.

Mr. Greenberg: I was about to add that in the next sentence.

The Court: All right, I'm sorry.

Mr. Greenberg: Continuing, your Honor, that line of thought, reference is made to page 2,511 of the proceedings of October 4, 1960, and to Mr. Schillaci's testimony of June 14, 1960, on page 178.

We believe, your Honor, that these tables are competent, relevant and material.

The Court: The first universe of 39,000 is what we will

call for want of a better word the Schillaci universe, and the 29,000 is what universe?

[fol. 3414] Mr. Greenberg: That is millions, your Honor.

The Court: What?

Mr. Greenberg: Millions, your Honor. Three zeros——

The Court: Yes, I know that, but what is the 29,000,000?

Mr. Greenberg: That is the range of from 30 to 40 per cent. In other words, one universe constitutes, after a projection, 30 per cent, or starts with the 30 per cent estimate, and the other one starts with the 40 per cent estimate.

The Court: In other words, that is, taking the range of Schillaci between 30 and 40 per cent, the 30 per cent is the 29,000,000 and the 40 per cent is the 39,000,000.

Mr. Greenberg: That is so, your Honor.

Tables 3 and 4 do not contain a universe figure. Table 3 contains the poundage figures for six firms and the dollar sales of one firm, all of which are covered by the stipulation G-925.

[fol. 3415] A group total is used instead of a universe to indicate relative rank in production among the leading companies.

The characterization of "leading companies" is based upon testimony already in the record, testimony which occurred during the month of June.

Table 4 has the same format as table 3, except that it makes its computations for both dollars and pounds.

We believe tables 3 and 4 are competent, relevant and material and should not be rejected by his Honor.

Table 1 seeks to compare the growth of five leading firms in the plastic container industry, and for Continental Can alone, and compares such growth with the expansion of the glass container and metal can industries. The data in this table is based upon census material and facts covered by the stipulation.

The Court: Well, my worry about table number 1, I am frank to say, Mr. Greenberg, is that it seems to compare [fol. 3416] different things. You have got plastic containers net sales by Continental Can compared to plastic bottles, jars and carboys with another five firms, apparently lifted more or less arbitrarily out of the industry, and then you compare that to metal cans and glass containers, and what

worries me is what is the significance of the plastic bottles, jars and carboys?

Mr. Greenberg: Your Honor, we think that the poundage rate of growth and the dollar sales rate of growth are related.

The Court: For instance, in 3, if this figure were plastic containers instead of plastic bottles, jars and carboys, you might get an entirely different figure of percentage increase.

[fol. 3417] Mr. Greenberg: If the Court please, these figures are based on the matters covered by the stipulation. In 3 what we tried to do was to extract from the figures such things——

The Court: When I say 3, I am talking about line 3 of table 1.

Mr. Greenberg: That is what I am talking about.

The Court: All right. Go ahead.

Mr. Greenberg: With those poundage figures in line 3, we tried to extract from these figures that which was represented by Christmas ornaments, toy pigs and what have you, which represented a small percentage, a very small percentage of the production of these five leading companies. That is the reason why we call line 3, or entitle it "Plastic Bottles, Jars and Carboys." That is the only reason.

The Court: Is it your contention that line 3 represents thousands of pounds of polyethylene consumed by these five firms in the manufacture of all containers, plastic con-

[fol. 3418] tainers, manufactured by them?

Mr. Greenberg: No, your Honor. We are indicating that —this is what we are trying to show: We have taken five companies who we believe are leading companies in the field, and this is based upon testimony in the transcript. We wanted to show their growth, regardless of what the rest of the industry did, their growth, the growth of these leading companies, over a five-year period, because they are the ones——

The Court: Well, the only way you can show that in the container field is by including all the containers, the plastic containers, they manufactured.

Mr. Greenberg: Well, I think these are all the plastic containers they manufacture. They do not include containers such as toy pigs or the few other things——

The Court: I am not talking about toy pigs.

Mr. Greenberg: Your Honor, again I wish to reiterate, all this line 3 shows is the growth, perhaps in an important [fol. 3419] phase of these companies' business, their growth over a five-year period. We want to show——

The Court: You don't say, for instance—do you say that polystyrene is in competition with metal cans and glass containers?

Mr. Greenberg: No, your Honor, we do not. The testimony this far has indicated that competition has been in the high and low-density polyethylene fields. We do not deny that, for example, occasionally a company such as Prell will put out a polystyrene tube, and that was offered by Mr. Hughes a few days ago. But that is surely the exception, and we maintain that is so, and we believe the defendants cannot show that it is not the exception.

The Court: All right. Anything further on this, Mr. Greenberg?

Mr. Greenberg: No, your Honor.

The Court: Now, I will hear briefly from you, Mr. Johnson.

You may remember that 1207 for identification has been [fol. 3420] offered since I heard from you last time, and you might want to address yourself to that. That is the material from the Internal Revenue Service.

Mr. Johnson: Yes, sir.

Let me address myself first to the last subject, since it is now before us.

The more I hear about this group of documents, 809, the more confused I become as to what they are all about. The government seems somehow to be trying to get from us an agreement of what the plastic container industry is, or what the plastic container business is.

I have not tried to define it for the purpose of this case, and I don't think it is incumbent on me to do so.

With respect to what Mr. Schillaci said, it seems to me that really all I can say is that Mr. Schillaci said what Mr. Schillaci said, and it is in the record.

At this point we get all confused about whether we talking about Polyethylene, blow-mold, of polystyrene. I have [fol. 3421] just heard that polystyrene containers for some reason are apparently so different that they are not even closely related to the polyethylene bottles. I heard that with considerable surprise from the government.

With respect to what Mr. Schillaci said, about what this industry was, on page 178 of the transcript——

The Court: Just a minute. I will follow you as you go along. All right.

Mr. Greenberg: Could you wait just a moment until I get the page reference?

Mr. Johnson: Yes.

Mr. Greenberg: All right.

Mr. Johnson: On page 178, it is there that he says:

> "... we do something in the order of between 30 and 40 per cent."

A few lines down, your Honor asked him:

> "He is talking about the type of bottles we have been discussing here. Is that right?"

The witness says:

[fol. 3422] "Yes, sir.

On page 143 he says:

> "We manufactured the bottles for use in the field, mostly from polyethylene but not limited to that. The plastic material that can be blown is used for selling the markets where special purposes are required or where a special function or purpose is needed."

On page 229, Mr. Greenberg asked, toward the bottom of the page—I am sorry——

Mr. Greenberg: I didn't.

The Court: It was Mr. Hughes.

Mr. Johnson: I am sorry. Mr. Hughes in cross examination asked him:

> "... whether you"—referring to Plax—"make polyethylene bottles of low-density and high-density."?

He said, "Yes, we do.

> "Q. And that is the overwhelming highest percentage of the bottles you make, that is, made of either low or high density?

The answer on page 230 is "Yes."

[fol. 3423] Then on pages 238 and 239, on cross examina-

tion, it was suggested to him that there might be as many as 200 companies in the industry. He says that wasn't the figure that he had in mind. "but I certainly would not say that it was out of line . . ."

The next page, 240, referring to these same small manufacturers, the Court asked him:

> "What sort of volume would he produce in terms of dollar volume?"

He said:

> "Couple thousand, three, four thousand dollars a week,"

and your Honor then translated that into, "Say, two hundred or $250,000 a year maybe?"

He said, "Possibly."

And on the following page, he goes into the question of injection molding and makes an estimate as to the number of firms in the injection molding business.

So, your Honor, all I can say on that again is that Mr. Schillaci s[illegible]hat Mr. Schillaci said. I don't think I need [fol. 3424] spend any time on the rest of these tables in this group. They are just indicating how much a limited group of companies did, and to me this is nothing more than taking six delicatessen stores at random and adding up the total and then dividing as to what percentage of the six each of them sold.

Mr. Greenberg did comment on the leading companies, and he said that his concept of leading companies here was based on the record.

Again I point out, as I did in the cross examination, that somehow and mysteriously American Can Company has disappeared from this group. There is no reference to Olympic Plastics. In fact, there is no indication of what is meant by leading companies at all.

Going back, then, to the earlier material, Mr. McManus has said in a number of instances that this material was the best they could do and I simply point out again that if the material is no good in the first place, the best they can do is no good.

[fol. 3425] Mr. Greenberg: I would like a page reference to that.

The Court: What is that?

Mr. Greenberg: I would like a page reference to that?

The Court: To what?

Mr. Greenberg: To Mr. McManus' statement that this was the best they could do, or something like that.

The Court: Don't interrupt his argument. If you have anything to say, you can add it later.

Mr. Greenberg: I hesitated to argue, your Honor, and I don't normally do that, but I believe that remark is improper argument.

The Court: Go ahead, Mr. Johnson.

Mr. Johnson: Now, with respect to the chart that related, or the table, I believe, to captive manufacturers, Mr. McManus said they did not have any figures, and I think that with respect to your Honor's question about Campbell's Soup he merely said they did not have any figures.

[fol. 3426] The Court: As I understood it, he said he did not have any specific figures on specific companies. He pointed to a figure on one of the tables, six hundred million-odd, which he said indicated the number, that is the gross, of the so-called captive man manufacturers.

Mr. Johnson: That is correct. I simply wanted to comment that he did not have any American Can figures until such time as he chose to give them. The same figures were available with respect to the other companies as were available with respect to American.

This morning we have a new starter as an offer by the government. This is Government's Exhibit 1206, the so-called key customers. I indicated before this document has never been considered at all in pretrial discussions.

[fol. 3427] Mr. McManus indicated, I think the words he used were "this document had been held back and subjected to special treatment."

In the first place I think it should be clear, if it isn't already, that regardless of how this document was produced, it was not prepared for any purposes in this case. It was not prepared in response to either an interrogatory or prepared in response to a motion to produce.

The Court: You don't question that it came from your

files, or, I take it, that it was a report of your Sales Control Department, do you?

Mr. Johnson: I do not, sir, but it was not prepared in response to anything. We have no evidence with respect to it. There is no indication that it is an admission by the company. There is no indication of why it was prepared; no indication of the accuracy of the material. It doesn't even show what products were sold—simply lines that show metal containers or glass containers of the Hazel-Atlas Division. There has been no foundation of any kind whatso- [fol. 3428] ever laid with respect to this document.

What is your Honor supposed to conclude it means? What do all of these figures stand for? What is the purpose of making the offer? I don't know. We are left in the dark completely with respect to that.

Mr. McManus made something about the manner in which this was produced. Of course it was produced very carefully, with all kind of references to confidentiality. This is a list full of customers' names. Instead of being held back in any way, shape or form, this document was discussed with the plaintiff at a time when we were trying to work out the scope of the motion to produce. Now suddenly we find this as a document which is to be offered for no one knows what purposes.

With respect to the Internal Revenue material, Mr. McManus said that in that instance when I questioned the witness I was actually talking about material other than that used. I presented that document that I used to the witness, after it had been marked for identification, and asked him [fol. 3429] on page 3300 of the transcript:

> "Did you use this book in the preparation of your tables?"

The answer: "Well, ours was the original source book that was obtained from the Internal Revenue Service, that's right."

Mr. McManus makes a distinction without a difference. The documents, the charts, that he is referring to apparently were prepared from earlier versions of this material. The witness, however, had no difficulty whatsoever identifying with this material. In fact, the number of returns which

are referred to in cross-examination, number of 52 on line 122 of page 16, is exactly the number referred to for 1956 in the chart (showing to Court).

The Court: Yes.

Mr. Johnson: Some reference was made in Mr. McManus' argument as to the exclusion of plastic caps from one of the closure tables. I don't know whether plastic caps should or should not be included. My point there is simply that the [fol. 3430] government has picked out what he now says, what he now describes, as tin mill products, and has decided that that is the thing, that somehow there is some magic in comparing those.

Mr. McManus talked at length about this little CMI brochure, pamphlet. Mr. McManus says this was an expensive document that was prepared by a large staff; it was published year after year; obviously people relied on it. Mr. McManus said those things.

There is not one word to that effect in the record. I was hesitant to answer your question as to why this was prepared for fear I would be testifying. But does Mr. McManus know any of these things? Does he have the least idea of where this mimeographed sheet was prepared and why it was prepared and who relies on it and who looks at it?

He has had Continental people on the stand; he has had CMI people on the stand. What does he know about this thing? If he wants testimony of what it is, I say it is a [fol. 3431] publicity blurb that is thrown out and no one relies on it.

Your Honor asked some questions of Mr. McManus with respect to the so-called growth charts, the tables that show glass-container line and the can line and the metal container line, going from 1939 on up to some later date, and Mr. McManus indicated his belief that if you started from any date other than the one they had, that the results would be something approximately the same.

Your Honor will recall, however, that I specificially asked the witness whether there was not a possibility that those two lines might cross if they started from a different date, and the witness said there was such a possibility.

Well, your Honor, I believe those are the comments that I wanted to add.

The Court: All right, thank you.

Now, gentlemen, I am prepared to rule, and I will go through these things the way Mr. Johnson treated them by way of objection.

First, the first objection was raised to charts 2C, 3C and [fol. 3432] 4C of Exhibit 803, which is folder C.

As to those, the objections are overruled.

(Charts 2C, 3C and 4C of Government's Exhibit 803, folder C, received in evidence.)

The Court: As to chart number 9 on Exhibit 800 for identification, relating to closures, or Section IX of the chart book relating to closures, the objection is overruled.

(Section IX of Exhibit 800 received in evidence.)

The Court: As to 5C and 5D of folder C, Exhibit 801, the objections are sustained as to both of those.

Mr. Hughes: That is 803, your Honor.

The Court: I beg your pardon?

Mr. Kuhn: 803.

The Court: 803, yes, I'm sorry.

As to the tables comprising Section I of Exhibit 801, and Section V and VI of Exhibit 802, the objections are over-[fol. 3433] ruled and those tables are received.

(Tables comprising Section I of Government's Exhibit 801 and Sections V and VI of Government's Exhibit 802, received in evidence.)

The Court: As to Sections II and III of Exhibit 801, and Sections I, II, III, IV and VII of Exhibit 802, the objections are overruled and those tables will be received.

Mr. Handler: Will you repeat those numbers, your Honor?

The Court: Exhibit 801, Sections II and III, and Exhibit 802, Sections I, II, III, IV and VII.

(Sections II and III of Exhibit 801, and Sections I, II, III, IV and VII of Government's Exhibit 802 received in evidence.)

The Court: As to the part of Section III of Exhibit 800, and also Section V of Exhibit 800, which objections were

raised on the ground that contain unit figures that were [fol. 3434] based on improper conversions, the objections are overruled.

(Part of Section III and also Section V of Exhibit 800 received in evidence.)

The Court: As to Sections I and II of Exhibit 800, the chart exhibit, the objections are overruled.

(Sections I and II of Exhibit 800 received in evidence.)

The Court: As to table number 1C of Exhibit 803, the objection is overruled.

(Table number 1C of Government's Exhibit 803 received in evidence.)

The Court: As to Section IV of Exhibit 800, which relates to historical growth, I am going to overrule the objection, but I think it should be understood that I consider these charts of very, very doubtful value, and at the present writing at least the weight I will give to them will be minimal, if any.

(Section IV of Exhibit 800 received in evidence.)

The Court: Now, as to Section VI of Exhibit 800, the [fol. 3435] so-called common customer sales charts, the objections are sustained and those charts will be excluded.

As to Exhibit 1206, which is the report of the Sales Control Department of Continental Can with respect to sales to key customers and suppliers, the objection is overruled and that material will be admitted.

(Government's Exhibit G-1206 received in evidence.)

The Court: As to Exhibit 800, Section VII, the firm asset classifications from Internal Revenue statistics, first of all I will take Exhibit 1207, which are the basic Internal Revenue statistics from which Section VII of Exhibit 800 purports to have been made. The objection to 1207 is overruled and 1207 will be admitted.

(Government's Exhibit 1207 received in evidence.)

The Court: Insofar as Section VII of Exhibit 800 is con-

cerned, the objection will be overruled and they will be [fol. 3436] admitted.

(Section VII of Exhibit 800 received in evidence.)

As far as Exhibit 1202 is concerned, which is the Can Manufacturers Institute figures, I understand that most of the figures, the basic figures, in that table agree with the census figures, and there is testimony to that effect insofar as base box totals are concerned. As far as the balance of material is concerned, I have, frankly, very grave doubt as to whether there was sufficient foundation laid. However, at this point I am going to admit that material subject to a motion to strike, and I am going to make the same caveat, subject to a motion to strike, with respect to all the material in any of these exhibits which we are discussing, which relate to a certain figure for cans predicated on the pamphlet of the Can Manufacturers Institute.

(Government's Exhibit 1202 received in evidence.)

[fol. 3437] The Court: With respect to Exhibit 809, the plastic tables, the objection is overruled and the plastic tables will be admitted.

(Government's Exhibit 809 received in evidence.)

Now I want to reemphasize in making these rulings that the admission of any document is not in any way an endorsement by the Court of the weight to be given to a document or any indication as to the amount of weight that will be given to it. I have already indicated with respect to several of these documents that I think they are pretty feeble as far as having any probative value or weight is concerned. I think you might as well know that I consider the plastic tables not so much in terms of the accuracy of any figures that may be included in there, but as to the significance of the figures, of very doubtful value indeed.

The same may be said with respect to a number of other tables that have been admitted in evidence.

I am saying that so the government will not assume that because a table has been admitted into evidence they can [fol. 3438] proceed from there without giving the most careful consideration to the question of the weight, the sig-

nificance of the tables, in the light of the picture that is before me and their relation to the issues.

Now, I do not know, gentlemen, whether the rulings I have just made cover the offers in full. Insofar as they do not cover the offers in full, anything in Exhibits 800, 801, 802, 803 and 809, which was not covered by a specific ruling in the rulings that I have just made, as to any other such material, the objections will be considered to be overruled and the material admitted, that is, if I have omitted anything in my specific rulings.

Mr. Johnson: I think your Honor's rulings are very precise.

However, I should like to ask a question with respect to this G-1206, which was the additional starter here this morning.

I don't now understand what it was offered for or what [fol. 3439] it is intended to prove.

The Court: I think that is a fair question and I think Mr. McManus ought to tell us.

Mr. McManus: Your Honor, as I understood it, we had made an offer of what we considered common customers between Hazel-Atlas Glass Company and the Metal Can Division of Continental Can, and you indicated that you thought those tables were highly misleading. I could understand—well, maybe I couldn't—but at least I understood some of the problems you have with the tables, and we, in effect, are offering the basic data in lieu thereof, which we feel shows the common customers of Continental Can Company and Hazel-Atlas Division, and also, we think the table will show part of our full line position.

Mr. Handler: Will show what?

Mr. McManus: Part of our full line position, which indicates that Continental sells a number of products of these types, such as paper and cans, caps and so forth to the same [fol. 3440] common customer. We think that that is what that table will show, and that is what it is offered for, primarily the first, but also the second.

Mr. Johnson: It is offered then for these purposes without any showing what it is all about or——

The Court: Well, the difficulty with that is, Mr. Johnson, that this has got, as I read it, quite an elaborate description

of what it purports to be in the second page, which I have read, and I presume that it is what it purports to be.

Mr. Johnson: Well, your Honor, I believe I am entitled to a witness on that subject, as to——.

The Court: You may call him, and if you find, if you get as far as your case, it appears that this is not what it purports to be and for some reason it ought to be excluded, you can make a motion to strike. This is true of any exhibit which I have admitted from the files of Continental Can, [fol. 3441] concerning which there has been presently up to now no testimony.

Mr. Johnson: Yes, sir. It is not simply a matter of being what it purports to be, but also of explanations of what it is.

The Court: Well, you are perfectly entitled to make all the explanations you want to, and, Mr. Johnson, you may show, for all I know, that instead of helping the government this material is very helpful to you.

Mr. Johnson: I understand that.

Mr. Handler: Your Honor, I am going to be confronted very shortly with the argument on the motion to dismiss, and I will have to deal with this exhibit.

I find quite unenlightening the first part of Mr. McManus' statement, in which he says that the exhibit purports to show common customers. The second part of the statement I understand. He says he wants to use it in terms of his full line contention.

There is no issue in this case as to whether or not there [fol. 3442] were common customers. What would be significant about the offer is the inference that he wants to draw from the fact of common customers, and on that he has been silent.

Now, the document does not purport to show competition between Hazel-Atlas and Continental Can for the patronage of the common customers, and I think that Mr. McManus ought to state now whether or not he at any time is going to call your Honor's or another court's attention to this exhibit and ask that an inference be drawn that by virtue of the fact there are common customers, that there is competition. Because the fact of the matter is that a common customer listed in this exhibit might be an oil company that buys oil cans from Continental and buys tumblers from Hazel-Atlas, to be used for promotion, and this exhibit

doesn't say one word about the products that are being purchased by the common customers, and it would be a most misleading use of the exhibit to say that it shows competition. [fol. 3443] The Court: What do you say to that, Mr. McManus?

Mr. McManus: Your Honor, I think with all due respect to Professor Handler we are starting a day earlier. I think that inferences can be drawn from this document of the effect of having common customers, and I think the government will.

Now, the defendants have every right, as Mr. Handler has just indicated, to draw inferences contrariwise, and you have indicated also, your Honor, that they have every right if they get to that stage for them to call a witness who will testify that this does not mean this, but it means something else. But I think a fair reading of this document would show the common customers of these various divisions in glass, cans, things of that nature, to show the common customers, and inferences can be drawn that that gives them an advantage, and we would like to draw them.

Mr. Handler: If your Honor please, right after your [fol. 3444] ruling I think that a motion to strike is quite in order, because I think that this is a most unusual and extraordinary procedure. The document was offered in evidence at your Honor's invitation in order to serve as an explanation for an exhibit which your Honor now has excluded. Now, it is one thing to have a document in which would enlighten the Court on reading an exhibit. It is quite another thing, without a witness, without any effort, to offer evidence surrounding the execution of this document and to ask your Honor at this stage of the record to draw an inference of competition from the fact that there were common customers. Certainly there must be a greater predicate than that.

The Court: Professor Handler, in order to ask me to draw an inference from this document that there are common customers in some significant sense, significance in having relation to the issues in this lawsuit, Mr. McManus will have to show me something in this document that leads to such an inference.

[fol. 3445] Mr. McManus: That's right.

The Court: Now the fact is that the charts which I ex-

cluded and which Mr. McManus, I think, introduced to demonstrate the inferences that could be drawn, I have excluded them. At the present time I am not drawing any inferences from this material. I say this is offered, the key customers and suppliers of Continental Can, in my judgment, as having some relevance in this Section VII proceeding.

Now, the inferences to be drawn from it, or what they establish, are another matter entirely, and I do not for the moment want it understood that by admitting this or any other document in evidence I am drawing any inferences.

Mr. Handler: Thank you, your Honor.

The Court: All right.

Mr. Johnson: May I ask your Honor that 1206 be treated as a particularly confidential document?

The Court: I can easily see why, Mr. Johnson.

Mr. Johnson: Yes, sir.

[fol. 3446] The Court: The very heading of the document indicates the necessity for its being treated as confidential material, and it will be ordered to be part of the sealed record in this case and not disclosed to anyone outside of counsel for the parties.

OFFERS IN EVIDENCE AND COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Johnson: There were several items marked for identification on cross-examination. Some of those I should like to offer at this time in the light of your Honor's rulings.

I offer first Defendant's X for identification, consisting of defendant's interrogatory 6 and plaintiff's answer to interrogatory 6B.

Mr. McManus: Could I have the purpose, your Honor?

Mr. Johnson: The purpose is to show that the government, in answering the defendant's interrogatories, said that it had no reason to verify the accuracy of Can Manufacturers Institute data.

[fol. 3447] The Court: Any objection?

Mr. McManus: No objection, your Honor.

The Court: It may be received.

(Defendants' Exhibit X for identification received in evidence.)

Mr. Johnson: I next offer that portion of Defendants' Exhibit Y for identification which is the United States Department of Agriculture Bulletin No. 24 under the heading "Trend in Canned Vegetables to Smaller Size Cans."

The Court: Any objection?

Mr. McManus: No objection.

The Court: It may be received.

(Defendants' Exhibit Y for identification received in evidence.)

The Court: Now, something just occurred to me that must be cleared up.

When I stated a few moments ago that with respect to Exhibit 803, among others—Exhibit 800, I think—where is the prior acquisition table?

Mr. Johnson: That is in 800.

[fol. 3448] The Court: 800. I thought so. When I said that everything in 800 was to be admitted if not specifically covered, I did not refer to 808, which is the prior acquisition table which we have still got to discuss and which I have to pass on.

Mr. Johnson: I think you caught us asleep, your Honor.

I have also several physical exhibits referred to in the cross examination which I now want to offer: Defendants' Exhibit 105 for identification, Defendants' 113 for identification and Defendants' 122 for identification.

The Court: Those were some of the things you offered as examples on the cross examination.

Mr. Johnson: Yes, sir.

The Court: Any objection?

Mr. McManus: Your Honor, if they are the ones that I stipulated to previous to the start of the case, if they are what they say they are, I have no objection.

[fol. 3449] The Court: All right. They may be received.

(Defendants' Exhibits 105, 113 and 122 for identification received in evidence.)

Mr. Johnson: I offer also Defendants' 210 for identification, Defendants' 212 for identification, Defendants' 214 for identification and Defendants' 215 for identification.

Mr. Greenberg: If the Court please, may we have the scope and purposes of the offer?

The Court: No. They are samples, again, that we used on cross examination of a witness, and we don't have to have any further definition of this.

Is there any objection to it?

Mr. Greenberg: May I examine them for just a moment, please?

The Court: Of course you may.

As I recall them, some of them are labeled "Polyethylene jar with a polystyrene lid," if I am not mistaken. Now, I presume somebody wants some indication that they are what [fol. 3450] they say they are. If you want a witness for it, I am sure they will get you a witness, but it seems to me an enormous waste of time.

Mr. Greenberg: No objection.

The Court: They may be received.

(Defendants' Exhibits 210, 212, 214 and 215 for identification received in evidence.).

Mr. McManus: Your Honor, I understand that those are the ones that we stipulated that they are what they purport to be, and that is what we are admitting them for.

The Court: All right.

Mr. Johnson: With respect to each of those, there is a stipulation——

The Court: All right. Mr. McManus has just conceded that there is a stipulation on them, and that they are what they purport to be.

Mr. Johnson: I offer next Defendants' Exhibit BB for identification, CC for identification, DD for identification and EE for identification. With respect to these items, your Honor, there is no stipulation. These are items which were [fol. 3451] used on the examination of a witness.

The Court: All right. I will admit them. If you find any error in them anywhere, move to strike them and I will hear you at that time.

Mr. Greenberg: If the Court please, I would like to make one comment for the record: The stipulation does not, nor is there any evidence of what these containers hold or can hold or whether they are appropriate for sale in the lines of commerce that we had specified, to wit, drugs, cosmetics——

The Court: I will look at them, and I will know pretty

well after this lawsuit whether they are suitable for sale in the line of commerce that we are talking about.

(Defendants' Exhibits BB through EE for identification received in evidence.)

The Court: As far as the rose dust is concerned there, I have used that on a rose bush on a roof in New York.

All right.

Mr. Johnson: That is all I have.

[fol. 3452] The Court: Now, presumably before we go to a different subject matter, we are going to take a brief afternoon recess. I take it the next order of business is the prior acquisition.

Mr. McManus: Yes, sir.

The Court: And so that I may be clear on that, the evidence on prior acquisitions offered by the government is what?

Mr. Greenberg: The exhibits are G-785 and G-786.

The Court: I see.

Mr. Handler: If your Honor please, there are three exhibits that have been marked so far: G-785, G-786 and the page in G-800 to which you refer.

The Court: Yes.

Mr. Handler: In addition, your Honor, there are two documents that have been marked by the government since the July recess which in part deal with this subject, and I wonder if it wouldn't be a good idea for them to be formally offered at this time so that I might be able to discuss all [fol. 3453] documents having to do with prior acquisitions at one time. I am referring to G-788, which is a resolution of board of directors of Continental Can, and G-900, which in part has to do with this subject, particularly with reference to the Obar & Nestor transaction.

I would like counsel for the government to make a formal offer at this time.

The Court: I will have a formal offer made. I want to see what we are dealing with. I will have those two exhibits which were just mentioned to take in with me.

Mr. Greenberg: Your Honor, if you are taking them in, I would like to point out that with respect to G-900 we are offering only pages 8 through 34, and we are offering 788.

(Short recess.)

The Court: All right.

(Discussion off the record.)

The Court: Let the record show that Mr. Martin Jacobs, representing now Mr. DeMerell, an officer of Anchor-Hock-
[fol. 3454] ing Glass Company, who testified on June 27, 1960, has presented a letter which has been shown to counsel for both sides, in which Mr. DeMerell corrects certain answers given in his testimony on the record at page 1498 of the transcript on June 27th last.

In accordance with the Court's suggestion, the government has offered the letter of Jones, Day, Cockley & Reavis of Cleveland, addressed to Mr. McManus, dated October 14, 1960, which makes these corrections. The letter has been offered by the government and will be received as Government's Exhibit 1208 in evidence.

(Government's Exhibit G-1208 received in evidence.)

The Court: This corrects the record, and if counsel wish to go through those mechanics, they may arrange to have the copies of the record physically corrected in accordance with the terms of the letter, should they deem that desirable.

Mr. Jacobs: Thank you very much, your Honor.

Mr. Greenberg: If the Court please, last June the govern-
[fol. 3455] ment had offered certain documents which related to so-called prior acquisitions. At that time Mr. Handler submitted a brief to his Honor with copies to government counsel in which he made his formal objections on the grounds of relevancy and materiality to G-785 and G-786. In that brief he amplified the grounds that he stated, and the government is prepared now to argue in rebuttal.

The Court: I see.

We are now arguing with respect to the government's offer of Exhibits 785 and 786 for identification, which have not yet been ruled on.

Now, do I understand that there are other documents which the government claims bear on the question of prior acquisitions, and which the government is now offering?

Mr. Greenberg: Two other documents bear in part on the question of prior acquisitions and a contemplated acquisition by Continental Can. I hasten to add, however, that we offer the two documents involved, G-788 and G-900, for all

[fol. 3456] purposes. G-900, however, is limited to an offer of pages 8 through 34.

To the extent that these two documents pertained to the argument on prior acquisitions and contemplated acquisitions, we agreed to discuss them and to offer them along with G-785 and G-786.

The Court: And, of course, there is also implicit in all this the chart 8 of Exhibit 800, which purports to be some sort of pictorial representation of prior acquisitions.

All right.

Mr. Greenberg: If the Court please, I would desire now to commence the government's argument with respect to prior acquisitions.

The Court: Well, the question is, who comes first?

Mr. McManus: That's correct. I suppose that the government really has the burden of showing the Court why prior acquisitions should be admitted here and how they are relevant.

The Court: What do you say to that, Mr. Handler?

[fol. 3457] Mr. Handler: We are objecting, your Honor, and I think I ought to be able to present my objection, and then it would seem to me the normal thing would be for Mr. Greenberg to respond.

The Court: Well——

Mr. Greenberg: Your Honor, the government, in light of the fact that Professor Handler has submitted a brief to you in June, would prefer to open the discussion.

The Court: Well, Mr. Handler submitted the brief to me in June, Mr. Greenberg, and I got a brief from the government at 3:27 this afternoon. It doesn't seem to me that that gives the government any privilege of opening.

I have not read your brief. As far as I know, before I pass on this question, which I intend to pass on at the conclusion of the argument, unless something rather peculiar happens, I will not have read the government's brief by that time, and I am frank to say that if the government expects me to read their briefs they must not wait from June 27th until 3:27 on October 17th when the argument is to be held and [fol. 3458] expect me to read their brief.

Mr. Greenberg: Your Honor, may I make one comment? This brief was intended only to supplement our arguments in court, and I wish to add that for the record, and of course

we would prefer if his Honor did read the brief, but, as I stated before, it merely supplements our arguments.

The Court: I will hear from Professor Handler on his objection, and then I will hear from you.

Mr. Greenberg: Thank you.

Mr. Handler: If the Court please, I am very much in the position of a pitcher who has been in the bullpen warming up for the past 10 days.

The Court: This is really also part of the warm-up process, Professor Handler, what I expect to hear from you tomorrow or the next day. This further warm-up may be good for you.

Mr. Handler: There are now before your Honor a proffer of five exhibits. I should like to address myself first to [fol. 3459] three and subsequently I shall turn to the latter two.

The three exhibits, briefly, consist first of 785, which is a voluminous document, consisting of a comprehensive letter to Mr. England of the Federal Trade Commission by the Willkie firm in response to an inquiry from him.

The Court: That is what—785?

Mr. Handler: I believe it is 785—786. I beg your pardon.

The Court: 786.

Mr. Handler: But chronologically it comes first.

Attached to this document of some 36 pages are many financial statements in the form of exhibits.

The document purports to summarize the various acquisitions made by Continental, the earliest was December 6, 1926, and it runs through to an acquisition on September 21, 1944. Each of these acquisitions is separately discussed in separately numbered paragraphs.

[fol. 3460] Now, in addition, there is an Exhibit 785, which was a table of six pages, likewise prepared by the Willkie firm, which was submitted to the Department of Justice as an exhibit to a letter answering many questions which the Department put to the defendant.

The Court: Was that in answer to an interrogatory?

Mr. Handler: No, this was in answer to a letter of inquiry before the suit was started.

This purports to summarize a substantial number of acquisitions during the period from 1942 to 1956. It lists the names of the acquired company, the form of acquisition,

the date of acquisition, the product line of the company, and then the information furnished to the government with respect to the acquisition.

Now, the third of the group of exhibits is the table to which frequent reference has been made, the chart in Government's Exhibit 800. By my numbering it is page 92. And this chart purports primarily to be based on the two previous [fol. 3461] exhibits.

Now, the complaint in this action, in paragraph 6, alleged that since 1942, Continental has acquired more than 25 independent business enterprises. Accordingly, the defendant, in an interrogatory, requested the government to state how and precisely in what manner the acquisition by Continental of each of these 25 businesses is claimed to be relevant to the acquisition of Hazel-Atlas by Continental or the charges made in the complaint in respect thereof. The government answered that these prior acquisitions are relevant in the present case in so far as they involve a company engaged in the production, manufacture and/or sale of containers, container products and related products.

Now, I presume that this answer does not relate to Continental. I don't suppose the government is saying that the acquisitions are relevant because Continental is engaged in the container field. I would suppose that the answer has to do with the acquired companies.

[fol. 3462] Now, there are two points that I want to make to that answer. The first is, as Mr. Johnson brought out in his cross examination of Mr. Tolton, that the proffered exhibits are not confined to container companies at all. They relate to companies engaged in fields remote from and not connected with containers or accessory lines. Indeed, if you look at the bottom of the chart, you find a caption, "All Others," and seven companies are listed under "All Others." Mr. Johnson brought out that some of the companies are engaged in businesses that are most remote from the packaging field. For example, we call your Honor's attention to the Tenco Company, which is engaged in the manufacture of plastic pipe fittings. He referred to Wallace Container Company which makes Vinite collapsible tubing.

The Court: What is that used for, Mr. Handler?

Mr. Handler: What is that?

The Court: What is that Vinite tubing used for?

[fol. 3463] Mr. Handler: I will have to find out, your Honor.

Mr. Johnson informs me that the Wallace Company is extinct and we don't know what the tubes were used for, and I used the past tense for Tenco. I should use the present tense. They are making plastic pipe fittings.

The Court: Aren't they discontinued too?

Mr. Johnson: I believe. It is not quite correct that I don't know what they were used for. I believe that Wallace Container Company at one time did make tubes. Now, whether that is the principal product or not, I don't know.

Mr. Handler: Apart from the fact that these documents, and particularly 786, embrace acquisitions of companies that are not engaged in this field, more important than that is that our contention is that these prior acquisitions, even if in this field, are lacking in relevance and in materiality.

For example, some of the acquisitions have to do, if you [fol. 3464] look at the chart, with the canning machinery phase of Continental's activity. You haven't heard a word in this case of any anticompetitive effect as charged in the field of canning machinery. And some of these companies were in the flexible packaging field. What you have heard about flexible packaging is that the government claims that fresh food packaged in flexible packaging is not to be treated in the same breath with foods packaged in tin and in glass.

Now, having regard for the type of contention that has been made in this case, and considering relevance and materiality in terms of the issues litigated here and not in some abstract fashion, what is the significance that the government attributes to acquisitions of the character to which I have just referred?

Now, I come to acquisitions in the canning field and to the acquisition now in question in the glass field.

At pretrial your Honor asked a series of extremely pointed questions of government counsel to clarify this [fol. 3465] phase of the case, and their answers may be summarized by saying unqualifiedly that they admitted that the prior acquisitions have no materiality to this litigation. Now, that, of course, is my conclusion, which I shall endeavor to support by reference to the colloquy.

Now, I define materiality the way the books on evidence

define materiality, that is to say, evidence without any legal significance to the issues in the case at bar.

Now, your Honor asked first, is the government challenging the legitimacy of the prior acquisitions, and the answer was that they are not challenging those acquisitions.

Your Honor next asked: Would this case have been brought if there had been no prior acquisitions. Is the government claiming that this acquisition is unlawful, standing on its own footing, separate and apart from the prior acquisitions? And the answer was, "Definitely, yes."

And, finally, your Honor asked: What is the significance of the prior acquisitions? And Mr. McManus told you that [fol. 3466] if all he had was evidence of prior acquisitions, he couldn't make out a case.

Now, that is asking the same question, I submit, in three different ways, and the fundamental question is, what is the legal significance of this evidence, and the answer is that it has no significance because you have got to determine, as the statute commands you to, the legitimacy of this acquisition on the basis of its own facts. It is this acquisition whose effect upon competition must be determined as a pre-condition to any finding of illegality.

Now, Mr. McManus, in his answers to the interrogatories, and frequently at pretrial, gave a second reason as to why he was referring to the prior acquisitions. He said that the prior acquisitions are relevant on the theory that they may be part of a cumulative process described in House Judiciary Committee Report No. 1191, and at one point, when you were trying to draw out from him the legal theory underlying his contention of the significance of prior acquisi- [fol. 3467] tions, he said, and I quote, referring to the pretrial transcript at page 872:

> "The only reason I say so, your Honor, is what the committee reports tell me."

Now, the burden of my argument today, and it is an argument which I believe has never been made before to any court, is that the committee reports do not tell Mr. McManus what he said they "tell me." On the contrary, they tell him precisely the opposite.

Now, your Honor is familiar with the monumental work

of the late and beloved Justice Cardozo, who enumerated the three basic ways in which judge law develops: the method of history, the method of logic and the method of sociology. He did not mention the method of error, and law develops through misreading of significant documents, through false logic, through erroneous history and through invalid sociology, and what your Honor is confronted with here is false history.

The government, not only in this case but in many cases [fol. 3468] instituted under Section 7, has misread the House report, and I think your Honor is going to be called upon, for the first time since this statute was enacted, to read the House report exactly as it appears in the printed document, and I invite your Honor's attention, if you have our memorandum of law, to page 5.

The Court: I have it before me.

Mr. Handler: Now, there the House committee was answering the question: would the bill merely duplicate the Sherman Act, and it is pointed out that the bill is not intended as a mere re-enactment of that statute. Then comes the key paragraph which I would like to read with your Honor's permission:

> Acquisitions of stock or assets have a cumulative effect, and control of the market sufficient to constitute a violation of the Sherman Act may be achieved not in a single acquisition but as a result of a series of acquisitions. The bill is intended to permit intervention in such a cumulative process when the effect of an acqui- [fol. 3469] sition may be a significant reduction in the vigor of competition, even though this effect may not be so far-reaching as to amount to a combination in restraint of trade, create a monopoly or constitute an attempt to monopolize."

Now, you have got to read this report exactly as it is written, and you have got to recreate the situation which gave rise to this legislation. At the time of this legislation, there was only one instrument, one legal instrument, by which acquisitions of assets could be challenged. That was the Sherman Act, and Your Honor will remember that in the Alcoa case, where Judge Hand presided over a statutory court, he made the observation, which has been much

quoted, where, in defining monopoly, he said that 90 per cent is clearly sufficient—the percentage referring to market share—66 or 64 per cent might not be sufficient, 33⅓ per cent was clearly not sufficient.

Now, the 64 per cent had to do with the decision in the [fol. 3470] 1926 term of the Supreme Court, where the court upheld International Harvester, a company, which through acquisitions, had achieved a 64 per cent market share.

Under this statute, in attacking mergers, you had to wait until the company had achieved a monopoly position. You couldn't go after a single merger if it fell short of monopoly. You had to wait until the aggression was large enough, and that is why you considered the series of acquisitions, and that is why in such historic landmark cases as the Standard Oil of New Jersey decision by Chief Justice White in 1911, he reviews the various acquisitions of the Standard Oil trust which led to their having a dominant and monopoly position which the court adjudged to be unlawful and ordered dissolution.

But the whole point of this legislation was to permit intervention in the legislative process at any stage. You did not have to wait until the end. You could go after each and every acquisition if it had the effect of substantially lessen-[fol. 3471] ing competition, and that is pointedly, unqualifiedly and, I think, most lucidly set out in the language I just quoted. But you can intervene even though the effect of the challenged position may not be so far reaching as to constitute a monopoly menace.

Now, my good friends have referred in the memorandum which they submitted today; at the very last page, to certain authorities. They refer to Judge Weinfeld's decision in Bethlehem Steel, to Judge Weber's decision in Brown Shoe, and they also refer to the Senate report, all of which I shall want to address myself to.

Now, if you will turn, your Honor, to page 4, I believe, of the government brief, and look at the first paragraph, they refer to this intervention in a cumulative process. They then say that it, the statute, is addressed to growth through a series of small acquisitions, referring to the Senate report, page 5. Well, let's see whether they have correctly interpreted the Senate report in this regard.

[fol. 3472] Page 5 of the Senate report reads:

> "Under the Sherman Act, an acquisition is unlawful if it creates a monopoly or constitutes an attempt to monopolize. Imminent monopoly may appear when one large concern acquires another but is unlikely to be perceived in a small acquisition by a large enterprise."

And here is the sentence from which they quoted a part:

> "As a large concern grows through a series of small acquisitions, its accretions of power are usually so minute as to make it difficult to use the Sherman Act test against them."

That is the very same point that I have made, not the point that they would imply in the quotation on page 7.

Now in the next sentence, the quotation on page 4 of the brief—I was in error—in the next sentence in that paragraph of page 4 they say:

> "Consideration is to be given to the circumstances giving rise to the acquisition."

[fol. 3473] Again they quote from the Senate report. Let me read the whole sentence:

> "It is expected that in the administration of the Act, full consideration will be given to all matters bearing upon the maintenance of competition, including the circumstances giving rise to the acquisition."

Certainly the circumstances surrounding the acquisition at the time it is made, not the circumstances having to do with other acquisitions which are not in suit.

It is noteworthy in this Senate report—and I think I should call this to your attention because it is the fundamental error that has been made by Judge Weber in the Brown Shoe case, which is now up on appeal before the United States Supreme Court—you will remember the sentence I read from the Senate report which says:

> "As a large concern grows through a series of such small acquisitions, its accretions of power are usually

so minute as to make it difficult to use the Sherman Act [fol. 3473a] test against them."

Now, Judge Weber took that sentence, which, incidentally, is not a sentence of the Senate committee, which is a sentence which the Senate committee quoted from a Federal Trade Commission report on the merger movement, to which I shall shortly refer.

[fol. 3474] Judge Weber took that sentence and he said, "This sentence is proof positive that the Congress intended to prohibit minute acquisitions," and he said in Brown Shoe that the acquisition was certainly of large enough dimension to be denominated a minute acquisition; therefore, the acquisition was unlawful.

Now, on page 20 of their memorandum, where they speak of authority, they rely upon Judge Weber's decision.

I will not deny, your Honor, that Judge Weber refers to prior acquisitions by Brown Shoe in his opinion. Nor will I deny that Judge Weinfeld, in Bethlehem Steel, likewise refers to prior acquisitions. But that is a far cry from saying that these two learned judges would have refused to sustain an objection to this evidence had the objection been lodged. There is nothing in the opinions to show that the point that is now before you was considered by them.

Frankly, because I think you want and are entitled to complete frankness on my part, I don't know what these [fol. 3475] fabulously long records show in this regard. I do know that the fabulously long opinions written by these judges do not pass upon this point.

I go even further, your Honor, in the interests of complete candor: I certainly have no knowledge—and I have followed, as you are aware, all of these merger cases since the statute was enacted in 1950—I am not aware that these arguments were called to the attention of Judge Weinfeld or Judge Weber. Certainly the issue in those cases may very well have been buried in trials of extraordinary length. All I know is that the House report upon which Mr. McManus relied and which he said to you was the basis upon which he argued the relevance, and he said, "I think that it is relevant, your Honor, because the committee reports tell me it is relevant"—I am paraphrasing what he said—well, I say

that the committee reports do not say that prior acquisitions are relevant.

[fol. 3476] Now, I am not going to burden your Honor with any extended analysis of the Senate report. The House report is sufficient. It is enough for present purposes to call your Honor's attention that the Senate report quotes in part from the Merger Movement, and if you read the Merger Movement you have the same distinction that is made in the House Report.

Under the inadequate statute it had to wait until the acquisitions achieved the dimension of monopolistic matters. You had no instrument to step in and challenge the particular acquisition where it did not involve monopoly.

The Court: Well now, Mr. Handler, assuming your argument that under the House report and the Senate report on question 7 neither of such reports authorizes the admission, or I scarcely see how they can, the admission of these documents or make the documents relevant—I have grave doubt whether you could start making documents relevant by reports of the Congress, which are useful for a variety [fol. 3477] of purposes, but are not at all sure that is one of them—but, assume that they are not, assume that those reports have the effect of making this material relevant, I wish you would address yourself to the point of why it may not be relevant regardless of what they say?

Mr. Handler: That is precisely the point where I find myself, your Honor.

I think that the government, in offering this testimony, wants you to draw some inferences, and I have the same difficulty here that I have throughout the case in ever finding out what are those inferences which they want you to draw.

The Court: Well, of course, you see, I am in something of a dilemma here, too. I am in a dilemma by reason of some of the objections from the defense upon the theory that the matter should be excluded because I might draw the wrong inferences from it. I don't think that that is necessarily an argument for the inadmissibility of the testimony, of the evidence.

[fol. 3478] Mr. Handler: I couldn't agree with you more, your Honor. When I chide my good friends for being silent about the inference that they want you to draw, I am not chiding them because you are going to confuse inference

with admissibility, I chide them without knowing the inference it is extremely difficult for me to know what is the ultimate proposition of fact that they are trying to prove by this document. They tell you, as they told us, that "We are trying to prove that there were prior acquisitions." Earlier today Mr. McManus said, "This document shows common customers."

Well, these documents show prior acquisitions. So what? What is it they are trying to prove?

Now here, your Honor, I come to what is the essence of this matter. Obviously they think that prior acquisitions has something to do with a section VII case. They are not offering this evidence here for you to pat us on the back [fol. 3479] and say, "Well, you were good people in making these prior acquisitions." They want you to draw some inference adverse to us. They have some proposition that they are trying to establish, and that proposition obviously is deleterious.

Now, if your Honor please——

The Court: I don't want to interrupt your thread, but let me ask you this: let's suppose that instead of offering evidence about prior acquisitions by Continental, the government offered a historical survey of the industry in the last 20 years. Assuming we knew precisely what the industry was, assuming we have a well defined industry and the government said "We want to show your Honor what the history of this industry was during the past 20 years," would you say that that was irrelevant and immaterial in a Section VII case?

Mr. Handler: I would say, your Honor, I would quote your Honor the big case report, where the judges who [fol. 3480] studied this problem have urged—yes, I am referring to the Prettyman Report and this new report has been promulgated by Judge Murtagh.

The Court: If you want to get along with me, don't quote me the Murtagh Report, which is what I call a long and protracted report of a long and protracted conference on long and protracted cases, that still continues in its long and protracted fashion, and it does not impress me, frankly.

Mr. Handler: Well, your Honor, I think you should be and are impressed by the fact that it is necessary in these

cases to have some terminal point, a point of beginning and a point of end.

The Court: I agree with that.

Mr. Handler: And it is the consensus of all the Federal Judges, and I have never seen anyone express a dissenting opinion.

The Court: I may agree with everything the report said. My only difference is it has all been said 45 times before [fol. 3481] by 45 other committees and people.

Mr. Handler: Precisely.

The Court: Stretching back for ten years.

Mr. Handler: I agree with that. But the nub of the matter is that these cases have to be compressed within manageable proportions.

The Court: Yes.

Mr. Handler: And we are not here engaged in writing a doctoral dissertation. You go into history if history is going to shed some light on the present, if it is going to enable your Honor to determine whether this acquisition of Hazel-Atlas may have the effect of substantially lessening competition. But if it is offered for that purpose and it doesn't shed any light, or if it sheds a misleading light on the problem, then it seems to me that it is not relevant.

Now let me explain what I mean by this: You heard Mr. Johnson cross-examine Mr. Tolton. Mr. Tolton had been asked by Mr. Johnson, "Do you know whether the govern-[fol. 3482] ment ever encouraged any of these mergers on page 92 of Exhibit 800?" And he said he didn't know, after Mr. McManus objected.

Then Mr. McManus, on redirect, said, "Do you know whether the government ever discouraged any of these mergers?" and the same answer, "I don't know."

Now, the predicate of Mr. McManus' redirect examination was very clear to me. He was trying to signal to your Honor that these acquisitions had not been encouraged by the government.

Now let me read to you Exhibit 900, which the government is now offering in evidence.

The Court: Well, as a matter of fact, I may say to you that during the recess I read practically all of the pages except for the figures and statistics and tables, I read all of the text from pages 13 to 34 of Exhibit 900.

Mr. Handler: Did you read, your Honor, the bottom of page 31 and page 32?

[fol. 3483] The Court: Let me just see.

Yes.

Mr. Handler: Now, our proposition is this, your Honor: Do you remember that at pre-trial you indicated that you would not grant us an order for the production of material in files of the Department of Justice which has to do with these acquisitions. We made the statement then and we make it in this document, which the government now is offering in evidence as part of their case, we made the statement then that the government of the United States encourages many of these can acquisitions, because the government of the United States, after Judge Rose's decision in the American Can case, where he refused to order dissolution, encouraged the creation of a large company that could compete effectively against American Can.

Now I submit that it is contrary to all principles of justice for the plaintiff in a litigation to offer documents from which it wants to prove a proposition of fact, when it has in [fol. 3484] its own possession evidence which negate the fact that it is endeavoring to establish.

I go further, your Honor. The law in this country, and particularly in this Circuit, is that when the United States Government comes into court and tenders a witness or tenders a document, it is under an obligation to furnish the Court with all documents relevant to the document in question, and if it fails to provide the Court with those documents, the case has to be dismissed. That is Judge Hand's decision.

The Court: I am quite familiar with that principle.

Mr. Handler: Now we say that we don't understand what this evidence relates to. If it relates to the fact that we made prior acquisitions, and that is supposed to establish some deleterious tendency, pattern or trend on our part, we say that these exhibits prove nothing of the kind.

What does the table prove? It lists a lot of names. What [fol. 3485] does 785 do? It calls attention to the fact that many of these acquisitions were reviewed with the Department of Justice. And the opening pages of 786 expound the same philosophy as is embodied in 900.

Now, are they trying to show that we made prior acquisitions because the government of the United States wanted us to do so? If that is the fact, what light does that shed on whether this transaction is lawful or unlawful? What does history mean in the context of this litigation?

We bought other companies. Now what does that mean, so far as whether or not the line of commerce are the ten enumerated by the government, or whether or not there has been or is likely to be a substantial lessening of competition in any of those lines?

Now I shall briefly advert to their brief, where they endeavor, I suppose, to meet some of these arguments, and to clarify what they said at pre-trial.

My good friends have a very beguiling habit of testifying [fol. 3486] in the guise of arguing, and I know that your Honor accepts what they write or what they say merely as argument and not as proof. But turn if you will to page 5, the first sentence under "Past acquisitions and the effect of the present merger.

"The history of past acquisitions by Continental and by other firms manufacturing packaging items is material to show that the effect of the Hazel-Atlas acquisition may substantially lessen competition by making it necessary for competitors to merge in order to keep up."

Now, you had 16 glass companies here. You had Solinsky. You had Plax. Where is the evidence? Where is the evidence in this record that it is necessary for competitors to merge in order to keep up? Who says this beside the Yale note, which is not evidence, and the government?

I continue reading:

> "The evidence of past acquisitions will show how the growth of Continental by mergers has given the decisive [fol. 3487] advantages vis-a-vis smaller less diversified manufacturers in all of the lines in which Continental deals."

Now, again, where is that evidence? You have heard many promises about "decisive advantage," and I intend to deal with this fully on my motion to dismiss. At this point I merely ask how dare they make a statement that our acquisitions have given decisive advantages over smaller

less diversified manufacturers in all the lines of commerce in which Continental deals?

Then the next sentence:

> "The government has introduced some evidence of mergers that have followed and paralleled Continental's mergers."

They gave you evidence of mergers of can companies, of companies engaged in the manufacture of canning machinery; companies engaged in the manufacture of flexible packaging; companies engaged in the manufacture of paper; companies engaged in the manufacture of crows. I'd like [fol. 3488] Mr. Greenberg to give you record references where they have introduced evidence of mergers in other fields that have paralleled Continental's mergers.

Now going back, they speak about putting pressure—going down to the next paragraph—"putting pressure on all package and closure manufacturers to present a comparable full line."

Where is the evidence of that?

Is it evidence from Mr. McManus and Mr. Greenberg to make the statement? Why didn't they ask that question of these companies that took the stand? They had chairman of boards; they had presidents; they had executive vice presidents—you had a Who's Who of these industries appear before you. These were the gentlemen who were knowledgeable. Why weren't they asked these facts?

This is what they were trying to prove and if they had proved decisive advantage, if they had proved that they would put pressure, if they had proved that we had altered the patterns, well, you wouldn't need this kind of evidence. [fol. 3489] You would have it already. This isn't the way to prove these kind of facts.

Now, the essence of it, your Honor, is that history adds absolutely nothing here. I am not going to take the extreme position that somehow, somewheres, in some set of circumstances you might not have a case where you would find it enlightening to delve into the past. But you are not dealing with this problem, nor am I, at the threshold of a case. We are on the eve of the government's resting. We know their case now. Now, if they had offered this at the very begin-

ning, they would then be able to say to you, "Well, your Honor, wait awhile and you will see its relevance."

There is nothing to wait for. What will history, what will prior acquisitions enlighten your Honor on? How is it going to help you in deciding the two basic issues here—relevant markets and whether or not there has been a substantial lessening of competition, in actuality or in prospect?

[fol. 3490] Now I want to end with just one more word. I am always very flattered when my adversaries quote from me or cite me, as they do in this case at page 20, but I am a very peculiar person. When I am quoted I like to be quoted accurately.

At the bottom of the very last page of their brief, footnote 36, they refer to the lectures that I gave at the University of Buffalo Law School, it is page 67, and they assert that I have taken the position that acquisitions are material.

Now let me read to your Honor what I said. I was reviewing—in this lecture I made some years ago, before there were any decisions, and all one had to deal with were the complaints filed by the government, Department of Justice and the Federal Trade Commission. I analyzed those complaints, and I said, after reviewing a lot of complaints:

"Some of the cases appear to be an attack on business [fol. 3491] pure and simple, without regard to any anti-competitive effect. Some rest squarely upon quantitative substantiality. In several considerable emphasis is given to the history of prior acquisitions, as though that factor in and of itself might be decisive."

This is the quotation on which they rely in telling your Honor that I heard in my writing affirmed the relevance and materiality of prior acquisitions.

I say, your Honor, that these three documents are plainly irrelevant and immaterial in the context of the present case. I don't have to deal with what the situation would be elsewhere.

Now the two other documents have further infirmities. 788 is a resolution of the board of directors of Continental Can, which recites that the chairman indicated to the board that he had been in negotiation with two glass companies, and that if his negotiations could be successfully completed Continental would acquire one or both of these companies.

[fol. 3492] The Court: Is this before the Hazel-Atlas merger or not?

Mr. Handler: It was contemporaneous. It was May 16, 1956. It was before.

The Court: I presume, though I am not trying to read something in there, that one of these was the Hazel-Atlas Glass Company.

Mr. Handler: One was the Hazel-Atlas Glass Company. And the board told him to go ahead with his negotiation.

The Court: I have read that, and I don't understand what the significance of that is, frankly. Everybody knew they were going to get the Hazel-Atlas Glass Company, and plainly, they wouldn't possibly acquire the Hazel-Atlas Glass Company without the chairman telling them there were some negotiations on the fire.

Mr. Handler: Well, the purpose of this, your Honor, is a sentence in G-900, the file exhibit, and here I think your Honor will find that not only is the government offering [fol. 3493] evidence which is irrelevant, but it is doing something which you and I would not do, and something which we would personally not be very proud in having others do.

In this letter which was submitted to Judge Hansen, who was then the head of the Anti-trust Division, and signed by the Willkie firm, the statement was made that:

"Continental has asked us to inform you in the strictest confidence that it is carefully considering the business of Obear-Nester Incorporated, East St. Louis, Illinois, including its subsidiary, Lincoln Container Company, to supplement the lines of Hazel-Atlas. The concern is primarily a beverage bottle manufacturer with combined net sales in '54 and '55 of around $15,000,000 and $14,000,000 respectively. It is our intention to discuss the matter with you fully before proceeding with the acquisition."

Well, the acquisition never went through.

The Court: Were there any discussions, or what hap- [fol. 3494] pened? Was the trouble about Hazel-Atlas which made any such conferences inadvisable, or what happened?

Mr. Handler: The negotiations failed for other reasons, your Honor.

The Court: All right.

Mr. Handler: Now, this is a fortiori. To offer evidence of acquisitions which never occurred, which were merely in contemplation, certainly that is not history.

The Court: It is not history. It seems to me the only thing that would bear on was intent, and as I understood it there is no question of intent in this case.

Mr. Handler: There is no question of intent in a Section VII case. We are held accountable for the consequences of our acts. Continental Can did not act as a sleep walker. It consciously bought this company.

Now Mr. Greenberg in his brief refers to the Supreme Court decision in DuPont-General Motors, where DuPont tried to bring the purchase, that it had made some decades [fol. 3495] before the Supreme Court ruling, of General Motors stock within the investment exception of old Section VII, which is continued in the new version of that statute. It was in connection with whether or not the stock had been bought for investment that the court considered General Motors' intent.

Obviously, the intent with which you buy stock, whether you are buying it to control an enterprise, or whether you are buying it for an investment, is necessarily material to the investment exception. That has nothing whatever to do with the present case, where intent is obviously of no consequence. If this acquisition substantially lessened competition, we could bring in a thousand witnesses here, telling you what wonderful guys we are, and you would hold all of it immaterial, and if the acquisition does not substantially lessen competition, our state of mind is immaterial. It has been no issue in case whatsoever.

[fol. 3496] For all of these reasons, your Honor, and I thank you for indulging me in what has been, I fear, an excessively long argument, we say that these documents should be rejected. They are not material, they are not relevant.

In addition, the chart in G-800, we believe, is misleading for the reasons brought out in Mr. Johnson's cross-examination.

The Court: Well now, Mr. Greenberg, it is now 4:30, and I don't think, in considering the fact that I have heard a substantial number of words from a substantial number of people today, I don't think it is fair even to you or to me to

hear you on this question this evening. I take it you want to be heard at some length.

Mr. Greenberg: My discussion might encompass a few minutes less than Professor Handler's, but it might be fairly lengthy.

The Court: All right. Now I will tell you what I will do. I will read what I describe as your belated memorandum tonight and I will hear you on this question in the morning, [fol. 3497] and probably make my rulings after I hear you, and anything further which Professor Handler may briefly wish to say to me.

Apart from that, we have these additional documents, which number, as I understand it, somewhere around a hundred. I directed that counsel confer on that on Friday, or over the weekend, in an effort to determine how many were being introduced simply for the purpose of showing what I would succinctly refer to as an awareness, and how many were for more general purposes.

What was the result of that conference?

Mr. McManus: Your Honor, we indicated to Mr. Hughes that only I think four or five, or at the most, six—I forget the number, but a very small number—were going to be offered for other than awareness. Now, of course, I would like to define "awareness" when I get to it.

The Court: Oh, I understand that.

Mr. McManus: You understand that.

Another thing. Since that time, your Honor, I have gone [fol. 3498] over these documents, some additional, which I think I will not offer because they are cumulative, and also I hoped in the morning, where we have bulky documents, to indicate that we are only offering maybe the first four or five pages.

The Court: You had better do that, because if you are going to offer reading material by the ream, you are going to have to be awfully selective in offering, because I am just not going to read a lot of bulky documents unless I have some reason to read it.

Mr. McManus: I understand that, and that is why I have that job about 90 per cent completed, and I would have it completed in the morning. So that I think the time spent in that should not be of considerable length.

Mr. Hughes: Well, I only want to say this: Mr. McManus

told me today that he thought that if I were to spend another 10 or 15 minutes with him, that he could draw a line through a lot of these exhibits, which would mean to me that they [fol. 3499] are not even being offered at all. To the extent that we could do that, why, that is fine.

The Court: That is all to the good.

Mr. Hughes: That is all to the good.

Mr. McManus: Surely.

Mr. Hughes: I do think that your Honor should be aware that even though it would appear now they were to be offered for a limited purpose, there are some of these documents as to which we have additional grounds for objection, I don't know, the objection that we have been making to that whole awareness concept.

The Court: Yes.

Mr. Hughes: And therefore, even though this will help, to some extent, to expedite it, I feel that we will have to go on a document by document basis.

The Court: Well, I am simply trying to visualize what we are going to get into tomorrow. I should say it is quite plain that assuming the government rests some time tomorrow, when the government rests we will take an adjourn- [fol. 3500] ment for the day and we will begin with the argument on the motions the following day. I should assume that we will not be taking the whole day tomorrow.

Mr. Hughes: Your Honor, I think that as with any long case, as you draw near the end of it there are what I would call tag ends. We do have one or two tag ends that we want to draw to your Honor's attention.

The Court: All right.

Mr. Hughes: They will take only moments, as I say.

The Court: That is all right. Let's get all the loose ends and tag ends and bobtail and whatnot cleared up tomorrow, and get this package, which is called the government's case, buttoned up.

Mr. Greenberg: Your Honor, I have only one comment to make, if Mr. Hughes will permit me.

You indicated that you intended to read our brief tonight, and of course we are quite elated over that. I would like to add, however, that after having listened to Professor Hand- [fol. 3501] ler for such a long period of time, I believe he suggested further arguments and amplifications of our

brief, which will be presented in oral argument. I hasten to add that.

The Court: I am not going to limit you by your brief. I will hear you, don't worry about that.

Mr. Hughes: Your Honor, may I just say this, that it would be helpful, I think, and expedite matters if Mr. McManus could tell me tonight which of these exhibits he is going to contract and only offer limited portions?

Have you said that your work on that is 90 per cent complete?

Mr. McManus: I intend to do that, and I hope before the evening is out I will have more.

The Court: All right, you confer and cut out as much as you can by conference.

Mr. McManus: I will.

The Court: Very good. Goodnight, gentlemen.

(Adjourned to October 18, 1960, at 10:30 A.M.)

[fol. 3502] New York, October 18, 1960, 10:35 A.M.

Trial resumed

The Court: All right, Mr. Greenberg, we will hear you on the question of the prior acquisitions.

Mr. Greenberg: Thank you, sir.

If the Court please, the process of determining what is not relevant and what is not material is essentially one of considering what should be rejected completely and finally from this litigation.

The defendants, by their objections, would have his Honor reject for all purposes any evidence relating to the past acquisitions already in the record or to come. The defendants would have us reject evidence in the record which relates to the acquisition of the White Cap Company. This [fol. 3503] company was purchased on January 4, 1956. Its position as one of the industry leaders in the sale of vacuum caps and in the development of capping machinery cannot objectively be subject to serious dispute. The vacuum cap is an integral part of the glass container in many segments of the food industry.

The specific relationships between the things produced by the White Cap Company and the glass containers of Hazel-Atlas have been the subject of abundant testimonial and documentary proof. The White Cap acquisition, when viewed in the context of the Hazel-Atlas merger, has placed smaller glass container manufacturers in a position where their development into serious and substantial competitive threats has been impeded by their opponent's full line advantages.

Concomitant with this, such acquisitions serve to deter the entrance of new substantial capital into the market.

In Government's Exhibit 900, for identification the defendants indicate that after the Hazel-Atlas acquisition they were contemplating the purchase of the Obear-Nester Glass Company.

[fol. 3504] Before the Court is this situation: Continental Can acquired the White Cap Company. A few months later the Hazel-Atlas Glass Company contemplated the acquisition of still another important competitive factor in the glass container industry. This situation, we say respectfully, necessitates intervention by the Court.

The Court: Now, I am a little baffled. I don't want to confuse two things. You talk about the acquisition of the White Cap Company as one of the prior acquisitions. You also talk about possible plans that the defendant may have had in the future for the acquisition of another glass company, which never came off.

Mr. Greenberg: That is correct.

The Court: In other words, they were talking about the acquisition of another glass company. It seems to me that these two things are quite different, and that prior acquisitions are one thing, but prospective plans which never came off are something quite different, unless you are going to say that we are dealing with intent as an important element in this case.

Is that your position?

Mr. Greenberg: Your Honor, our position is this: We [fol. 3505] agree with your Honor that the occurrence of the White Cap acquisition, and on its heels, the Hazel-Atlas acquisition, would be enough to support our argument with respect to full line advantages, and other arguments which I will develop in my argument. To that extent we agree with his Honor.

With respect to the Obear-Nester Glass Company, we say that there is language in some of the cases which indicate a fear of a chain reaction of acquisitions which might result from upholding the legality of an acquisition under consideration, and we bring the contemplated acquisition of Obear-Nester to your Honor's attention for whatever value he may find.

[fol. 3506] The Court: I am frank to say, quite apart from the other question of prior acquisition, I see very little, if any, significance in a contemplated acquisition—I say a contemplated; I don't even know how it is contemplated. There is one exhibit which talks vaguely about the possibility of perhaps acquiring some glass companies, one of which was plainly Hazel-Atlas, but it does not seem to me that that has any significance in the picture, nor is it of any evidentiary value, unless you are talking in terms of the defendants' intent to do certain things, and I had understood that it was early stipulated here that intent was not a part of this lawsuit.

Mr. Greenberg: If the Court please, I had intended to deal with that question later, but I will deal with it now.

The Court: Don't let me interrupt the thread of your argument. We will take it up again when we come to it.

Mr. Greenberg: I might as well do it now.

We would like to direct your Honor's attention, on the question of intent and the acquisition of companies, to United States v. Columbia Steel Company.

[fol. 3507] The Court: First of all, you have got to get over one hurdle, it seems to me, and that is that I have a very clear recollection that during the course of the pretrial in this case it was stipulated on the record by the government that intent was not a part of this case.

Mr. Greenberg: Your Honor, I do not recollect exactly the wording——

The Court: And I am not going to permit, at this stage, if intent was not a part of this case in the pretrial, intent to be dragged into this case now.

Mr. Greenberg: If I may continue, your Honor.

The Court: Yes.

Mr. Greenberg: Section 7 of the Clayton Act has always been directed toward retardation of a cumulative process

which threatens to have serious anti-competitive consequences.

Professor Handler disagrees with this assertion.

Referring to pages 4 and 5 of the defendants' June brief which dealt with prior acquisitions, he argues that [fol. 3508] since the statute by its terms does not require a consideration of prior acquisitions by its "plain meaning," that therefore a court should consider them irrelevant and immaterial. Realizing, however, that such an argument may appear unreasonable to his Honor, Professor Handler abandoned such an argument in the middle of page 5 of the June brief for the assertion that the government has misconstrued the cumulative effect language of the House report.

We are told and instructed that what the language really means is that, since each merger is now subject to the Clayton Act before it reaches illegality of the type condemned by the Sherman Act, we need not consider any other acquisitions but the one in question.

First, we would like to agree wholeheartedly and completely with part of Professor Handler's thesis. We agree with him that Clayton Act standards and Sherman Act standards are at different poles. We shall agree with him on this point throughout this litigation. That this distinction between standards justifies the ruling out of prior acquisitions is a startling theory, but the fact that such an [fol. 3509] assertion is startling and unique does not make it credible, sensible or acceptable.

Our point is that if the Hazel-Atlas merger is looked at in a vacuum and not in its true sense, then how can we determine whether this is one of a series of acquisitions which is causing harm to the competitive vigor of our economy in the manner I have described earlier?

The next prior acquisition to be discussed is that of the Elmer Mills Corporation. This company was purchased in 1953. It has always been and today is one of the industry leaders in the sale of plastic containers to the cosmetic, drug, household and chemical industries.

The competitive relationships between and among can, glass and plastic containers have been amply demonstrated for his Honor.

To acquire a substantial enterprise in the plastic container industry in 1953, and then to follow it up three years later with the acquisition of a leading glass container company operating in the same fields reduce the vigor of competition across industry lines to the detriment of buyers of containers for drug, cosmetic, household and chemical products.

[fol. 3510] Moreover, the joinder of two such competing companies has the result of placing smaller container manufacturers in a position where their development is hindered by their——

The Court: Let me ask you a question here. Let me interrupt you again.

What do you say is the difference, or what added significance is there from the fact that the plastic company, which was acquired in 1953—in other words, what difference does it make, assuming that at the date of the Hazel-Atlas merger the Continental was engaged in the plastic container field substantially; what difference does it make whether they went into that field on their own or whether they went into that field by an acquisition in 1953?

Mr. Greenberg: Well, I think the 1953 date is significant because the plastic container industry began its growth, it began to become a successful competitor to cans and glass containers. The plastic container industry, as your Honor knows from the testimony in the record, is a virgin industry, it is a new industry, it is a new source of competition [fol. 3511] to can and glass container manufacturers.

The fact that Continental acquired its way into the business instead of building a new company, we think is significant because the legislative history places an *anethma* on acquisitions as opposed to building new plants, because when this is done you are not only eliminating a competitor, you are buying know-how, you are buying customers and placing other container manufacturers in a position where their development is hindered.

The Court: But you are not in this lawsuit, Mr. Greenberg, in any way critical, as I understand it, of the action of Continental in acquiring this plastics company in 1953. That also has been stipulated on the record.

Mr. Greenberg: I am sorry, your Honor, I don't understand.

The Court: In other words, the government is not attacking or, indeed, claiming that the action of Continental in 1953 in acquiring the plastic companies is in any way illegal. That has been certainly stipulated on the record in the course of our pretrial discussion.

[fol. 3512] Mr. Greenberg: I think that perhaps is correct, sir, but I do not believe that that forecloses inquiry into mergers of this type. The fact that a merger was legal in 1953 and is legal now I think still can be inquired into in a situation where we are alleging that the Hazel-Atlas acquisition, by virtue of its relationship with the prior acquisition, creates a situation, an evil situation, to use the words of the DuPont-GM case, and for that reason we believe that these prior acquisitions, among other reasons, are relevant.

Just for the record, when you would ask me about whether we considered intent relevant in a suit of this nature, whatever we said in the past may have been ambiguous, but what we meant to say was that we believe that bad intent on the part of the acquiring company is relevant but that good intent on the part of the acquiring company is not.

The Court: I want a record reference to that because this is quite different from what my conception of the stipulation is. Has anyone got a record reference here?

Mr. Handler: May I interrupt, your Honor?

[fol. 3513] The Court: I would just like the reference.

Mr. Handler: The pretrial transcript, at page 309, the middle of the page.

The Court: Well, now, I am reading from the transcript:

"Let me interrupt you again. To what extent, if any, is the question of the intent or purpose of Continental Can in making these acquisitions of significance?

"Mr. McManus: The intent, your Honor, is of no significance. There is no significance.

"The Court: Your position is that if these acquisitions had the effect or tended to have the effects you claimed for them, intent and purpose are of no significance either way?

"Mr. McManus: That's correct."

Mr. McManus: Your Honor, I made that statement, and may I say something? I don't want to interrupt the presentation here. The government still stands behind that statement, and I am dealing only with this case of course.

The Court: Well, I am not asking you to do anything [fol. 3514] outside of this case. I am interested in this case at the moment; that is all.

Mr. McManus: That's right.

Now, your Honor, the only thing I would like to say, the fact that Continental Can's board of directors decided that they can buy two companies has nothing to do with their intent after they acquired the company.

We are not arguing that they had bad intent or good intent in buying Obear-Nester. We just say that they had permission from their board of directors to buy another company, and were in the process of buying. We put no onus on their intent in what they were going to do with Obear-Nester and in attempting to affect the industry. Your intent only comes up after you have made your acquisition.

We are just trying to show by this document that they were in the process of not only buying Hazel-Atlas but were moving on to the next step to buy Obear-Nester. We do not allege that there was either a good intent or a bad intent to use or misuse Obear-Nester.

I would say that bad intent could be a factor, but we are [fol. 3515] not using that in this case, your Honor.

The Court: Well, it cannot be a factor now in view of the stipulation, and the stipulation in the pretrial, and that was as long ago as June 9th and 10, 1959.

Mr. McManus: That is absolutely correct, your Honor, and we still stand by it.

I think what Mr. Greenberg was trying to point out was that it could be, but it is not a factor in this case.

The Court: All right.

Mr. Greenberg: I had been discussing the Elmer Mills acquisition when I interrupted the train of thought on the question of intent, so I will try to continue now.

I had just finished discussing the proposition that the joinder of two such competing companies has the result of placing smaller container manufacturers in a position where their development is hindered by their opponent's

full-line approach. This has the concomitant result of discouraging the entrance of substantial new capital into the container industries affected.

Continental Can has made many other acquisitions over [fol. 3516] the years. In 1944 it purchased the Bond Manufacturing Company or Corporation. They produced crown caps and cork products. There has been evidence offered of the relationship between crown caps and narrow-neck beverage bottles. Our arguments with respect to the relevancy of this acquisition is the same as those asserted for the White Cap acquisition.

Continental Can has also purchased companies producing paper containers and paper products. In this field they have bought companies producing composite containers, fiber drums, paper containers of various types, as well as the companies producing the raw materials which are used in manufacturing these containers.

In addition, their acquisition program has reached the companies producing can-making machinery, laminated bags, and flexible packaging.

In its earlier years it acquired many admittedly substantial metal can companies. This can be ascertained from the comments contained in G-786, and I refer his Honor to page 7 of G-786, which discusses the U.S. Can acquisition. [fol. 3517] The Court: All right.

Mr. Greenberg: Other references, your Honor, which I state in passing are to pages 9 and 11 of G-786, those portions which deal with the Southern Can Company and the Wheeling Can Company. All of these acquisitions, which are cumulative in nature and which encompass many years, discourage and prevent the development of companies operating in the can, glass and plastic container industries.

The defendants offer a substitute for competition from such companies. At page 14 of G-900 it is said:

"Many products now use or can use a variety of different types of packaging. Thus, it is the policy of Continental to encourage its various individual product divisions to push their own particular type of packaging to maximize customer service volume and profits."

And the following part, your Honor, is the part I wish to emphasize:

"This results in strong intra-company competition, which in many instances is more effective than outside competition in bringing about the adoption of improved products, cost reductions and better service to customers."

[fol. 3518] The government rejects their substitute as not being consonant with the principles of our capitalistic system.

In drawing near to the close of our argument there are certain points which we believe should be made to make our overall position crystal clear.

Point number 1: We do not and cannot, as responsible officers of the court, suggest that Continental Can or any other company cannot diversify or integrate. This would be a reckless argument. Perhaps if the defendant's acquisitions were fewer and less significant over the years there would be no argument today on the relevancy of prior acquisitions.

Point number 2: Mr. Handler referred to a few seemingly unrelated acquisitions as being included in G-785 and G-786, and the graphic chart which portrayed certain of the defendant's prior acquisitions. We do not deny that there are unrelated acquisitions included in these exhibits. They were left in to show that out of all the acquisitions made by Continental Can over the years just a few were unrelated to the arguments we assert. Mr. Handler did not mention certain Canadian acquisitions described in G-786. These are also unrelated. There are ten unrelated ac-

[fol. 3519] quisitions in G-785 and G-786, and they are as follows: The Reynolds Molded Plastic Company is unrelated; and so are the Dixon Manufacturing Company, Bowes Industries, Tenco, Inc.; Cannonsburg Coal Company; Metal Box and Printing Industries; Whittall Can Company, Ltd.; Colonial Canners, Ltd.; Mono, Ltd. of Canada; General Steelwares, Ltd., McDonald Division.

With these mergers eliminated from the case, your Honor, let defense counsel and the government join issue on such past mergers as the U.S. Can Company, the Southern Can Company, the Wheeling Can Company.

The Court: Well, now, you say "join issue." That again puzzles me, Mr. Greenberg. What are you joining issue on? You are joining issue with respect to, let's say, the merger of United States Can Company, whenever it was,

in 1920? Are you claiming that there is anything illegal, either in the statutes at the time or in the Clayton Act, in the merger in 1920 of Continental and United States Can?

Mr. Greenberg: We are not saying these companies were acquired illegally. We don't know, frankly. As far as we know they were not acquired illegally. We are saying [fol. 3520] this is part of a cumulative series of acquisitions which have covered cans which competed with the cans of Continental, inter-industry competitors, such as the Hazel-Atlas Glass Company, supplemental packaging items, such as the vacuum closure in the Crown cap, and other types of packaging items described in G-785 and G-786, such acquisitions as the White Cap Company, the Elmer Mills Company and the Bond Manufacturing Company.

What now are defense counsel's arguments when we focus on acquisitions of these kinds with their characteristics?

I have nothing further, your Honor, at this point.

The Court: Do you wish to be heard further, Mr. Handler?

Mr. Handler: Just really very briefly, your Honor.

I must confess that I am totally at a loss to understand what a stipulation, solemnly made by the Government of the United States in a lawsuit, means in light of the argument that your Honor has just heard. At pre-trial you were told unqualifiedly that there was no attack upon any [fol. 3521] of the prior acquisitions. Mr. Greenberg now tells you, in response to your question, that he doesn't know whether these acquisitions were legal or illegal. I don't know what his words mean. I have heard them all, and I thought I understood the English language.

But he tells you that the can company acquisitions back in the '20s prevented the development of new companies in the can and glass industry. I don't know where that comes from. I heard no such evidence, and I have attended every day of this trial, and I have read the record and I have read all the exhibits. That is a matter of evidence.

Also, it seems to me that it is an attack on the prior acquisitions, if they had that effect. He has made the same kind of an attack upon the Mills acquisition and on the White Camp acquisition, all, I think, in total disregard

of the solemn assurance your Honor was given at pre-trial that no effort would be made to attack the legitimacy of the prior acquisitions.

Now, he also has, I think, compelled your Honor to exclude the chart in G-800, because he has told you that this is a misleading chart. Its title is "Domestic acquisitions [fol. 3522] of Continental Can Company in the container and related product field," and he has listed all the acquisitions that do not fall within that title.

Now with respect to everything that he has had to say about full line advantages, chain reaction, and the like, I intend to cover that fully in my argument on the motion to dismiss, because that has to do with the evidence that is in this record, as contrasted with counsel's decisions.

Thank you, your Honor.

The Court: Let me see Exhibit 800, will you please?

On this question of prior acquisitions, I am not persuaded that the evidence of prior acquisitions is irrelevant and immaterial. I am, on the other hand, not persuaded that the relevancy and materiality of that evidence is anything more than the admission of a certain amount of historical background. As historical background I think the evidence may or may not throw some light upon the operations of Continental Can and what has happened through the years in terms of the operation reaching the point which they did. At the present time I view the evidence only in that context, and I do not think in a case of this character [fol. 3523] prior history of the company in question can be considered to be irrelevant and immaterial, and thus excluded.

Beyond that at this stage I do not go. We are certainly not getting into any question of intent here. There isn't any intent question in this case, because the government has said so, in so many words. We are not getting into the question of whether the prior acquisitions were or were not illegal. As I understand the stipulation of the government, there is no attack on the prior acquisitions. But that does not go so far as to say that they may not have some relevance or materiality in terms of an understanding of the operations of the Continental Can Company in the light of its historical background.

For that reason I am going to admit Exhibits 785, 786 and pages 13 to 34 of Exhibit 900.

Mr. Greenberg: Your Honor, we offered pages 8 through 34.

The Court: 8 through 34, all right.

As a matter of fact, if Continental should take that position, I am perfectly prepared to consider any suggestion by them that we admit the whole letter, which is Exhibit 900.

[fol. 3524] Mr. Greenberg: If the Court please, if pages 1 through 7 are admitted, we would like to make it clear that pages 1 through 7 contain self-serving legal discussions which we simply do not agree with and we would hope that your Honor would find it——

The Court: Well, I think that if Continental thinks it made its position with respect to this whole subject matter clear in the letter to Judge Hansen, they are entitled to have their entire position placed in the record and not merely parts of it, if they want it.

Mr. Greenberg: I just, respectfully, your Honor, did want to make it clear that the government was not offering pages 1 through 7.

The Court: Well, the point is that if Continental takes the position that, assuming that the pages that the government offers go in, the whole letter goes in, then I will consider such an application by Continental. I haven't read the previous pages, I don't know what is in them.

Mr. Handler: Your Honor, you anticipated very properly the point I was going to make. We feel that if the government offers part of the letter of this sort, the doctrine of [fol. 3525] completeness would require that the entire letter be offered by the government.

The Court: Well, then, you object to that, Mr. Greenberg?

Mr. Greenberg: I most certainly do, your Honor. We don't think the law of evidence reads that way.

The Court: Well, I do.

Mr. Greenberg: Well, I did want to say, I am talking about whether we have to bring it in as part of our exhibit, not whether it goes in. That was the point that I was addressing myself to.

The Court: I don't say you are offering it. All I say is that it seems to me very fundamental business that if

you offer parts of a letter as alleged admissions against interest, you have got to have the rest of the letter; you have got to have the good with the bad and you can't pick out a part of it and say, "We are going to take this and we are not going to let the rest of the explanations go in."

Mr. Greenberg: I just did want to make my point clear. I was addressing myself to whether we were making it part of our exhibit.

The Court: Well, the point is, in any event 900 will go in [fol. 3526] in its entirety, so as to give me the entire picture. 785 will go in in its entirety. 786 will go in in its entirety.

(Government's Exhibits 785, 786 and 900 received in evidence.)

The Court: Now, that leaves us with two other things. That leaves us with 788 and also with 800, whatever the chart number is. Is it 8 or 9?

Mr. McManus: 8, your Honor.

Mr. Johnson: 8.

The Court: As far as 788 is concerned, I am going to let it in. I think it is of no value and doesn't make the slightest difference either one way or the other. I think it might just be in to complete the record. I can't think that it does anybody any harm. Although that is not a good method of admitting evidence, I will admit it.

(Government's Exhibit 788 received in evidence.)

The Court: In so far as the chart is concerned, it seems to me that the chart is mislabeled, and I am not going to admit in evidence a mislabeled chart. It says "Domestic acquisitions of Continental Can Company in the container and related product field"

[fol. 3526a] Mr. McManus: Your Honor, could I address myself to that, if I may?

The Court: Yes.

Mr. McManus: Your Honor, that may be right, and I am not strongly urging that this document go in. However, I would like to say this: it was compiled, I believe, from the underlying data that you have admitted, and insofar as aiding the Court in understanding, we would be willing——

[fol. 3527] The Court: Well, I will tell you what I will do with you. If you physically strike from that exhibit the words "in the container and related product field," I will let the exhibit in evidence as a mere listing of what is contained in these other exhibits for purposes of convenience and nothing more.

Mr. McManus: Now, may I suggest——

The Court: What do you say to that, Mr. Handler? Or Mr. Johnson?

Mr. Johnson: Cross examination indicated that the side headings were misleading. There are categories at the side. If we start amending the table it is going to be a different thing entirely, and it seems to me that with the indicated change on it it has no probative value whatsoever.

The Court: Well, in many cases, Mr. Johnson, a tabulation has no probative value standing by itself. It is merely a convenient form of viewing certain information.

I do not indicate here that this chart has any probative value standing by itself. If is merely a listing of some things that happen to be in evidence.

[fol. 3528] Now, you say that it is also inaccurate in the categories on the left-hand side, do you?

Mr. Johnson: Yes, sir. If you will look at the second one, glass and plastic containers, and under the heading "1940s" there is Reynolds Spring Company. Mr. Greenberg just now said that Reynolds had no relation to the container industry at all.

The Court: What is Reynolds, do you remember?

Mr. Johnson: I think it was a bomber parts company that was acquired during the war.

The Court: Well, if that is so, and there are certain inaccuracies of that nature in here, I am not going to admit the chart.

Mr. McManus: That is all right, your Honor.

The Court: I will exclude it.

Mr. Greenberg: Your Honor, I did want to make one point before we left these various documents, and that is that we are offering, as I believe your Honor recalled, G-900, pages 8 through 34, for all purposes.

Mr. Handler: I didn't hear that.

[fol. 3529] The Court: He says he is offering pages 8 to 34 of Exhibit 900 for all purposes.

Mr. Handler: We have no objection, your Honor.

The Court: All right.

Mr. Handler: Your Honor, just in the interest of a clear record, am I correct in understanding that you have admitted 785, 786 and 788 for the limited purposes which you articulated in your ruling?

The Court: That's right.

Mr. Greenberg: If the Court please——

Mr. Handler: One further point——

Mr. Greenberg: May I just address myself to that point? We are offering 785 and 786 for the truth of the facts stated therein, and we would hope that we could cite any facts contained in those documents as what is the case and as what was the case.

The Court: These facts are in the record as facts presumably. The question we are dealing with now is the significance to be attached to those facts from an evidentiary point of view. That does not destroy their validity as facts.

Mr. Handler: Mr. Greenberg, your Honor, renewed the [fol. 3530] offer of 900 to pages 8 through its conclusion when he asked that it be admitted for all purposes.

Would your Honor indicate the basis upon which you are admitting the first eight pages?

The Court: Yes. The first eight pages will be admitted for all purposes too.

All right, now, gentlemen, where do we go from here?

Mr. Hughes: Your Honor, I had indicated that there were a few matters that I thought we could address ourselves to before Mr. McManus went to his documents, and the first, your Honor, is to remind your Honor that on June 15, 1960, we offered in evidence as our Exhibits B-1, B-2 and B-3 the annual reports of the Owens-Illinois Glass Company for 1953, 1954 and 1959, and at that time Mr. McManus indicated that he wanted to have an opportunity to look at them before he indicated whether he would have any objection, and then somehow or other the whole subject got lost in the shuffle, and in going over the record this was one of the things that we wanted to dispose of.

The Court: Have you any objection to those?

[fol. 3531] Mr. McManus: The only thing I would like to

have is the purpose of the offer and then I am sure I have no objection.

Mr. Hughes: We offered them in connection with the testimony of Mr. Levis. You will recall Mr. Levis testified to——

The Court: He testified at some length as to the operations of Owens-Illinois.

Mr. Hughes: That is right, as to its earnings, and sales, and that sort of thing, and it is offered by way of illumination of his testimony.

Mr. McManus: We have no objection.

The Court: It may be received.

(Defendants' Exhibits B-1, B-2 and B-3 for identification received in evidence.)

Mr. Hughes: Your Honor, may I pass to another subject?

The Court: Yes, please do.

Mr. Hughes: One thing, your Honor, that we felt should be clarified before the plaintiff rests was the posture of the case before you as relates to the pretrial proceedings.

We had felt, and we wanted to be sure that we were [fol. 3532] correct in our feeling, that the proceedings before you in pretrial were before you in considering the motion to dismiss. I have in mind such things as your pretrial orders and rulings, stipulations or agreements of the parties——

The Court: Well, such as the stipulation, or the part of the transcript that we referred to this morning.

Mr. Hughes: Yes, that is correct.

The Court: I would assume that—in fact, I have assumed—the pretrial record in a non-jury trial of this nature is a part of the record as a whole and must be considered together with the evidence in connection with any motions.

I take it there is no disagreement on that, is there, Mr. McManus?

Mr. McManus: No sir, your Honor.

The Court: All right.

Mr. Hughes: Mr. Johnson has a matter to dispose of.

The Court: All right.

Mr. Johnson: After your Honor's ruling yesterday with respect to the documents, there were two additional exhi-

bits which I had had marked for identification, portions [fol. 3533] of which I wanted to offer and I overlooked it at that time.

The first are pages 16 and 135 of Defendants' Exhibit GG for identification.

The Court: Which is what?

Mr. Johnson: Which is United States Treasury publication on statistics of income, 1956-1957.

The Court: That is one of the documents you used on cross examination?

Mr. Johnson: Yes, sir.

The Court: Any objection to that?

Mr. McManus: If he is offering it for the purpose of explaining his cross examination—is that what it is?

Mr. Johnson: Yes, sir.

Mr. McManus: I have no objection.

The Court: All right. Received.

(Pages 16 and 135 of Defendants' Exhibit GG for identification received in evidence.)

Mr. Johnson: And the second one offered for the same purpose is page 22 of HH for identification, which is a similar Treasury Department publication, statistics of income, 1957-58.

[fol. 3534] The Court: In other words, it is the next volume of the same series.

Mr. Johnson: Yes, sir.

Mr. McManus: No objection.

The Court: All right. It may be received.

(Page 22 of Defendants' Exhibit HH for identification received in evidence.)

Mr. Hughes: Your Honor, on June 17 we offered Defendants' Exhibit F, which was a brief schedule of dates of certain price increases. That was offered, you may recall, at the end of a day.

The Court: I don't recall, Mr. Hughes.

Mr. Hughes: We want to withdraw that exhibit, unless there is——

The Court: Was it admitted?

Mr. Hughes: It was admitted subject to Mr. McManus' consideration of it, yes. It was admitted subject to any——

Mr. McManus: It was admitted subject to my motion to strike, your Honor, and it was used in the cross examination of one of our witnesses, and I don't think that this exhibit should be withdrawn.

[fol. 3535] Mr. Hughes: That is all right.

The Court: All right, we will let it stand.

Mr. Hughes: I think, your Honor, that covers the items that we wanted to call to your attention.

The Court: All right. Now, Mr. McManus, are you prepared to go ahead now on the documents, or would you like a couple of minutes to get the documents arranged physically?

Mr. McManus: Your Honor, I believe that I am as well prepared as I would be five minutes from now.

The Court: All right. Let's go right ahead.

Mr. McManus: Of course, with a number of these documents you sometimes get a little bit confused, but I have explained to the defendants as much as I could, or at least thought I could, the documents that we will attempt to offer, and also the limitations that we put on those documents.

Now, your Honor, I have Government's Exhibit 1209 for identification, which is notice and proxy statement for [fol. 3536] special meeting of common and preferred stockholders of Continental Can Company, Inc., to be held October 26, 1956.

The Court: What is that—on the merger?

Mr. McManus: This was on the merger, but it outlines a great deal of the operation of Continental, Hazel-Atlas and Robert Gair, and as such I think that it does have a bearing on this case. It took place approximately a month after the Hazel-Atlas acquisition.

The Court: Yes, Mr. Hughes.

Mr. Hughes: Your Honor, in the first place, let me say that I thought that it was clear that we were trying only the Hazel-Atlas case and not the Gair case. Beyond that, your Honor, it seems to me that there is an enormous amount of this material that is now being offered that could have no conceivable relevance here, and in the interest of keeping our record down and sticking only to relevancy, I would think that Mr. McManus could indicate those portions that he really intends to rely on.

The Court: That would seem so to me. Have you got a copy of that, Mr. Hughes, or Mr. McManus?

[fol. 3537] Mr. McManus: Yes, your Honor (handing).

Mr. Hughes: And also the purpose of them, too.

The Court: For instance, here is a summary of the terms of the Robert Gair merger. Now, what in heaven's name has that got to do with this lawsuit?

Mr. McManus: Your Honor, we are willing to strike that out.

The Court: The purpose of the meeting—if you take the position that in this document there are certain things that you consider admissions against interest on the part of the defendant, I am willing to consider them, but it does not seem to me, and I have gone through—here is a great description of the Gair Company, which goes on for some pages, and then there is item 4 about the business of Continental. Now, it is Continental's description of its own business. It may conceivably be relevant and material here. I can understand that. Perhaps Continental's summary of its earnings. I don't know whether the range of security prices has anything to do with this case or not. I imagine that it does.

[fol. 3538] A lot of stuff about the records of Gair and remuneration of them: has that got anything to do with this lawsuit.

Mr. McManus: Perhaps I should withdraw the reference there to the agreements with Gair and matters of that sort.

The Court: Why don't I suggest this at the moment: that you offer section 4 and section 5. Do you want the capital stock of Continental described? Have I got anything to do with that?

Mr. McManus: We will offer that portion now, your Honor, and if I could have five minutes I will——

The Court: In other words, we will take some relevant portion of this and let's try and agree to cut out all the stuff that isn't relevant.

Mr. McManus: Your Honor, the government——

The Court: I take it, Mr. Hughes, you have no objection.

Mr. Hughes: To 4 and 5, your Honor, no.

The Court: You have no objection to those two?

[fol. 3539] Mr. Hughes: No, your Honor.

Mr. McManus: Now, your Honor, the next government exhibit is Government's Exhibit 1210, which deals with the notice of special meeting of stockholders of the Hazel-Atlas Glass Company, and outlines the acquisition of the Hazel-Atlas Glass Company and the business of Continental and the plants of Continental, the description of the companies and their earnings, and things of that nature. It is a typical notice to stockholders.

The Court: What do you say to that, Mr. Hughes?

Mr. Hughes: Here, again, your Honor, it does seem to me that there are some portions of this that really are not relevant, a description of the common stock, and——

The Court: Well, I think in this case, Mr. Hughes, it would be more time-consuming to eliminate than otherwise. I am going to overrule your objection and take that.

Mr. Hughes: Yes. All right.

The Court: 1210.

(Government's Exhibit 1210 for identification received in evidence.)

[fol. 3540] Mr. McManus: Your Honor, the government would like to offer Government's Exhibit 1211 for identification in evidence, which is the Continental Can Company's annual report for 1955; Government's Exhibit 1212 for identification, which is the Continental Can Company's annual report for 1956; and Government's Exhibit 1213, which is Continental Can Company's 1957 annual report. These cover the years just prior, including and after the Hazel-Atlas merger.

The Court: Any objection?

Mr. Hughes: Here, again, are you offering the entire document?

Mr. McManus: Yes. I think it is important to show the operation of the company, before, during and right after the acquisition.

The Court: Any objection?

Mr. Hughes: I have no objection, your Honor.

The Court: All right. They may be received.

(Government's Exhibits 1211 through 1213 for identification received in evidence.)

Mr. McManus: Your Honor, the rest of the documents [fol. 3541] that we are offering, we are offering them on the basis of the fact that Continental made them and that it was a pattern and a course of conduct of their company to make such documents, and that it showed their concern for other types of packaging material, principally glass.

The Court: Which is wholly on the awareness theory.

Mr. Hughes: Would you read Mr. McManus' last statement?

(Record read.)

The Court: Just let me have a description very briefly of what these documents are, and how many there are to begin with.

Mr. McManus: Your Honor, I don't have the exact number, but I believe there were 97 the other day, and I would think that we have cut them at least in half. On the bulky documents we have cut pages down considerably, as you had indicated that you would desire us to do.

The Court: Let me hear Mr. Hughes on this. He is familiar with the material, I believe.

Mr. Hughes: Yes. Your Honor, may I first say that I think it is going to help you your Honor, as we move along [fol. 3542] through these documents, if you had before you the stipulation that we entered into with respect to some of these documents. We have prepared a very lengthy stipulation which your Honor had before you when the documents of GCMI were being offered, and that stipulation said some things about some documents and other things about other documents, and our position is, your Honor, that if we go through these on a document-by-document basis, in the end we will save time because each one has certain different aspects to it.

I do say that you can get to things like surveys where I think we can work out a pattern of procedure as to what Mr. McManus is offering and how much of the document really needs to go in.

The Court: Is the stipulation marked with an exhibit number?

The Clerk: Yes, your Honor. 804 or 805, I don't remember which.

Mr. Hughes: Your Honor, this happens to be a copy of it.

The Court: Fine.

Mr. McManus: Your Honor, we would prefer first to—I assume we will go through them one by one, which I [fol. 3543] think is probably the better way.

The Court: I think that will save time in the long run.

Mr. McManus: Yes. I refer your Honor to Government's Exhibit 401 for identification.

The Clerk: Your Honor, may I have a few minutes to get organized on these exhibits?

Mr. McManus: Yes, I think that would be a better idea.

The Court: Yes, I think we will take a few-minute break here so that you can get together with the clerk, so that the clerk can have this material ready for me.

Mr. McManus: Yes, your Honor.

(Short recess.)

[fol. 3544] The Court: All right.

Mr. McManus: Your Honor, unless you want me to do otherwise, I will indicate the document we are offering and the pages, and as I understand it you have the stipulation before you, and unless you want me to, I will not read what that stipulation says.

The Court: All right, I think that is just as well.

Mr. McManus: Your Honor, the government is offering Government's Exhibit G-401 for identification, and with respect to that document we are offering the cover page, entitled "The packaged syrups market and appraisal of metal containers competitive position," from the first page down through iii, which includes the cover page and three additional pages.

The Court: Wait a minute. I am trying to follow this. There is a title page, called "The packaged syrups market." Then there is a summary.

Mr. McManus: That's right, your Honor.

The Court: In other words, the first, the title page, and four additional pages, you offer.

Mr. McManus: That's right, your Honor.

[fol. 3545] The Court: Yes, Mr. Hughes.

Mr. Hughes: Your Honor, I object to it as irrelevant and immaterial. No proper foundation has been laid for

its reception. There is no proof of any circulation of the document outside of the company; no proof of any authority or offer to bind the defendant; no proof of any adoption or reliance on the document by the defendant; and on the further ground that there is no proof of their competition in any respect, and there is certainly no proof of any competition between Continental Can and Hazel-Atlas, and it has no probative value on the issue of whether this acquisition violated Section VII.

The Court: All right, objection overruled. It will be admitted for the limited purpose indicated by Mr. McManus.

(Government's Exhibit G-401 received in evidence.)

Mr. Hughes: Now, your Honor, it having been admitted, may I call your Honor's attention to paragraphs 3, 4 and 5, beginning at I.

The Court: "In the small size market," and so forth and so forth?

Mr. Hughes: Little i, I guess, little iii, I guess is what [fol. 3546] I should have said.

The Court: You are talking about the paragraphs——

Mr. Hughes: That are marked 3, 4 and 5, the first two sentences of 5.

The Court: Yes, all right.

Mr. Hughes: Your Honor, I think I should add the objection of incompetence, as to this document.

The Court: All right, overruled.

Mr. McManus: Your Honor, of course we would like to draw particular attention to paragraph 6.

The Court: All right.

Mr. McManus: The government also now offers, your Honor, Government's Exhibit 406 for identification. We offer the cover page, the contents and page 3, introductory page.

The Court: You are not going into the history of coffee.

Mr. McManus: We also offer, your Honor, pages 20 through 23.

Mr. Hughes: Again, for the same limited purposes as you have indicated, Mr. McManus?

[fol. 3547] The Court: Yes, everything from now on, unless Mr. McManus states to the contrary, I am assuming, is offered for the same limited purpose as 401.

Mr. McManus: That is correct, your Honor.

Mr. Hughes: Your Honor, I object to this document on all of the grounds urged in connection with Exhibit 401.

May I call your Honor's attention to the fact that in considering this document—I withdraw that remark, your Honor, and stand upon the objection.

The Court: All right, objection overruled.

(Government's Exhibit 406 received in evidence.)

Mr. McManus: The government, your Honor, offers G-407 for the same purpose, and in this case we offer the entire document, page 1 through 15.

Mr. Hughes: The same objection as to the previous documents, your Honor.

May I call your attention to the fact that this document relates to Savorlock Can, as to which there was testimony. I think it was the witness Cleaves who indicated——

The Court: It never came to pass.

[fol. 3548] Mr. Hughes: —it never came to pass, and it finally wound up in a shipment to South Africa.

Mr. McManus: I don't think the latter was testified to, because I have checked it, your Honor.

The Court: Well, I don't care much whether it ended up in South Africa, Timbuktu or the Atlantic Ocean. Doesn't make any difference here.

The same ruling, Mr. Hughes.

Mr. Hughes: I think, also, the record on that ought to be made clear that Mr. Walker, when he testified, said that he had never seen the document, and Mr. Cleaves, although he was on the witness stand, was never questioned with respect to the document.

The Court: Well, I will take it.

It seems to me though, I may say, Mr. McManus, that you are beginning to get a tremendous amount of cumulative testimony here. I mean, we deal with coffee in here, these are two documents on coffee. The second doesn't seem to add very much. Is there any reason why we should have the record cluttered with this cumulative matter?

Mr. McManus: Your Honor, I think the fact that it is [fol. 3549] cumulative—now, I have tried to cut down pages so that we don't have any more—is a factor, I mean,

is important, because it shows—our argument is—because it shows very much the concern of the can companies in this field where they are trying to make inroads. If there were just one isolated document, it would make a lot of difference than if there were quite a number.

The Court: Well, mere quantity for its own sake is not going to do you any good.

Mr. McManus: I understand that, your Honor, but quantity combined with a certain amount of quality, I think, should be helpful.

Mr. Hughes: Your Honor, I call your attention to the fact that this exhibit is undated.

The Court: All right.

(Government's Exhibit 407 received in evidence.)

Mr. McManus: The next exhibit, your Honor, that we offer is Government's Exhibit—excuse me. Did you rule on that document?

The Court: Yes, same ruling.

Mr. McManus: —Government's Exhibit G-411, which consists of five pages, and we offer the entire document, your [fol. 3550] Honor.

Mr. Hughes: Same objection, your Honor, and may I call your Honor's attention to the fact that Mr. Lankelma, who is indicated to be the author of this document, was subpoenaed as a witness and never called by the government, so that there has really been no identification of the document beyond what the stipulation says.

The Court: Overruled.

I may say that of course if we should get past the events of the next two days, and you should continue with the defendant's case, you of course are at liberty to call any of these people.

Mr. Hughes: Yes, sir; I realize that. My point and my legal position is that the burden really is upon the government to lay a proper foundation for these documents.

The Court: Yes, I understand.

Same ruling.

(Government's Exhibit 411 received in evidence.)

The Court: Next, Mr. McManus?

Mr. McManus: Your Honor, the next exhibit is Govern-

ment's Exhibit 412, and the government offers only the [fol. 3551] first five pages. The first five pages would include the cover.

Mr. Hughes: Well, your Honor, this is the first of a number of surveys which are to be offered in evidence, and you will recall, your Honor, that when the GCMI documents, surveys, were offered, that your Honor ruled that it was merely sufficient to show the fact of a survey——

The Court: That's right.

Mr. Hughes: —and for that reason the contents of the documents were reduced.

The Court: Well, as I understand it here, Mr. Hughes, so that we understand one another, there is a summary. Is that included within—I don't have the pages of this exhibit numbered.

Mr. Hughes: I object to the summary, because that does constitute this foreword——

The Court: I will sustain the objection to the summary.

Mr. Hughes: And the foreword, which really constitutes part of the text of the survey, its setup.

Mr. McManus: Your Honor, my position on that is this: You have to go through to the summary and including the [fol. 3552] summary, in my opinion, to tell what this survey is.

Now, I understand that when this summary indicates "Preference rating show 46 per cent in favor of glass," something of that nature, you are not taking that in as a truthful statement.

The Court: All right, Mr. McManus, it seems to me quite sufficient to take in the table of contents, the title page—the title page, the table of contents and the foreword. You don't have to go beyond that.

Mr. McManus: All right, your Honor.

Mr. Hughes: And the foreword is taken merely as descriptive of the——

The Court: Not as truth of the facts stated, but as descriptive, for the purpose of showing that Continental had a survey made on this subject matter.

Mr. Hughes: With that limitation, your Honor, may I interpose the same objection as I have made to other documents, except of course here the document didn't really

emanate from our files, in the sense that it was authored by anybody in Continental.

The Court: All right, same ruling.

[fol. 3553] (Government's Exhibit 412 received in evidence.)

Mr. McManus: With respect to 413, your Honor, the government offers the cover page, page 1, 2, 3 and 4, for the same purpose.

The Court: I don't see any reason why you have to go beyond the cover page and page 1 on this.

Mr. Hughes: Well, your Honor, you are limiting it then to those two pages?

The Court: Yes.

Mr. Hughes: And with that limitation, the same objection is interposed as to the previous survey.

The Court: Same ruling.

(Government's Exhibit 413 received in evidence.)

Mr. McManus: Your Honor, the government offers Government's Exhibit 414, the cover page, which would be proposal for the introduction of a new soluble coffee can for the Continental Can Company.

Mr. Hughes: Well, your Honor, here, in addition to all the other objections, this doesn't even appear to be a survey. It appears on its face to be some sort of a suggestion that an advertising agency made to us. There is no indi- [fol. 3554] cation that we ever acted on the proposal, and here it seems to me——

The Court: No, I don't see any—I will exclude it.

Mr. McManus: Your Honor—well.

The Court: You have got enough on coffee in here.

Mr. McManus: If I may, your Honor, I am afraid that I possibly might have lost a tab off one of my documents. If I could just have one minute to check with Mr. Hughes?

The Court: Yes.

Mr. McManus: Your Honor, the government would like to offer Government's Exhibit 415, which deals with baby food.

The Court: The whole exhibit?

Mr. McManus: Just a minute, your Honor. I just want to make sure that we have what we are talking about.

The Court: Now, look, you have here, as I see it, 415. You are going to offer 415-B and 416?

Mr. McManus: No, sir; your Honor.

The Court: Oh, you are not?

[fol. 3555] Mr. McManus: We are offering 415, and the first five pages.

Mr. Hughes: You are offering only the first five pages, you say?

Mr. McManus: That is correct. The charts and the data we are not offering.

Mr. Hughes: Your Honor, I interpose the same objection and call your Honor's attention to the additional fact that this is very remote in time. It goes back to the spring of 1946. I respectfully submit that is sufficient for the purposes for which it is being offered just for the title sheet to be admitted.

The Court: No, I will take it, Mr. Hughes. Overruled. Same ruling.

Mr. Hughes: Yes.

(Government's Exhibit 415 received in evidence.)

The Court: What is next?

Mr. McManus: The next, your Honor, is 416, and that would be the cover page and through the next six pages.

Mr. Hughes: What was the last one? 416, was that the one?

[fol. 3556] Mr. McManus: 416, and it would be the cover page report of Consumer's Survey on baby food in Philadelphia, and it would include the following six pages.

The Court: The last page, including "Respectfully submitted Batten, Barton, Durstine & Osborn"?

Mr. McManus: That is correct, your Honor.

Mr. Hughes: Your Honor, the same objection, and I call your Honor's attention also to the fact that this is dated in 1946, and in addition the title page, it seems to me, is a sufficient description of the document without the necessity of including the balance of it, which contains a lot of hearsay and a lot of discussion as to how this survey was purportedly conducted.

The Court: I will take the document as offered and overrule the objection.

(Government's Exhibit 416 received in evidence.)

Mr. McManus: The next one is 417-A. The government offers the cover page——

The Court: 417-A. That is distinguished from 417; right?

[fol. 3557] Mr. McManus: That is correct, your Honor. And we are only actually, your Honor, offering the foreword on page 2, which is the cover page.

Mr. Hughes: Here again, your Honor, this is a document that has no identification on it at all beyond the fact that it was produced. There is no stipulation with respect to it.

The Court: There is no stipulation about 417-A in the stipulation?

Mr. Hughes: There is no stipulation on this, and we have no information as to the origin of this document or anything about it.

The Court: All right.

Mr. McManus: Just a second now.

Mr. Hughes: And may I also add that the witness Larson was questioned about it and said he didn't know anything about it, and that was the substance of what he said.

The Court: In the absence of any foundation for this, I will exclude the document.

Mr. McManus: All right, your Honor.

The Court: Now, where do we go from there?

Mr. McManus: 419, your Honor.

The Court: All right, what do you want in 419?

[fol. 3558] The Clerk: My records indicate 419 is in evidence.

The Court: 419 is in evidence, according not only to our records, but according to the marking on the exhibit.

Mr. McManus: All right, sir.

Mr. Hughes: Your Honor, my understanding is that just the last two pages of 419 are in evidence.

The Court: Well, the record may show that, but I am just trying to indicate that 419 has been disposed of.

Mr. Hughes: Yes, that's right.

Mr. McManus: The next one, your Honor, would be 420, and we would offer the cover page and the foreword.

Mr. Hughes: Again, your Honor, we think it would be

sufficient for the government's purposes to show just the cover page.

The Court: It seems so to me, Mr. McManus. I don't see that you need any more than that.

Mr. McManus: Your Honor, the foreword indicates the purpose.

The Court: So does the title page, "Use, attitudes and opinions of cans against glass jars among young mothers [fol. 3559] and doctors."

Mr. McManus: Your Honor, I would still offer the cover page and one page.

The Court: All right, you get the cover page and no more.

Mr. Hughes: Same objection to this.

The Court: Yes, overruled.

(Government's Exhibit 420 received in evidence.)

Mr. McManus: The next one is 422, your Honor. We would offer the entire document here as explanatory of Continental's advertising of Aerosol containers.

Mr. Hughes: Is this Exhibit 421 you are talking about?

Mr. McManus: 422.

Mr. Hughes: Exhibit 422?

Mr. MacManus: Yes. Excuse me. Did I skip one?

Your Honor, I thought I had told Mr. Hughes that we were not offering 421.

The Clerk: It is already in, Mr. McManus, according to my records.

Mr. Kuhn: No, 421-A is in. 421 is not in.

[fol. 3560] The Court: I understand they are not offering 421.

Mr. McManus: We are not offering 421. We are offering 422, your Honor.

The Court: All right.

Mr. Hughes: Same objection, your Honor.

The Court: Same ruling.

(Government's Exhibit 422 received in evidence.)

Mr. McManus: We now go, your Honor, to Government's Exhibit——

Mr. Hughes: Your Honor, may I also call attention to the fact that 422 is not dated.

Mr. McManus: We now, your Honor, go to Government's Exhibit 438, which I believe is in the next book.

Mr. Hughes: 438?

Mr. McManus: Yes.

Mr. Hughes: How much of this document are you offering?

Mr. McManus: Just page 1, your Honor.

The Court: Page 1?

Mr. McManus: Yes.

Mr. Hughes: Same objection, your Honor.

[fol. 3561] The Court: Same ruling.

(Government's Exhibit 438 received in evidence.)

Mr. Hughes: May I have a moment, please?

Mr. McManus: 439-A, your Honor.

The Court: I don't have 439-A, I don't think. What is it entitled?

Mr. Hughes: You Honor, there is no stipulation with respect to this document, and there has been no foundation laid for it.

The Court: I don't even have it here, as far as I know. What is it called?

Wait a minute, wait a minute now.

Mr. Hughes: I wanted to correct that, your Honor. We have stipulated that it was produced from our files, but beyond that we have not stipulated. There is no foundation for it, and Mr. Walker, when he testified, was shown it and said he didn't recognize it.

So, in addition to all the other grounds that I have urged here, it seems to me that there is absolutely no foundation whatever laid for the reception of this document, no identification.

The Court: What foundation do you claim is laid for [fol. 3562] this?

Mr. Hughes: It isn't even dated, your Honor.

Mr. McManus: Your Honor, we will withdraw 439.

The Court: Very good.

Mr. McManus: The next one, your Honor, that we offer is Government's Exhibit 442. We offer the cover page and the table of contents on the next page, your Honor.

Mr. Hughes: Well, your Honor, this is another survey which was prepared by an outside firm. I object to it on all the previous grounds urged with respect to the previous surveys, and call attention to the fact that since the only purpose is to establish that a survey was made, that the title page is sufficient for that purpose.

The Court: Now, in this case, I will take through page H, consisting of four pages all told, and overrule the objection.

(Government's Exhibit 442 received in evidence.)

Mr. McManus: The next, your Honor, is Government's Exhibit 600.

[fol. 3563] Mr. Hughes: Same general objection, your Honor. There is no real foundation for this document. The most that it was stipulated was that it was from our files, and in some way prepared by the defendant.

The Court: This is a thing called "the ABCs of canning"?

Mr. McManus: That's right, sir.

The Court: Objection overruled.

(Government's Exhibit 600 received in evidence.)

Mr. McManus: The next one, your Honor, is Government's Exhibit 612.

Mr. Hughes: That was not on the list of documents. Mr. McManus indicated that that was a document that he was withdrawing.

Mr. McManus: I thought I indicated I withdrew a number of documents after 612, your Honor. I didn't intend that 612——

Mr. Hughes: May we pass that one then, your Honor?

The Court: Let's pass it and reserve it for later.

Mr. McManus: All right.

[fol. 3564] The next document, your Honor, is 641.

Mr. Hughes: Your Honor, may I inquire how much of this is being offered?

Mr. McManus: Well, your Honor, we have marked out on—I thought we had morked on defendant's copies as well as your own the parts that we were offering.

The Court: 641 consists of one page, doesn't it?

Mr. Hughes: You have, but in offering the document you didn't indicate that.

Mr. McManus: Oh, I'm sorry. We are offering the one page in Government's Exhibit 641.

Mr. Hughes: That is the page that is numbered page 2?

Mr. McManus: It is entitled "Canned foods meet highest quality standards."

Mr. Hughes: Same objection.

The Court: Overruled.

(Government's Exhibit 641 received in evidence.)

Mr. McManus: We offer Government's Exhibit 642, pages 1, 2, 3 and 4, inclusive.

Mr. Hughes: That was 642?

Mr. McManus: Yes.

[fol. 3565] Mr. Hughes: Mr. McManus, was that 642?

Mr. McManus: That is correct. All the way over to the pretty girl on the last page.

Mr. Hughes: Including that?

Mr. McManus: Including that.

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit 642 received in evidence.)

Mr. McManus: The government offers Government's Exhibit 643, which is one page entitled "NCA president cites gains in can food popularity."

The Court: What about the pretty girl in the second and third? Are you going to leave her out?

Mr. McManus: We are going to offer her independently, your Honor. We have numbered her separately.

Mr. Hughes: Which number is that?

Mr. McManus: 643.

Mr. Hughes: Just that first page?

Mr. McManus: 643 is the first page of Canned Foods Merchandiser for January, 1958.

Mr. Hughes: That's right.

Mr. McManus: January, 1958.

[fol. 3566] 644, your Honor.

Mr. Hughes: Same objection, your Honor.

The Court: All right, 643 and 644, the objection is overruled.

(Government's Exhibits 643 and 644 received in evidence.)

Mr. McManus: 645, we offer Government's Exhibit—I withdraw that, your Honor.

The next exhibit is Government's Exhibit 648.

Mr. Hughes: 648 is your next?

Mr. McManus: Yes.

The Court: Now, 648, in my copy, has some markings on it.

Mr. McManus: Yes, we offer the entire exhibit, except where it has been X'd out, which would be the first paragraph on the first page of 648, and it would be stating with "brokers can help" on the second page of Government's Exhibit 648.

Mr. Hughes: Same objection.

The Court: Overruled.

(Government's Exhibit 648 received in evidence.)

[fol. 3567] Mr. McManus: Next is Government's Exhibit 649. We offer Government's Exhibit 649, the entire exhibit, in evidence, which includes one, two, three pages.

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit 649 for identification received in evidence.)

Mr. McManus: The Government offers Government's Exhibit 650——

The Court: Wait a minute, now. 650, yes, except for the part which is X'd out.

Mr. McManus: Yes, starting with "Passed the test."

Mr. Hughes: Your Honor, if I am not mistaken, this exhibit is the last page really of the preceding exhibit.

The Court: I don't quite understand why this has a separate exhibit number.

Mr. McManus: Your Honor, I believe at the time we marked these we did not know if that was going to be a separate exhibit or not.

The Court: All right. Combine that page with the preceding exhibit number except for the part that is X'd out [fol. 3568] and it will be admitted as part of 649.

Mr. Hughes: Same objection.

The Court: Same ruling.

(Marked as part of Government's Exhibit 649 in evidence.)

Mr. McManus: 656, your Honor, is the next one. The Government offers page 3 and page 4.

The Court: Wait a minute. 656 is only, as I see it, two pages.

Mr. McManus: Yes, sir, which are pages 3 and 4 of the Canned Foods Newsletter for Brokers, May, 1958.

Mr. Hughes: Your Honor, I object upon the same grounds, and may I call your Honor's attention to the fact that page 3 in part, as least, appears to be nothing but a quotation from part of a letter of one Val S. Bauman, vice president of National Tea Company. I cannot see any possible relevance or materiality.

The Court: Well, Mr. Hughes, it may be relevant that Continental Can chose to distribute this puffing statement from Mr. Bauman to whomever it distributed its publication. I don't know. I will admit it.

[fol. 3569] (Government's Exhibit 656 for identification received in evidence.)

Mr. McManus: The next number, your Honor, is 684.

Mr. Hughes: Are you offering this entire document?

Mr. McManus: Just a minute, now, Mr. Hughes.

Your Honor, we are limiting our offer the first and second pages of 684.

Mr. Hughes: Mr. McManus, may I ask you whether you would be prepared to stipulate that the type of can that is referred to in this document is now out of use? Because I think with that stipulation I would not object to it.

Mr. McManus: I have no reason to believe that it is. I don't know that it is not.

Mr. Hughes: I object to it on all the grounds——

The Court: Overruled.

(Government's Exhibit 684 for identification received in evidence.)

Mr. McManus: The next number, your Honor, is 685, [fol. 3570] and it consists of one page.

Mr. Hughes: Your Honor, this relates to the same subject matter, that can that was a subject matter of the immediately preceding exhibit, and I object to it on all the grounds previously urged.

The Court: Overruled. Same ruling.

(Government's Exhibit 685 for identification received in evidence.)

Mr. McManus: Your Honor, the Government offers 686 for identification in evidence, the first page only.

Mr. Hughes: Again this relates to the same subject matter, and I make the same objection.

The Court: Same ruling.

(Government's Exhibit 686 for identification received in evidence.)

Mr. McManus: The next exhibit, your Honor, is Government's Exhibit 700.

Mr. Hughes: What is that?

Mr. McManus: It is the Hazel-Atlas advertisement which consists of one page.

Mr. Hughes: Your Honor, I object to this document on all of the grounds that have been previously urged and in addition may I call your Honor's attention to the fact that [fol. 3571] there is absolutely no proof that this document was ever used by Hazel-Atlas, and we have no information that it was, and for all we know it may have been the suggestion of an advertising agency. In any event, there has been no foundation whatever laid for the reception of this document.

The Court: What foundation do you say has been laid for the reception of this document, Mr. McManus?

Mr. McManus: Your Honor, this purports to be a—well, this is admitted to be a document that was produced by the defendant, Continental Can, from its files, which shows containers or we believe that it shows containers for the drug and cosmetics industry, and has stamped on the top of it, next to the spot announcements, "The Drug and Cosmetics Industry."

The Court: Where does it say that? Is this 700?

Mr. McManus: Yes, your Honor. You see, it says "Spot

Announcements" and the copy has "The Drug and Cosmetics Industry."

Now, we think, your Honor, that it does indicate Hazel-Atlas' concern and preparation of advertising material for the purpose of selling their containers for that industry.

[fol. 3572] The Court: Well, is there any doubt at all that Hazel-Atlas advertises its product extensively?

Mr. Hughes: Well, when you say "extensively," your Honor, I would have some hesitation about saying——

The Court: Well, withdraw the word "extensively." Is there any doubt that Hazel-Atlas advertises its products?

Mr. Hughes: It has, yes, but we don't know whether this was ever run——

The Court: I don't know of any foundation for this. I will exclude it.

Mr. Manus: All right, your Honor.

The next exhibit, your Honor, is Government's Exhibit 715, and your Honor, we offer the three pages of 715.

Mr. Hughes: The same objection, and in addition may I specifically point out there has been no foundation laid for the introduction of this document, no showing as to whether this was ever in fact distributed for release, and we have no information on that subject. We object because there is no foundation laid for it.

The Court: I will overrule the objection.

[fol. 3573] (Government's Exhibit 715 for identification received in evidence.)

Mr. McManus: The next exhibit we have, your Honor, to offer, is Government's Exhibit 738.

Mr. Hughes: There has been no foundation laid for this document, no stipulation with reference to it, so therefore we object to it.

The Court: No foundation. It is not referred to in the stipulation.

Mr. McManus: No, your Honor, it is not, but this is an advertisement which bears the trademark of the Continental Can Company.

The Court: I don't even know what publication it was published in.

Mr. Hughes: There is no proof that it ever in fact was published.

The Court: No. Objection sustained.

Mr. McManus: Government's Exhibit 741, your Honor.

Mr. Hughes: Your Honor, I object to this on all the previous grounds, and in addition, Mr. McManus has indicated that crowns were out of the case.

Mr. McManus: I never said that, your Honor. I never [fol. 3574] said that crowns were out of the case.

Mr. Hughes: Well, you have said that they are not in competition with screw-type closures.

Mr. McManus: I have said that.

Mr. Hughes: Excepting for that correction, I add that as an additional objection to its reception.

The Court: Where was this published? Where is it dated? What is this?

Mr. Hughes: It has no date on it, your Honor, and we have no information as to whether it was ever used or when it was used, or how it was used.

We object to it on the ground that no foundation has been laid.

The Court: All it says here is that this was produced by the defendant from its files.

Mr. Hughes: That's right.

The Court: You don't know what use was made of it, when, if ever, it was published, whether it was a draft.

No, I will exclude it.

Mr. McManus: The next one is Government's Exhibit 745, your Honor.

Mr. Hughes: I object to it on all of the grounds urged to the previous document, your Honor, but I do suggest [fol. 3575] that if Mr. McManus is prepared to stipulate that Continental Can maintained a booth at the American Bottlers of Carbonated Beverages Conventions for many years prior to the date of this document, I would be prepared to withdraw my objection.

Mr. McManus: Your Honor, I cannot see where that has much bearing on this document. I don't know. I have no way of knowing if they did or did not.

Mr. Hughes: I understood, your Honor——

The Court: Well, there is a certain amount of give and take here, Mr. McManus.

Mr. McManus: I know. I understand that, but this document was stipulated to. It was stipulated that it was produced by the defendant from its files. It was prepared on or about November, 1956, by or for the defendant, and distribute to district sales managers and plant managers.

Mr. Hughes: The point about it is, your Honor, that this document indicates at the top "First Edition."

From that, during the course of the pretrial, the Government appeared to have drawn the inference that this was something new to Continental whereas in fact they have [fol. 3576] been maintaining a booth at this Convention for many years prior to the date of this document, and, as I say, if they were prepared to stipulate to that fact I wouldn't object to it at all.

Mr. McManus: Your Honor, I am not trying to be difficult. I don't know where the first sentence has anything to do with maintaining a booth anywhere.

The Court: Well, it says "See you at the ABCB Show."

Mr. McManus: 745.

The Court: "Visit us at Bond Booth No. 00001." That is the last page.

Mr. Hughes: And then in '56, at the pretrial conference in November of '56, Mr. Greenberg stressed that this was the first edition, and he stressed the postscript and quoted to your Honor, "See you at the ABCB Show."

I withdraw that. It was at the pretrial conference—I don't have the date but it occurred in the stenographer's minutes at pages 466 to 468.

Mr. McManus: Your Honor, I don't want to quibble. I would be willing to stipulate that since Continental went into the manufacture that they have had a booth or some [fol. 3577] type of display at the ABCB Show, or whatever it is there, the Bottlers Convention.

The Court: All right, then, it will go in with that stipulation.

(Government's Exhibit 745 for identification received in evidence.)

Mr. McManus: The next document is 748, your Honor.

Mr. Hughes: Your Honor, we object to this. We have no information as to when or where this document was ever used, and in addition to all other grounds urged, that there was absolutely no foundation laid for its reception. This, again, deals with the subject of crowns.

The Court: What is the purpose of this, to show that they sell crowns? Everyone knows they sell crowns, Mr. McManus.

Mr. McManus: Yes, your Honor. Actually I think that we are offering this document insomuch as an explanation of crowns as we do the fact that they sell crowns. I know that you are aware of that, but this is a descriptive document of crowns and how crowns are produced and sold.

[fol. 3578] Mr. Hughes: I press my objection. There is no foundation laid for its reception.

The Court: I will take it. Overruled.

(Government's Exhibit 748 for identification received in evidence.)

Mr. McManus: The next document, your Honor, is Government's Exhibit 750.

Mr. Hughes: This document is undated and I object to it on all the grounds previously urged.

The Court: Overruled.

(Government's Exhibit 750 for identification received in evidence.)

Mr. McManus: The next document is 751.

The Court: How much of this do you want to put in?

Mr. McManus: May I have just a second, your Honor?

The Court: Yes.

Mr. Hughes: The same objection, and there is no foundation laid for tis reception. We have no information as to whether this interview was ever used by the defendant or by White Cap, and it appears, so far as we know, to be a draft of a possible interview of an employee of White Cap Company.

[fol. 3579] The Court: A possible interview? This is the report on White Cap Engineering & Services. This is 750, isn't it?

Mr. McManus: I thought you admitted 750, your Honor. Maybe we have gotten out of step here.

The Court: Did you offer 749?

Mr. McManus: No, sir, your Honor, I did not.

The Court: Then I omitted 750. All right, it is 751.

Mr. Hughes: I don't know whether your Honor heard my additional objection to this. We just have no information with respect to whether or when or how this document was used, and it would appear merely to be a draft of a proposed interview of an employee of White Cap Corporation on some possible——

The Court: Yes. I don't see that there is any foundation for this. All that may happen is that this may be just promotional blurbs from Harshe-Rotman, whoever they are.

Mr. McManus: The defendants have admitted, your Honor, that it was produced from their files. It was prepared by Harshe-Rotman for White Cap Company, a subsidiary of the defendant, and in our request to admit they [fol. 3580] answered that it was made in the course of their respective engagement.

Mr. Hughes: That is quite true that we acknowledged that it was prepared by them for us, but beyond that we haven't gone, and I repeat that we have no information whatever as to whether this was ever used.

If the plaintiff had really thought this document had great significance, it could easily have gone into it during the taking of the depositions, or during the pretrial period to establish its admissibility.

The Court: I don't see that any proper foundation has been laid for its admission, Mr. McManus. I will exclude it.

Mr. McManus: Now, the next exhibit, your Honor, is Government's Exhibit 752.

Mr. Hughes: Same objection, and I repeat here with respect to this document that we again have no information as to whether this press release was ever used or ever issued. There is no foundation whatever laid for its reception.

Here again this is something the Government could have pursued if it so desired.

[fol. 3581] The Court: Yes. I will exclude it.

Mr. McManus: 754, your Honor, in which the defendants state this this document——

The Court: Yes. I see it.

Mr. Hughes: Same objection.

The Court: The same ruling as previously. We will admit it.

Objection overruled.

Mr. Hughes: Yes, your Honor.

(Government's Exhibit 754 for identification received in evidence.)

Mr. McManus: 755 is the next one, your Honor.

The Court: This is in the same category.

Mr. McManus: All right, your Honor, we will withdraw Government's Exhibit 755.

Mr. Hughes: Same objection to this as was made to——

The Court: 755 has been withdrawn.

Mr. Hughes: Oh, yes.

The Court: Next?

Mr. McManus: Well, your Honor, 756. The Government offers Government's Exhibit 756.

Mr. Hughes: Same objection to that as to the other [fol. 3582] Harshe-Rotman publicity releases.

The Court: No evidence as to what the nature of this document is or what was done with it. I will sustain the objection.

Now Mr. McManus, how much have you got to go here?

Mr. McManus: We are at 756. We have between six and eight at the most, your Honor.

The Court: I think we will take a luncheon recess now. There will be a couple of loose ends to finish up after lunch anyway, so we will return here at 2:15, gentlemen.

(Recess to 2:15 p.m.)

[fol. 3583] AFTERNOON SESSION

2:25 P.M.

The Court: All right.

Mr. McManus: Your Honor, I believe this will take us only a few minutes.

If you will go now to Government's Exhibit 759 for identification.

Mr. Hughes: 759?

Mr. McManus: 759.

The Court: Now, you are presenting this apparently for the advertisement by the White Cap Company; is that right?

Mr. McManus: Yes, your Honor.

The Court: Any objection to this?

Mr. Hughes: Same objection, your Honor.

The Court: Overruled.

(Government's Exhibit 759 received in evidence.)

Mr. McManus: 772, your Honor, would be the next one.

Mr. Hughes: Your Honor, the same objection as to all the other documents, and I call your Honor's attention to the fact that the document is undated and there is no foundation of any kind that I am aware of that has been laid [fol. 3584] for this document.

The Court: As I understand it, this document, according to the stipulation, was prepared for use as advertising material by or for White Cap Company.

Mr. Hughes: Yes, sir.

The Court: A subsidiary of the defendant.

Mr. Hughes: Yes, sir. I withdraw my objection. No objection.

The Court: All right, it may be received.

(Government's Exhibit 772 received in evidence.)

Mr. McManus: Your Honor, the other document that we had, there was some question about Government's Exhibit 612, whether I had indicated 612 or not, and you said that you would come back to that.

Mr. Hughes: Well, your Honor, I interpose the same general objection to that, and I will point out that it was apparently Mr. Smart who prepared that document, and he was a witness, and he was not examined at all concerning the document, and no attempt was made to lay a foundation for the admission of this document.

The Court: It is not in the stipulation, is it?

[fol. 3585] Mr. McManus: Yes, it is, your Honor.

The Court: It is?

Mr. McManus: Yes.

Mr. Hughes: I want to be clear about that, your Honor. Your Honor, you have my copy of the stipulation, and my working notes don't indicate——

The Court: The stipulation says, "This document was produced by the defendant from its files. It was prepared on or about December 13, 1954, by S. B. Smart, then assistant product sales manager of defendant."

Mr. Hughes: And he was a witness and he wasn't asked anything about this document, your Honor, and I submit there is no foundation been laid for it.

The Court: How much of this 612 do you want?

Mr. Hughes: I think the first page would be satisfactory, your Honor.

The Court: All right, objection overruled.

(Government's Exhibit 612 received in evidence.)

Mr. McManus: Your Honor, there is one other document, which I understand is not in evidence, and which I [fol. 3586] did not put on the list, but which has been referred to, I think, by both sides, and possibly for the information of the Court and to elucidate our discussions here I would like to offer Government's Exhibit 304. It is the Articles of Incorporation and Code of Regulations of GCMI, the Glass Container Manufacturers Institute.

Mr. Hughes: You Honor, I object to it. I don't object on the ground that it isn't a true copy, I dispute that, but I object to it as incompetent and irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibit 304 received in evidence.)

Mr. McManus: Your Honor, the only other matter that I have is, I understand that on Government's Exhibit 1209 for identification, which was the notice and proxy statement——

The Court: That is the Gair proxy statement.

Mr. McManus:—the part that you indicated, the sections that you indicated would be admitted; is that correct?

The Court: 4 and 5.

Mr. Hughes: Well, I think your Honor already admitted [fols. 3587-3591] those, as I understood.

The Court: Well, if I have not, 4 and 5 of 1209 will be admitted. The balance will be excluded.

Mr. McManus: All right, your Honor.

Your Honor, the only other matter that we have is, one of the people that prepared our chart relating to past ac-

quisitions was a little bit embarrassed because it was indicated that the Reynolds Plastics Division of Reynolds Spring Company was a spring company or an aviation corporation. This doesn't really add to the case, but if the record would show that it appears that it was a plant producing molded plastics at Cambridge, Ohio.

Mr. Johnson: I think Mr. McManus has perhaps misunderstood my statement this morning. I said I believed that it was making bomber parts.

Mr. McManus: I see.

The Court: All right.

Mr. McManus: In that case, your Honor, with that on the record, the government rests.

. . . . . .

[fols. 3592-4208] New York, October 19, 1960, 10:35 A.M.

Trial resumed

The Court: Yes, Mr. Handler.

Motion Of Defendant To Dismiss

Mr. Handler: If the Court please, now that the plaintiff had completed the presentation of its evidence, the defendant moves for a dismissal upon the ground that on the law and the facts the plaintiff has shown no right to relief. We are seeking a final judgment on the merits, dismissing the complaint.

. . . . . .

[fol. 4209] New York, December 8, 1960; 10:30 o'clock a.m.

Trial resumed

Present: Mr. McManus, Mr. Greenberg, Mr. Hughes, Mr. Johnson, Mr. Kuhn, Mr. Handler.

ORAL RULING ON DEFENDANT'S MOTION TO DISMISS

The Court: Gentlemen, we have been in recess, and I am going to read to you some material that I have prepared here which will bear on our situation.

On October 18, 1960, the Government closed its case and rested after some six weeks of trial. Thereupon, the defendant moved for a dismissal pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and for judgment on the merits in its favor on the ground that upon the facts and the law the Government had shown no right to relief. In substance, defendant contended that the Government had failed to establish that the merger of Continental Can [fol. 4210] Company, a manufacturer of tin cans and numerous other products, and Hazel-Atlas Glass Company, primarily a manufacturer of glass containers, violated Section 7 of the Clayton Act. I heard extensive argument by counsel for the respective parties on defendant's motion, and both sides have briefed the questions presented.

At the conclusion of the argument the trial was adjourned for a month so that I could carry out my assignment in Civil Part I of this court, where I have been continuously engaged during November. However, while on this assignment I have been able to make a study and analysis of the record in this case, the briefs submitted by counsel, and the transcripts of the very full oral arguments before me.

I am now prepared to give you my decision on the defendant's motion for dismissal. However, what I am about to say will be the bare bones of my decision only. I have had no time to prepare the opinion, which will follow in due course and which will contain a full statement of the facts and the law with reference to the motion and the reasoning [fol. 4211] leading to the results that I have reached. I will not attempt this morning to do more than give you some ultimate conclusions.

This case is being tried by the Court without a jury. Rule 41(b) of the Rules of Civil Procedure provides that where defendant moves for dismissal at the close of the plaintiff's case on the ground that upon the facts and the law the plaintiff has shown no right to relief, "the court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence."

In making such a determination, the Court may weigh all the evidence presented by the plaintiff, draw inferences therefrom, and determine whether the plaintiff has sustained its burden of establishing the right to relief which it claims. The question is not merely whether the plaintiff, at the close of its evidence, has made out a prima facie case, where such inferences as there are must be those most favorable to the plaintiff. It is rather whether upon the record the plaintiff would be entitled to the relief which it claims were the case to end there.

[fol. 4212] The problem then is whether the plaintiff has met this test. If it has, defendant's motion for a dismissal must be denied. If it has not, the motion must be granted.

Section 7 of the Clayton Act forbids the acquisition of one corporation by another "where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

The Act does not prohibit mergers or acquisitions as such, even though they may result in some lessening of competition. It deals only with such acquisitions as will probably result in lessening competition to a substantial degree.

The Government has the burden of proving a violation of the statute by a preponderance of the evidence, and in order to succeed it must sustain that burden on each element of its case.

There are two elements to the Government's case. First, it must establish the appropriate lines of commerce or relevant markets in the appropriate sections of the country which are affected by the acquisition under attack.

[fol. 4213] Second, it must establish that the effect of the acquisition may be substantially to lessen competition or to tend to create a monopoly in such relevant market or

markets. In substance, its burden is to show that there is a reasonable probability that competition will be substantially lessened in any of the areas of effective competition, established to be relevant markets.

It is not necessary for the Government to establish the probability of substantial lessening of competition in all the markets for which it may contend, but merely that there is the probability of such lessening in any line of commerce in any section of the country.

In the case at bar, the Government contends that there are ten separate lines of commerce in which the effect of the acquisition of Hazel-Atlas by Continental may be substantially to lessen competition or to tend to create a monopoly. In each of these lines of commerce the Government claims that the section of the country affected is the United States as a whole. As to eight of the lines of commerce it contends that sections of the country also affected are the United States east of the Rocky Mountains and the United [fol. 4214] States west of the Rocky Mountains.

It may be noted that the Government originally contended that there were other sections of the country affected in various of the lines of commerce contended for, but it has withdrawn such claims.

The ten lines of commerce in which the Government contends that competition may be substantially lessened are specified with particularity in the Government's answer to defendant's interrogatories in December 1958, some two years ago. These lines of commerce remained unchanged through many exhaustive pretrial sessions in which the issues to be tried were carefully limited and defined, and during the more than six weeks of the trial itself. These are the issues tendered by the Government, and it is upon these issues that the case has been tried.

Each of these lines of commerce and the claimed effects of the acquisition within them will be dealt with briefly separately.

[fol. 4215] I

As its first line of commerce, the Government specified containers for the canning industry and defined canning as "the process of sterilizing foods, including juices, by heat

and hermetically sealing them in tin cans and glass containers."

I will assume for purposes of this discussion that the Government's evidence establishes this to be a line of commerce and a relevant market, although that question is by no means free from doubt. Even if such an assumption be made, however, the Government has failed to establish any basis upon which I could find that competition within this line of commerce may be lessened to any substantial degree by this acquisition, for I find in this record no evidence as to either the size or shape of the relevant market or the share of either of the merging companies in it.

Indeed, the Government practically concedes that it has failed to make such a showing, for after the case had proceeded for over two years through the lengthy pretrials, through six weeks of trial, and through the defendant's argument on its motion for dismissal, the Government virtually abandoned its claim as to substantial lessening of [fol. 4216] competition within this line and attempted to substitute an entirely new and greatly expanded line of commerce for it.

During the course of its argument in opposition to the motion for dismissal, the Government asserted for the first time that heat sterilization was not a part of this line of commerce but that the key word in the Government's description of the canning container market was hermetic sealing. Moreover, under the Government's interpretation of hermetic sealing, all food containers made of tin or glass are hermetically sealed. Thus the Government in substance urges that this line of commerce covers all food containers made of tin or glass.

Apart from the manifest unfairness to the defendant of permitting the Government completely to switch its theory at this thirteenth hour, the proposed new line of commerce —in substance, all food in glass or cans—recommends itself neither to logic nor to the realities of the market place. The evidence produced by the Government is wholly insufficient to establish that there is any such line of com- [fol. 4217] merce. Assuming that such a line of commerce existed, however, the Government's proof is insufficient to show that there may be lessening of competition within any

such line of commerce by reason of the acquisition, to any substantial degree.

II

The second line of commerce specified by the Government is delineated as containers for the beer industry, consisting of glass bottles and metal cans used to market beer. I find that there is sufficient evidence in the record which, standing uncontradicted, establishes that this line is a line of commerce, or a relevant market.

However, the evidence adduced by the Government is insufficient to establish that the effect of the acquisition may be substantially to lessen competition within this relevant market. Without going into detailed figures at this time, the percentage share of Hazel-Atlas Glass Company in the relevant market ranged from 0.14% in 1955 to 0.17% in 1957—in other words, less than 2/10ths of 1% of the relevant market. This share is so insignificant as to show on its face that Hazel-Atlas was not a significant competitive factor in this line of commerce at the time of the merger, [fol. 4218] or at any time thereafter.

Recognizing this, the Government sought to establish that though there might be no substantial lessening of actual competition, there was substantial lessening of potential competition.

I find that the Government has failed to establish that there was substantial lessening of potential competition in this relevant market by reason of the acquisition, for it has not shown a probability that Hazel-Atlas would have become a significant competitive factor had the merger not taken place.

III

The next line of commerce which the Government delineated was "containers for the soft drink industry," consisting of both tin cans and glass bottles.

There is great difficulty in finding evidence in the record to establish this line of commerce as a relevant market. Under the definitions advanced by the Government, this market includes containers for both carbonated and non-carbonated soft drinks. The evidence relied on to establish this as a line of commerce is confined almost entirely to con-

tainers for carbonated beverages. Such evidence does not [fol. 4219] establish a relevant market of both carbonated and non-carbonated beverages.

Assuming, however, that the evidence justified a finding of a separate line of commerce which was limited to glass and metal containers for carbonated beverages only, which is a departure from the line for which the Government has contended throughout this trial, there is a failure of proof on the crucial issue of whether the effect of the acquisition may be substantially to lessen competition in that relevant market. While the Government's proof in support of its claimed line of commerce deals solely with carbonated beverages, the evidence upon which it relies to establish substantial lessening of competition in that line relates to containers both for carbonated and non-carbonated soft drinks. This divergent approach to the two issues relating to this subject matter makes it impossible to reach any conclusion as to the lessening of competition in a relevant market of containers for carbonated soft drniks only.

But even if the Government's original definition of this line of commerce, i.e., containers for both carbonated and [fol. 4220] non-carbonated beverages, should be deemed to have been established, it has failed to prove that the acquisition of Hazel-Atlas tends to lessen or has lessened competition in this line to any substantial degree. The percentage share of the relevant market in soft drink containers of Hazel-Atlas ranged from .03% in 1955 to less than .5% in 1957—in other words, a miximum of ½ of 1% of the relevant market. This insignificant share of the relevant market indicates plainly that Hazel-Atlas was not a significant competitor in this line of commerce and that there was no actual lessening of competition in any substantial degree by reason of the merger.

Again, the Government urges that there was a lessening of potential competition from Hazel-Atlas. I find, however, that the Government has failed to establish a probability that Hazel-Atlas would have become a significant competitive factor in this relevant market had the merger not taken place and has therefore not shown that there was a lessening of potential competition to any substantial degree.

[fol. 4221] IV

The next three lines of commerce for which the Government contends may be treated together. They are as follows:

(a) Containers for the toiletries and cosmetics industry;
(b) Containers for the medicine and health industry; and
(c) Containers for the household and chemical industry.

What the Government means by these definitions are containers for the products produced and marketed to the public by each of these industries. In each of these three lines of commerce the containers referred to include glass containers, tin cans and plastic bottles.

Even assuming that each of these separate lines of commerce has been established and that each constitutes a relevant market, the Government has failed to furnish the proof which would be necessary in order for me to find that the acquisition may lessen competition within any of such markets to any substantial degree.

In the first place, there is nothing from which I can find [fol. 4222] what the size of each of these relevant markets is. In the second place, there is insufficient evidence from which to find what the defendant's share of these relevant markets is. In the absence of such evidence, it is impossible for me to determine whether or not the effect of the acquisition may be substantially to lessen competition in these lines of commerce.

The plaintiff's suggestion that all of these lines of commerce be lumped together and viewed as a single line results only in confusion multiplied. There is insufficient in this record to establish either that there is any such separate line of commerce on the one hand, or, on the other, that competition in any such line of commerce may be substantially lessened.

V

The next line of commerce which the Government advances is the can industry. This includes all metal cans of every nature and description. The defendant concedes that

the can industry as so defined is a separate line of commerce.

However, I find that the evidence adduced by the Government is insufficient to establish that this acquisition may [fol. 4223] lessen competition in this relevant market to any substantial degree. In acquiring Hazel-Atlas the defendant did not acquire a can manufacturer but a manufacturer of glass containers. There is no proof in this record which establishes that the acquisition of this glass manufacturer by a manufacturer of cans and other products may lessen competition in the relevant can market to any substantial degree, nor does the evidence establish that potential competition in this market will be so lessened.

VI

The next line of commerce which the Government advances is denominated as the glass container industry. This includes all glass containers used for packaging. Here again, the defendant has conceded that this is a separate line of commerce.

However, the same conclusion must be reached with respect to this line of commerce as was reached with respect to the can industry line. The evidence adduced by the Government has failed to establish that there may be substantial lessening of competition in the glass container industry, potentially or otherwise, by reason of this acquisition.

[fol. 4224] VII

The next line of commerce which the Government advances is metal closures. These are the metal caps which are fitted over containers to close them, largely for glass bottles and jars. Only those made of tinplate are included. For reasons not clear to me, aluminum and plastic closures are excluded.

The Government has now limited this line of commerce to include only vacuum type closures and screw-thread and lug-type closures. It has chosen to exclude crown caps or closures from this line of commerce.

The White Cap Division of Continental Can makes vacuum closures but not non-vacuum closures. Hazel-Atlas

makes no vacuum type closures but only non-vacuum closures. The two are not in competition with one another. A line of commerce cannot be established by lumping together two non-interchangeable products used for different purposes. The Government has failed to establish such a line of commerce or relevant market.

VIII

Finally, the Government contended that the packaging industry, which included almost every conceivable type of [fol. 4225] packaging material used in the United States was a separate line of commerce. I have already found that the Government had failed to establish any such line of commerce or to show that there might be any substantial lessening of competition within such line of commerce if it existed, by reason of this acquisition. The Government's claim as to this line was dismissed at the end of its case.

In each of the lines of commerce for which the Government contends, it has also urged that the effect of the acquisition was to tend to create a monopoly. I find that the evidence fails to establish such a tendency in any of the lines of commerce specified.

The basic defect in the Government's case does not lie in its theories but in the nature and quality of its proof. Many of the propositions of fact on which the Government relies find support only in argument. Others rest on most insubstantial and evanescent evidentiary foundations. Statements of counsel as to what the facts may be or inferences based on incomplete if not misleading statistics or mere glittering generalities cannot be substituted for evidence, cannot be substituted for proof, and they cannot [fol. 4226] furnish a basis for finding the facts necessary to sustain the Government's case.

The evidence adduced by the Government is insufficient, both qualitatively and quantitatively, to establish that this acquisition has violated Section 7 of the Clayton Act in any respect. The Government has not established by competent proof that it is entitled to relief against this defendant.

Under these circumstances, there is no need to put the defendant to its proof and to place upon it the burden of

putting in extensive evidence to rebut a case which has not been made out. I conclude, therefore, that the defendant's motion for dismissal of the action must be granted.

As I have indicated, this decision does not constitute my opinion in this case. I will hand down an opinion at a later date dealing fully with the background of the case, the evidence in the record, the controlling legal principles, and my detailed findings and conclusions.

In view of the decision, which I felt in all justice to the parties and to counsel should be announced as soon as possible, the trial is now at an end, and I will make appropriate directions in my opinion as to the entry of judgment in [fol. 4227] favor of the defendant.

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[fol. 4228] Reporter's Certificate to Above Transcript Omitted in Printing

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[fol. 4229] [File Endorsement Omitted]

In United States District Court, Southern District of New York

Civil 112-387

United States Of America, Plaintiff,

against

Continental Can Company, Inc. and Hazel-Atlas Glass Company, Defendants.

Appearances:

Lee Loevinger, Esq. Assistant Attorney General W. Wallace Kirkpatrick, Esq. Acting Assistant Attorney General Larry L. Williams, Esq. Chief, Special Trial Section, Department of Justice George D. Reycraft, Jr., Esq. Chief, Special Trial Section, Department of Justice William H.

McManus, Esq. (Trial counsel) Samuel V. Greenberg, Esq. (Trial counsel) Attorneys, Department of Justice for the United States.

Willkie, Farr, Gallagher, Walton & Fitz Gibbon, Esqs. Attorneys for Defendants Mark F. Hughes, Esq. (Trial counsel) Helmer R. Johnson, Esq. (Trial counsel) Milton Handler, Esq., (Trial counsel) Bowie K. Kuhn, Esq. Stanley D. Robinson, Esq. Of counsel.

[fol. 4230] OPINION—April 16, 1963

BRYAN, District Judge:

This is a civil action by the United States to enjoin the proposed acquisition by defendant Continental Can Company, Inc. (Continental) of defendant Hazel-Atlas Glass Company (Hazel-Atlas) on the ground that such acquisition would violate § 7 of the Clayton Act as amended.[1] The court has jurisdiction over parties and subject matter.

The Government had previously attempted to block the acquisition by invoking a consent decree which had been entered against Continental in 1950 in a civil anti-trust suit under §§ 1 and 2 of the Sherman Act and § 3 of the Clayton Act in the District Court for the Northern District of California. On August 31, 1956 the California court held that the consent decree did not cover the proposed acquisition.[2] [fol. 4231] The consummation of the acquisition was delayed in the meantime at the Government's request. The Government then commenced this action. It moved for a preliminary injunction against consummation and sought a temporary restraining order pending the hearing and de-

[1] 15 U.S.C. § 18: "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly. * * * "

[2] United States v. Continental Can Company, 143 F. Supp. 787 (N.D. Cal. 1956).

termination of its motion. The temporary restraining order was denied on September 13, 1956. On that day, Continental took over all of the assets, property, business and good will and assumed all of the liabilities of Hazel-Atlas, which since then has been operated as the Hazel-Atlas Division of Continental.

The Government withdrew its motion for a preliminary injunction on September 18, 1956 and this action became one for divestiture.

After some considerable time, the case was assigned to me for all purposes. Extensive pre-trial proceedings were conducted at which over a thousand pages of transcript were taken. The case then came on for trial.

The Government concluded its case after six weeks of trial during which it called some 78 witnesses. Over four thousand pages of testimony were taken. The Government introduced more than twelve hundred exhibits and the defendants more than five hundred.

[fol. 4232] At the conclusion of the Government's case defendants, pursuant to Rule 41(b), F.R.C.P., moved for a dismissal on the ground that upon the law and the facts the Government had shown no right to relief and that they were therefore entitled to final judgment on the merits. The motion was granted in a brief oral decision which stated only the conclusions reached. In view of the importance and complexity of the case a detailed opinion was to follow.

Before that opinion could be filed, the Supreme Court decided Brown Shoe Co., Inc. v. United States, 370 U.S. 294 (1962), its first decision dealing at any length with § 7 of the Clayton Act as amended in 1950. The Government then asked leave to submit material dealing with the effect of that case on the case at bar. This application was granted and both sides submitted briefs on this question. Consideration of the *Brown Shoe* case has not changed the conclusions which I reached at the end of the trial.

My opinion follows.

Defendants' motion under Rule 41(b) for a dismissal at the close of the Government's case, posed squarely the question of whether on the record, as it then stood, defend-

[fol. 4233] ants were entitled to judgment.

The motion was made on the ground that "upon the facts and the law the plaintiff has shown no right to relief." In an action tried to the court without a jury, the court, when such a motion is made at the close of plaintiff's case, "as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence."

There is no doubt as to the meaning and applicability of Rule 14(b). The test to be applied in a case tried to the court alone is quite different from that on a motion to dismiss or for a directed verdict in a jury trial. In the latter case the question is whether or not the plaintiff has made out a prima facie case sufficient to go to the jury and the court must view the evidence in the light most favorable to him.

In a trial to the court alone, however, the court is authorized under Rule 41(b), to evaluate and weigh all of the evidence presented by the plaintiff, draw such inferences therefrom as it considers reasonable in the light of the record, and determine at that stage whether plaintiff has sustained the burden of proof necessary to establish its right to relief were the case to end there. If the court undertakes to make such a determination and concludes [fol. 4234] that the plaintiff has not met this burden, the defendant is entitled to judgment on the merits.[3]

In this case, as the trier of the facts, I determined at the conclusion of the Government's case that it had failed to sustain its burden of showing by a preponderance of the evidence that the acquisition under attack violated Section 7 of the Clayton Act in any respect. I therefore directed that judgment be rendered against the Government.

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[3] Global Commerce Corporation v. Clark-Babbitt Industries, Inc., 255 F. 2d 105 (2 Cir. 1958); Huber v. American President Lines, 240 F. 2d 778 (2 Cir. 1957); Henry v. Moore-McCormack Lines, Inc., 134 F.Supp. 71 (S.D.N.Y. 1955); Brahms v. Moore-McCormack Lines, Inc., 133 F. Supp. 283 (S.D.N.Y. 1955); 5 Moore's Federal Practice p. 1044, et seq. (2d ed. 1951). See also Blood v. City of New York, 237 F. 2d 855 (2 Cir. 1956).

I

Section 7 of the Clayton Act in the light of the Brown Shoe case

The Government's case is grounded solely on Section 7 of the Clayton Act as amended in 1950. There is no claim of violation or threatened violation of any provision of the Sherman Act. There is no charge of restraint of trade, monopolization or attempt to monopolize. This is strictly a Section 7 case.

Section 7 as amended forbids the acquisition of the stock or assets of one corporation by another "where in any line of commerce in any section of the country, the effect of [fol. 4235] such acquisition may be substantially to lessen competition, or to tend to create a monopoly."[4] The *Brown Shoe* case, decided on June 25, 1962, some twelve years after the 1950 amendment to § 7, is the first definitive interpretation of that section by the Supreme Court since its amendment.

The facts in the Brown Shoe case were entirely different from those in the case at bar. The specific holdings of the Court on the facts presented there are therefore not determinative of the problems posed here Indeed, *Brown Shoe* recognizes that the facts in each case in all likelihood will differ widely, that the framework of each industry is likely to be unique, and that each case must stand or fall on its own facts viewed within the framework of the industry pattern.[5]

However, the discussion in *Brown Shoe* of the legislative history and background of the 1950 amendment to § 7, the theory of the amended section, the interpretation to be given to it, and the principles and guidelines to be followed in applying it, is controlling.[6] *Brown Shoe* is the authoritative declaration of the law on the subject as it now stands

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[4] 15 U.S.C. § 18.

[5] Brown Shoe Co. v. United States, *supra*, pp. 321-322.

[6] The legislative history of Section 7 and the 1950 amendment is reviewed exhaustively in *Brown Shoe* (370 U.S. pp. 311-323). Further general discussion here is unnecessary.

[fol. 4236] and the principles and guidelines which it lays down must be applied here.

Section 7 proscribes acquisition of either stock or assets where, as a result, competition in any line of commerce in any section of the country may be substantially lessened. It covers all mergers or acquisitions, horizontal, vertical or conglomerate.[7]

As *Brown Shoe* makes plain, however, the section does not prohibit all mergers. While the congressional intent was to arrest restraints of trade and monopolistic tendencies "in their incipiency and well before they have attained such effects as would justify a Sherman Act proceeding,"[8] there is no per se proscription against the acquisition of the stock or assets of one corporation by another. The statute is concerned only with those acquisitions which have demonstrable anti-competitive effects.[9]

It is clear, moreover, that the statute was directed neither at the possibility that anti-competitive effects might occur nor at certainty of anti-competitive effects already covered [fol. 4237] by the Sherman Act.[10] "[P]roof of a mere *possibility* of a prohibited restraint or tendency to monopoly will not establish the statutory requirement * * *."[11] The statute is concerned with the reasonable probability of the lessening of competition or tendency toward monopoly as a result of the particular acquisition under scrutiny—a showing that such effects are reasonably likely to occur. This is what the words "may be" as used in the statute mean.[12] The lessening of competition, moreover, must also be shown to be "substantial".[13]

Acquisitions are proscribed where substantial anti-competitive effects or tendency to monopoly are reasonably

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[7] Brown Shoe Co. v. United States, *supra*, p. 317.

[8] S. Rep. No. 1775, 81st Cong., 2d Sess. pp. 4-5 (1950).

[9] Brown Shoe Co. v. United States, *supra*, pp. 319-320.

[10] Brown Shoe Co. v. United States, *supra*, p. 323.

[11] United States v. E. I. duPont de Nemours & Co. (General Motors), 353 U.S. 586, 598 (1957).

[12] A. G. Spalding & Bros., Inc. v. Federal Trade Commission, 301 F. 2d 585 (3 Cir. 1962)

[13] S. Rep. No. 1775, 81st Cong. 2d Sess., p. 3 (1950).

probably in *any* line of commerce in *any* section of the country. Thus, in order to determine wheether there are anti-competitive effects or tendency to monopoly, it is necessary in each case to define the lines of commerce in which the acquiring and acquired companies were engaged and the sections of the country affected. Anti-competitive effects and their substantiality cannot be evaluated in a [fol. 4238] vacuum. They can only be judged in terms of the particular markets or sub-markets affected—that is to say "within the area of effective competition." [14]

While Section 7 does not use the term "market", it is clear that "line of commerce" refers to a product market, and "section of the country" refers to a geographic market in which competition exists and in which the effects of the acquisition may be felt. A relevant product market must be a market which is meaningful in terms of competitive and commercial realities.[15] A relevant geographic market must embrace an economically significant section of the country in terms of competitive effects.[16]

Thus, relevant markets are neither economic abstractions nor artificial conceptions. They are rather specific areas where, viewed in the context of the facts of the particular case under consideration, there may be demonstrable anti-competitive effects as the result of the acquisition. The test [fol. 4239] then is whether the acquisition has demonstrable anti-competitive effects in any relevant product market in any section of the country.

Section 7 does not spell out any particular tests or standards for determining the relevant product markets or geographic areas which may be affected by the acquisition. Nor does it supply, either in quantitative or qualitative terms, any tests for determining whether the effects may be "substantially" to lessen competition. "However, sufficient expressions of a consistent point of view may be found in the hearings, committee reports of both the House

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[14] United States v. E. I. duPont de Nemours & Co. (General Motors), *supra*, 593.

[15] Crown Zellerbach Corporation v. Federal Trade Commission, 296 F. 2d 800, 811, (9 Cir. 1961), *cert. den.* 370 U.S. 937 (1962).

[16] Brown Shoe Co. v. United States, *supra*, p. 320.

and Senate and in floor debate to provide those charged with enforcing the Act with a usable frame of reference within which to evaluate any given merger." [17]

Against this background the tests and standards to be used vary depending upon what may be appropriate in the light of a wide variety of factors. These factors include the nature, business and relationships of the acquired and acquiring companies, the markets which they serve, the kind and extent of competition in such markets, the pattern of the industry as a whole and the place of such companies in the industry.

Thus, in determining relevant product markets it has [fol. 4240] been deemed pertinent to examine such factors as the peculiar uses and characteristics of the product; its distinguishing physical characteristics; whether it is sold to distinct classes of customers; distinct price differentiation; sensitivity to price changes; reasonable interchangeability of use and demand; public or industry recognition of the market as a separate market entity; unique production facilities; and specialized vendors.[18]

In determining the geographic market pertinent factors include scale of distribution; locale of actual and potential buyers and of competing sellers; focus of competition; and whether regional markets interlock to form a larger market.[19]

None of these factors are conclusive in themselves and all must be "functionally viewed, in the context of [the] particular industry." [20] Mere mechanical or quantitative application of § 7 should be avoided and each case must be judged in the light of its own peculiar facts. Only within

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[17] Brown Shoe Co. v. United States, *supra*, p. 315.

[18] Brown Shoe Co. v. United States, *supra;* United States v. E. I. duPont de Nemours & Co. (General Motors), *supra;* Crown Zellerbach Corporation v. Federal Trade Commission, *supra;* United States v. Bethlehem Steel Corporation, 168 F. Supp. 576 (S.D.N.Y. 1958).

[19] Brown Shoe Co. v. United States, *supra;* A. G. Spalding & Bros., Inc. v. Federal Trade Commission, *supra;* United States v. Bethlehem Steel Corp., *supra.*

[20] Brown Shoe Co. v. United States, *supra*, pp. 321-322.

such a setting can the probable anti-competitive effects of a merger be judged.[21]

[fol. 4241] In the light of these considerations the issues on which the Government had the burden of proof here were twofold. First, it was required to delineate the relevant product markets or submarkets in which it claimed that competition was adversely affected by the acquisition and the sections of the country affected. Second, it had to establish that in one or more of such markets or submarkets in any particular section or sections of the country, there was reasonable probability that the effect of the acquisition would be substantially to lessen competition or to tend to create a monopoly.

II

The merging companies

(1) Continental

Continental Can Company, Inc. is a New York corporation with its principal offices in New York City. It was organized in 1913 by the merger of three companies engaged in the manufacture of metal cans.[22] At that time American Can Company was the dominant factor in the can industry.

After its organization Continental went through a period [fol. 4242] of substantial internal expansion. Beginning in 1923 and for the next twenty years it continued to expand internally and also by acquiring some twenty-four companies in various sections of the country which were also engaged in manufacturing various types of cans, some of which had not been previously manufactured by Continental. It also acquired several companies which did not

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[21] Brown Shoe Co. v. United States, *supra*, p. 340.

[22] The three original companies were Continental Can Company, a New Jersey corporation; the Export and Domestic Can Company, a New York corporation; and the Standard Tin Plate Company, a Pennsylvania corporation.

produce metal cans but made other packaging products. Continental acquired its last can manufacturer in 1944.

Since that time it has engaged in a program of diversification aimed at increasing the variety of products which it is able to supply.

Its acquisitions have included companies producing can manufacturing and can closing machinery, flexible packaging, plastic containers and other plastic products, paper containers and paperboard, fibre drums, crown caps and vacuum closures, and a miscellany of other products.

In 1956 it acquired Hazel-Atlas, Robert Gair Company, Inc., a manufacturer of paperboard and similar products, and White Cap Company, which manufactured vacuum type metal closures.

By that time it was and had been for a good many years the second largest metal can manufacturer in the country. It was a formidable competitor of American Can Company [fol. 4243] which had long been the leader in the industry.

When it acquired Hazel-Atlas Continental's principal business was the manufacture and sale of metal cans and other metal containers to industrial consumers for a wide variety of uses. In 1955 metal cans and other metal containers accounted for between two-thirds and three-quarters of its total dollar sales volume. It also manufactured numerous other products, including fibre drums, flexible packaging materials, plastic products (including plastic containers), paper cups and plates, crown caps, vacuum type metal caps, can closing machinery, and special defense items.

By 1955 Continental had 72 plants for the manufacture of its products at various locations throughout the United States. It also had plants in seven foreign countries, including Canada. Forty manufactured metal cans. Approximately 45,000 persons were in its employ.

Its net sales and operating revenues and net income for the years 1953, 1954 and 1955, in thousands of dollars, were:

	Net Sales and Operating Revenues	Net Income
1953	$554,436.	$15,680.
1954	616,163.	20,736.
1955	666,266.	24,172.

[fol. 4244] Its total assets as of December 31, 1955 were $381,917,000.

Including the Hazel-Atlas, Gair and White Cap acquisitions, for the year 1956 Continental had net sales and operating revenues of $1,010,268,000, and net income of $43,143,000, with total assets as of December 31, 1956 of $633,706,000.

Comparative 1955 combined figures for these four companies prior to acquisition, show net sales and operating revenues of $929,428,000, net income of $38,693,000, and total assets as of December 31, 1955 of $568,850,000.

(2) Hazel-Atlas

Hazel-Atlas was a West Virginia corporation with its principal office in Wheeling, West Virginia. It was organized prior to 1900 and, as a result of its acquisition by Continental, was dissolved on September 21, 1956.

Its principal business was the manufacture and sale of glass containers of various types to industrial consumers and of glass jars for home canning, both largely of the wide mouthed variety. It also manufactured glass tumblers, tableware, kitchenware, glass articles of special design for industrial use, screw type metal closures and closures for home canning glass jars. It appears to have been the third largest glass container manufacturer in the United [fol. 4245] States.

Hazel-Atlas operated plants at thirteen locations in various parts of the country, principally in the western Pennsylvania, West Virginia and eastern Ohio area, and had [illegible] warehouses. Its net sales and net income in 1953, 1954 and 1955, in thousands of dollars were:

	Net Sales	Net Income
1953	$79,250.	$3,112.
1954	79,174.	3,629.
1955	79,920.	3,393.

Its total assets as of December 31, 1955 were $37,884,000.

After acquisition by Continental the operations conducted by Hazel-Atlas were continued by the Hazel-Atlas Division of Continental and its operating figures were included in Continental financial statements. It does not

appear that there was any substantial change in the volume or character of business done by the Hazel-Atlas Division in the period between its acquisition and the trial.

Prior to its acquisition Hazel-Atlas did not manufacture or sell metal cans, plastic or paper containers, vacuum type metal closures, crown caps or any other product manufactured or sold by Continental or its subsidiaries.

On the other hand, Continental did not, directly or [fol. 4246] through subsidiaries, manufacture or sell glass containers or any other glass products, screw type metal closures, or any product manufactured or sold by Hazel-Atlas. It is uncontroverted that the two merging companies manufactured and sold no identical products.

III

The types of products and the separate industries involved

This case is concerned with three basic types of containers—those made of metal, glass and plastic. They are of a variety of shapes, sizes and end uses.

The three types of containers are produced by three recognized separate industries, each with its own structure and pattern, the metal can industry and the plastic container industry in which Continental was engaged, and the glass container industry in which Hazel-Atlas was engaged.[23]

[fol. 4247] In addition to the three types of containers the case also is concerned with three different kinds of metal closures used to close or seal products packed in containers. They are crown caps, vacuum type closures and screw and lug type closures. Continental produced crown caps and vacuum type closures and Hazel-Atlas pro-

[23] It may be noted that reference will be made to what is claimed to be an all encompassing "packaging industry". However, as will be pointed out, the evidence wholly failed to establish that there is any such relevant product market in this case. Nor was it established that there is any recognized separate industry or relevant product market comprising all metal, glass and plastic containers, or any general combinations of them.

duced screw and lug type closures. Closures will be discussed separately though there is no separate metal closure industry.[24]

(1) Basic types of products

(a) Metal cans

For Census Bureau statistical purposes the metal can is defined "as a single-walled container constructed wholly of tin plate, terne plate, blackplate or waste plate designed for packing products."[25] Such cans have distinct physical characteristics. They are rigid and unbreakable, but can be dented. Unlike plastic containers, they can be hermetically sealed and are impermeable to gases. They can be heat processed faster and are lighter than glass containers, and are not chemically inert.

The basic raw material used in can manufacture is tin-[fol. 4248] coated steel (tin plate), but some cans are made from uncoated steel (blackplate) or aluminum. Other raw materials include soldering compounds, paints, varnishes, lithographing inks, paper and cartons for packaging. The major factor in determining can prices is the cost of tin plate. Cans are generally sold f.o.b. the manufacturer's plant.

The products packed in metal cans are extremely numerous and varied and in fact cover a substantial segment of American industrial and agricultural production. However, for statistical purposes the Census Bureau has set up thirteen different general categories of metal cans all in terms of end use. The Bureau collects statistics from metal can manufacturers as to the amount of metal each consumes in the manufacture of cans in each of these categories.[26]

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[24] See discussion *infra* pp. 35-40.

[25] G-1203. This definition excludes steel pails which are defined as "single-walled shipping containers having capacities of 1-12 gallons inclusive that are cylindrically constructed of steel sheet of 29 gauge and heavier."

[26] Under the regulations of the Bureau metal can manufacturers report the number of base boxes of steel consumed in the manufacture of cans in each category. A base box is a unit of area measurement. The Bureau does not pre-

The thirteen Census Bureau end use categories are fruit [fol. 4249] and vegetables (including juice); evaporated and condensed milk; other dairy products; meat (including poultry); fish and seafood; coffee; lard and shortening; soft drink; beer; pet food; oil open-top (1 quart and 5 quart) all other food (including soup and baby food cans); and all other nonfood.[27] A number of these categories plainly include a great number and variety of specific end uses for which no accurate further breakdowns are available.

Among the principal types of cans are "Packers" cans and "General Line" cans. "Packers" cans are normally used for food products though they are used for many nonfood products as well. They are round open-top or sanitary cans. The packer after filling the can puts the top on.

"General Line" cans are used both for food and nonfood products and have different kinds of fittings and different shapes. There are other types of cans also. All types of cans are manufactured from the same raw materials by the same production processes and with the same equipment.

Cans used for one type of product may be used for other types of products also, but they usually have different linings for different products. For example, substantially [fol. 4250] the same open-top can is used for food, pet food, motor oil and other non-food products.

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scribe which specific end products fit into each category and this is left to the discretion of the individual reporting manufacturer.

The base box figures so reported are then converted by the Bureau into short tons of steel on the basis of conversion factors for each category. The comparative production figures in this record are those based on short tons of steel used in the production of metal cans reported by manufacturers as belonging in the various census categories of metal cans shipped.

There are no published figures of the actual number of cans shipped and there are wide differences in the product mixes in terms of sizes of cans produced by the various manufacturers.

[27] G-1203.

(b) Glass containers

There are two basic types of glass containers, the wide mouth and the narrow neck container.

Glass containers have distinct physical characteristics. They are rigid, chemically inert and impermeable to gases; can be hermetically sealed but are readily broken; and, unlike many cans, can be easily resealed after they have been opened. Glass containers are heavier than other types of containers and must be carefully packed for shipment to avoid breakage. Costs of shipment are therefore higher. They take longer to heat process than cans. Many narrow necked glass containers are suitable for re-use by bottlers and are returned by consumers to the bottler for such re-use.

Glass containers used for one type of product are often identical with containers used for widely dissimilar products. Thus, the same wide mouthed glass jar is used for peanut butter and silver polish, and the same narrow necked glass bottle is used for vinegar and liquid starch.

The basic raw materials used in the manufacture of glass [fol. 4251] containers are sand, lime and soda ash. Also required are the necessary labeling and coloring materials. Because of the need for careful packing for shipment to customers, corrugated cartons are used to pack the containers.

Cost of labor is the major factor in determining glass container prices. The corrugated shipping container represents 18-20% of the cost of the final product as shipped. Glass containers are generally sold on a delivered price basis with freight included in the price.

The Census Bureau publishes data as to glass container shipments. These statistics are grouped, in terms of end use, in the following fourteen categories: [28]

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[28] The statistics are collected for the Bureau by the industry trade association, the Glass Container Manufacturers Institute, from its member manufacturers and are used as the industry totals. A number of manufacturers are not members of the Institute. Statistics are prepared on a physical volume basis measured in gross. They show container shipments by product groups as classified by the Institute with a basic division between narrow neck and

Narrow Neck: Food; medicinal and health supplies; household and industrial; toiletries and cosmetics; beverage, returnable; beverage, non-returnable; beer, returnable; beer, non-returnable; liquor; and wine.

Wide Mouth: Food, including fruit jars and jelly glasses; [fol. 4252] medicinal and health supplies; household and industrial; toiletries and cosmetics; dairy products; and packer's tumblers.

Each of these general end use categories is composed of hundreds of individual end use items. But no detailed breakdown figures on the end use categories are available.

(c) Plastic containers

Plastic containers are manufactured by various methods including blow molding and injection molding. They are made of such raw materials as polyethylene and polystyrene. Prices are principally determined by the price of raw materials. Some are sold on a delivered price basis and some are not.

Plastic containers have distinct physical characteristics. They are neither rigid nor transparent. They are not impermeable to gases, and cannot be hermetically sealed. Such containers are virtually unbreakable, but they cannot contain internal pressure and their ability to hold a vacuum is limited. They are lighter in weight than glass containers of equal capacity. They are electrostatic and therefore attract dust.

Plastic contdiners are of many shapes and sizes and include such items as bottles, jars, tubes, vials and bags. They [fol. 4253] are used to package many kinds of foods, drugs, cosmetics, detergents and industrial products including such widely diverse products as rust removers, baby lotions, ice cream, insect repellents, shoe polishes, pills, water, and deodorants.

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wide mouth containers. It may be noted that the Institute's descriptions of the different end use categories (G-1205) are slightly different from those which Census apparently used. The Government relied on the latter, however, and I have used them here.

(2) Separate industries

(a) The metal can industry

This industry is composed of companies engaged in the manufacture of metal cans used to pack a large number and wide variety of different products. Most of the companies in the industry manufacture cans for sale to industrial and agricultural processing customers who, in turn, use them to pack their own products for marketing. Some companies, on the other hand, the so-called captive companies, produce cans for their own use in packing their own products.[29] Some of the captive companies produce cans for their own use and also sell to other users.[30]

A number of metal can manufacturers also manufacture tin-ware and other tin plate products. Some also produce [fol. 4254] other kinds of packaging materials and incidental items.

There are no reliable figures in the record as to the number of companies engaged in the manufacture of metal cans in the United States. Estimates run from seventy-five to over ninety. The largest is American Can Company. Continental is second. Either Campbell Soup (a captive manufacturer) or National Can Company is third. Other important manufacturers include Crown Cork & Seal Company, Heekin Can Company, J. L. Clark Company, Carnation Milk and Sherwin-Williams. American Can, Continental, National Can and Crown Cork & Seal, among others, sell cans throughout the country. Most of the other companies operate on a regional basis.

American Can, the industry leader, like Continental, manufactures a variety of products used by packers. In addition to metal cans it produces fibre, plastic and paper containers. It also manufactures machines for filling and closing both metal and fibre containers. Various other com-

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[29] Such companies include Campbell Soup Company, H. J. Heinz Company, Hollingshead Corporation, Pet Milk Company and Otoe Food Products Company.

[30] Among these are Armstrong Paint Company, Sherwin-Williams Company, The Borden Company and Carnation Milk.

panies manufacturing metal cans also have diversified product lines.

In 1955 American Can shipped approximately 38% of the metal cans sold in the United States. Continental's shipments amounted to approximately 33%. American's [fol. 4255] shipments exceeded Continental's in nine of the thirteen Census categories. Together these two companies accounted for approximately 71% of the total metal can shipments in the country.

It appears that can companies sell their products directly to users. There is nothing to indicate that there are any jobbers or wholesalers who purchase cans for resale to their own customers and it may be assumed that there are none.

The trade association for this industry is the Can Manufacturers Institute. Its forty-nine members, limited to can manufacturers, include American, Continental, National, Crown, Heekin and Clark. Voting rights and representation on the Board are determined by the number of employees of the member companies.

The Institute has a professional staff of three. Its activities, carried on largely through committees, deal with various technical industry problems such as industrial relations, traffic, safety and research and include a limited amount of promotion on the advantages of the metal can.

A promotion and advertising program, jointly financed by the members of the Institute and tin plate manufacturers who supply raw materials for can manufacture, was carried on at one time. The program was dropped when the tin plate manufacturers withdrew financial sup- [fol. 4256] port. A recent program of advertising to promote soft drinks in cans was not conducted by the Institute but was financed exclusively by tin plate manufacturers.

Since 1957 the Institute has done no advertising and its only promotion work has been in connection with the celebration of the sesquicentennial of the tin can. The extent of the activities of the Institute and the effects, if any, which such activities may have upon the industry or upon the public are not reflected in the record.

The annual production of cans has increased substantially since the end of World War II when the industry

resumed its normal rate of growth after wartime curtailment of metal supply. Its facilities have also expanded substantially and continue to do so.

Since 1950 American and Continental have substantially maintained their market positions as the number one and number two companies in the industry respectively. However, the medium sized producers, with assets of less than $100,000,000 have not only participated in the growth of the industry but have increased their share in the market. The evidence did not show that there has been any reduction in the number of companies manufacturing cans since the Hazel-Atlas acquisition and, in fact, the number of companies engaged in the "Tin Can and other tinware [fol. 4257] industry"[31] was greater in 1957 than in 1950.

It did not appear that the initial capital investment needed to embark upon can manufacture is unreasonably high, that there is any obstacle to obtaining whatever technical knowledge is necessary or that there are any patent barriers to entry into the industry. Raw materials are plentiful and readily available.

There was little in the record as to the shape and pattern of the industry in terms of such factors as the markets which it serves, the nature of the competition which exists in such markets, pricing practices, its methods of buying, selling and merchandizing, the supply and demand picture or similar matters.

From all that appears the industry is prosperous, healthy and highly competitive. Competition has been and remains keen and vigorous. What the record presents is a generalized picture of a large, strong, and relatively stable but expanding metal can industry.

(b) The glass container industry.

This well-defined and recognized separate industry is composed of companies engaged in the manufacture of glass containers sold to industrial and agricultural customers for use in packing their own products. Glass containers are also sold to the public for home preserving.

[fol. 4258] The industry produces glass containers of a

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[31] This is an Internal Revenue Service classification.

wide variety of types, shapes, sizes and colors for numerous end uses. A number of companies, including Owens-Illinois Glass Company and Hazel-Atlas, also produce glass table and kitchen ware and other glass products. Some also produce other products used by packers.

There are at least forty-two companies engaged in the manufacture of glass containers. By far the largest is Owens-Illinois Glass Company with almost 35% of the total production and with annual sales in 1955 of some $370,000,000 and earnings of some $27,000,000.[32] Anchor-Hocking Glass Company, Hazel-Atlas and Knox Glass, Inc. appear to follow in that order. The Hazel-Atlas share of the glass container market in 1955 was about 9.6% with net sales of some $79,000,000 and net earnings of approximately $3,000,000.

Owens-Illinois, in addition to glass containers, manufactures plastic containers, metal and plastic closures, corrugated shipping containers, various types of fibre and paperboard containers, closure machinery and a wide variety of other glass and plastic products. Other com- [fol. 4259] panies, such as Anchor-Hocking, also have diversified lines.

There are at least twenty companies in the industry with sales above or in the neighborhood of $10,000,000 a year. Most of these companies have been expanding their facilities and production and increasing sales at a rapid rate. There is nothing to indicate that smaller companies are not also prospering.

Five companies in the industry sell throughout the country. They are Owens-Illinois, Anchor-Hocking, Thatcher Glass Mfg. Co., Ball Bros. Co., Inc., and Hazel-Atlas. Other companies sell on a regional basis.

The trade association for the industry is the Glass Container Manufacturers Institute. Its membership consists of thirty-six glass container manufacturers, six closure

[32] These figures apparently include all of the products manufactured by Owens-Illinois and are not confined to glass container sales. The Hazel-Atlas figures are also inclusive but Hazel-Atlas, unlike Owens-Illinois, did not have widely diversified product lines.

manufacturers and twenty suppliers of raw materials and equipment.[33] Dues are assessed on the basis of sales volume and the Board of Trustees is composed of employees of the member companies.

The Institute has about forty-five paid employees. Its ac- [fol. 4260] tivities are carried on by standing committees. Members of the professional staff are assigned to each committee.

Activities include market research and promotion, the collection and dissemination of statistics concerning the industry, technical research, package design and specifications, the development of standard testing and quality control procedures, problems of freight rates, labor relations, and liaison work with government. The Institute does advertising and publicity for the industry but the evidence does not indicate how substantial this is or how effective such activities are.

As in the case of the metal can industry, there is virtually nothing in the record of significance regarding such matters as the markets served by the industry, the nature of the competition which exists in such markets, the problems faced by its customers, methods of selling and merchandizing, price structure or pricing practices, the supply and demand picture, or similar matters.

During World War II the tin place supply was greatly curtailed and the glass container industry was able to make substantial advances at the expense of the metal can industry. Since the war the glass container industry has continued its substantial growth and expansion and this process has not abated since the Hazel-Atlas acquisition. The growth of the glass industry has been more rapid than [fol. 4261] that of the can industry.

Numerous technical improvements have been made in the glass container which have increased its strength, resistance to breakage and overall utility, and have lightened

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[33] A number of manufacturers are not members of the Institute, including Star City Glass Co., Wheaton Glass Co., T. C. Wheaton Co., Kerr Glass Manufacturing Co., Underwood Glass Co., Arkansas Glass Co., and Gallo Glass Co.

weight. These improvements have contributed significantly to the growth of the industry.

There appears to be no difficulty in entering the glass container industry and a number of new companies have recently entered and have had successful operations. There has been a continuous expansion of facilities by both large and small companies through new plant construction or additions to existing plants.

There was no evidence that the initial capital investment needed to enter the industry was unreasonably high or that there is any obstacle to obtaining whatever technical knowledge or facilities are necessary. Nor are there any patent barriers to entry. Raw materials are plentiful and readily available, as are shipping containers.

The industry is prosperous, healthy and highly competitive. Here again is a generalized picture of a large, strong, and rapidly expanding industry in which competition has been and remains keen and vigorous.

[fol. 4262] (c) The plastic container industry

The plastic container indutry is relatively new. It got under way in the mid 1940's. The industry has since grown rapidly and is still undergoing rapid expansion. Neither the size and scope of the industry nor the respective positions of Continental and other manufacturers in it can be determined with any reasonable degree of accuracy from the evidence in this record.

The larger companies in the industry include Plax Corporation, Injection Molding Company, American Can, Continental, Royal Manufacturing Company, Inc., Owens-Illinois, Wheaton Plastics Company and Foster-Grant Company, Inc.

The dollar sales volume of the industry is small compared with that of the metal can and glass container industries. Plax, the largest producer, had plastic container sales in 1959 of about $12,000,000, which it estimated to be 30% to 40% of such sales in the United States.

In 1955 Continental's sales of plastic containers amounted to $2,400,000, and according to its estimate it shipped approximately 9.3% of the plastic squeeze bottles sold in the United States in that year.

There are apparently thousands of small companies engaged in the manufacture of plastic containers. Some use [fol. 4263] the blow molding method of manufacture and others use injection molding.

Among the many types of plastic packaging materials produced by companies in the industry are bottles, jars, vials, boxes, folding cartons, tubs, tubes, carboys, tubes with metal ends, film and other flexible materials and bags. These containers are sold to a wide variety of industrial customers who pack their own products.

There is a Plastic Bottle and Tube Manufacturers Institute, organized in 1957, which is a division of the Society of the Plastics Industry, Inc. Its members are American Can, Continental, Foster-Grant, Injection Molding, Plax and Royal.

There was a paucity of information in the record about the activities of this Institute. It appears to collect statistics from its members, some of which apparently are published by the Department of Commerce but these figures are not in the record. Such statistics as are collected by the Institute concerning individual companies are destroyed when received and only overall totals are maintained. The Bureau of Census does not collect or publish statistics relating to the production of plastic containers.

There is no showing that the initial capital investment needed to enter manufacture of plastic containers is high. [fol. 4264] Nor are there any technical obstacles to such manufacture. Raw materials and labor are readily and plentifully available and patents constitute no barrier to entry into this field.

The number of companies manufacturing plastic containers is on the increase and has continued to increase since the acquisition. The industry is rapidly expanding and competition is keen and vigorous. There are no universe figures for the industry in the record and such statistics as there are concerning it are wholly unreliable and furnish no basis from which informed conclusions can be drawn.

This relatively new and expanding industry plainly has substantial potential. However, its overall dimensions and the extent to which it may be in competition with the

glass container and metal can industries remain, at best, obscure.

(3) Closures

The term "closures" refers to a miscellany of devices used by packers to close and seal containers in which products are packed. The various types include crown caps, vacuum type closures, screw and lug type closures, paper and foil caps, and closures for home canning. Some are made of tin plate, some of aluminum or plastic, and others of paper or foil.

As I mentioned earlier, prior to the acquisition Conti- [fol. 4265] nental produced crown caps and, after acquiring White Cap Company, vacuum type metal closures as well through that subsidiary. Hazel-Atlas did not manufacture either of these products. It manufactured screw and lug type metal closures and home canning closures. Continental did not.

(a) Crown caps are made of tin plate with cork or composition lining. They are used to close narrow neck glass bottles, primarily for beer and carbonated beverages. They are applied to the bottle by crimping and not by lugs or threads. They are not sold in competition with screw or vacuum type metal closures.

The largest producer of crown caps was Crown Cork & Seal Company, which was also a metal can producer. Other producers, in addition to Continental, were Armstrong Cork and Guttman. Though Anchor-Hocking and Owens-Illinois did not manufacture crown caps at the time of the acquisition, both of them had been for some time large manufacturers of beer bottles and beverage bottles.

In 1956 Continental shipped 17.1% of the crown caps sold in the United States, in 1957 18.4% and in 1958 18.5%.

(b) Vacuum type metal closures are made of tin plate or aluminum, with various kinds of linings. They may be of the side-seal, top-seal (or twist-off) or roll-on varieties. [fol. 4266] They are used on glass containers almost entirely for packing food.

Vacuum type metal closures are applied by closing machines which create a vacuum in the head space of the

container. The products to be packed are sterilized and steam is inserted into the area remaining between the food and the top of the jar, thus exhausting the air in the head space. The closure is then applied and when the product cools and the steam evaporates a vacuum seal is created.

Closing machines for the application of vacuum metal closures are leased or sold to packers by Continental through its White Cap Division and also by Owens-Illinois, Anchor-Hocking and Aluminum Comany of America. Vacuum closing machines for a particular type of vacuum closure made by different manufacturers, are interchangeable with similar machines made by other manufacturers, or may be made so with relatively minor modifications. Such machines cannot be used to apply screw type metal closures and they operate at much higher speeds than machines for the application of screw type closures.

The White Cap Company, now a subsidiary of Continental, is the leading manufacturer of vacuum type closures. Other manufacturers include Anchor-Hocking, Owens-Illinois and Crown Cork & Seal. In 1956 White Cap produced approximately 60% of the vacuum closures made from tin [fol. 4267] plate. A recent development, apparently pioneered by White Cap, is the twist-off vacuum closure which is used for the same general purposes as other vacuum closures.

(c) Some screw and lug type metal closures are made of tin plate with various kinds of linings. Others are made of aluminum or plastic. It does not appear that screw and lug type closures made of different materials have end uses substantially different from one another. Closures of this type are normally used on glass containers.

These closures engage the glass container by screwing into continuous threads in the neck of the container. They cannot be used where a vacuum is required and in general are not used for food products for which vacuum metal closures are needed because of spoilage problems. Screw and lug type closures are used on both food and non-food products.

There are at least 18 companies manufacturing screw and lug type metal closures, including Owens-Illinois, Crown, Ball Bros. and Hazel-Atlas. In 1958 Hazel-Atlas produced

approximately 4.7% of the screw and lug type metal closures shipped in the United States. There are several companies, including Owens-Illinois, which manufactured both metal and plastic type screw and lug type closures, the [fol. 4268] uses of which appear to be substantially interchangeable. From 24 to 36 companies make plastic screw type closures.

The statistics in the record relating to closures do not include metal closures used in home canning, alminum closures, plastic closures or paper caps, though Hazel-Atlas made home canning closures as well as screw and lug type closures for commercial packing. With the exception of home canning jars sold with closures attached, glass containers and closures for them are sold separately. Closures are sold by the manufacturer directly to packers and there appear to be no wholesalers or jobbers of these products. Closure customers generally have multiple sources of supply. There is no evidence that prices of one type of closure have any effect on the sales volume of any other types.

There is no shortage of raw materials necessary to manufacture closures. There was no showing that there were any substantial obstacles to entry into any of the closure fields.

Crown caps, vacuum type closures and screw and lug type closures have in the main quite different uses and do not significantly compete with one another. However, competition within each of the respective screw type, vacuum type and crown cap fields has been and remains keen and [fol. 4269] vigorous and there does not appear to have been any significant diminution in the number of companies engaged in these respective fields either before or after the acquisition.

IV

The contentions of the parties.

(1) Lines of commerce and sections of the country claimed to be relevant.

A year and a half before the commencement of the trial, the Government, in answer to defendants' interrogatories, specified with particularity ten separate lines of commerce which it claimed were adversely affected by the acquisition

under attack. The lines of commerce so specified remained unchanged throughout the exhaustive pre-trial proceedings in which the issues to be tried were carefully limited and defined, and during the six weeks of the trial itself.

The ten lines of commerce are as follows:[34]

[fol. 4270]

1. The packaging industry.
2. The can industry.
3. The glass container industry.
4. Metal closures.
5. Containers for the beer industry.
6. Containers for the soft drink industry.
7. Containers for the canning industry.
8. Containers for the toiletries and cosmetic industry.
9. Containers for the medicine and health industry.
10. Containers for the household and chemical industry.

The Government contended that the relevant geographic market in which adverse effects of the acquisition were felt in each of these ten lines of commerce was the United States as a whole. It contended also that in lines of commerce numbered 2, 3, 5, 6, 7, 8, 9 and 10 there were adverse effects in two separate sections of the country, as well, (a) the United States east of the Rocky Mountains, and (b) the United States west of the Rocky Mountains.

No discussion of the attempted distinction between the areas east and west of the Rocky Mountains is necessary here. The evidence wholly failed to establish that, in the context of this case, there were any differences between

[34] The lines of commerce are listed here in what seems to me to be the logical order in which they should be discussed. The order in which they were listed by the Government in its interrogatories, which I followed in my oral decision, was as follows:

1. Containers for the canning industry. 2. Containers for the beer industry. 3. Containers for the soft drink industry. 4. Containers for the toiletries and cosmetics industry. 5. Containers for the medicine and health industry. 6. Containers for the household and chemical industry. 7. The can industry. 8. The glass container industry. 9. Metal closures. 10. The packaging industry.

these areas or between either of them and the United States as a whole indicating that they constituted economically significant separate geographic markets in any [fol. 4271] of the lines of commerce specified. Nor was there evidence that such effects of the acquisition as might be felt were any different in different sections of the country. The only "section" of the country which was relevant was the United States as a whole. That is the geographic market with which we are conderned here.

The defendants agreed with the Government that the can industry and the glass industry were separate lines of commerce for Section 7 purposes. They contended, however, that the other eight lines of commerce specified did not in fact exist and that there were no such separate relevant product markets or sub-markets.

Hazel-Atlas, said the defendants, was engaged in two lines of commerce, glass containers and screw and lug type metal closures and these were the only relevant markets in so far as it was concerned. They said further that the only relevant product markets in which Continental was engaged were metal cans, plastic bottles, crown caps and vacuum type closures.

Thus defendants contended that there were but six separate and distinct relevant lines of commerce or product markets. Moreover, they took the position that the lines of commerce in which Hazel-Atlas and Continental were respectively engaged, were quite different and did not overlap to any significant degree.

[fol. 4272] (2) Claims as to anti-competitive effects.

The Government conceded that it had no proof that any person or firm, seller or buyer, suffered any actual injury as a result of this acquisition, although the trial took place more than three and a half years after it occurred. There were no complaining witnesses. None of the 78 witnesses whom the Government placed on the stand testified to any actual anti-competitive effects or tendency to monopoly. There was no evidence of actual anti-competitive effects or tendency to monopoly in this record.

The Government's case was predicated upon what it claimed were potential anti-competitive effects.

As its standards for determining whether such effects

were reasonably probable, the Government advanced four criteria referred to in the House Report on the 1950 amendment to the section.[35] It claimed that the acquisition (1) had eliminated in whole or in material part the competitive activity of Hazel-Atlas which had been a substantial factor in competition with Continental; (2) had increased the relative size of Continental to such point that its [fol. 4273] advantage over its competitors threatened to be decisive; (3) had resulted in an undue reduction in the number of competing enterprises; and (4) had established relationships between buyers and sellers which deprived their rivals of a fair opportunity to compete.

The Government also stressed a statement in the Senate Report on the 1950 amendment that the statute was intended "to cope with monopolistic tendencies in their incipiency and well before they have attained such effects as would justify a Sherman Act proceeding . . . ."[36] It emphasized prior acquisitions by Continental of companies in the metal can and other fields, and urged that when Continental acquired Hazel-Atlas, the process of acquisition had reached a stage where it was reasonably probable that anti-competitive effects would occur and that the acquisition was therefore unlawful.

The Government took the position that, while the anti-competitive effects referred to in the House Report might not be apparent presently, it was probable that they would occur in the future in each of the lines of commerce which it attempted to delineate.

[fol. 4274] Defendants, on the other hand, while conceding that the criteria referred to in the House Report might be relevant considerations in an appropriate Section 7 case and that, in appropriate circumstances, a continuing process of cumulative acquisition might become unlawful, insisted that there was no substitute for a showing that there be reasonable probability of substantial anti-competitive effects or tendency to monopolize in the product markets relevant to the case under consideration. They pointed out that the intention of Congress to cope with restraints of trade and monopolistic tendencies in their

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[35] H. R. Rep. No. 1191, 81st Cong., 1st Sess., 8.

[36] S. Rep. No. 1775, 81st Cong., 2nd Sess. 4.

incipiency was carried out by the concept of reasonable probability embodied in the statute and that this was the sole standard to be applied to the particular facts of each case.

Defendants also pointed out that Section 7 cannot be applied mechanically or quantitatively but that each case must be decided on its own facts. They maintained, moreover, that in any event, the Government could not prevail since there was a complete failure of proof here.

They urged that Hazel-Atlas and Continental did not compete with one another to any significant degree and there was no reasonable probability that they ever would; that the merger was utterly devoid of anti-competitive [fol. 4275] significance; and that it had not resulted and there was no probability that it would result in any substantial lessening of competition or tendency toward monopoly in any of the lines of commerce delineated by the Government or in any other lines of commerce.

V

Uncommon features of the case

This case does not fit into any of the classic anti-trust patterns. It deals with three separate and distinct industries manufacturing separate and distinct types of products.

As the earlier discussion indicates, each type of container is made from different raw materials and each had different physical characteristics and properties. Different plant and machinery are required for each and the processes of manufacture are different. The different types of containers manufactured by these different industries are of wide varieties of sizes and shapes and are put to hundreds, if not thousands, of different end uses.

Concededly there was substantial and vigorous inter-industry competition between these three industries and between various of the products which they manufactured. Metal can, glass container and plastic container manufacturers were each seeking to enlarge their sales to the thou- [fol. 4276] sands of packers of hundreds of varieties of food, chemical, toiletry and industrial products, ranging from ripe olives to fruit juices to tuna fish to smoked

tongue; from maple syrup to pet food to coffee; from embalming fluid to floor wax to nail polish to aspirin to veterinary supplies, to take examples at random.

Each industry and each of the manufacturers within it was seeking to improve their products so that they would appeal to new customers or hold old ones. Hazel-Atlas and Continental were part of this overall industrial pattern, each in a recognized separate industry producing distinct products but engaged in inter-industry competition for the favor of various end users of their products.

It does not necessarily follow from this, however, that the acquisition of Hazel-Atlas by Continental falls within the ambit of Section 7 of the Clayton Act. That section of the act deals specifically with relevant product markets and the lessening of competition within them. The fact that there is inter-industry or inter-product competition between metal, glass and plastic containers is not determinative of the metes and bounds of a relevant product market.

[fol. 4277] As the Supreme Court said in the *Cellophane* case:[37]

> "Determination of the competitive market for commodities depends on how different from one another are the offered commodities in character or use, how far buyers will go to substitute one commodity for another. For example, one can think of building materials as in commodity competition but one could hardly say that brick competed with steel or wood or cement or stone in the meaning of Sherman Act litigation; the products are too different. This is the interindustry competition emphasized by some economists. See Lilienthal, Big Business, c. 5."[38]

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[37] United States v. E. I. duPont de Nemours & Co. (Cellophane), 351 U.S. 377, 393 (1956). See also Kansas City Star Company v. United States, 240 F. 2d 643 (8 Cir. 1957), *cert. den.* 354 U.S. 923 (1957).

[38] Illustrations of inter-industry competition given in Lilienthal, Big Business: A New Era (1952), c. 5, referred to by Mr. Justice Reed, include copper and aluminum; coal and oil; cotton, wool and synthetic fibres; trucks, automo-

Thus the relevant product market for anti-trust purposes by no means includes all substitutes. In this connection the Court said in the *Times-Picayune* case:[39]

> "For every product, substitutes exist. But a relevant market cannot meaningfully encompass that infinite range. The circle must be drawn narrowly to exclude any other product to which, within reasonable [fol. 4278] variations in price, only a limited number of buyers will turn; in technical terms, products whose 'cross-elasticities of demand' are small."

This appears to be what the Court had in mind in *Brown Shoe* when it said:[40]

> "The outer boundaries of a product market are determined by the *reasonable* interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it." (Emphasis added.)

In this case the circle referred to in *Times-Picayune* cannot be drawn to include within the boundaries of a single product market the metal can, glass container and plastic container industries and their wide variety of products. Attempts by the Government here to combine these separate industries and their products or to combine separate and distinct products from separate and distinct industries into single product markets necessarily failed because appropriate distinctions were not made between inter-industry or overall commodity competition and the type of competition between products with reasonable interchangeability of use and cross-elasticity of demand which has Clayton Act significance.

[fol. 4279] The boundaries of a product market or submarket may only be determined "by examining such prac-

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biles, buses and airplanes; iron, copper and plastic pipe; glass, concrete, brick and asbestos building and insulation materials, and *even glass, cans, and plastic bottles.*

[39] Times-Picayune Publishing Co. v. United States, 345 U.S. 594 (1953) at p. 612, fn. 31.

[40] Brown Shoe Co. v. United States, *supra*, p. 325.

tical indicia as industry or public recognition of the [market] as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors." [41]

Nevertheless, the Government here has made an attempt to establish a product market embracing all of these separate industries and products and many more in the line of commerce which it denominated as the packaging industry. The theory upon which it proceeded on this line of commerce is illustrative of its failure to make the distinctions I have pointed out.[42]

Moreover, with the exception of the lines of commerce denominated as the metal can industry and the glass container industry, each of which were conceded to be separate product markets and the line denominated "containers for the beer industry" which I have found to be a separate product market, the Government also ignored these concepts in attempting to combine products produced by [fol. 4280] separate industries, which were not shown to have reasonable interchangeability of use or cross-elasticity of demand, into relevant lines of commerce. Examination of such practical indicia for determining product markets as were in the record did not establish that there were such lines of commerce. These lines of commerce were artificially carved out by the Government and did not conform to the realities of the marketplace.

We therefore do not have here the pattern of a horizontal combination between two companies which manufacture or sell the same products, as the Government seemed to assume. Nor are we concerned with the pattern of a vertical combination. Neither Continental nor Hazel-Atlas was engaged in any essential step in the processing, manufacture or sale of products made or used by the other.[43]

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[41] Brown Shoe Co, v. United States, *supra*, p. 325.

[42] See discussion of "The packaging industry", pp. 66 to 70 *infra*.

[43] But see discussion of corrugated shipping cartons, *infra*, pp. 81-8 and containers for the beer industry, *infra*, pp. 87-94.

What we have here, basically, is a conglomerate combination in which one company in two separate industries combined with another in a third industry for the purpose of establishing a diversified line of products suitable for a variety of end uses to be sold to a wide range of customers with differing packing requirements.

> [fol. 4281] "Such a merger * * * does not have the effect of automatically foreclosing to competitors any market outlet or source of supply as in a vertical merger, nor does it have the effect of automatically eliminating a competitor as in a horizontal merger." [44]

Here the Government moved into virtually uncharted Section 7 territory. In the twelve years since Section 7 was amended there are apparently only two other cases raising this exceptional problem. They are United States v. General Motors (Euclid Road Machinery) which is currently pending in the District Court for the Northern District of Ohio, and the Procter & Gamble case before the Federal Trade Commission which has just been cited. A third case, United States v. General Dynamics, filed in this district on November 8, 1962 and as yet undetermined, may also involve the same problem to some extent.

To complete the background I should add that I have been unable to find any case dealing with a pattern of inter-industry and inter-commodity competition comparable to that which exists here nor in which the diversification of products, industries and consumers is so pervasive.

This is not to suggest that enforcement of Section 7 [fol. 4282] may not be extended beyond the range of any of the cases thus far decided. For, as both *Brown Shoe* and the legislative history which it reviews make clear, Section 7 is applicable to conglomerate mergers where the facts warrant.[45] But there must be evidence that the facts warrant such application.

Understandably the case of a conglomerate merger set in such a complicated inter-industry pattern as this presented great difficulties of proof for the Government. But

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[44] Procter & Gamble Co., 3 C.C.H. 1961 Trade Reg. Reports (¶ 15,245; F.T.C. Orders), at p. 20,257.

[45] Brown Shoe Co. v. United States, *supra*, p. 317.

that does not mean that the Government's burden was lessened or that it was relieved from the obligation of establishing relevant product markets or of showing reasonable probability of substantial anti-competitive effects in one or more of them as a result of the acquisition. In fact, in the case of a conglomerate merger such as this, where such a wide diversity of factors bear on questions of relevant markets and anti-competitive effects within them, the Government must be at pains to examine in detail all practical indicia which might bear on both questions.[46]

[fol. 4283] In the case at bar the Government not only failed to do this but the evidence concerning such indicia as were examined was woefully inadequate. Even assuming that the theory upon which the Government sought to construct its line of commerce for the packaging industry, for example, were tenable, it conspicuously failed to adduce any evidence whatsoever to support its theory, as I shall point out in detail later. In the lines of commerce denominated containers for the soft drink, canning, toiletry and cosmetic, medicine and health, and household and chemical industries, moreover, its proof was also altogether deficient as to practical indicia showing that such product markets as these in fact exist. It failed to establish that these were relevant lines of commerce.

The Government's failure of proof was not confined to its attempted delineation of end use and other lines of com-

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[46] The comments of the Federal Trade Commission with respect to the standards of proof required in such a situation are not inappropriate:

> "• • • the same tests apply as in any other matter coming within the purview of Section 7, but since a conglomerate acquisition does not have the above-mentioned 'automatic' effects of a vertical or horizontal merger, such a determination is necessarily difficult to make from a consideration of evidence relating solely to the competitive situation existing in the relevant market prior to the acquisition and to the pre-merger status of the acquired and acquiring corporations. Consequently, a consideration of post-acquisition factors is appropriate [as well]." Procter & Gamble Co., *supra*, p. 20,258.

merce. Its failure was equally evident with respect to anti-competitive effects in the can industry, the glass industry and the beer container lines of commerce which it was successful in establishing.

[fol. 4284] Plainly, in order to make out a case under the Act the Government was required to show either that the acquisition had actually resulted in a significant diminution of the vigor of competition or that there was reasonable probability that it would do so. Unless it showed that there were actual anti-competitive effects of a substantial nature, which it did not, the reasonable probability test had to be met. As I have mentioned, there is no evidence of actual anti-competitive effects in this record, substantial or otherwise and the Government did not proceed on that theory.

Thus, the Government had to establish the reasonable probability of substantial anti-competitive effects from this acquisition and it had to do so under the facts and circumstances of this case and within the framework and context of the industries and markets specifically involved.

The Government was not able to sustain this burden. Its case was based on what it claimed to be anti-competitive effects which *might* occur in the future. No doubt if the evidence here had shown that there was a reasonable probability that future effects of a substantial nature would occur, sufficient would have been shown to make out this [fol. 4285] element of the case.[47] But no such showing was made. It is a far cry from *might* occur to a reasonable probability of occurring.

Reasonable probability of the lessening of competition in the future is just as much subject to evidentiary proof as is actual lessening of competition. Mere speculation or conjecture cannot be substituted for proof of reasonable probability. Nor are mere possibilities that competition might be lessened in the future, or inferences to that effect, sufficient.

In the absence of evidence of reasonable probability of anti-competitive effects the Government has speculated as to what might occur and has substituted what are at best mere possibilities for reasonable probabilities.

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[47] Brown Shoe Co. v. United States, *supra*,

For example, the Government laid great stress throughout on prior acquisitions by Continental and urged that the overall history of such acquisitions impels the conclusion that the Hazel-Atlas acquisition was repugnant to the statute.

It is plain that the Act requires intervention in a cumulative process of acquisitions where the effect may be a significant reduction in the vigor of competition in any line of commerce.[48] But this cannot be assumed. It can [fol. 4286] only be established by showing that such effects had in fact occurred or that it was reasonably probable that they would. There is no such proof in this record.

The evidence as to prior acquisitions here is confined to two documents which were answers by Continental in 1946 and in 1956 to inquiries made by the Government and passing references in a letter in which Continental outlined to the Anti-Trust Division its position with respect to the proposed acquisition of Hazel-Atlas.[49] All that these documents show is that Continental has, over a period of many years, acquired a substantial number of companies, or portions of companies, in a wide variety of businesses.

Many of the acquisitions were made a number of years ago in the 1920's and the 1930's. Many were extremely small. Some were the result of liquidation sales. Some appear to have been cleared with the Department of Justice or to have had its tacit approval. Some were located in Canada. Some of the companies acquired were subsequently sold.

None of the companies acquired in the ten years prior to suit were can companies. No glass company had ever [fol. 4287] been acquired before. As I will point out a little later, the objectives of the acquisitions carried out over the last ten years at least, and of a number before that, were to diversify Continental's product lines.

The Government did not show what the effects of any of these acquisitions were, cumulative or otherwise. There was no evidence that they had any anti-competitive effects in any of the industries or product markets to which they

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[48] Brown Shoe Co. v. United States, *supra*, pp. 318, fn. 32, 333-334, 345, fn. 72.

[49] G-785, G-786, G-900.

were related. The Government's conclusion that anti-competitive effects will necessarily flow from this merger because of Continental's prior acquisitions is pure conjecture, unsupported by evidence.

Indeed, such evidence as there is tends to negative such a conclusion. Continental's letter to the Anti-Trust Division, outlining its position with respect to the proposed acquisition,[50] states its purposes and intentions in making the acquisition.

Plainly, purpose and intention are not in any way controlling in a Section 7 case. But purpose and intention are factors which may be taken into account together with all the other factors in the case in predicting the probable [fol. 4288] future conduct of the parties and the probable effect of the merger.[51] Viewed in that context purpose and intention may throw some light on the effects which might reasonably be anticipated from the merger.

The Government placed heavy reliance on Continental's letter stating the purpose of the acquisition. As expressed in that letter the purpose was a further diversification of Continental's various lines of products to include for the first time a glass container division.

The history of prior acquisitions by Continental indicates its design to diversify increasingly so as to be able to maintain independent lines of various kinds of materials used by packers of many kinds of products and to service a wider variety and number of customers. As a result of this program, apart from metal cans, other products which it had come to produce included fibre drums, kraft liner board, flexible packaging materials, plastic containers, crown caps, vacuum type metal closures, various types of can and closure machinery, paper cups and plates, and steel pails. By the acquisition of Hazel-Atlas, Continental further diversified its product lines to include glass containers and other glass products, screw and lug type [fol. 4289] metal closures and home canning closures.

There was no evidence that Continental's program of diversification resulted in the suppression of new lines which it acquired. Nor was there evidence that competi-

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[50] G-900.

[51] Brown Shoe Co. v. United States, *supra*, p. 329, fn. 48.

tion in these lines was curtailed or that any pressures, either directly or indirectly, were brought in any of them which tended to create any anti-competitive effects. Though the case was tried almost four years after the acquisition, far from indicating that there had been any such post-acquisition effects, the evidence was to the contrary. This is especially significant in the case of a conglomerate merger such as this.[82]

The announced, and, indeed, actual policy which Continental followed was to encourage development of the new lines in separate corporate divisions and to promote intra-company competition so as to strengthen its overall ability to compete with other companies in the different industries and different product lines in which it was doing business.

There are no indications in the record that the acquisition tended either to weaken the position of Hazel-Atlas as a competitive factor in the glass industry or in any of its product lines, or to weaken Continental's position as [fol. 4290] a competitive factor in the metal can industry or in its product lines. Nor is there anything to show that such positions were so strengthened as to have any significant anti-competitive effects in any of the industries or markets involved here.

In the light of the situation in the metal can and glass container industries, the apprehension expressed by the Government that Continental was likely to eliminate or limit the manufacture of glass containers after the Hazel-Atlas acquisition or to eliminate or limit some of its can lines, is not only unsupported by the evidence but also unfounded. In fact any such course would have run counter to Continental's concept of the theory and purpose of its diversification program.

The Government views with alarm every advantage which Continental or Hazel-Atlas might gain as a result of the merger and sees in each the spectre of anti-competitive effects. But the mere fact that the competitive position of acquiring or acquired companies may be improved by a

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[82] Procter & Gamble Co., *supra*, p. 20,258.

merger does not establish that the merger is harmful or has any of the proscribed anti-competitive effects.[53]

[fol. 4291] The test is not whether, as a result of a merger, either the acquired or acquiring company obtains advantages which help it to compete more effectively. Obviously were this so, any merger permitted under the Act could have no sound business justification. The object of the Clayton Act is not to discourage business from taking steps to compete more effectively but to keep competition vigorous and effective. Opportunities to offer improved products, to make cost reductions or to give better service to customers are not in themselves indications of anti-competitive effects. These are all legitimate business objectives. "It may well be that by effecting a better arrangement for a more profitable undertaking * * * competition would be stimulated rather than lessened."[54]

Thus, the Government could not have succeeded here merely by showing that there were competitive advantages accruing to the acquiring or acquired companies or both from the merger. It is the *anti*-competitive effects of the merger with which the statute is concerned—that is to say, the lessening of the vigor of competition, rather than the converse. Competitive advantages are not proscribed unless there is a reasonable probability that anti-competitive [fol. 4292] effects of some significance in the relevant product markets will result. No such showing was made.

The Government also contended that "concentration" in the industries and product markets involved resulted from the merger which should be considered as a key factor in establishing that there was reasonable probability of anti-competitive effects or tendency to monopoly.

Concededly Continental was a very large corporate entity. So to a much lesser degree was Hazel-Atlas. They stood second and third respectively in their industries and each had substantial shares in different product markets.

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[53] Brown Shoe Co. v. United States; *supra*, pp. 319-320. See also Address by Attorney General Robert F. Kennedy, Economic Club of New York, Nov. 13, 1961.

[54] 96 Cong. Rec. 16,456 (1950) (Remarks of Senator O'Conor.)

It is not to be doubted that size and market shares are factors to be taken into account in determining anti-competitive effects and tendency to monopolize. But mere size or concentration alone are not decisive. As the Supreme Court has said, exclusively mathematical tests are to be avoided.[55]

Such tests are particularly inapposite where a conglomerate merger is under scrutiny. In such a situation the Supreme Court's stricture that the merger must be "functionally viewed, in the context of its particular industry"[56] [fol. 4293] becomes especially meaningful.

A conglomerate merger does not result in the elimination of a competitor but merely substitutes the competition of the acquiring company for that of the acquired company in the lines of commerce in which the acquired company was formerly engaged. Thus, such a merger does not in itself result in any increase in industry or product market concentration and the shares of the acquiring and acquired companies in their respective product markets are the same as they were before.

Of course, if the product markets served by the acquiring and acquired companies are closely tied together, it is possible that substantial competitive advantages may accrue which could result in changes of market positions. It was not shown that this was the situation here, however, and though, at the time of trial three and a half years had elapsed since the merger, there was no indication either that any such changes had occurred or were reasonably likely to occur.

The record here is replete with statistics. Basic figures have been combined, separated, recombined and then combined again. Many of these combinations have no sound statistical basis and are predicated on implausible hypotheses [fol. 4294] not supported by evidence. Figures have been placed in unnatural and illogical groupings without re-

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[55] Brown Shoe Co. v. United States, *supra*, p. 321, fn. 36. See also A. G. Spalding & Bros., Inc. v. Federal Trade Commission, *supra*, pp. 625-626; Crown Zellerbach Corporation v. Federal Trade Commission, *supra*, p. 826.

[56] Brown Shoe Co. v. United States, *supra*, pp. 321-322.

gard to dissimilarity of products, separate and distinct industrial patterns or the realities of the marketplace. This was particularly evident in the proof concerning the last five lines of commerce where the Government unsuccessfully attempted to combine different products produced by different industries solely in terms of end uses.[57]

The 78 witnesses place on the stand by the Government included, in addition to one can manufacturer, 18 representatives of glass container manufacturers, several plastic container manufacturers, three minor food packers, and a number of firms manufacturing toiletries, cosmetics and drugs.

Yet the Government failed to adduce testimony from these witnesses from which inferences or conclusions could be reasonably drawn that there was reasonable probability of anti-competitive effects or monopolistic tendencies. These witnesses, instead, gave a picture of keen and vigorous competition within the industries and markets with [fol. 4295] which they were respectively familiar and between such industries and markets and the other industries and markets involved, both before and after the acquisition. None of them gave evidence tending to show either that the merger had in fact lessened competition in any line of commerce or that there was any reasonable probability of its doing so.

Viewing the evidence as a whole, quite apart from theory, there was a total failure by the Government to establish the essential elements of a violation of Section 7. As will be apparent from a discussion of the proof relating to each specific line of commerce, the Government did not lay either the statistical or testimonial foundations required to establish its case. It was this failure of proof which required the dismissal of the complaint and entry of judgment for the defendants.

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[57] These lines of commerce are containers for the soft drink industry, pp. 95-102, *infra*, the canning industry, pp. 103-112, *infra*, and the toiletries and cosmetic industry, the medicine and health industry, and the household and chemical industry, pp. 112-122, *infra*.

VI

The proof as to the lines of commerce specified by the Government [58]

(1) "The packaging industry."

The claim of the Government as to this line of commerce [fol. 4296] was dismissed during the oral argument of defendants' motion made at the close of the Government's case.

The evidence in the record on which the Government relied to establish what it called "the packaging industry" product market was confined to the mid-1956 letter from Continental answering Department of Justice inquiries concerning its proposed acquisition of Hazel-Atlas.[59] In that letter Continental outlined its diversification program and stated it was attempting to provide "tailor-made packaging" for a wide variety of products. In discussing this program the letter used the generic but undefined term "the packaging industry."

As requested, the letter estimated the percentage of the national market held by Continental in various groups of products for the year 1955. The products listed included metal cans, steel pails, lithographed kitchenware made of tin plate, unspecified military items, can closing equipment, metal closures, cork products, low pressure laminates, injection molding, rigid plastic containers, squeeze bottles, plastic pipe and fittings, paperboard, paper products (including paper cups and plates, nested containers and fibre drums) and flexible packaging.

[fol. 4297] The estimates made by Continental of its share of the markets in these various products ranged from less than 2% in such product categories as paper board and injection moldings, to 31.4% in metal cans, and in the single instance of fibre drums, to approximately 80%. With respect to several products no figures were available from

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[58] The lines of commerce will be discussed in the order in which they are listed at page 41, *supra*.

[59] G-900. See *supra*, p. 58.

which any informed estimates could be made and some of the products listed, such as plastic pipe, were no longer produced by Continental.

In addition to these product categories the Government apparently also sought to include within this line of commerce corrugated shipping cartons and other products manufactured by Gair, and glass containers, glassware, screw type metal closures and closures for home canning jars produced by Hazel-Atlas.

There was no definition of the boundaries of this alleged line of commerce in the record. Nor were there any universe figures for it. The Government offered in evidence a table purporting to compare the value of all packaging materials sold in 1957 and 1958 with the net sales and operating revenues of Continental for these years.[60] The table was excluded because there was no substantiation [fol. 4298] whatsoever of the overall figures which it contained. The comparisons which the table attempted to make between Continental's sales and revenues and the value of all packaging materials sold were shown to be utterly unsound statistically and entirely unsupportable. During the colloquy concerning the admission of this exhibit, it became apparent that the Government conceived of "the packaging industry" as involving a sales volume of more than ten billion dollars. The products which it sought to include fell into 43 general categories, each of which was sub-dividable into countless individual items. The products ranged from cooperage to grocery boxes, from transparent film to steel drums, from pill boxes to plastic and glass carboys, from fruit and vegetable baskets to plastic tubes and from Christmas wrappings to cigar boxes. Here we are veritably wandering in a sort of Clayton Act Wonderland where there is talk "of shoes—and ships—and sealing wax—of cabbages—and kings . . . ."[61]

It is manifest that the broadest application of the product market test of "reasonable interchangeability of use or

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[60] G-803(5c) for id.

[61] Lewis Carroll (Charles Lutwidge Dodgson), *Through the Looking-Glass and What Alice Found There*, Chap. IV, Stanza 11.

cross-elasticity of demand" could not possibly encompass this wide diversity of products and there was no evidence [fol. 4299] that it did. Nor was there any evidence concerning industry or public recognition of the market, peculiar characteristics and uses of the products involved, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, specialized vendors, or any of the other practical indicia by which a product market may be determined. [62]

Moreover, the record does not even show the names of the companies which were claimed to be a part of the industry, to say nothing of where they were located, what their annual sales were, or anything about them. There is nothing at all in this record from which it could be found that a relevant "packaging industry" product market exists.

Furthermore, there was no evidence at all about competition within this alleged market, let alone anti-competitive effects. In sum, there was complete failure of proof.

(2) "The metal can industry."

The defendants conceded that this line of commerce, as delineated by the Government, was a separate and relevant product market, and I have so found. Thus, the Government's burden was confined to establishing that, in this [fol. 4300] product market, there was reasonable probability of substantial anti-competitive effects resulting from the acquisition.

The Government claims that in this line of commerce, as a result of the acquisition:

(a) Continental's increase in size and diversity, and its consequent ability to offer a full line of container products, gave it an advantage over smaller and less diversified can manufacturers which threatened to be decisive.

(b) Entry into the industry was made more difficult and more unlikely than prior to the merger, and the possibility of new entry was significantly decreased.

(c) It was probable that similar mergers would be trig-

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[62] See discussion *supra*, pp. 10-11.

gered and that such further acquisitions would make effective competition less likely.

(d) Continental's incentive to push metal cans as against glass or plastic containers was reduced, and it was therefore less likely to be an industry innovator and pioneer.

(e) And finally, there was a tendency toward monopoly because the merger tended "to aggravate a general oligopolistic trend" in the industry.

[fol. 4301] We are dealing here with the effects of the merger in a specific line of commerce—the metal can industry. Unless the probability of substantial anti-competitive effects were shown in that industry, the Government case as to this line of commerce necessarily failed.

The Government's difficulty here was the same that it encountered so frequently in this trial. Its claims are pure speculation and, as far as I can discern, are not supported by any proof that it was reasonably probable that the claimed results would follow.

a. The Government urged that Continental obtained an advantage over its competitors in this industry which threatened to become decisive because of its ability after the merger to offer a "full line" of metal, glass and plastic containers, closures of various types and closure machinery. But there was no testimony that a can manufacturer obtained any particular competitive advantage by offering a full line of container products.

The only can manufacturer who testified was the Chairman of the Board of National Can, the No. 3 company in the industry, which manufactured general line and packers' cans only. His testimony was to the effect that Na-
[fol. 4302] tional was expanding its operations; that it had built a new plant as late as 1956; that competition in the industry was "tougher"; but that National's earnings figures had gone down somewhat since 1956 though to what extent was not shown. He did not testify that there was any competitive advantage to be obtained in the can industry from offering a full line of products. Nor did he indicate that whatever decline in earnings National had had since 1956 was in any way ascribable to the Hazel-Atlas-Continental merger.

No other can manufacturer was called to testify. No one else testified on this subject. There were no documents or figures in the record supporting the Government's contention.

Plainly Continental, by its diversification program, expected to be able to compete more effectively against the strong competition in this highly competitive market.[63] But on this record it would be sheer speculation to conclude that because this was so, anti-competitive effects were likely to occur, to say nothing of competitive advantages which threatened to become decisive. There was no evidence of any such probabilities.

b. Much the same can be said of the Government's contention that the acquisition made new entry into the industry more difficult and significantly reduced the possibility [fol. 4303] of such entry. The only evidence which might be considered to bear any relation to this contention is the testimony of the National Can Board Chairman that there had been no new company among the six top producers since 1935, and that of the Board Chairman of Owens-Illinois Glass concerning the metal can business which that company carried on between 1936 and 1944.

The National Can Chairman did not testify that there was undue difficulty in entering the metal can industry at any time. This can scarcely be inferred from the fact that competition in the industry was keen and vigorous and becoming increasingly so. It is of course always difficult to enter a highly competitive industry. But the Clayton Act was surely not designed to make an industry less competitive as as to encourage new entrants. It was designed to insure that competition remained keen and vigorous.

As to the Owens-Illinois experience, it appeared that this company acquired various metal can companies in 1936, made a profit from its can business immediately before the war and disposed of the business in 1944 when, because of the war, it was difficult to get the necessary supply of tin plate. It then sold its can business to Continental for $7,500,000. Continental did not acquire any other metal

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[63] See discussion supra, p.

[fol. 4304] can company in the ensuing sixteen years up to the time of the trial.

There was no other evidence in the record bearing on this contention. There was no showing that the amount of capital required to enter the industry was unreasonably large, that any unobtainable know-how was required, that there were any patent barriers to entry, or that any other factors made entry difficult for anyone desiring to go into the business. Indeed, there was no evidence at all concerning problems of entry at the time of the merger or subsequently.

Once again the Government's claim was based on sheer speculation unsupported by proof.

c. There was no showing that this acquisition would trigger further acquisitions of glass companies by can companies. To sustain this contention the Government seized on a passing mention by the Executive Director of the Glass Container Manufacturers Institute that he had heard a rumor to the effect that a relationship had recently been established between American Can and Wheaton Glass Company. The subject was dropped there and never referred to in the evidence again. The Government made no effort to call either American Can or Wheaton to find out anything about this. There was nothing to show the nature of the arrangement, the reasons for it, what it was all about, [fol. 4305] or indeed that it in fact existed. Nor was there anything to show that if it did exist it had any connection with or bore any relation to the Continental-Hazel-Atlas merger.

d. The Government fared no better on its claim that as a result of the merger Continental was likely to lose the incentive to push can sales at the expense of glass. The Government introduced no evidence showing either that there had been or was likely to be any slackening of effort to push can sales. On the contrary, as has been pointed out, the object of the merger was diversification, and Continental was actively promoting intra-company competition between its various product lines.[64] Since by far the largest propor-

[64] *Supra*, pp. 58-61.

tion of Continental's business was in metal cans, it scarcely seemed likely that cans would suffer at the expense of glass.

Moreover, subsequent to the merger Continental actively engaged in a vigorous research and promotion program in both its metal and glass container lines. In the light of the record and of the competitive realities, the notion that it was likely to cease being an innovator in either line is patently absurd.

e. Finally, the Government's claim that the acquisition [fol. 4306] would tend toward monopoly in the can industry rests on no firmer footing than the other claims just discussed. What the Government said it meant by this claim was that the merger would "tend to aggravate a general oligopolistic trend in an industry."

As far as I can discern, what the Government relied on in terms of specifics was that Continental had widely diversified its product lines by acquiring other companies engaged in different businesses and now has assets and sales in excess of one billion dollars.

The Government placed in the record figures purporting to show the share of Continental in the combined metal can and glass container industries based on alleged total unit production. At best these figures rest on a somewhat shaky statistical foundation. But even accepting them at face value, Continental's share of the combined industries in 1957 was less than 25% and it remained in second place behind American Can which does not produce glass containers. The competition in both industries has consistently been keen and vigorous. There are many strong competing companies in both industries and there was no evidence of any diminution of competition. No reasonable probability that the merger will tend to create a monopoly was shown or could reasonably be inferred.

[fol. 4307] (3) "The glass container industry."

This line of commerce, as delineated by the Government, was also conceded by defendants to be a separate and distinct product market and I have found that it was. Here, too, the Government's only obligation was to establish reasonable probability of substantial anti-competitive effects in a recognized product market.

Its claims were in large measure the same as those it made with respect to the metal can industry. It contended that the increased size and diversity of Continental after the merger, and its ability to offer a full line of container products gave it a competitive advantage in the glass container industry that threatened to become decisive; that entry into the industry had been made more difficult by the merger; that the acquisition would trigger self-defensive similar acquisitions; that there was less incentive for Continental to push glass at the expense of cans or plastics; and that there was a tendency toward monopoly in the industry.

All of these contentions failed for lack of evidence to support them. Little needs to be added here to what has been already said under the metal can line. Only additional features specifically bearing on the glass container industry will be discussed.

The evidence on which the Government relied to establish [fol. 4308] the likelihood of increased difficulty of entry into the industry as a result of the acquisition is illustrative of how flimsy its proof was on much of this case. The major emphasis was placed on a letter from Emhart Manufacturing Company, a producer of glass forming machinery, to the AntiTrust Division in 1958.[65] The Government urged that a paragraph of the letter headed "Glass Container Business Requirements" stated the factors showing difficulty of entry into this field. A reading of the paragraph on which the Government relies is illuminating:

> "It is Emhart's opinion based on its experience that an essential requirement in entering the glass business is to obtain the services of at least one good man of executive or managerial caliber, experienced in the art of manufacturing glassware. A great deal of know-how is required, but the glass technology and engineering services of Emhart and others specializing in this industry are available. Machine operators are usually obtained from the unions. A large amount of capital is required. A real problem exists in finding a market

[65] G-364.

for new production in competition with established manufacturers."

It is difficult to understand the claim that this paragraph supports the Government's position. The paragraph certainly does not show that entry into the glass container industry is any more difficult than would normally be ex-
[fol. 4309] pected in a well established highly competitive industry. The only indication as to what the statement "a large amount of capital is required" means is a proposal which Emhart made to Gallo Wine Company in 1956 with reference to the establishment, from the ground up, of a plant to meet Gallo's substantial wine bottle requirements. Emhart estimated the cost as slightly more than three million dollars, surely not an unreasonably large capital requirement for the institution of such an enterprise.

The Government's reliance on the failure of the Neville Island Glass Company in 1947, to show difficulty of entry in 1956, is just as far removed from reality.

This small company never got off the ground and lasted less than a year before it went into a Chapter X reorganization and was thereafter liquidated. As appears from the Section 167 report of its Trustee in Reorganization,[66] the company was doomed from its inception due to egregious under-capitalization, inadequate facilities, and incompetent management. Its failure, occurring nine years before the merger and thirteen years before the trial, proves precisely nothing.

As against this evidence, or lack of it, it appears that five new companies using Emhart machinery, and six other new companies, have in fact entered the glass container
[fol. 4310] field since 1950, some independent and some captive. In addition, new production facilities have been placed in operation throughout the industry at a rapid rate, the growth and expansion of the industry have been rapid, and competition has consistently been keen and vigorous.

The Government also urged that Hazel-Atlas obtained competitive advantages in the glass container industry which threatened to become decisive because the Gair Division of Continental manufactured corrugated shipping

[66] Defendants' Exh. J.

cartons in which glass containers are usually shipped. This is the one instance in this case where the Government contended that there was an aspect to the merger of a vertical nature since the shipping carton represents a not insignificant part of the cost of the glass container as shipped. But here again the proof failed to support the theory.

Owens-Illinois and Anchor-Hocking, among other major glass container companies, produced corrugated shipping containers for their own use. Other companies used local suppliers in the vicinity of their plants, generally more than one local supplier. Yet others, such as Ball Bros., both manufactured such containers themselves and brought locally.

Corrugated shipping containers are readily available in any quantities required. There was nothing in the record [fol. 4311] to show that Hazel-Atlas, which before the merger was third in the industry and did not manufacture cartons, or any other company which did not do so, was under the slightest competitive disadvantage against manufacturers who made their own. Nor was there any evidence that any significant competitive advantage was to be gained by producing cartons, much less a decisive advantage.

The Government's next contention was that significant competitive advantages in the glass container industry were likely to accrue to Continental as a result of the acquisition because it produced crown caps which were used to close glass beer and beverage bottles, vacuum type closures used to seal hermetically glass jars, and vacuum closure machinery. Once more the evidence failed to support the Government's theory.

There was nothing at all about any competitive advantages to be derived by a manufacturer who produced both glass bottles and crown caps. As I shall point out a little later, Hazel-Atlas did not manufacture beer or beverage bottles or any other narrow neck bottles on which crown caps are used, to any significant extent, nor was there any likelihood of its doing so.[67] On the other hand, Anchor- [fol. 4312] Hocking and Owens-Illinois were large manu-

[67] See pp. 90-91, 99-100, *infra*.

facturers of beer and beverage bottles. They did not manufacture crown caps. Their consistent positions in the industry make it manifest that they suffer no disadvantage from that fact. Plainly the crown cap contention has no merit.

As to vacuum closures and vacuum closure machinery—of the eighteen representatives of glass manufacturers who testified, seventeen did not refer to the subject of such advantages at all. The only glass manufacturer who mentioned it, the Vice-President of Brockway, indicated that there might be a sales advantage in selling both vacuum closures and glass containers. He said, however, that there was no reason why his company could not manufacture vacuum closures if it wished but that it had never chosen to do so. Significantly enough, according to his testimony, the sales of Brockway had risen from twenty-three million dollars in 1954 to fifty-one million dollars in 1959. It can scarcely be said that Brockway was significantly disadvantaged.

Owens-Illinois and Anchor-Hocking also make vacuum closures and machines for applying them. There was no evidence that any competitive advantages over other glass container manufacturers accrued to them because they did so.

The theory was also somewhat tentatively advanced by the Government that the Hazel-Atlas Division of Conti-[fol. 4313] nental would have a significant competitive advantage in the glass industry by having access to the confidential customer lists of Continental. The Government offered no proof whatsoever to sustain this theory and it was without support in the record.

In addition the Government advanced the converse of the proposition which it urged with respect to the metal can line—that as a result of the merger Continental was likely to lose the incentive to push glass container sales at the expense of cans. In view of what has been said concerning the purpose of Continental's diversification program and the course it pursued after the merger, it is no more likely that Continental would slacken its efforts to promote glass than that it would slacken its efforts to promote cans. Indeed, if it had planned to do so there would have been lit-

tle, if any, point to acquiring Hazel-Atlas, a major glass container producer.

Whether the Government's claims as to the effects of the acquisition in the glass container industry be considered separately or in combination, it showed no reasonable probability of substantial anti-competitive effects or tendency to monopoly in this industry as a result of the acquistiion.

[fol. 4314] (4) *"Metal closures."*

There are several types of closures used to close or seal containers, as I have already mentioned. They are made of a variety of materials, including tin plate, aluminum, plastic and paper.

The Government excluded from its "metal closure" line of commerce closures made of aluminum, plastic and paper and there were no statistics with respect to such closures in the record. It also excluded crown caps and home canning closures, both made of metal (tin plate). Thus the line of commerce which the Government defined as "metal closures" included only two types of metal closures—vacuum type closures and screw and lug type closures. The former were produced by Continental in its recently acquired White Cap Division but not by Hazel-Atlas, and the latter were made by Hazel-Atlas but not by Continental.

The proof offered by the Government failed to establish that vacuum type closures and screw and lug type closures can properly be combined into a single product market. In fact the evidence was to the contrary.

There was no public or industry recognition that such a product market existed. There was no showing of interchangeability of use, cross-elasticity of demand or cross-sensitivity of prices between the two distinct types of prod-
[fol. 4315] uct which the Government sought to bracket together. There were no distinct classes of customers or any specialized vendors for both products. Production facilities for the two were quite different.

These products do not have the same characteristics or end uses. Vacuum closures, whether of the side-seal, top-seal or roll-on variety, are used almost exclusively for heat sterilized food products packed in glass containers where a vacuum is required to prevent spoilage. Screw type clos-

ures of metal and plastic, on the other hand, are used both for foods and non-foods. There was no showing that screw type closures were used on foods which require vacuum packing, and, as far as appears here, they are generally used to pack different food products from those which require vacuum closures and for non-food products as well.

Vacuum closures are applied by machine. A number of companies which produced vacuum closures, including Continental (White Cap), Owens-Illinois and Anchor-Hocking, also produced and sold or leased machinery for applying them. The closure machinery made by one company can be used to apply vacuum closures made by other companies, in some cases with and in some cases without minor modifications.

However, machines which apply vacuum closures cannot be used to apply screw type closures. They operate differ- [fol. 4316] ently and much more speedily than screw type closure machines.

These two types of closures do not compete with one another to any significant degree, if at all. Each is in a quite distinct and separate line of commerce and I so find. Indeed, it appears that the Government has abandoned its contention that this combination of products constitutes a separate line of commerce by failing to request a finding to that effect.

In view of the failure to establish this as a line of commerce it is unnecessary to discuss anti-competitive effects of the acquisition within it, though, in any event, proof of such effects was wholly lacking.

(5) *"Containers for the beer industry."*

This is the first of the lines of commerce which the Government sought to define in terms of end use. It is composed of metal cans and glass bottles sold to brewers and used to package beer.

The proof indicates the following:

Beer can only be packaged in metal cans or glass bottles. The cans and bottles used to package beer are suitable only for that purpose.

Beer generates specific pressures which are peculiar to it.

[fol. 4317] Beer cans and bottles are therefore structurally designed to resist such pressures and are not suitable for liquids such as carbonated beverages which generate different pressures. Beer cans and bottles are made in the same sizes in terms of capacity. Cans used for beer have special linings. Because of the characteristics of glass, beer bottles need not be lined. Thus, beer cans and beer bottles not only have the same end uses but have some common characteristics.

Brewers constitute a distinct and limited class of customer for both and they are sold to no other customers. Either one or the other may be used by the brewer as he chooses.

The trade associations of both the metal can and glass container industries have made extensive studies of the competition between beer cans and beer bottles and the inroads which they have respectively made on one another. Individual manufacturers, including Continental, have made similar studies. Each industry and the individual manufacturers in each were actively engaged in promoting the sale of one container as against the other.

Individual manufacturers of beer containers in each industry are sensitive to competition from the other. There was recognition in each industry of virtual interchangeability of use and cross-elasticity of demand between the two types of containers used for this purpose.

[fol. 4318] Manufacturers of beer cans and beer bottles showed considerable interest in the prices charged for the competing container and it is a fair inference that there was some price relationship between the two.

Of course, in view of the fact that defendants' motion to dismiss was granted at the close of the Government's case only one side of the picture was presented. At that stage of the case, however, the proof adduced by the Government, standing as it did uncontradicted, established prima facie that this was a relevant product market.

The basis on which the defendants' motion to dismiss as to this line of commerce was granted was not therefore the Government's failure to establish the relevant product market but rather its failure to establish the reasonable probability of substantial lessening of competition or tend-

ency to monopoly in the market as a result of the Hazel-Atlas acquisition.

The statistics on which the Government relied to show the scope and extent of this product market were based on unit sales of cans and bottles.[68] These figures are of questionable accuracy with respect to beer can units because of [fol. 4319] the method of computation used,[69] and with respect to beer bottle units because no weight was given to the fact that most beer bottles are returnable and are refilled an average of twenty-two times by the brewer.

Nevertheless, the figures in the record were an indication of the overall size of the market. According to these figures shipments of beer cans and bottles exceeded 8.8 billion units in 1955, 9.3 billion in 1956, and 9.6 billion in 1957. This was plainly a large product market.

Although at one time almost all packaged beer was sold in bottles, in a relatively short period the beer can made great headway and may well have become the dominant beer container. Beer cans represented approximately 83% of the total in 1955 and approximately 83.7% in 1957, though, as has been noted, the failure to give weight to the returnable bottle factor distorts these figures.

[fol. 4320] Continental's share of the beer can market, measured by units shipped, ran from 43% in 1955 to 46% in 1957. Its share of both beer can and beer bottle shipments, disregarding the returnable bottle factor, ran from 36% in 1955 to 38% in 1957. It is apparent that Continental had a sizeable share of the total product market.

The participation of Hazel-Atlas in the product market is in sharp contrast. Before the merger in 1955 Hazel-Atlas shipped only 8/10ths of one percent of the total beer bottles

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[68] G-801(1d), (2d), (3d).

[69] The unit figures are arrived at by converting base boxes of tin plate to short tons of steel and then applying a conversion figure to the tonnage to arrive at a unit figure. The conversion figure is based upon a hypothetical number of beer cans which might have been produced from each short ton of steel consumed. Although the formula used is related to methods used by the Bureau of Census, the reliability of the outcome was not demonstrated.

shipped, disregarding the returnable bottle factor. It shipped only 2/10ths of one percent of returnable beer bottles. In 1957, over a year after the merger, its total beer bottle shipments, again disregarding the returnable bottle factor, had barely advanced to 1.1% of the total beer bottles shipped.[70] There were no figures as to its shipments of returnable bottles in 1957.

These figures show only the extent of the Hazel-Atlas participation in beer bottles and not in the market composed of beer cans and beer bottles together. Its share in this overall market was only 14/100ths of one percent in 1955 and 17/100ths of one percent in 1957. The Hazel-Atlas share of the beer container product market was completely [fol. 4321] insignificant and indeed practically non-existent.

At the time of the merger for all practical purposes Hazel-Atlas was not a competitive factor in this product market, nor had it ever been. The acquisition of Hazel-Atlas by Continental could not have lessened existing competition in the market to any remotely significant degree and there is no evidence that it did. Nor was Continental's position in the market strengthened to any significant degree by the acquisition. It remained in second place behind American Can and its role in the market was not appreciably affected.

The Government did not stress the claim that there was any actual lessening of existing competition in this line of commerce as a result of the merger. It contended, instead, that there might be anti-competitives effects in the future because the potential of Hazel-Atlas as a competitor in the manufacture of beer bottles had been eliminated. The difficulty with this position was that the evidence failed to show that, had the acquisition not taken place, there was any reasonable probability that Hazel-Atlas would become a significant competitive factor in the manufacture of beer bottles.

At the time of the acquisition Hazel-Atlas was primarily a manufacturer of wide mouth containers which could not [fol. 4322] be used for beer and had relatively few machines for the manufacture of narrow neck bottles. It did not

[70] G-801(1d), G-800I.

make amber glass, required for most beer bottles, in any quantity. It was not able to produce beer bottles economically. Though it filled an occasional order it did not consider itself to be a manufacturer of beer bottles.

There was evidence that some of its wide mouth manufacturing machinery could have been converted to narrow neck manufacture at relatively little expense and that it would have been able to convert its flint glass tanks to the manufacture of amber glass had it desired to do so. But the record is devoid of evidence that it had any intentoin of so doing, or any reason for such a step which could have been taken only at the expense of its regular product lines.

Hazel-Atlas had no surplus capacity and its production was fully occupied with supplying its customers in the glass lines in which it had significant sales. Its plans to build a new plant in Plainfield, Illinois, had been deferred due to heavy increase in the costs involved. There was no intention, in any event, of using the proposed plant for the manufacture of beer bottles or of converting any of its existing facilities to such use. The Plainfield plant was planned for the purpose of producing the regular Hazel-Atlas product [fol. 4323] lines in the general Chicago area so as to bring it closer to that market and reduce fregiht costs.

Such scraps of evidence as there are concerning Hazel-Atlas's miniscule manufacture of beer bottles do not indicate that there was any likelihood of its becoming a significant competitor in the beer bottle field. There was a rumor that Hazel-Atlas was selling a few beer bottles on the West Coast in 1956 but there were also indications to the contrary. Two Hazel-Atlas salesmen in 1953, when it manufactured no beer bottles at all, referred to Owens-Illinois beer bottle prices in two unsolicited letters to the company. A Hazel-Atlas officer, in a speech made in 1954, made brief reference to limited experiments in amber glass. That is all there was on this subject. It was plainly not enough.

Of course, there was always the *possibility* that Hazel-Atlas might, at some undetermined time in the future, for some undetermined reason, have undertaken to become a significant manufacturer of beer bottles. That, however,

was mere speculation and by no means met the reasonable probability test.

There was no evidence in the record of any reasonable probability that the effect of the acquisition would be substantially to lessen competition or to tend toward monopoly [fol. 4324] in the beer container market.

(6) "Containers for the soft drink industry."

The Government attempted to define this line of commerce, in terms of end use, as comprising metal cans and glass bottles used to package "soft drinks." However, it is difficult to understand just what the Government intended the term "soft drinks" to mean.

The statistics produced to support this line of commerce are confusing. The table as to shipments of glass containers included in this line of commerce was headed "Beverage containers, returnable and non-returnable."[71] The table for metal can shipments included in the line was headed "Soft Drink Containers."[72]

"Beverages" apparently included bottled water, a variety of fruit juices and other unspecified drinks. One Government statistician, testifying on these tables, said that they included "mostly soft drinks" but that bottled water in carboys was also included. On the other hand, a [fol. 4325] food technician called by the Government testified that he considered soft drinks to be in the food category. Some fruit juice containers were classified as food containers, and orange drink in wide mouthed glass jars was classified under the heading "Dairy Products."

The Government's statistics were taken from Census Bureau figures, which in turn were derived from figures supplied by the Glass Container Manufacturers Institute. The Institute classified "beverages" as applying "to all bottles for soft drinks and water, carbonated or non-

[71] G-801(1e).

[72] G-801(2e). These statistics are predicated on the same theoretical computations as were used for beer cans —that is to say, unit base boxes of steel converted into short tons of steel, converted in turn into can units.

carbonated • • •." But this does not aid materially in resolving the confusion.[73]

There appeared to be no definition in the record of the term "soft drinks" as used in the metal can table but I will assume, for purposes of this discussion, that it includes at least carbonated and non-carbonated beveraegs.[74] [fol. 4326] The figures for glass and metal containers were combined in a third table purporting to show total container shipments of "glass and metal soft drink and beverage containers."[75] This is the table on which the Government relied to establish this line of commerce.

Assuming the line includes both carbonated and non-carbonated beverages, and perhaps other products, there is no evidence to establish that this is a separate and distinct product market.

The boundaries of the market were undefined and there was no showing of interchangeability of use or cross-elasticity of demand between the various types of containers

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[73] For example, G-1205 gives the following instructions for reporting to the Institute production of containers for dairy products:

> "This classification applies to all containers used by dairies. It includes milk and cream bottles, and it also includes cottage cheese jars, *orange and chocolate drinks when not in narrow neck beverage bottles.*" (Empbasis added.)

I assume that orange and chocolate drinks, when in narrow neck bottles are classified under beverages and, therefore, come under "soft drinks." But to confuse matters further, fruit juices, when in narrow neck bottles are included under containers for foods.

[74] There is no evidence to indicate whether or not G-802, Table 2e, the Government's table on metal soft drink containers lumps metal containers for both carbonated and non-carbonated beverages together, but in order for these figures to be at all relevant on this line of commerce they must be consistent with those used for glass containers and with the term "soft drinks" as used by the Government.

[75] G-801(3e).

included. In fact, carbonated beverages generate even more pressure than beer, and bottles and cans used for those purposes must be specially designed to withstand such pressures. They have different physical characteristics from bottles and cans used for other soft drinks.

The practical indicia to be examined did not show that a product market consisting of carbonated and non-carbonated beverages and soft drinks exists and I have found that no such market was established.

However, after the case was concluded there were indi- [fol. 4327] cations that the Government's position changed and that it then sought to have this line of commerce confined to carbonated beverages only. If this be so, the Government shifted its position with respect to this line at a very late date indeed. But assuming this change in position to be permissible, the Government is faced with the difficulty that no record was made to support its altered theory.

There were no universe or total unit figures and no breakdown figures in the record showing shipments of carbonated beverage containers, taken by themselves, as distinguished from soft drink and beverage containers generally. In the absence of such figures it is manifestly impossible to determine the extent of such a market or the shares of Continental, Hazel-Atlas and other manufacturers in it.

But quite apart from the failure of the Government to establish a carbonated beverage product market consisting of metal cans and glass bottles, it failed to show any anti-competitive effects of the merger in such a market, if it existed.

After considerable initial difficulty, metal can manufacturers developed a can strong enough to resist the pressures generated by carbonated beverages. These cans had ad- vantages which distinguished them from glass bottles, in- [fol. 4328] cluding unbreakability, greater lightness in weight, lack of necessity for return, faster chilling and less storage space requirements. However, the cost as compared with the bottle, and particularly the returnable bottle, was and continued to be high. The metal can for carbonated beverages was conceived of as a luxury package to be sold at a premium price with a resulting increase

in the overall sale of carbonated beverages rather than a decreased use of bottles by beverage manufacturers.

However, can manufacturers made strenuous efforts to promote the use of metal cans for carbonated beverages as against glass bottles. Despite these efforts, taking into account the estimate that returnable beverage bottles are reused twenty-five times, not more than 1½% of all soft drinks sold were packaged in metal cans and the cans used for this purpose constituted less than 1% of overall can production.

Continental's share of this small market for metal soft drink containers ranged from 36% in 1955 to 26% in 1957.

Disregarding the important returnable bottle factor, the Hazel-Atlas percentage of total shipments of glass beverage containers was only 0.04% in 1955, 0.08% in 1956 and 0.6% in 1957.[16] It would, of course, be very much smaller were [fol. 4329] weight given to the returnable factor. In 1955 Hazel-Atlas shipped no returnable beverage bottles. The Hazel-Atlas share of total glass and metal soft drink and beverage containers shipped, once again disregarding the returnable bottle factor, was 0.03% in 1955, 0.07% in 1956 and 0.48% in 1957.

Thus, as in the case of beer containers, the Hazel-Atlas share of the product market consisting of metal and glass containers for soft drinks and beverages was so insignificant as to be for all practical purposes non-existent. Indeed, in 1955, prior to the acquisition it was only 3/100ths of one percent, even less than in the case of beer. Were any figures for carbonated drinks alone available in the record it cannot be assumed that Hazel-Atlas's percentage of this market would be any more significant.

Moreover, Continental's share in the total market was far from large, even with the returnable bottle factor disregarded. If that factor be disregarded, its share of the total shipments of glass and metal soft drink and beverage containers was 7.2% in 1955, less than 5.4% in 1956, and

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[16] The percentage figures for 1955-1956 shown as 0.1% for each year in G-801 are incorrect. I have used the correct figures.

less than 6.2% in 1957.[11] Taking the returnable factor into [fol. 4330] account, however, as previously indicated, Continental's share of the market was so small as to be insignificant in terms of the overall market which the Government delineated.

Thus Hazel-Atlas was not a significant factor either in the theoretical beverage and soft drink container market or in the theoretical carbonated drink container market, nor had it ever been. In view of the limited acceptance of cans for these end uses Continental was scarcely more of a factor. Hazel-Atlas did not compete in these markets and the acquisition did not lessen competition in either of them to any remotely significant degree.

The Government also contends, as it did with respect to beer, that Hazel-Atlas was a potential competitor in the manufacture of beverage bottles and that anti-competitive effects may arise because such potential competition was eliminated by the merger. However, it was not established that there was any reasonable probability that Hazel-Atlas would have become a significant factor in the manufacture of soft drink bottles had the acquisition not taken place.

While Hazel-Atlas had produced a few satisfactory beverage bottles prior to the merger, its experience in this field [fol. 4331] was extremely limited and it had made only minor and very tentative efforts to sell such a product. Its facilities for decorating beverage bottles were inadequate, it had no franchises from any of the large bottlers such as Coca Cola which required their bottle manufacturers to be franchised, and the Hazel-Atlas management felt that small bottlers were not desirable customers since they were poor credit risks. With the exception of a brief passage in a speech by a Hazel-Atlas officer in 1954 which pointed out some of its difficulties in this area, there was nothing in the record indicating any likelihood that it would become a significant competitor in this field. The

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[11] Continental's shares of the overall market for 1956 and 1957 as shown on G-801(3e) include the bottles produced by Hazel-Atlas during those years.

conclusion that it might have become so at some indeterminable time in the future is mere speculation.

The Government also urged that the acquisition reduced the incentive of Continental to press its metal can line for packaging soft drinks. There was not the slightest evidence to support this theory. Quite apart from the considerations regarding Continental's diversification program, already discussed, there was in fact no reduction in Continental's activities in promoting soft drink cans after the acquisition.

Thus I find that the Government failed to establish either a line of commerce consisting of "containers for the soft [fol. 4332] drink industry" or a line consisting of containers for carbonated beverages. Moreover, even had it done so there was no showing of any reasonable probability that the effect of the acquisition would be substantially to lessen competition or tend to monopoly in either of such product markets.

(7) "Containers for the canning industry."

The line of commerce which the Government denominated "containers for the canning industry" included all metal cans and glass containers for the end uses of "canning" food. "Canning" was specifically defined by the Government as "the process of sterilizing foods, including juices, by heat and hermetically sealing them in tin cans and glass containers."

The Government's case as to this line of commerce was predicated on its definition of "canning." Yet the statistics concerning metal cans and glass containers which it placed in evidence to support this line [78] cannot be equated to its definition. These statistics related to glass and metal containers used for foods generally and were not limited to containers for foods which were heat sterilized and hermetically sealed. Though a number of foods are hermeti- [fol. 4333] cally sealed when packed, many are not hermetically sealed and many others, though hermetically sealed, are not heat sterilized. Containers for all of these kinds of food were nevertheless included in the Government's figures.

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[78] G-801(1c), (2c), (3c).

The tables introduced did not show which of the containers included were used to pack either heat sterilized or hermetically sealed foods, or both, and which were not. Some of the products included, moreover, such as coffee, were not even considered to be foods.[79]

Thus there were no universe figures in the record as to the amount of containers used for canning food as this term was defined by the Government, or any showing as to Continental's share of the metal cans, Hazel-Atlas's share of the glass containers, or their combined share of the containers of both types shipped for such end uses.

"Containers for the canning industry" was one of the [fol. 4334] lines of commerce specified by the Government before the pre-trial sessions began and its definition of this product market remained unchanged until after the case had been concluded. However, after defendants, upon argument of their motion to dismiss, had pointed out the deficiencies in the Government's proof as to this product market, the Government abandoned its claim that there was such a line of commerce. It then advanced for the first time the theory that the process of heat sterilization should not properly be included as a factor in defining this line and that only hermetic sealing was significant.

Thus, after all the evidence was in, the Government attempted to substitute an entirely different line of commerce for the one which it had theretofore consistently advanced. The new line was composed of glass containers and metal cans used to pack hermetically sealed foods and its boundaries were quite different from those of the line on which the case had been tried and on which the defense had been conducted.

However, the Government was in no better position to

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[79] Excluded from the Government's definition of canned foods by one or both of the food experts who testified for the Government, were such items as coffee, mayonnaise, vegetable oil, shortening, syrup, concentrated fruit juices, pasteurized whole milk, pasteurized barbecue sauce, maraschino cherries, green and Spanish olives, peanut butter, nuts, condiments, frozen fruits and vegetables. Some items such as vinegar, pickles, fruit preserves and fruit jellies were excluded by one expert and included by the other.

sustain this new line of commerce than it had been to sustain the old. It was apparent that the statistics in evidence combined both containers for foods which were hermetically sealed and those for foods which were not. For example, they included undetermined amounts of con-
[fol. 4335] tainers used to pack a large variety of products such as mayonnaise, mustard, honey, whole milk and baking powder, which were not hermetically sealed. Indeed the figures included metal cans and glass containers used to pack all types of food in the following categories: Fruits and vegetables (including juices); evaporated and condensed milk; other dairy products; meat (including poultry); fish and seafood; coffee; lard and shortening and all other food.

Thus the Government's statistics on its revised theory of this product market did not give any universe figures for shipments of glass or metal containers, or both, used to pack hermetically sealed foods. Its figures were not and could not be broken down to show totals for foods hermetically sealed and those not hermetically sealed. Nor was there anything in the record from which to ascertain the amounts of cans in either category produced by Continental or by other manufacturers in the metal can industry, or the amounts of glass containers in either category produced by Hazel-Atlas or others in the glass container industry.

Thus, the Government's position in substance boiled down to this—that on the basis of statistics covering containers used for packing all types of food, whether hermetically sealed or not, and with no showing as to the proportions
[fol. 4336] of containers used for hermetic sealing it sought to have the court find a line of commerce consisting of metal cans and glass containers used to pack hermetically sealed foods only.

It is manifestly impossible on the basis of such figures to determine the boundaries of a product market consisting of metal and glass containers for hermetically sealed foods. Nor can it be ascertained, in terms of end uses, what products were packed in hermetically sealed containers and what products were not.

Moreover, there was no showing that there is any public or industry recognition of such a product market or sub-

market. Nor did any of the other indicia for determining whether there was such a relevant product market show that such a market or sub-market exists.

There remains only what appears to be some suggestion by the Government that there might be a product market consisting of metal cans and glass containers used to pack all of the types of food products included in the Government's statistics.

Such a line of commerce commends itself neither to logic nor to the realities of the market place. It not only includes a vast number of disparate products but it excludes a large number of similar products. If milk bottles are [fol. 4337] included, as they apparently are, why are paper milk cartons excluded? If screw top glass jars for hard candies are included, why are not cellophane bags for such candy also included? If jars and cans for spices are included in the market, why not cardboard containers, with or without metal ends, for spices?

Again, as in the case of the claimed product market for hermetically sealed foods, there was no public or industry recognition of any such product market as was suggested. The metal cans and glass containers included within it do not have the same physical characteristics and uses. Their shapes, sizes and other characteristics differ widely, depending upon the type of food to be packed in them. The characteristics of metal cans and glass containers used for packaging food do not differentiate them from cans and glass containers used for other purposes. Metal or glass food containers were not sold differently or shipped differently from non-food containers.

There was no showing of reasonable interchangeability of use or cross-elasticity of demand as between metal and glass containers used for packing food. At least sixty categories of foods are packed either in cans entirely, or almost entirely, or in glass entirely, or almost entirely.[80] [fol. 4338] The Government went to some pains to have F.B.I. agents observe, on the shelves of chain stores in Atlanta, Chicago, Los Angeles and Washington, D.C., food products of different kinds, a number of which were available both in glass and metal containers, and a number only

[80] Defendants' Exh. N.

in glass or only in metal. But, except in limited instances, there was no information as to such factors as differences in price, size or quality of the products packed in the containers which were compared. There was no explanation as to why such differences in packing as there were occurred.

There are literally thousands of packers purchasing containers for packing hundreds of food products. The only three packers who were called to testify packed between them only 25 different food products. They represented but a tiny segment of the packing industry and of the products which the industry packed and there was no showing that they were representative. Only eight of the twenty-five products packed by these witnesses were packed in both glass and cans. The small quantity of string beans packed in glass did not sell. A few boiled onions were packed in glass because, for some obscure reason, "eye appeal" was important to certain people purchasing boiled onions. In the case of other of the eight products packed in both glass and cans, only glass was used for consumer sizes and only cans for the large institutional sizes.
[fol. 4339] The three packers called made it clear that different kinds of machinery and different cooking processes had to be used for packing in glass and packing in cans.

It can scarcely be said that this testimony shows any general interchangeability of use or cross-elasticity of demand as between glass and cans. The fact that in some instances similar products were packaged in two or more different types of containers, or that at times one kind of container has supplanted another in the packing of the same product, does not show that different types of containers are generally commercially interchangeable.

Choice of type of container in which to pack a particular product may be dictated by a variety of factors, including traditional or changing preferences of the buying public, eye appeal, the nature of the trade to be served, the physical characteristics of the product to be packed, the type of packing process required, distance to outlets, and other diverse factors. But the record is barren as to the extent to which specific factors of this nature affect the choice of metal or glass containers in which to pack the enormous

varieties and kinds of food products included within the broad range claimed for this product market. [81]

[fol. 4340] Metal cans and glass containers used for packaging food do not have unique production facilities. The manufacturing equipment and processes and the raw materials for each, far from being interchangeable, are entirely different. Moreover, as has been mentioned, the machinery used to pack food products in glass containers and the packing process are different from that used for packing in metal cans.

There was no evidence to show that the thousands of packers of food products who purchase metal cans or glass containers, or both, fall into any categories of distinct classes of customers. In fact, one of the glaring deficiencies in the Government's proof on this line of commerce, and elsewhere in the case, was its failure to make any detailed inquiry into the customer pattern.

Nor was there any evidence of a distinct price structure for metal cans and glass containers used for food products, or of correlation or correspondence of prices between them. Indeed, the paucity of evidence on the subject of prices and pricing practices was another major deficiency in the Government's proof.

There are no specialized vendors of containers used for food products. Can manufacturers and glass manufacturers each sell their own products directly to users who in most instances have multiple sources of supply. There are apparently no jobbers or wholesalers who sell either cans [fol. 4341] or glass containers, or both.

Much of what has been said concerning a product market consisting of metal and glass containers used to pack all types of foods applies also to a market composed of such containers for hermetically sealed foods only. Such limited examination as was made in this case of the practical indicia

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[81] For example, ground coffee is packed 99% in cans and paper bags and less than 1% in glass. Soluble (or instant) coffee, on the other hand, is packed 99% in glass and 1% in cans. Catsup is packed in glass for the consumer market and in cans for the institutional market. (Defendants' Exhibit N.) There is no explanation of these differences.

for determining whether a product market exists did not establish that there was any line of commerce consisting of metal cans and glass containers used either for packing food products generally or for food products hermetically sealed.

It is therefore scarcely necessary to discuss the question of proof of anti-competitive effects in such product markets. It is sufficient to say that the Government failed to show any reasonable probability of substantial anticompetitive effects or of tendency to monopoly in these areas as a result of the Hazel-Atlas acquisition.

(8) *"Containers for the toiletries and cosmetic industry;"*

(9) *"Containers for the medicine and health industry;"* and

(10) *"Containers for the household and chemical industry."*

In each of these three lines of commerce respectively the Government sought to include, in terms of end use, glass, metal and plastic containers of every type used by the in- [fol. 4342] dustry designated. Since such statistics and figures as were introduced to support these lines of commerce are inextricably confused and cut across all of them, and since the problems concerning them are in essence the same, they will be discussed together.

Each of the groups of manufacturers categorized as an "industry" produce a very wide range of products and use containers to package their products of many diverse kinds, shapes, sizes, materials and characteristics. For example, the numerous products packed by a representative group of companies in the toiletries and cosmetic industry include dentifrices, cosmetics, deodorants, face creams, bath salts, lipsticks, face powder, shampoos, colognes, hair dressings, medicated powders, analgesics, hand creams, nail polish, eye shadow, and hair spray. The containers used in packaging such products include glass containers, glass aerosols, metal aerosols, aluminum foil, paper, collapsible metal tubes, including lead and aluminum tubes, brass cases, plastic containers, both squeeze type and others, cloth, cans

and paperboard boxes. Glass containers of various kinds are used more frequently than the others.

Manufacturers grouped in what is called the household and chemical industry manufacture an even wider range of products running into the hundreds, if not the thousands. [fol. 4343] To mention only a few, there are such disparate products as car wax; embalming fluid; insecticides; silver polish; inks; hydrochloric, nitric, sulphuric and other acids; chlorination liquids; rust removers; pet cleaners; weed killers; glue, blueing; and photographic chemicals. The containers used range from small cans to large glass carboys to fibre drums and include a wide range of materials.

What is called the medicine and health industry covers the whole range of medical and health products, including such items as prescription drugs, topical lotions, foot powders, rubbing alcohol, merchrochrome, throat and mouth sprays, eye drops and ear drops, cough syrups and cough drops, first aid kits, absorbent cotton and bandaids. Again the varieties and types of containers used to package the various products produced are extremely wide.

While it is apparent that the number of products produced by each of these industries is exceedingly large and varied, the scope of the respective industries was not shown by the evidence. There were no figures showing the extent of these industries and it cannot be determined which companies or which products are included in them and which are excluded. The statistics in the record do not show either unit or dollar figures for metal or plastic con- [fol. 4344] tainers used in packaging products in these industries either separately or combined. It is impossible to determine what share Continental or Hazel-Atlas had of the container business in these fields either before or after the acqusiition.

The statistical tables of Continental's metal can production include a category covering all non-food products and indicate that in 1955, 1956 and 1957 Continental shipped approximately 30% of the total shipments of such containers.[82] This figure includes cans for such products as pet food and motor oil which plainly do not come within the

[82] G-801(2f).

compass of any of the industries with which the three lines of commerce under discussion here are concerned. There was nothing to show what percentage of Continental's non-food metal can shipments fall into these categories nor what the shares of Continental are in the overall shipments of containers for use by these industries.

There were no figures at all showing what percentage of plastic containers for these industries were sold or shipped by Continental, though there is an estimate that Continental sold between 7 and 9% of polyethylene bottles, tubes, jars and carboys and about 6% of the plastic squeeze bottles shipped in 1955.[83]

[fol. 4345] The three industry classifications used to delineate these lines of commerce were taken from the Bureau of Census categories for the glass industry. The Bureau of Census figures, expressed in totals only, and not broken down by individual companies, were in turn obtained from the Glass Container Manufacturers Institute which used these categories to collect statistics from its members.[84] The Census Bureau used quite different categories in collecting figures for the metal can industry and had no figures at all for the plastics industry.

There were figures indicating that in 1955 Hazel-Atlas shipped about 10% of the narrow neck bottles and about 40% of wide mouth glass containers for the household and chemical industry. It also shipped about 9% of narrow neck glass containers and 28% of wide mouth glass containers for the toiletries and cosmetic industry, and about 6% of narrow-neck and 25% of wide mouth glass containers for the medicine and health industry.[85]

But there were no totals for plastic and metal container shipments to these three industries. Nor were there any totals for the combined shipments of glass, plastic and metal containers to them with which to compare the Hazel-Atlas figures, or any showing of what the Hazel-Atlas [fol. 4346] share of such totals might be.

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[83] G-810.

[84] See fn. 28, *supra*, p. 22.

[85] G-800.

Apart from its failure to produce evidence showing the size and scope of the product market said to be embraced within these three lines of commerce, the Government also failed to show any other factors establishing that such lines of commerce existed.

There was no public or industry recognition of any such product markets either separately or in combination.

There was no showing that the containers which were sought to be included had peculiar characteristics and uses. The wide variety of sizes, shapes and kinds of containers and of different products packed in them has already been referred to. Plastic containers could not be used at all to package a goodly number of products because plastic is too porous. There are other differences between the products sought to be included such as the use of opal glass jars to package certain types of products and flint glass jars and bottles for others; the peculiar characteristics of the plastic squeeze bottle and of the aerosol type of container; the differences in design, decorative features and fitments of various types of containers; and the differences in weight between glass, metal and plastics. Moreover, there are many other materials used to package products included within these indutry categories which are excluded entirely [fol. 4347] from consideration here without explanation.

It was not shown that the general characteristics and uses of the various types of containers used for packing products in any one of these industries were the same or that their characteristics and uses necessarily differentiated them from containers used in other industries, or, indeed, for other purposes entirely. Containers used by these industries were not sold or shipped differently from any other containers.

It did not appear that there was any reasonable interchangeability of use or cross-elasticity of demand between containers made of these different materials. It is true that glass container, plastic container and metal container manufacturers are each seeking to promote their lines of containers at the expense of other lines, and that all are attempting to improve their products or to develop new ones so as to have a wider customer appeal. But, as has

been pointed out, this, in itself, does not establish reasonable interchangeability.[86]

Here, as in the case of foods, the choice of container may be dictated by a wide variety of factors, as the testimony of the witnesses from companies engaged in the manufacture of toiletries and cosmetics showed. In this field [fol. 4348] plainly the matter of customer appeal is of paramount importance. The physical characteristics of the product to be packed and the nature of the trade to be served also have a major effect on the choice of a container for a particular product.

It is true that manufacturers from time to time may shift a product from one type of container to another. But there does not appear to have been any general shifting back and forth as between the containers used for a given product. Packaging changes are made only after careful research and investigation and are normally permanent in character. For example, switches for a particular end use from glass to plastic and back from plastic to glass do not appear to occur.

The Government lays some emphasis on the packaging of light duty detergents. Such detergents in powder form were originally packed in paper containers. When light duty liquid detergents were developed they were first packaged in glass containers since no other container was functionally suitable. After a modification in the product formula, light duty liquid detergents changed from glass to metal containers. Most of them now are packed in plastic containers and apparently the product has never returned to the container from which it was shifted.

Again, as in the case of foods, the Government intro- [fol. 4349] duced evidence as to observations of F.B.I. agents of products on the shelves in chain stores and department stores. These observations indicated that some products were sold in containers made of glass, plastic and metal, some of glass and metal, and some of metal and plastic. Other products, on the other hand, were sold only in one type of container.

But, as in the case of foods, with limited exceptions, no observations were taken as to differences in sizes, prices,

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[86] See *supra*, pp. 47-50.

or quality of products, the uses for which they were intended, or any other factors which might determine the choice of the container for them. There was no showing that the products packed in containers made of the same material represented any substantial proportion of the total number of products included within these industries. On the contrary, it appears that in the larger stores, at least, there were thousands of products on the shelves which might be classified as sold by these industries and the products found in containers made of the same materials represented only a small proportion of the total.

As to the medicinal and health and household and chemical industries, there was no evidence that there were any distinct classes of customers engaged in purchasing all three types of containers, though some overlap could cer- [fol. 4350] tainly be expected in view of the great number of different products being packed by these industries.

As to the toiletries and cosmetic industry, certainly the principal toiletry and cosmetic manufacturers normally purchased all three types of containers. This again was to be expected in view of the large number of different kinds of products which they packaged and is of no particular significance in the line of commerce context.

There was no distinct price structure for the three kinds of containers included within these lines of commerce. It appears that plastic containers have been and remain considerably more expensive than glass containers. While a number of toiletry and cosmetic manufacutrers take some account of differences in prices between the various kinds of containers, as they would be expected to do, it does not appear that this is a dominant or controlling factor in selling a container for a particular product. While manufacturers of one type of container pay some attention to the prices of other types, it was not shown that there was any correlation or correspondence of prices between the three types of containers.

There is no evidence that there are any specialized vendors for containers of these types. Manufacturers sell [fol. 4351] their own products directly to users who appear to have multiple sources of supply.

Here again the Government failed to establish the lines of commerce which it specified either separately or in com-

bination. There is no showing that there are any product markets consisting of metal, plastic and glass containers for use by the toiletry and cosmetics, medicine and health, or household and chemical industries. Inter-industry competition between plastic, metal and glass manufacturers in the sale of containers to package some products included within these industries there no doubt is, but separate relevant product markets in the anti-trust sense were not shown to exist.

Again, since no lines of commerce have been established there is no necessity for discussing the Government's claims as to anti-competitive effects of the acquisition in such lines. It should be said, however, that none of the numerous witnesses representing toiletry and cosmetics manufacturers or the representative of the largest plastics containers manufacturer who testified with respect to these lines of commerce, indicated that the Hazel-Atlas acquisition had had or was likely to have any effect of any kind on their own businesses or generally. All gave a picture of healthy competitive conditions both before and after the acquisition with no suggestion of any anti-competitive effects or tendency to monopoly.

[fol. 4352]

VII

Conclusion

The evidence in the record at the close of the Government's case has been weighed not only as a whole but as to each of the ten lines of commerce on which the Government relied until the end of the trial, as to such possible alternative lines as the Government suggested after its case had been concluded, and as to any other product markets which may have existed. Such inferences have been drawn from the evidence on each aspect of the case as were reasonably justified.

After doing so, I concluded that the proof submitted by the Government established only three of the ten lines of commerce or relevant product markets which it attempted to delineate in this case—the metal can industry, the glass container industry and containers for the beer industry. As to these product markets I found that there was no

proof of any reasonable probability of substantial anti-competitive effects or tendency to monopoly in any of them as a result of the acquisition of Hazel-Atlas by Continental.

I also concluded that the proof failed to establish that any of the other lines of commerce which the Government [fol. 4353] delineated or suggested were in fact relevant product markets or sub-markets. In addition, I concluded that there was no evidence in the record establishing any relevant product markets or sub-markets other than those relied upon or suggested by the Government.[87]

Moreover, even assuming that any such product markets existed, I have found there was no proof of any reasonable probability of substantial anti-competitive effects or tendency to monopoly as a result of the acquisition in any of them.

Thus, the Government wholly failed to sustain its burden of proof in this case.

Some measure of its failure of proof here can be gathered from a comparison with the proof adduced in the *Brown Shoe* case. I do not mean by this to suggest that the proof in *Brown Shoe* sets any minimal standards for determining Section 7 violation. However, such a comparison is illustrative of the deficiencies in the Government's proof in the case at bar.

[fol. 4354] The *Brown Shoe* case involved a merger, both horizontal and vertical, of two companies in a single, well-recognized, separate industry. In the case at bar, on the

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[87] I found that vacuum type closures and screw and lug type closures while not forming a product market in combination, each constituted a separate product market. These products did not compete with one another to any significant degree. Their respective product markets were not areas of effective competition in the context of this case and were not "relevant" in that sense. (See pp. 85-87, *supra*.)

The plastic container industry was a recognized separate industry (see pp. 33-35, *supra*) and may constitute a separate product market. However, the Government made no attempt to establish such a relevant product market here.

other hand, the merging companies were each in different industries and the merger was almost entirely of a conglomerate nature. I have already pointed out the different problems presented by conglomerate mergers and horizontal or vertical mergers, the difficulties of proof in a conglomerate case and the neeessity in such a case for detailed examination of all of the factors which might bear on relevant product markets and anti-competitive effects within them.[88]

In the light of the differences between the two types of cases, it is particularly significant that the proof in *Brown Shoe* which impelled the Court to strike down the acquisition there, went far beyond the proof adduced in the case at her.

For example, in *Brown Shoe* there was "[t]estimony in the record from numerous independent retailers, based on their actual experience in the market, demonstrat[ing] that a strong, national chain of stores can insulate selected items from the vagaries of competition in particular locations and that the large chains can set and alter styles in footwear to an extent that renders the independents un-[fol. 4355] able to maintain competitive inventories."[89] There was also evidence "that [the merger] creates a large national chain which is integrated with a manufacturing operation. The retail outlets of integrated companies by eliminating wholesalers and by increasing the volume of purchasers from the manufacturing division of the enterprise can market their own brand at prices below those of competing independent retailers."[90]

Moreover, the proof in *Brown Shoe* established lines of commerce within a single industry, well recognizable in terms of the commercial realities. There was detailed testimony as to specific and demonstrable anti-competitive effects in each of these lines of commerce in specifically defined economically significant geographic markets.

It was on evidence of this nature, taken in conjunction with proof of the market shares held by the combining com-

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[88] Supra, p. 53.

[89] Brown Shoe Co. v. United States, *supra*, at p. 344.

[90] *Ibid.*

panies and the trend toward concentration in the industry, including Brown Shoe's own part in that trend, that the Court found that the Brown Shoe—Kinney merger violated Section 7.

[fol. 4356] Here, in contrast, seven of the ten lines of commerce which the Government attempted to carve out were artificially contrived and were neither recognized as separate product markets nor comported with market realities. Beyond this, as to no product market in the case at bar was there evidence from competitors in the relevant industries, from buyers of the products involved, or from any other sources, that there was reasonable probability of any anti-competitive effects, substantial or otherwise, or any tendency to monopoly as a result of this acquisition.

Lacking evidence to sustain its burden, the Government speculated as to what might happen as a result of the acquisition. In the light of the record these speculations were at best mere possibilities. There was no proof of reasonable probability that such anti-competitive effects as the Government foresaw were likely to occur or that, if any of them did occur, they would be substantial.

It has been said that "* * * mergers are a common form of growth; they may lessen, increase, or have no effect upon competition. A merger as such involves no necessary connotations of coercion, dominance or lack of effective competitive pressures."[91]

[fol. 4357] As far as the record here shows the merger under scrutiny in this case had no such connotations and, in fact, had no significant effect upon competition in any product market. This merger was not shown to be one of those proscribed by Section 7 of the Clayton Act.

Thus, at the end of the Government's case it was apparent that the Government had not succeeded in establishing any violation of Section 7. Defendants were therefore entitled to judgment which will be entered accordingly.

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[91] Report of the Attorney General's National Committee to Study the Anti-Trust Laws, March 31, 1955, p. 124.

This opinion constitutes my findings of fact and conclusions of law in this case pursuant to Rule 52(a), F.R.C.P.

It is so ordered.

Frederick van Pelt Bryan, U.S.D.J.

Dated: New York, N. Y., April 15, 1963.

[fol. 4358] [File Endorsement Omitted]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civ. 112-387

UNITED STATES OF AMERICA, Plaintiff,

vs

CONTINENTAL CAN COMPANY, INC., AND HAZEL-ATLAS GLASS COMPANY, Defendants.

JUDGMENT—April 16, 1963

The issues in the above entitled action having regularly been brought on for trial before the Honorable Frederick van Pelt Bryan, United States District Judge on June 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, July 1, August 12, October 3, 4, 5, 6, 10, 11, 13, 14, 17, 18, 19, 20, 24, 25, and December 9, 1960, and the Court having handed down its opinion constituting its findings of fact and conclusions of law on April 16, 1963, it is

Adjudged: that the defendants have judgment against the plaintiff.

Dated: New York, N.Y., April 16, 1963.

James E. Valeche, Clerk.

[fol. 4359] [File Endorsement Omitted]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 14, 1963

I. Notice is hereby given that the plaintiff, United States of America, hereby appeals to the Supreme Court of the United States from the final judgment entered in this action on April 16, 1963, dismissing the complaint at the close of the government's case under Rule 41(b), F.R. Civ. P. This appeal is taken pursuant to 15 U.S.C. 29.

II. The clerk will please prepare a certified transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include therein the entire record before the district court, including the pleadings, the transcript of testimony, the exhibits submitted by the parties and this notice of appeal.

III. The question presented by this appeal is whether the government met its burden of establishing that the acquisition by Continental Can Company of Hazel-Atlas Glass Company violated Section 7 of the Clayton Act, so that the district court erred in granting defendants' motion to dismiss at the close of the government's presentation of evidence.

Lionel Kestenbaum, Melvin Spaeth, William H. McManus, Attorneys for the Plaintiff.

Dated: June 14, 1963.

[fol. 4360] PROOF OF SERVICE (omitted in printing)

[fol. 4361] Clerk's Certificate (omitted in printing)

[fol. 4362] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1963

No. 367

UNITED STATES, Appellant,

vs.

CONTINENTAL CAN COMPANY, et al.

ORDER NOTING PROBABLE JURISDICTION—October 28, 1963

Appeal from the United States District Court for the Southern District of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[fol. 1] GOVERNMENT'S EXHIBIT 1

Obear-Nester Glass Co.
Manufacturers of
Flint and Amber Bottles
Office and Factory
East St. Louis, Ill.

March 4, 1954.

Mr. Dick Cheney, Director of Market Research and Promotion,
Glass Container Manufacturers Institute,
8 West 40th Street,
New York 18, New York.

Dear Mr. Cheney:

I am enclosing, for your information, a letter received from the Continental Can Company, regarding baby foods.

Very truly yours, Obear-Nester Glass Co., Joe, President.

JMN:MC

[fol. 2] GOVERNMENT'S EXHIBIT 2

Obear-Nester Glass Co.
Manufacturers of
Flint and Amber Bottles
Office and Factory
East St. Louis, Ill.

March 24, 1954.

Mr. Richard L. Cheney, Research & Promotion Dept.,
Glass Container Manufacturers Institute,
8 West 40th Street,
New York 18, New York.

Dear Dick:

Some time ago I forwarded you a letter which was distributed by the Continental Can Company in the St. Louis area.

I am enclosing herewith another piece of literature from the same source.

This time give me your thoughts on this matter, or any recent developments that you may have, which you think would be of interest to me.

With kindest personal regards, I am,
Sincerely, Obear-Nester Glass Co., Joe, President.

J. M. Nester/MC

[fol. 3] GOVERNMENT'S EXHIBIT 3

April 2, 1954.

Mr. J. M. Nester, President
Obear-Nester Glass Company
East St. Louis, Illinois

Dear Joe:

Please pardon the delay in replying to your letter of March twenty-fourth in which you enclosed the letter sent out by Continental Can Company to mothers in the St. Louis area.

Your letter of March fourth did not reach here until March eighth, shortly before my departure for the West Coast where I attended the annual West Coast meeting, did some work on the carbonated beverage situation in that area, and gave some help to Frank Wright in connection with his work in handling the West Coast activities.

Both of these letters from Continental burn me up. The first one is really very vicious in its handling of breakage and glass chips and of course the second one is greatly exaggerated as to the savings that could be affected by purchasing of baby food in cans.

The way I figure it, in order to accomplish the amount of savings shown, 2.73% of all the baby food in the United States would have to be sold in St. Louis, which has only .56% of the population of the country.

Other than this it shows that the can industry is beginning to fight back more aggressively in this field where it is losing ground to glass. You will be interested to know that the 1953 figures, just obtained from the National Canners' Association by 'phone shows that glass packed baby food represented 62.1% of the market in 1953. This is up one percentage point from the 61.1% of the market in 1952.

Continental are taking the most direct means possible by using direct mail to the mothers. In many states it is possible to obtain the names of new mothers from the official records and I think it is the custom of most of the baby food packers to do direct mail promotion in this way. This is obviously smart, since mothers represent a rela-

tively small percentage of the population and advertisements placed in general circulation magazines have a con-
[fol. 4] siderable proportion of "waste" circulation when you are just trying to reach the mothers.

Also, I am sure that we would find that Continental are picking the border line markets where glass and cans are splitting the business somewhere near fifty-fifty, to see if they can reverse the trend to glass there. If successful, presumably they would spread their efforts.

My thoughts at present as to the best way of putting pressure on them to tone down the viciousness of their letters would be to get Libby, McNeill and Libby, Heinz or one of the other of the baby food packers who uses considerable quantities of cans to put the pressure on them and point out that they are hurting the preserved foods industry in general, and their customers in particular with these tactics. I think we could probably get them to clean up their copy by this means.

This brings up once more the whole subject of whether or not we should jump in and do some real promotion on baby food now that the trend is running in our direction, and we have almost a two to one position in the market. This may be the time to put the pressure on.

As you may know, Heinz are doing a great job in California and although we have not been able to find out how their sales are going, they have succeeded in getting very wide distribution with their glass, so that in many retail outlets the Heinz and Beech-Nut glass packed section equals or exceeds the Gerber canned section.

I am sending copies of the two letters which you have been good enough to send to me to our Marketing Committee, and scheduling the subject for discussion at the meeting on April fourteenth. I will be interested in talking with you about the subject when you are here on the fifteenth.

Meanwhile, Joe, I wonder if I could ask you to obtain, if possible, from whoever turned these letters over to you, samples of all letters they may be receiving from the baby food packers, particularly Beech-Nut or Libby, McNeill and Libby.

The latest report I am able to find is one dated in January, 1950 which shows that those two companies are the

only ones in glass in the St. Louis market. If further shows that Libby had a 53% distribution position in the stores there and Beech-Nut only a 1.6% which leads me to believe that they were just introducing Beech-Nut at that time. I presume they now have a considerably larger part of the market. Do you have any way of knowing how the matter does stand there now? Could you tell which brands are in glass and what proportion of the display space they occupy in the average store.

Until the Committee gives me freedom to contact the baby food packers, it is difficult for me to obtain this type of information except in those cities where the local news- [fol. 5] papers conduct an annual survey of distribution of household products in their area. It happens that right now neither of the St. Louis papers are conducting such surveys.

Thanks very much, Joe, for your interest in sending these things along to me and I hope that I have not bored you with this long letter of reaction.

With kindest regards to you and the family,

Sincerely, R. L. Chaney, Director, Market Research and Promotion.

RLC:bvn

[fol. 6] GOVERNMENT'S EXHIBIT 14

March 4, 1957.

Mr. R. C. Langsett
Armstrong Cork Company
Lancaster, Pennsylvania

Dear Bob:

The consumer attitude survey which touched upon ice cream toppings, about which I spoke to Russ Thompson at the Canners Convention, was our 1954 nationwide survey of consumer attitudes, conducted by Ford Sammis & Company.

Using a scientifically selected sample of about 10,000 consumers, this nationwide survey should accurately rep-

resent the attitudes of all housewives, as it was distributed by region, size of city, age groups, income level, etc. on a scientific basis.

Enclosed are 5 copies of a photostat of page 8 from this report which shows 41% of the consumers preferring glass jars for ice cream toppings against 36% who preferred cans, with a 23% "no preference" group whom we believe should be swinging to glass as a result of our nationwide advertising.

I hope these will be helpful to you and since I presume you never saw the original survey from which this was taken, I am enclosing copy #7 of this whole survey so that you can see the material I am sending in its context.

Under the rules by which we operate, these surveys are sent out to our members on a library loan basis and so as soon as this one has served its purpose we will ask that you return it to us.

It was good to see you in Chicago, Bob, and I hope you continue to enjoy living in the East.

With warmest regards.

Sincerely yours, R. L. Cheney.

RLC:CH
Attachments.

[fol. 7] GOVERNMENT'S EXHIBIT 24

June 20, 1958.

Mr. J. S. Heuisler
Maryland Glass Corporation
2147 Wicomico Street
Baltimore 30, Maryland

Dear Stan:

As requested, I have made a quick study of the present economic relationship between bottles made from the new linear or "high-density, low-pressure" polyethylene and glass bottles. I also give you below some thoughts on the market competition that this new polyethylene bottle offers to glass.

We understand this plastic (which is trade marked "Marlex-50" by Phillips Chemical Company but is also

manufactured by other companies under different names) sells to bottle makers for about 35¢ a pound. The most optimistic figures I have been able to find as to the eventual cost of this material is 28¢ a pound.

If we assume that the cost of glass at the feeder is $30 a ton (the best estimate I can develop here) and that the cost of forming the plastic containers is the same as the glass container, when we know the relative weights of the bottles we can get an approximation of their comparative costs. I have chosen a pint-size bottle for comparison and find that when made of linear polyethylene it weighs 20 grams or 0.72 ounces. A similar bottle in glass weighs 8½ ounces. That is, the glass bottle weighs about 12 times as much as the plastic bottle. At 35¢ a pound for the polyethylene, material costs become $700 a ton but we need only 1/12th as much to make the same number of bottles, so that the polyethylene bottle will cost about twice as much as a glass bottle. At 28¢ a pound for polyethylene this relationship drops down to 1.6 times as much as glass. [fol. 8] Freight savings also enter in and the 11/67 pounds difference between the weight of a case of 24 pint glass bottles and 24 pint polyethylene bottles would come to 4.3¢ per case at 100 miles, 5.6¢ per case at 200 miles, and 6.8¢ per case at 300 miles from the shipping point. To arrive at this I have assumed freight rates of 37¢ per CWT, 48¢ per CWT, and 58¢ per CWT, respectively. These are the rates in this part of the country pertaining to household bleach, a typical household product that might possibly be bottled in this material.

At six case per gross this brings added freight costs on products packaged in the glass bottles to 25.8¢ per gross at 100 miles, 33.6¢ per gross at 200 miles, and 40.5¢ per gross at 300 miles.

These calculations seem to tie in pretty well with the figures given in the story starting on page 92 of the June 1958 issue of Modern Packaging Magazine describing the use of this type of polyethylene bottle by Breck's.

That article states that the plastic bottles cost approximately twice the glass and after allowing for shipping savings the plastic containers still cost 20% more than glass. They go on to point out in this article that while "when polled in market tests, a significant majority of

women request products in plastic containers, yet they buy glass rather than plastic when they shop. They are not yet convinced of the prestige and functional qualities of the plastic package." As we all know, the economics of the situation is only one of many factors in the selection of a particular package by the consumer. The qualities of the container other than cost may be far more important than the cost.

While it is true that the new linear polyethylene is only one-fifth as permeable to most products as the conventional type polyethylene, it *is* still permeable and compares unfavorably to glass in this respect.

Here are some figures taken from the Technical Bulletins put out by Phillips Chemical Company about their "Marlex-50." Listed is the percentage weight lost for the given product that will occur during one year's time when stored in Marlex-50 polyethylene bottles at 80°F. temperature:

[fol. 9] Clorox	0.33%
Carbon tetrachloride	80.3 %
Pentane	299.3 %
Benzine	142.0 %
Ethyl acetate	8.70%
Ammonium hydroxide	1.57%

These were based on tests of four months duration using 4-ounce Boston round-shape polyethylene bottles. What it means is, for example, that all the pentane would be gone in about a third of the year and all the benzine in about nine months.

While the rate of permeation of the new polyethylene may be lower than that of conventional polyethylene, it certainly cannot be said that any permeation is a good thing and therefore this is a distinct disadvantage of the polyethylene bottle. In addition to this is the fact that the bottle is not transparent but only translucent, that they have a feel which does not give the impression of cleanliness, and that on the counters of the stores dust tends to accumulate and cling to these bottles, giving them a poor appearance. This last feature alone has probably done more to slow up the sale of products in the older polyethylene bottle than any other factor.

Summing it all up, there is not doubt that the light weight

and increased strength of the new linear polyethylene bottle, together with its improved physical and chemical properties over the old polyethylene will increase the potential market for bottles made of this substance. Glass has a great many advantages and a strong consumer preference which will make any invasion of the markets now enjoyed by glass containers by linear polyethylene bottles a relatively slow and difficult process.

I will let you know any additional information I may uncover during my forthcoming trip.

With kindest regards,

Sincerely, R. L. Cheney.

RLC/bg

[fol. 10] GOVERNMENT'S EXHIBIT 31

October 21, 1958.

Mr. William J. Green
Thatcher Glass Manufacturing Company, Inc.
375 Park Avenue
New York 22, New York

Dear Bill:

Here are our GCMI statistics for Septe[illegible] and the first nine months of the year. I have a flag up to get Department of Commerce figures to you immediately on their release, but in the event they do not come through before you make your talk, it is my estimate that they will show glass container shipments for the first nine months to be 0.6% ahead of 1957.

As of the end of August, Department of Commerce figures were running 1.3 percentage points above ours in relation to the cumulative period this year against last year.

Other items which might be of possible use to you are as follows:

1. Attached clipping from Food Field Reporter of October 13, 1958, "Hazel-Atlas To Close Two Of Its Factories." This is evidence of the trend of our industry to decentralization and I should think it could be used as a springboard to show the foresight which

your company has exercised in its plant locations, being several years ahead of many others in the industry in this respect.

2. Clipping from Food Field Reporter of October 13, 1958, "Labor To Influence Can Prices In 1959." This frankness on the part of Mr. Stolk can only mean that the can industry anticipates trouble on the cost price squeeze from here on and is preparing its customers for increases which in my opinion will be greater than those necessary in our industry. In other words, I think our competitive position as against cans is going to improve.

[fol. 11] 3. The contrary is probably true with regard to our competition with plastic bottles. The declining cost of polyethylene and the ability to make lighter weight bottles from the new linear polyethylenes (which are also more impervious than the other polyethylenes) spells increasing competition for glass from this source.

However, it can be pointed out that in the field where polyethylene has so far made its principal "inroads" (that of toiletries and cosmetics) the glass container industry has enjoyed its greatest rate of growth. Against an index of 1947-1949 equals 100, glass container shipments for toiletries and cosmetics at the end of 1957 stood at 195 as against an index number of 146.2 for the overall glass container industry.

Further than that, it is evident that for the next two or three years at least, the plastic bottle will be offering its principal competition in the household chemical field to cans (for detergents) rather than to glass since we still have a very substantial economy advantage as well as the well known advantages of impermeability and chemical inertness,—except where long freight hauls are involved. Also, new products in the chemical field (Lestoil, for example) keep coming along which are not chemically compatible with other materials in glass and cumulatively they bring large new volume into the industry.

4. In connection with the foregoing, we are able to look forward to the advances which are unquestionably going to take place in our industry in the direction of lighter, stronger, more economical glass containers as a result of the scientific research being done.

The Glass Container Research Corporation is concrete evidence of the effort that is being made in this direction and inasmuch as we are utilizing only 1% [fol. 12] of the theoretical strength of our material, the research scientists tell us that we will undoubtedly be increasing the strength utilization of our material by five or six times within the next ten years.

5. At long last it appears that we are on the threshold of a real sound opportunity to greatly expand the use of the no-deposit beer bottle. Reports from Pittsburgh indicate that the cone top "Little Brown Jug" bottle being used for "Tech" beer by Pittsburgh Brewing Company is having tremendous success. I was told just the other day by Knickerbocker that their sales of beer in one-way bottles are growing in New England and following the ban in Vermont, it has taken hold there again very well.

Of particular interest is the fact that Container Corporation has recognized the potential of the new lighter weight no-deposit beer bottle and tell us that they plan to take advantage of the general apprehension on the part of the brewers that the cost of cans are eating up their profits, by the introduction of a new wrap around six pack carrier with fully automatic equipment for the brewery at a cost of less than $30.00 per carrier.

According to their figures, the new bottle with this six pack carrier would make economically possible the sale of six one-way bottles in a carrier, for from 7 to 9¢ per carrier less than six cans. Their sales manager is starting on a nationwide tour this month to attempt to get this established.

6. As to the coming year, the latest forecast we have from the Econometric Institute (copy attached and

paragraphs marked) is that they expect our industry to wind up with 1958 shipments 1.5% below the record 1957 level. (They expect that the heavy shipments in September have borrowed against October and that the last quarter will be lighter than the last quarter of 1957.)

[fol. 13] They forecast that the twelve months ending June 30, 1959 will show a 1.5% increase over the corresponding twelve months a year earlier and they tell us over the phone that the forecast which they will give at our meeting at Sea Island will indicate that they expect the third quarter next year to continue at about this 1.5% higher rate for 1958.

I will watch for further timely items including the Department of Commerce figures and will get them to you as fast as they appear.

I thought you might like the foregoing at this time so that you could be thinking about it.

With kindest regards,

Sincerely, R. L. Cheney.

RLC:CH
Attachments.

SURVEY *of* MARKET PROBLEMS *of the* GLASS CONTAINER INDUSTRY

[fol. 15]

1670

SURVEY of MARKET PROBLEMS of the GLASS CONTAINER INDUSTRY

As presented by Richard L. Cheney to members of Glass Container Manufacturers Institute, Inc. at the Semi-annual meeting December 1, 1953

Copy No. 159 for the confidential use of:

CHARTS shown at semi-annual meeting are reproduced on right-hand pages of this report, numbered for reference.

COMMENTS made by R. L. Cheney are condensed on left-hand pages, facing charts to which they correspond.

REFERENCE MATERIAL, including statistics on which charts are based, are contained in the Appendix, which has a separate table of contents.

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[fol. 17] **FOREWORD**

167

In May, a five-man Market Survey Committee, consisting of:

F. P. Pollock, Chairman

J. S. Algeo

E. F. Ball

C. G. Bensinger

and W. V. Fisher

was asked to undertake a broad survey, for the purpose of analysing the market problems facing the glass container industry, with the following broad objectives:

1. To evaluate the competition from other container materials in our various markets, and

2. to formulate a positive approach toward the promotion of glass containers in these markets.

The writer was asked to handle the mechanics of this project under the direction of the committee; and he has personally carried out most of the field work, statistical research and analysis. However, to help secure guidance in the use of the most effective market research techniques, the services of Mr. Ford Sammis, Marketing Economist, have been widely used. (Interviews with the manufacturers of competitor packaging materials and with packers and chain stores were handled by Mr. Sammis or his trained interviewers.)

In the course of this project I have travelled over 40,000 miles, have talked with representatives of the U. S. Department of Commerce and Agriculture, a great many members of G.C.M.I., with the managers of some 15 trade associations, the research directors of Corning Glass Works, Hartford Empire Company, Wyandotte Chemical Company, Battelle Memorial Institute, and of several members of this industry, and many others in related fields, and with such people as financial analysts, magazine editors and home economists. I have made an extensive library research of all magazine articles bearing on the subjects involved, which have appeared in the past three years.

[fol. 18]

It would be my purpose before any further steps were taken, to complete my calls upon members of G.C.M.I., for the best part of what I have learned has come from the intelligent, practical people in our industry with whom I have talked.

The valuable and whole-hearted cooperation of General Manager, Mr. Victor L. Hall, and all of my other associates on the G.C.M.I. staff is gratefully acknowledged.

The Problem

The glass container industry is faced by a number of alarming surface indications that competition from other container materials may be rapidly increasing in agressiveness and potential effectiveness.

The first phase of our problem is, of course, to measure the relative position of the glass container industry and its several powerful opponents in the ensuing battle for a larger share of the over-all packaging market.

Next, we have to count the possible cost of lost markets against the cost of defending them; and again, the cost of developing new markets as against the value of these markets to the industry.

Or, to borrow a term from the new science of "Operations Research", we may, in a non-professional way, apply the "Principle of Least Regret". We shall endeavor, as near as possible, to measure all the factors in the equation mathematically. Then perhaps we can determine whether it is wiser to look the other way, save our money, and hope the bugaboo will go away; or, perhaps to take a calculated risk, and make an investment out of present profits (such as they are) in a campaign which gives promise of winning the battle for wider markets and increased profits.

R. L. Cheney

New York, New York
November 25, 1953

WHAT IS HAPPENING *in the* OVER ALL PACKAGING INDUSTRY?

[fol. 20]

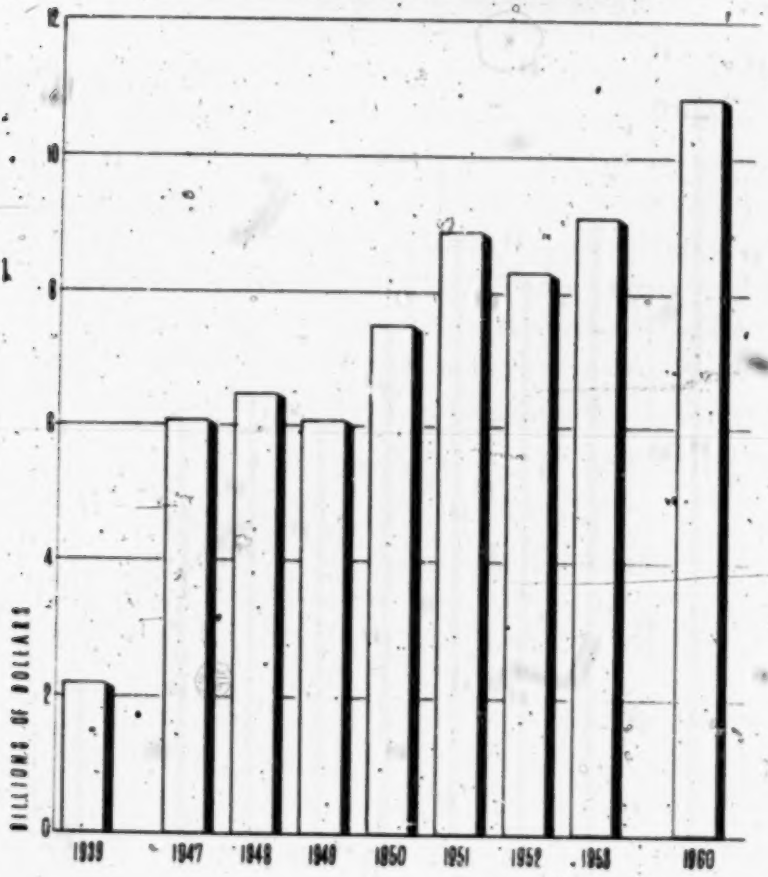
The glass container business is part of a large and growing industry: The packaging industry. It is a $9,000,000,000 industry today, and McGraw-Hill Publishing Company forecasts it will reach a value of $10,850,000,000 by 1960.

Figures on this chart became available for the first time in July, 1953. Data for 1947 and 1951 were prepared by the Division of Interindustry Economics, Bureau of Labor Statistics. Data for other years represent estimates by McGraw-Hill Publishing Company, utilizing the same sources and techniques used by the Bureau of Labor Statistics.

[fol. 21]

1676

PACKAGING
A $9 BILLION INDUSTRY



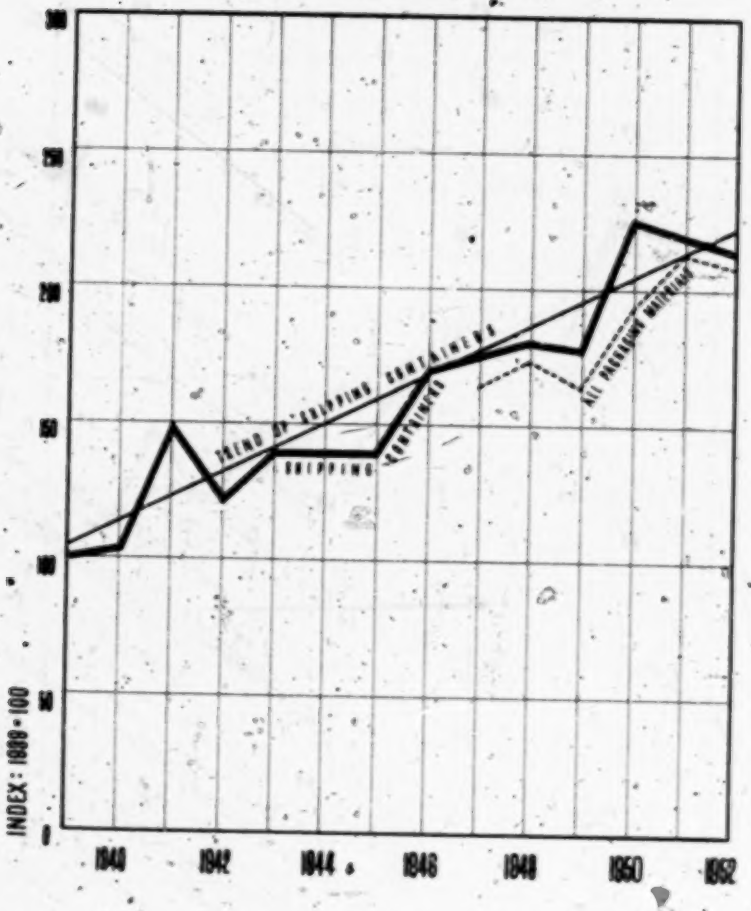
[fol. 22]

The use of corrugated and solid fibre shipping containers is generally considered to be indicative of the trend in the use of retail size packages. On this chart the solid red line shows the year-to-year shipments of the shipping containers in thousands of square feet of paperboard used in their manufacture, plotted as index numbers based on the year 1939 equals 100. The dotted line represents an index (1939 equals 100) of total packaging volume, as set forth in the preceding chart. The trend line of shipping containers as shown here will be used on subsequent charts as a basis for comparing the growth of the different packaging materials. It will be noted here that the total of all packaging materials falls somewhat below this trend line in recent years, indicating that small packaging (retail sizes) is growing somewhat faster than the over-all packaging market.

[Vol. 23]

1678

The PACKAGING MARKET IS EXPANDING



[fol. 24]

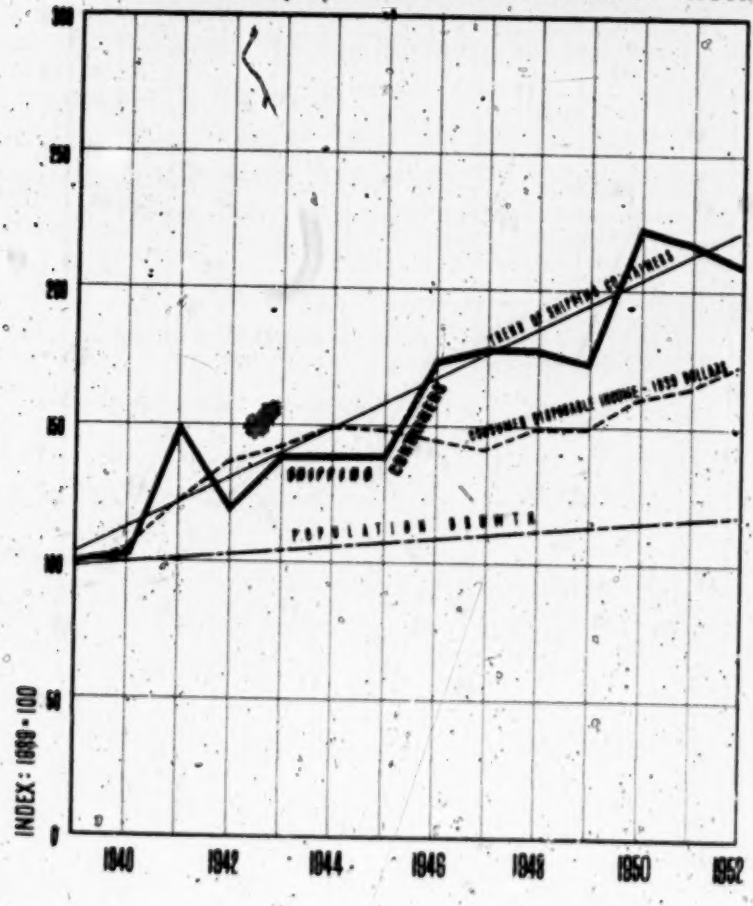
Here it will be seen that our trend line of the packaging industry is rising much faster than is population, and even faster than consumer disposable income. The latter is shown in 1939 dollars to eliminate the effect of inflation and to make this line comparable to the container trend line which is based on physical units.

[fol. 25]

1680

The PACKAGING MARKET is GROWING

faster than population or consumer income



④

[fol. 26]

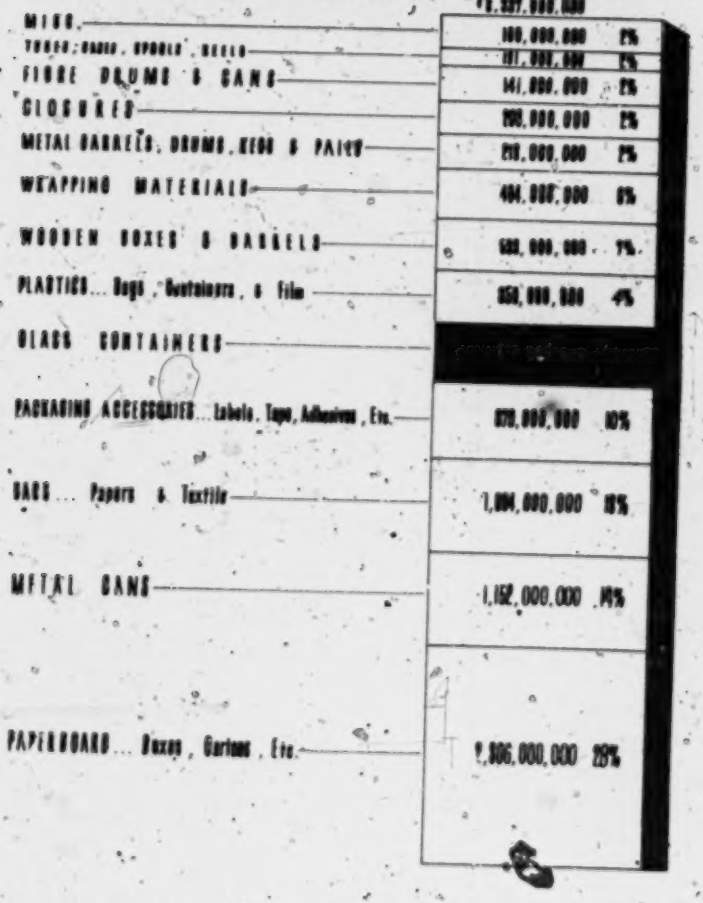
Here is the way the $8,592,000,000 packaging market is broken down. Note that glass containers represent 8% of the total and closures 2%. Metal cans represent 14%, and all paperboard boxes, cartons, etc. -28%. Note that this chart is in dollars, and represents the 1952 output of these packaging materials. Obviously, dollar value represents about the only common denominator in which these different materials can be compared.

The data are McGraw Hill estimates for 1952, based on Bureau of Labor Statistics figures for 1951. These estimates are purchaser values, obtained by adding estimates of marketing charges (such as transportation, warehousing, trade margins and excise taxes) to the manufacturer's value. Value of imports are included and exports are excluded.

[fol. 27]

GLASS CONTAINERS

have 8% of the packaging market



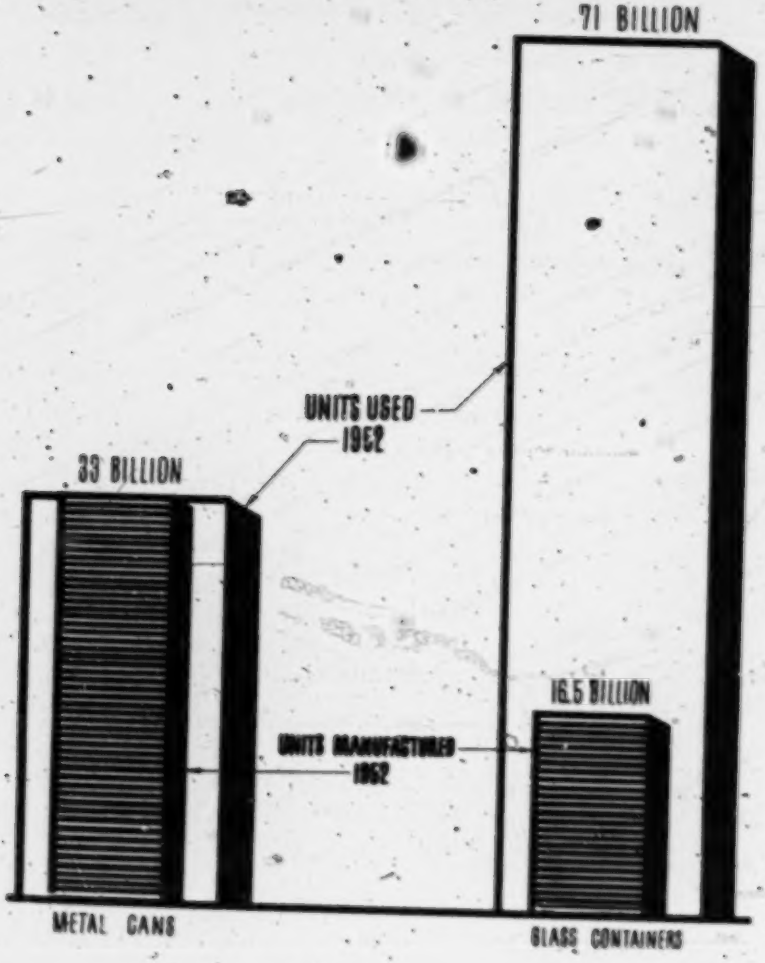
(5)

[fol. 28]

Because of the fact that many glass containers such as milk bottles, carbonated beverage bottles and beer bottles are re-used many times, glass containers are actually the most widely used rigid containers. Through a study of closure statistics we are able to determine that over twice as many glass containers "went to market" last year than metal cans. This, in spite of the fact that the can industry received almost twice as many dollars for their product as did the glass container industry, as indicated by the number of units actually manufactured in 1952.

Note. On all subsequent charts showing glass container volume, the data represent units actually shipped, and do not take re-use into account.

More GLASS CONTAINERS ARE USED THAN CANS

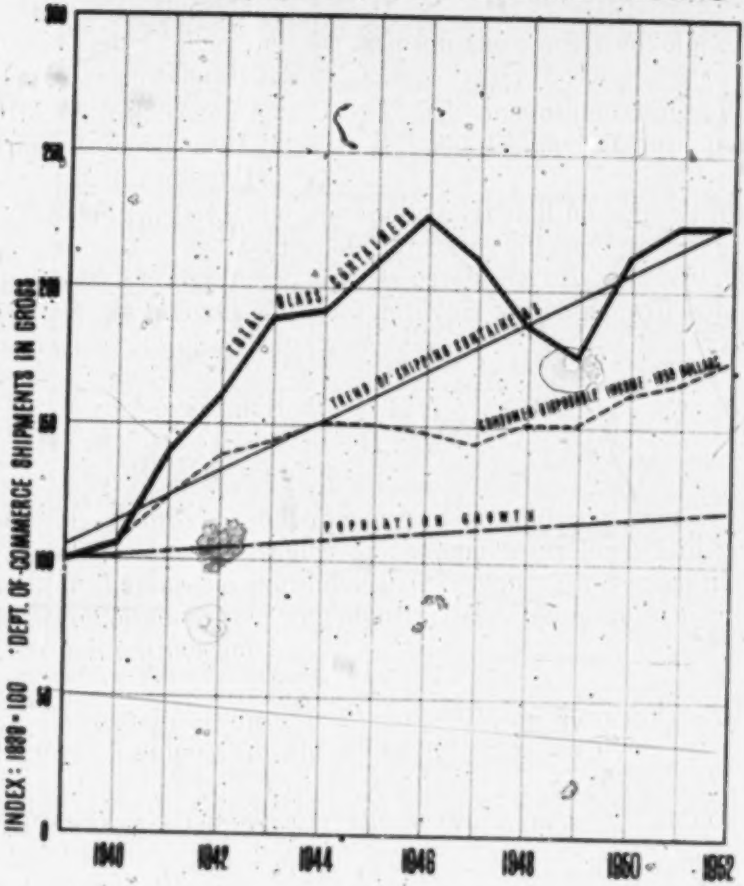


Here it will be seen that even though we have lost a part of our wartime "bulge", the use of glass containers continues to grow faster than population or consumer disposable income. Glass containers have kept pace with our over-all trend line of packaging, although there seems to be some evidence of a leveling off in 1951 and 1952. This chart shows glass container shipments in gross, (not dollars) converted to index numbers in which the year 1939 equals 100.

[fol. 31]

GLASS CONTAINERS are GROWING

faster than population or consumer income



(1)

[fol. 32]

The various end uses of glass containers are not expanding at the same rate. When glass container shipments are broken down into the four broad categories(*) of the industries we serve, we find food and chemical containers have retained a large measure of their wartime expansion, and continue to enjoy a higher rate of growth than the packaging industry as a whole. Beverage containers, while influenced by the normal ebb and flow of the returnable bottle business, seem generally to be trending above the rest of the packaging industry.

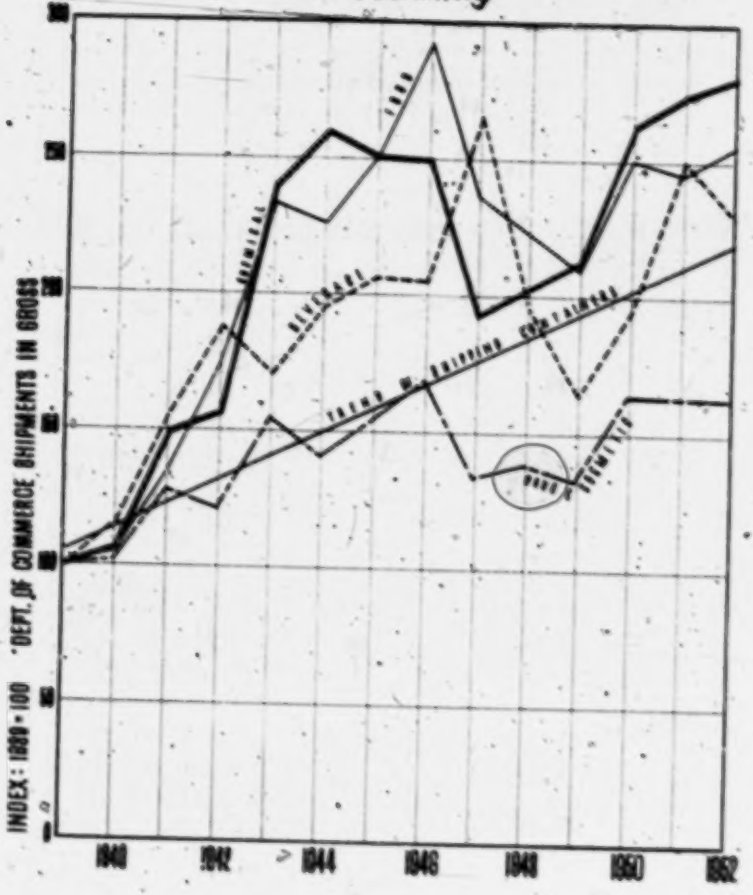
It is in the drug and cosmetic container categories where glass has been losing position. Glass container business in these fields is falling well below the general trend of packaging, and as will be seen later, hardly keeps pace with the growth of population.

(*) Almost all, if not all, companies in the glass container industry manufacture containers suitable for packaging most of the products now packaged or considered packagable in glass. Many containers may be used interchangeably for various products, and consequently, for most purposes, it is erroneous and improper to speak of a type, or a class, or a line, or a category, of glass containers as something separate and apart. For all practical purposes a glass container is a glass container, regardless of end use, or shape, or size, or other characteristics. In terms of a market analysis, however, we feel it is proper to indulge in classification by end or product uses, since it is the use of glass containers for these various products which we hope to stimulate as against the use of other packaging materials. Hence, when we refer to categories, or lines to types or classes of glass containers, we are really describing the end use for which the shipments were made.

[fol. 33]

FOOD · CHEMICAL · BEVERAGE GLASS CONTAINERS
are growing at high rate

DRUG & COSMETIC GLASS CONTAINERS
are declining



WHAT HAS BEEN HAPPENING *in the* GLASS CONTAINER INDUSTRY ?

[fol. 35]

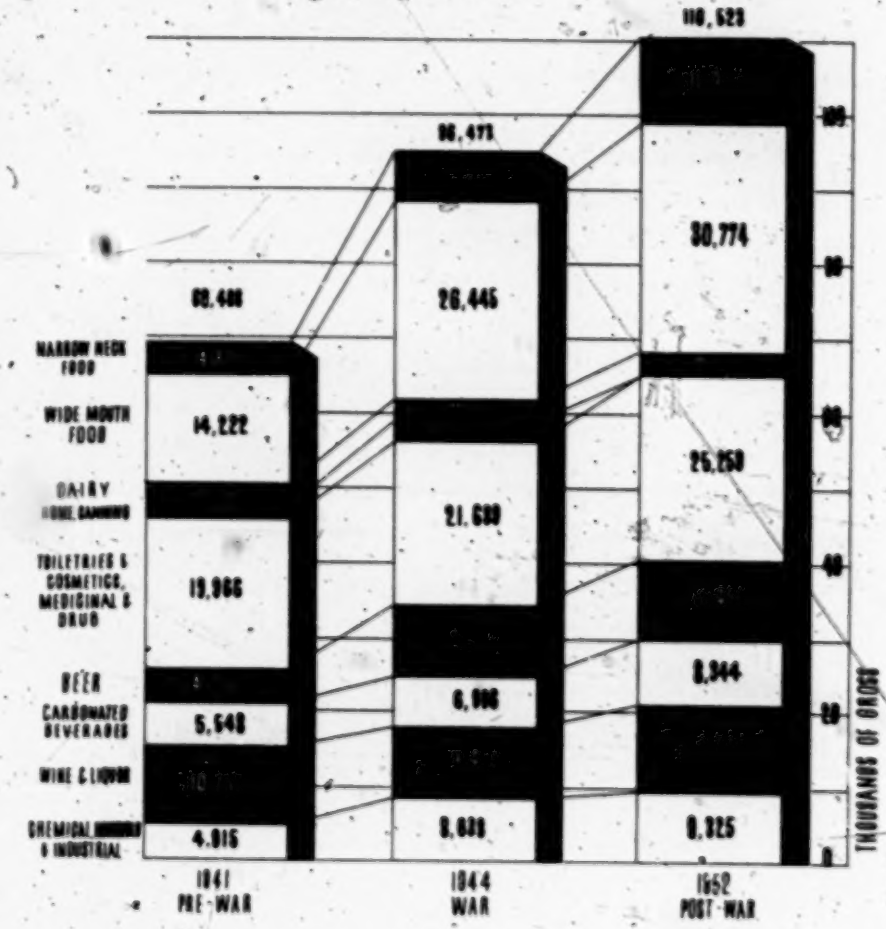
So much for the over-all packaging industry and the position of glass containers therein. In the series of charts which follow, we will take a long-range look at glass container shipments by individual classes of products.

Because all these charts are in terms of index numbers (1939 equals 100) in order to show trends, relative volume of the different classes of product is not apparent on the charts.

This bar chart, which shows pre-war, wartime, and post-war volume in thousands of gross, may be used for reference while studying the trend charts which follow.

GLASS CONTAINER SHIPMENTS

by classes



Prior to World War II the glass container industry was following a rather well defined upward trend which if continued through 1952 would have resulted in a volume last year representing about 154% of 1939, or approximately 76 million gross. As it was, the magnificent production job this industry did during the war to meet the packaging needs of the country during critical metal shortages carried glass shipments way above the pre-war trend.

Following the war, some decline took place, followed by a sharp rise and then a leveling off. The post-war trend is not as well defined as pre-war, but it is not unreasonable to assume that it is picking up approximately the same pre-war trend, except at a considerably higher level.

1952 sales of about 111,000,000 gross (226% on the basis of 1939 equals 100%) is 46% above the 76,000,000 gross which would have been forecast for that year in 1939 without the artificial situation created by the war. It would have taken the glass container industry until 1968 to reach its present 1952 volume on a projection of the pre-war trend.

[fol. 38]

GLASS CONTAINER SHIPMENTS
All Classes

(11)

[fol. 39]

Narrow neck food bottles have maintained their wartime growth better than any other glass container line, as will be seen by comparision with the following charts. With 1952 sales standing at 324% of 1939, or almost 12,000,000 gross, it is evident that the public, having had an opportunity to buy syrups, salad oil and many other liquid food products in glass bottles, has made known its preference for this type of package in no uncertain terms.

[fol. 40]

GLASS CONTAINER SHIPMENTS

Narrow Neck Food

(12)

[fol. 41]

The wide mouth food jars experienced the greatest wartime increase of any type of commercial glass containers except beers reaching a peak of 332% of 1939, or 34,675,000 gross in 1946. This was to have been expected as the wartime restrictions on metal cans hit this field of packaging more heavily than any other. Only the limitations of the productive capacity of the glass container industry prevented this category from going much higher. That the level of the wide mouth glass food container business has been sustained at such high post-war levels is very encouraging, and largely accounts for the present highly satisfactory rate of operation in the industry. 1952 shipments of almost 31,000,000 gross represent about 294% of 1939 shipments of this type of ware.

[fol. 42]

GLASS CONTAINER SHIPMENTS
Wide Mouth Food

(13)

[fol. 43]

This chart clearly shows two things:

(1) The cyclical nature of business in the returnable container field. Dairies tend to stock up on bottles and then work from their "float" for several years.

(2) The other thing it shows is that unlike practically all other types of glass containers, milk bottle sales have barely kept pace with population increases. Index of per capita shipments is shown by light black line. That they are as high as they are (having lost a substantial portion of the retail store business to paper containers) is due only to rapid growth in the dairy business as a whole, and to increases in the per capita consumption of milk.

[fol. 44]

GLASS CONTAINER SHIPMENTS

Dairy Products

[fol. 45]

At first glance this chart may not fully convey the plight of the home canning jar business. However, it will be seen that our index year (1939) was in itself a very poor year and was near the end of a long downward trend following the depression-born rush of home canning jar business in 1931-2. The victory garden program and other wartime stimulation to home canning is amply manifested here, carrying shipments of home canning jars to a 1943 peak of 4,358,000 gross. The inventory of these food jars in the hands of the housewife following seven years of all-time high production can be imagined. Couple this with the declining interest in home canning and the increasing number of packers' ware jars now carrying home canning finishes, and it is apparent why present shipments are well below 1939 and less than 1,000,000 gross per year.

The general decline in home canning activity is indicated in the following statistics from the U. S. Department of Commerce on the combined shipments of complete home canning closures and lids. (These are the only years for which data are available):

1947 - 19,313,112 gross

1948 - 21,525,040 gross

1951 - 16,234,185 gross

1952 - 15,228,324 gross

[fol. 46]

GLASS CONTAINER SHIPMENTS
Home Canning Jars

(15)

[fol. 47]

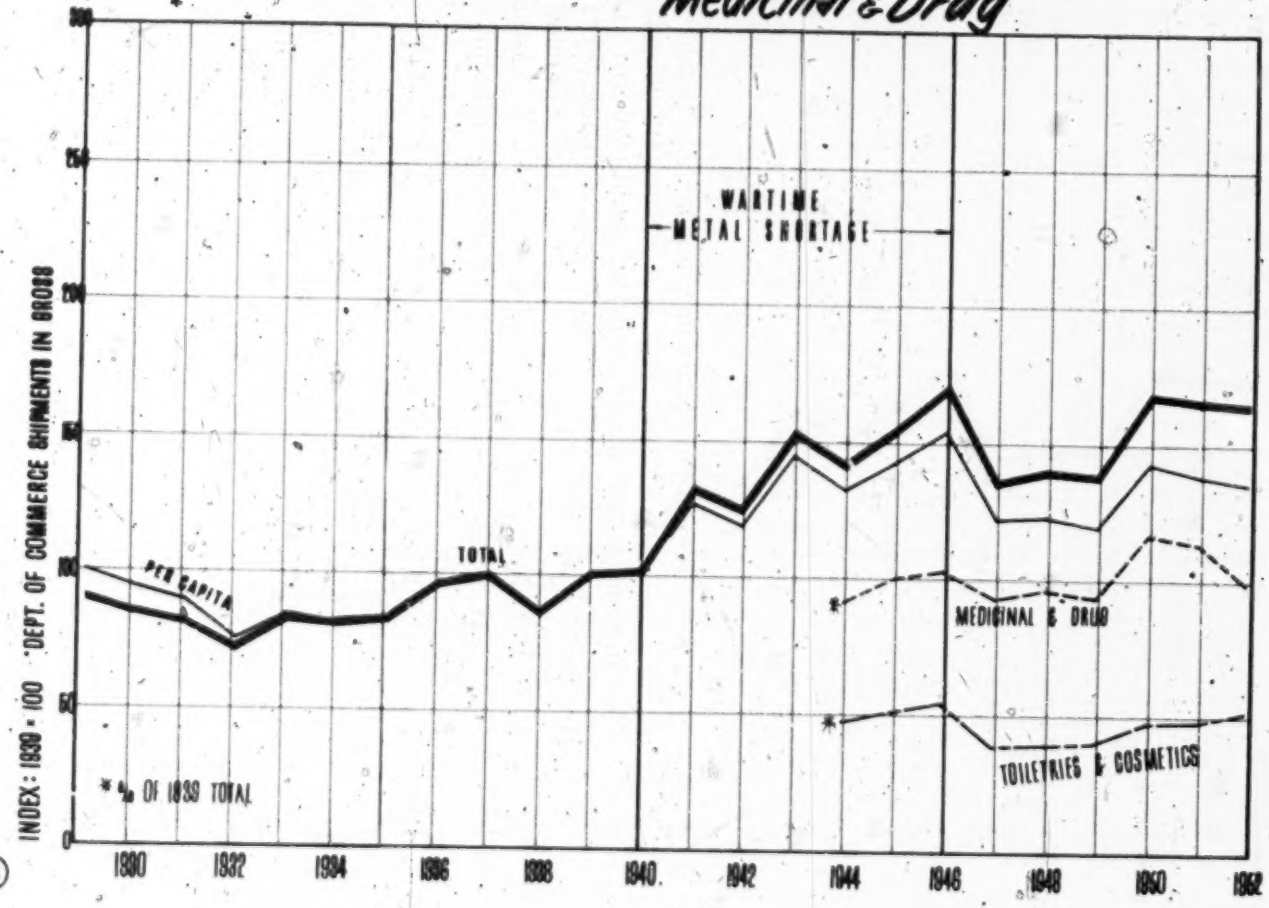
These classes are plotted together on one chart as they are not separated on available data for the years prior to 1944. It will be noted that unlike most types of glass containers, they did not receive any great stimulation during the war. The products represented here are traditionally glass packed products, and so there was no major conversion to glass to take place. Also, the trend in the medicinal field has been away from medicines in liquid form such as "patent medicines" to pills and capsules frequently packaged in paper or foil. It is in this field, too, that plastic containers have made most of their inroads.

The solid black line represents per capita shipments of the two categories of ware combined. Per capita shipments in 1952 were only 38% above the 1939 level.

The breakdown between medicinal and drug ware and toiletry and cosmetic ware has been shown from the year 1944. Although it is not, perhaps, statistically valid to do so, these two separate types have been shown as a percentage of the total of the two categories in 1939 so that for any year the two categories added together will be found to total the combination shown by the heavy line on the chart. However, these two subsidiary lines bear no direct relation to the percentage scale based on 1939 equals 100.

GLASS CONTAINER SHIPMENTS

Toiletry & Cosmetic
Medicinal & Drug



[Tol. 46]

1203

[fol. 49]

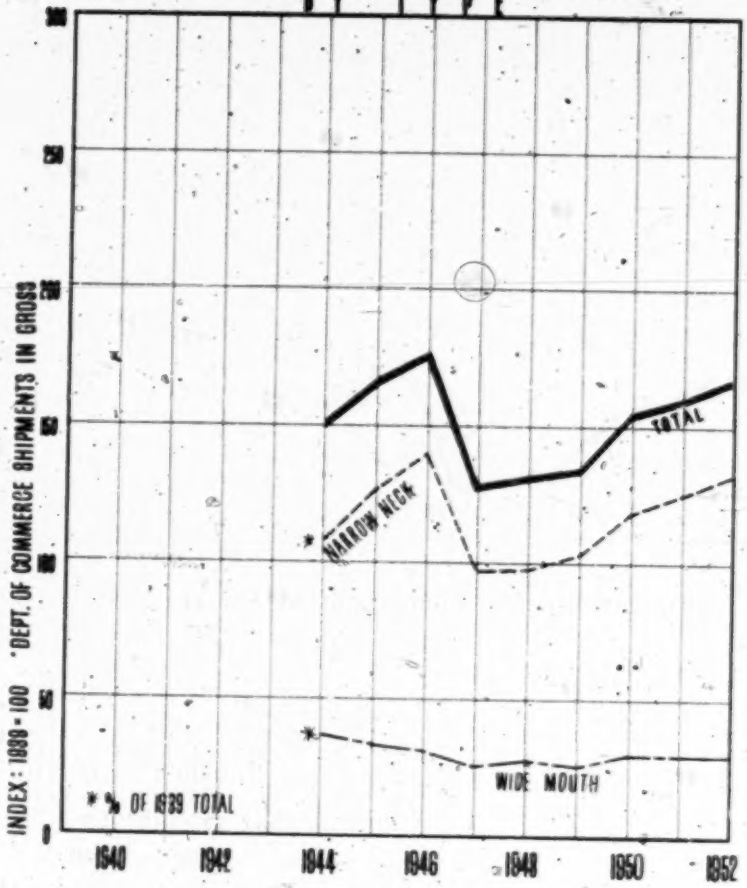
Here the toiletry and cosmetic category is broken down into wide mouth and narrow mouth containers for the years for which this information is available. This shows narrow neck containers in this field to be faring better than wide mouth, and also to be experiencing greater fluctuation than the wide mouth jars.

On this chart and the following chart, both narrow and wide mouth shipments are expressed as a percentage of total shipments for 1939.

[fol. 50]

1705

SHIPMENTS OF
Toiletry & Cosmetic Containers
BY TYPE



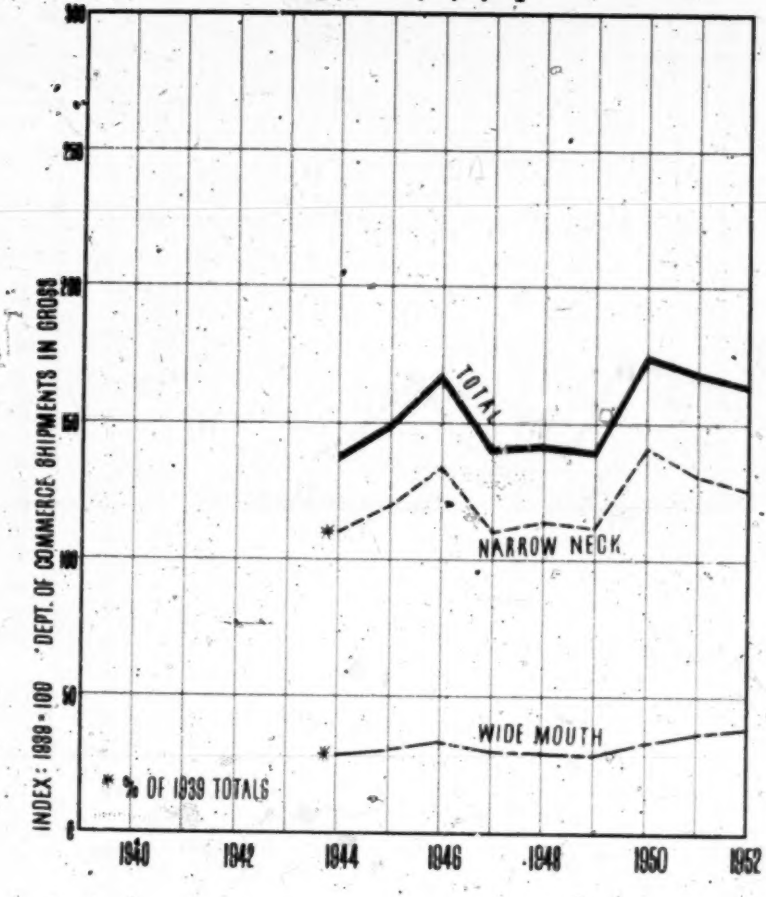
(17)

[fol. 51]

This chart shows the breakdown between wide mouth and narrow mouth medicinal and drug containers. Wide mouth containers in this field have experienced a more stable trend than narrow neck, but have not increased at as rapid a rate.

[fol. 52]

SHIPMENTS OF
Medicinal & Drug Containers
BY TYPE



 [fol. 53]

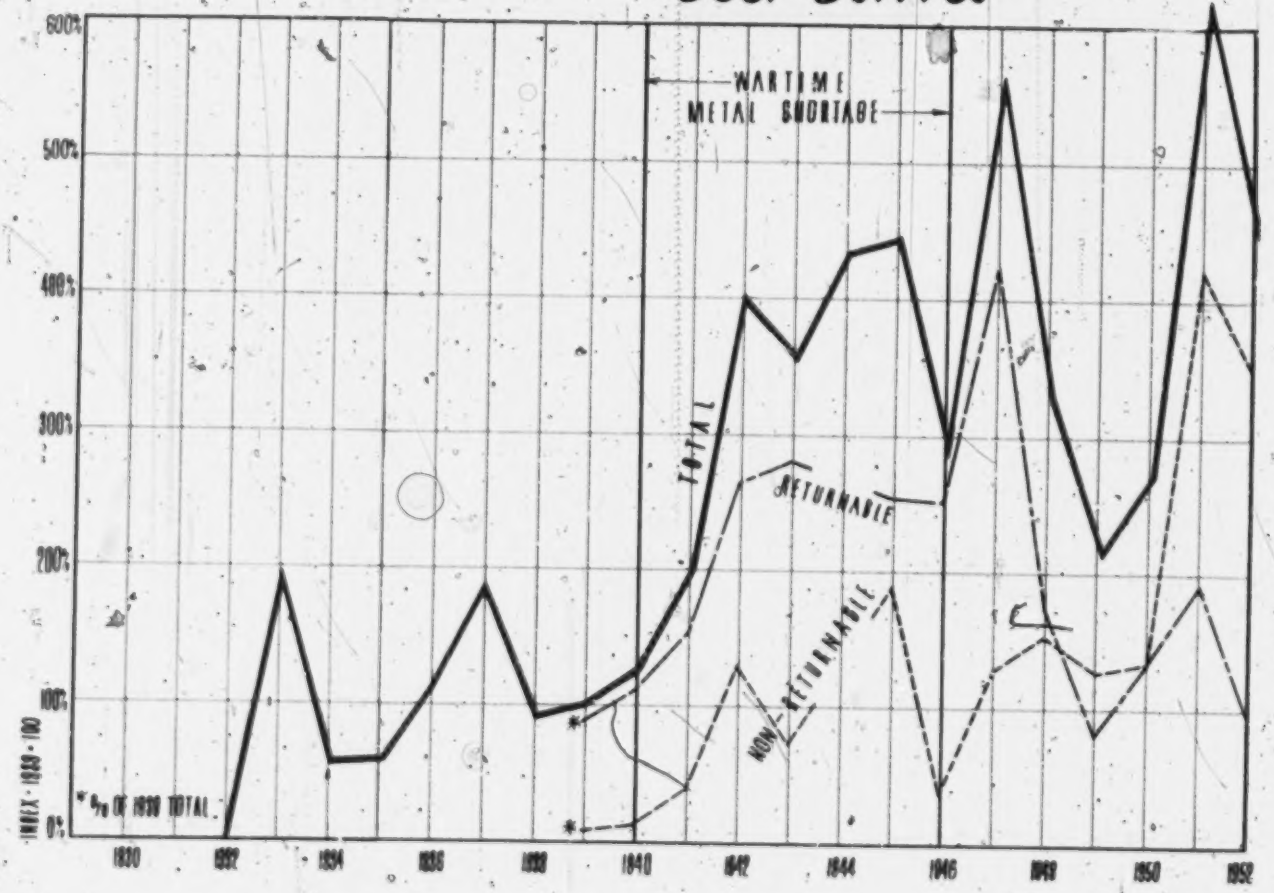
Starting with Repeal, this chart covering beer bottles discloses the customary cyclical nature of the sale of returnable bottles, and reflects significantly certain other influences.

It is to be noted that the vertical scale on this chart is just one-half that of the other glass shipment charts in order to accommodate the imposing peaks encountered in 1947 and 1951.

The peak in 1937 is partly attributable to the introduction of the Steinie beer bottle, and the 1947 peak to the postwar restocking of returnable bottle "floats". The 1951 peak, representing a spectacular increase in One-way bottles and a substantial one in returnable bottles, can be attributed partly to the promotional efforts in behalf of the One-way beer bottle, and particularly to the can shortage arising from the Korean War.

GLASS CONTAINER SHIPMENTS

Beer Bottles



[Vol. 54]

1209

[fol. 55]

Shipments of soft drink bottles show the periodic peaks characteristic of a returnable bottle market, and the very heavy restocking of starved "floats" in the post-war year of 1947, when sugar rationing became inoperative. Recovery from the 1949 slump has been very rapid and were it not for the threatening can competition, the future for this line of bottles would look very promising. Per capita shipments of beverage bottles in 1952 were 221% of the 1939 level.

[fol. 56]

GLASS CONTAINER SHIPMENTS

carbonated & non-carbonated BEVERAGE BOTTLES

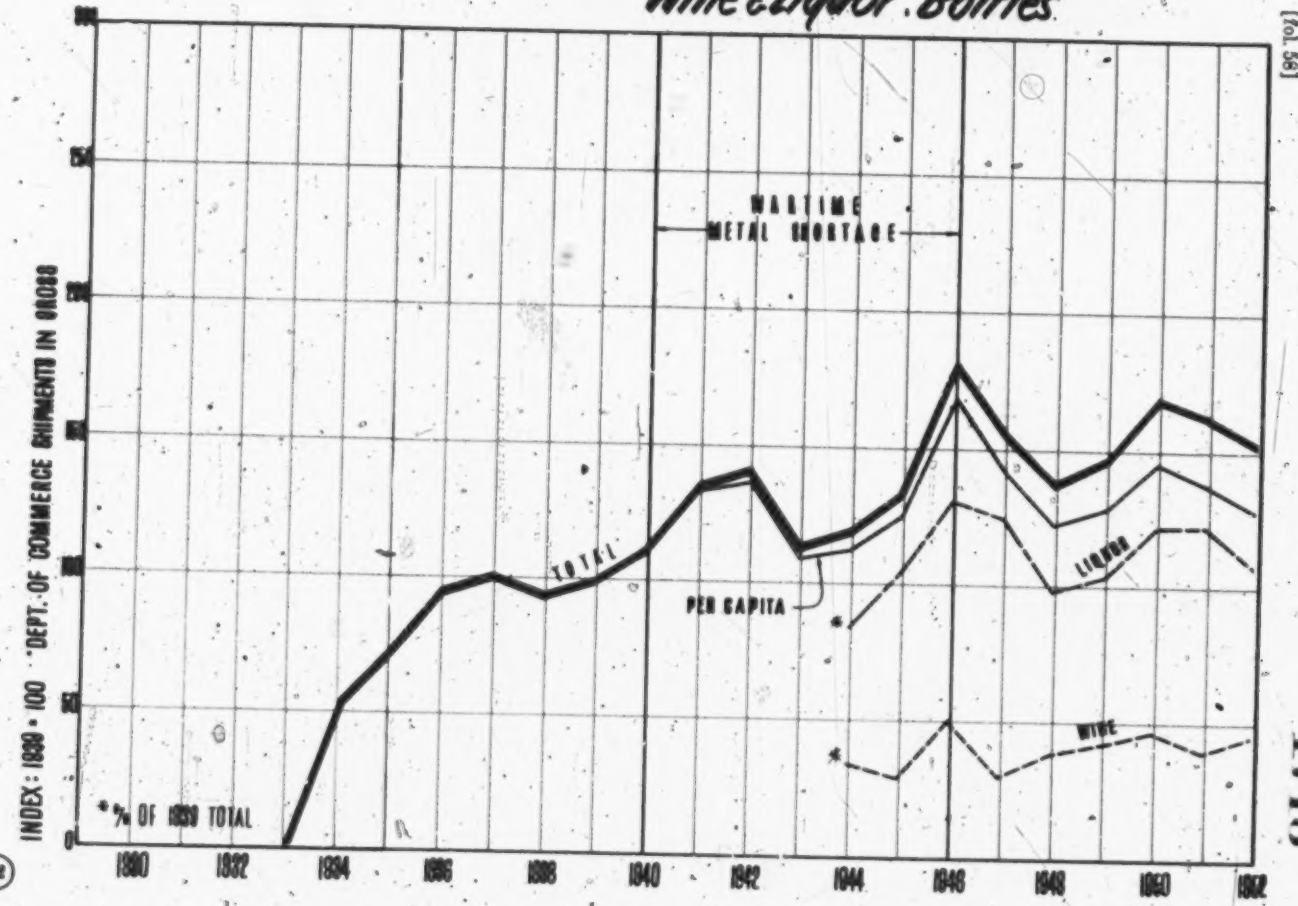
[fol. 57]

Following its steady rise from the repeal of Prohibition to the early war year of 1942, the curve for wine and liquor bottles levels off appreciably in a curve which barely keeps pace with the population growth. 1952 per capita shipments were only 29% above 1939.

The two elements of this curve, -liquor bottles and wine bottles,- are shown from the year 1944 on. Data for the separate lines were not available prior to that year. As noted on a previous chart, these lines are plotted to show the relative size of the volume of containers used for packaging these two products, so that they will add up to the total of the heavy line on the chart. Consequently, they cannot be properly related to the percentage figures based on 1939 equals 100 at the left-hand margin of the chart.

GLASS CONTAINER SHIPMENTS

Wine & Liquor Bottles



[Vol. 58]

1713

(21)

[fol. 59]

The chemical, household and industrial category shows a post-war usage of glass containers exceeded only by narrow neck foods. Wartime production of ware for these purposes showed a marked increase, and the post-war decline has been considerably less than for other classes of ware. A very gratifying upward trend continued to be manifested in 1952.

[fol. 60]

GLASS CONTAINER SHIPMENTS

Chemical, Household & Industrial Containers

(22)

[fol. 61]

From the foregoing charts, it has been evident that the various categories of glass containers reacted differently during and after the war. When glass containers are considered solely from the standpoint of end use, the difference in effect of the war become even more apparent.

This chart shows glass containers by end use. In some instances, it has been necessary to make estimates because of lack of available data, but in all cases figures have been checked with several authorities to secure as much reliability as possible.

The bars at the bottom of the chart include certain classes of product which were hardly affected by the war - toiletries and cosmetics, liquor, milk bottles, and several food products, principally seasonings.

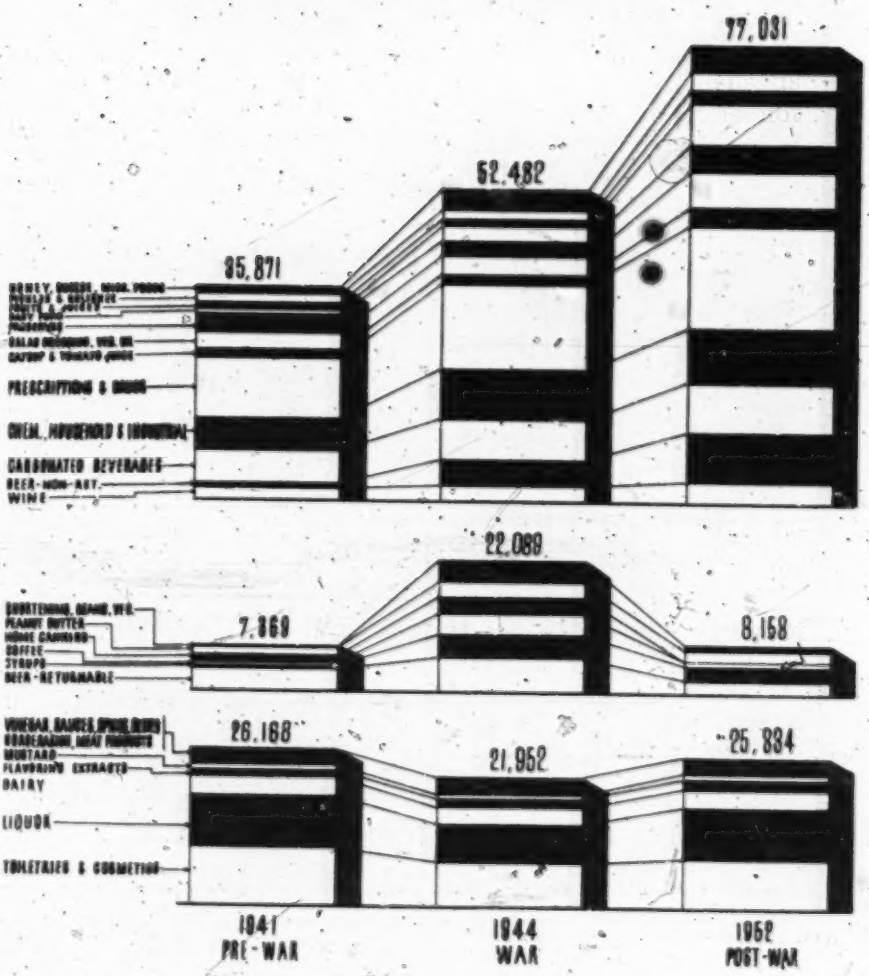
The center bars portray end uses where the stimulation of war measures didn't "take". Volume in these lines have dropped back to pre-war levels.

Products shown in the upper bars increased use of glass during the war, and have increased still more since the war. These are the products that are makin; the glass container market grow at the present time..

1717

END USES OF GLASS

(Thousands of Gross)



[fol. 63]

It is evident from some of the changes that have taken place in the glass container industry since, before the war, that changes must have been taking place in competitive industries, also. The following series of charts portray the trend of principal packages competing with glass containers since 1939.

WHAT HAS BEEN HAPPENING *in* COMPETITIVE INDUSTRIES?

[fol. 65]

We now return to our line showing the trend of shipping containers, which we believe to represent the best possible measure of the trend of the general small retail package industry. This line is shown in all of the competitive container charts as a trend reference. On this chart the index is based on 1940 equals 100, as 1940 is the first year for which data on metal can shipments is available.

It will be noted that over-all the can industry has never recovered the position it lost during the war. Food cans in particular are way below the general packaging trend, and are hardly keeping pace with the growth in population. One reason for this is, of course, the invasion of the canned food markets by frozen foods, and the long period of relative prosperity which permits even the lower socio-economic group to buy more fresh fruits and vegetables out of season.

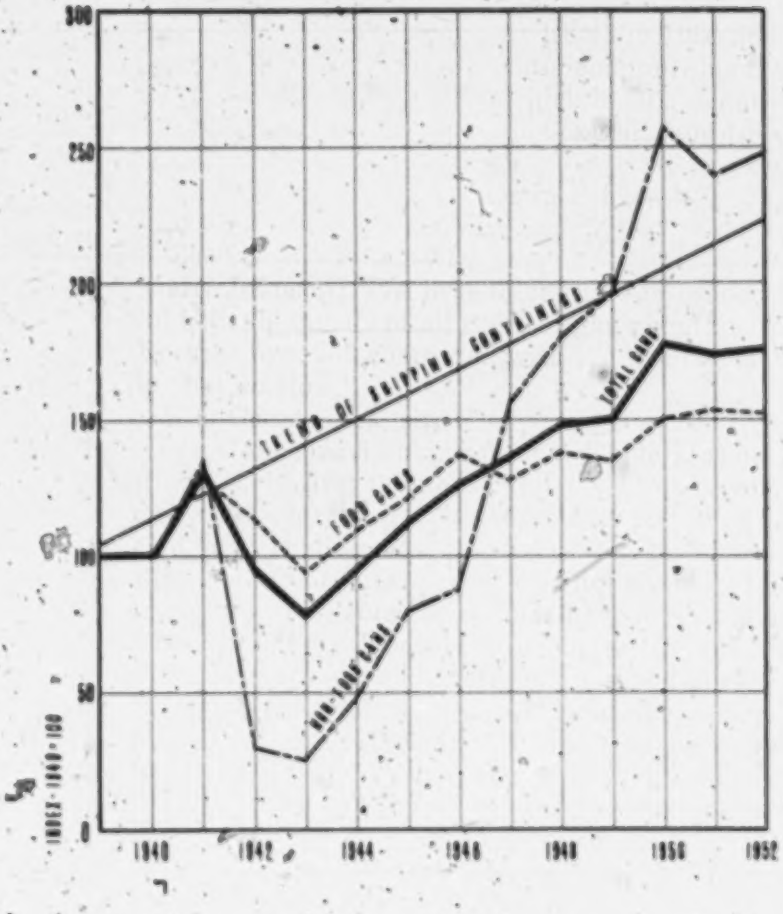
Another reason is that glass has retained some of the markets which cans lost during the war. Reference to chart 11 shows that glass and cans both moved to new plateaus after the war, one up and one down.

The rapid recovery evidenced by non-food cans reflects principally the rapid growth in the use of beer cans, and also the return of "general line" cans to the market, following ware-time restrictions. The great importance of the beer can to the health and welfare of the metal can industry becomes very evident here.

[fol. 66]

METAL CANS

1721



25

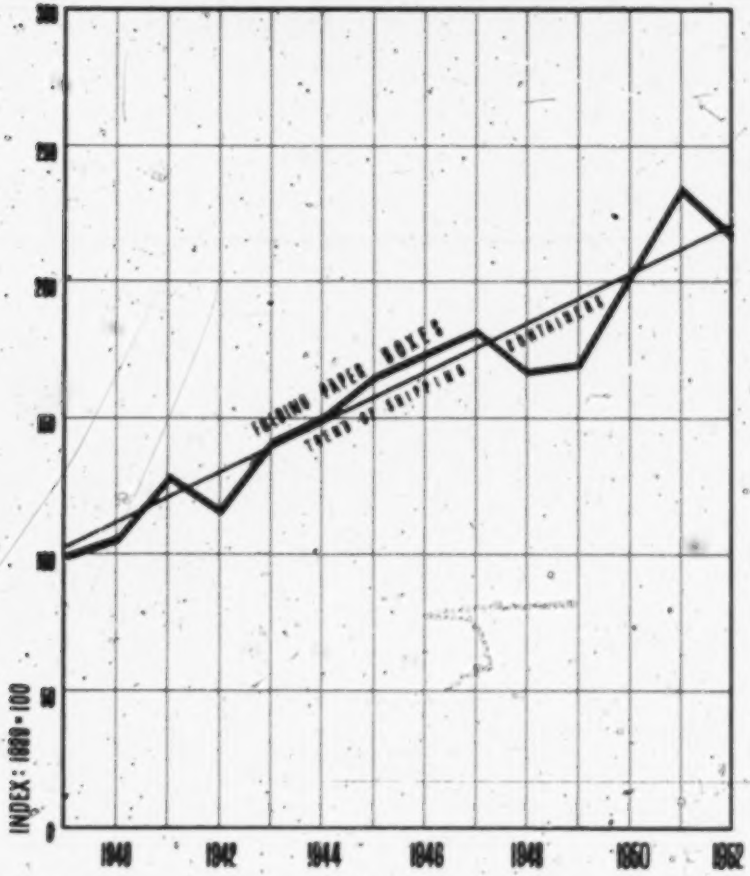
[fol. 67]

Folding paper boxes, it will be readily seen, clearly follow the general trend of packaging. It will be recalled that this trend represents a rate of growth considerably in excess of the population, and even in excess of the consumer disposable income.

[fol. 68]

Folding PAPER BOXES

1723



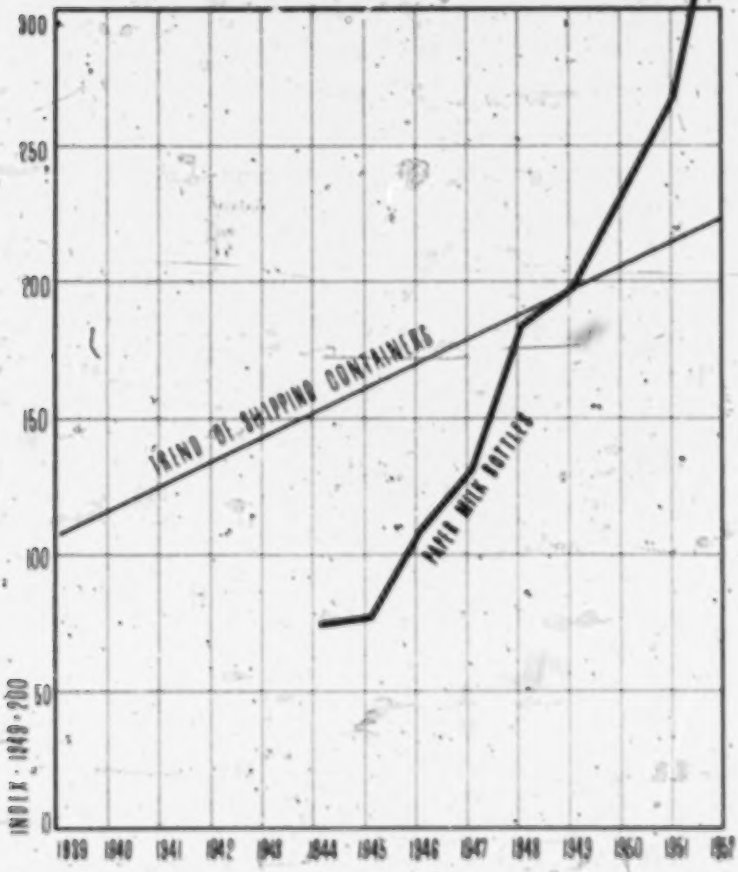
[fol. 69]

The chart speaks for itself and the glass container industry is only too well aware of the invasions made by this aggressive competitor into a traditionally glass container market.

Continued growth of paper milk bottles will depend largely upon whether they succeed in invading the home delivery market, an end toward which they are vigorously addressing themselves at present.

[fol. 70]

PAPER MILK BOTTLES



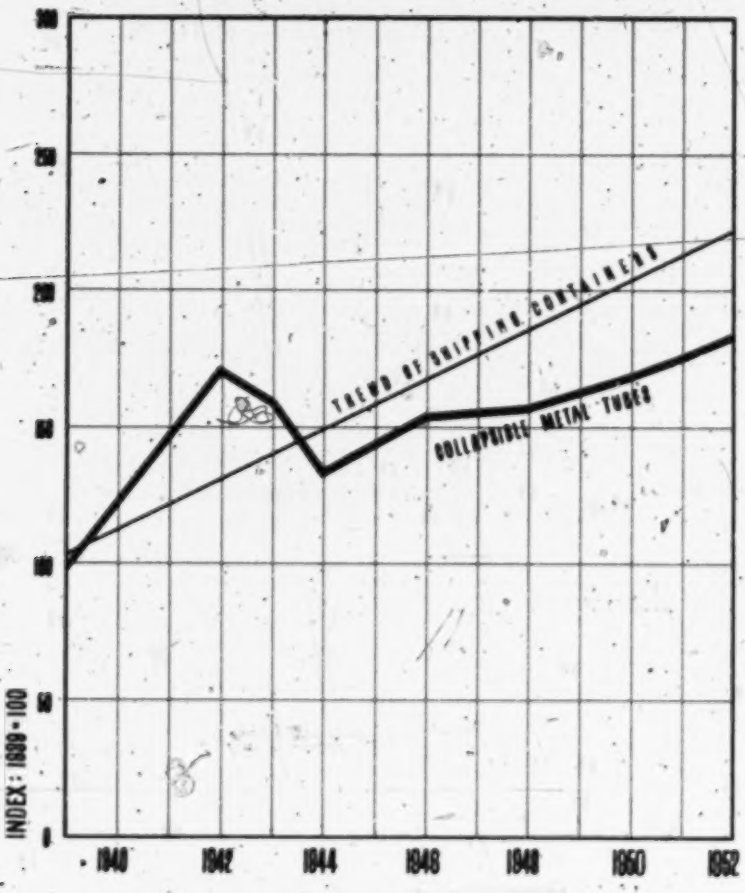
[fol. 71]

Collapsible metal tubes, curtailed during the wartime due to metal shortages, have failed to recover their pre-war position and are following a trend that lags considerably behind the growth of the general packaging market. It is presumed that this results from their loss to collapsible tubes made of plastic materials and to other plastic containers.

[fol. 72]

1727

Collapsible METAL TUBES



[fol. 78]

Polyethylene is the "glamor boy" of the packaging industry. As a raw material, polyethylene has many uses other than in packaging. The chemical industry predicts that polyethylene will be the first billion pound per year plastic.

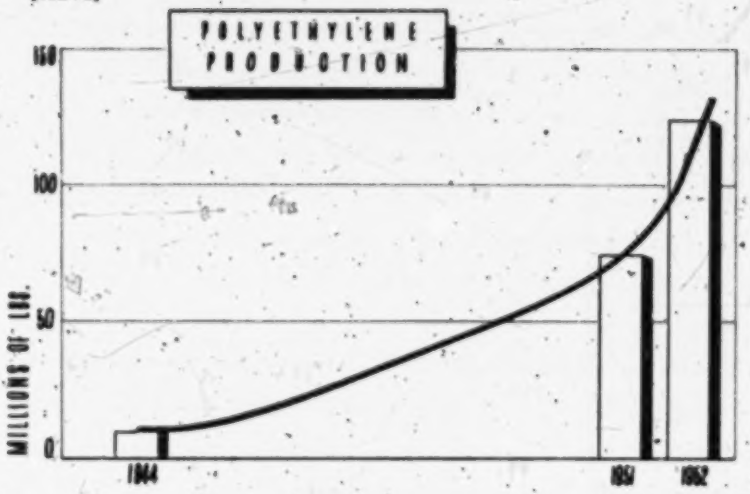
It has long been said that plastics would never represent a substantial threat to the glass container industry until a suitable material could be developed from by-products of the petroleum or the coal industries. The cellulose group of plastics has never offered promise of economic ability to compete with glass.

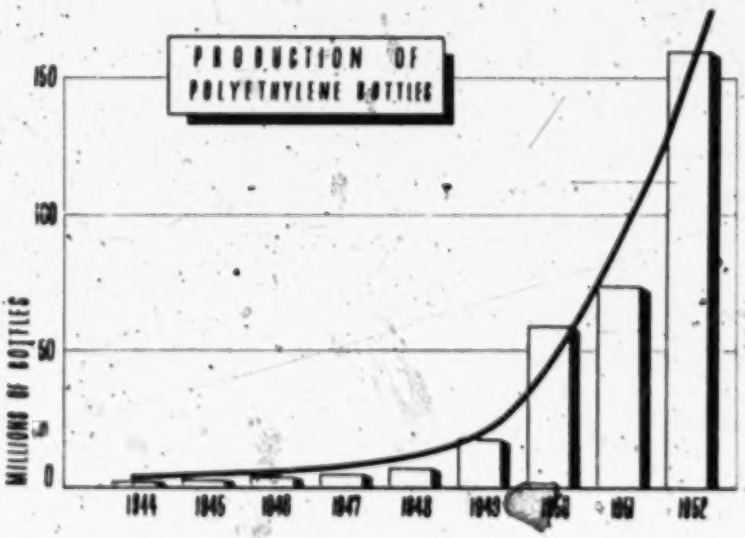
Polyethylene was selling at 49¢ a pound when this survey was undertaken in May. In November, the third cut in polyethylene prices within a year had reduced the price to 41¢ a pound. It is predicted that the eventual price will be in the neighborhood of 30¢ a pound. Careful studies indicate that at this figure, polyethylene squeeze bottles can compete economically with glass, particularly in sizes of 4 oz. capacity and less.

Polyethylene flakes (the raw material for the bottles) were produced at the rate of 125,000,000 pounds per year in 1952. New plants already under construction will bring production to 345,000,000 pounds in 1954 and 420,000,000 pounds in 1955. This will put production ahead of demand next year, for the first time. This should be a strong stimulus to the further development of polyethylene containers, which have heretofore been held back by raw material shortages.

160,000,000 polyethylene bottles were blown in 1952 and it is estimated that four times that number will be turned out in 1954.

A polyethylene bottle weighs about one-fifth as much as the comparable glass bottle and is not susceptible to impact breakage. Polyethylene is an excellent moisture barrier and it is chemically satisfactory to contain most of the products presently sold in glass containers. However, it is permeable to oxygen and carbon dioxide as well to essential oils, and will swell in the presence of certain vegetable and animal oils. Polyethylene bottles cannot withstand sterilizing temperatures. It is expected that as soon as the supply becomes adequate, considerable research will be thrown against this product in an effort to eliminate these objections. Experimental data already available indicate that eventually they will solve these problems.


POLYETHYLENE PRODUCTION
150
100
50
0
MILLIONS OF LBS.
1944
1951
1952


PRODUCTION OF POLYETHYLENE BOTTLES
150
100
50
0
MILLIONS OF BOTTLES
1944
1945
1946
1947
1948
1949
1950
1951
1952

[fol. 75]

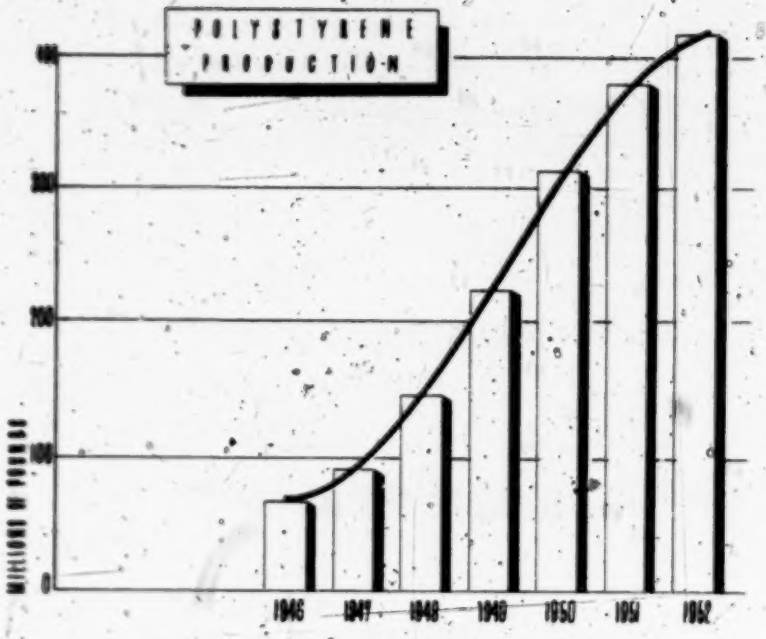
Although less spectacular than polyethylene in its long-range possibilities, polystyrene represents an important factor in the future packaging field. It does not give the hope of eventual low cost that polyethylene does, but it has many good qualities. Production of the raw material shows signs of leveling off at about 400 million pounds per year. It has been impossible to determine what portion of this production is going into containers at present, and the product has many other uses.

Polystyrene can be made crystal-clear, colored, or opaque. Polystyrene containers have been quite breakable and subject to crazing and splitting. However, annealing processes recently developed improve its physical qualities considerably. It is rigid (not squeezable). It is subject to "solvent crazing" and also crazing when subjected to direct sunlight or other sources of ultra-violet light. It has good chemical durability but is still incapable of withstanding sterilizing temperatures.

Metal foil and plastic film are growing rapidly in the packaging field, although accurate statistics do not seem to be available. Liquid products such as syrup are going into laminated foil and film "unipack" envelopes for individual servings, as are instant coffee, tea, and many dairy products.

[fol. 76]

1731



FOIL & FILM

Cellophane	1924	500,000 lbs
	1951	300,000,000 lbs
Vinyl Sheeting	1951	181,581,000 lbs
Metal Foil	1939	19,000,000
	1947	50,900,000
	1951	102,691,000

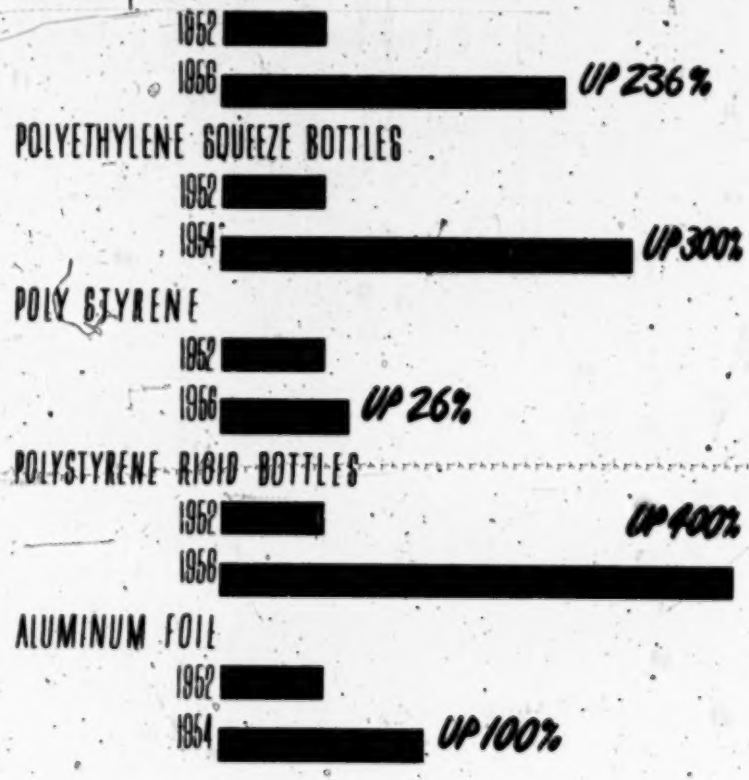
(30)

[fol. 78]

17333

New Materials are POTENT FUTURE THREAT

ANTICIPATED PRODUCTION



COMPETITION IS BECOMING STRONGER

★MORE AGRESSIVE

★EMPHASIS ON PRODUCT PROMOTION RATHER THAN BRAND

★NEW MATERIALS, WITH NEW PROPERTIES AND GLAMOUR OF NEWNESS

[fol. 81]

The competitors of glass containers are aggressively advertising their products, and taking advantage of the appeal of newness where they have this.

The Can Manufacturers Institute spent approximately $1,000,000 a year for consumer advertising from 1944 through 1948. American Can Company is spending at the rate of $400,000 a year to consumers and $70,000 a year in trade journals.

Continental Can Company is spending about $700,000 a year on consumer advertising and $65,000 on trade papers. Ex-Cell-O Corporation (Purepak Division paper milk containers) is spending about $425,000 on consumer advertising and $35,000 on trade papers. Plax Corporation (polyethylene bottles) is spending at the rate of $250,000 per year to consumers and $20,000 in trade journals.

DuPont's Cellophane Division is spending at the rate of $350,000 per year to consumers and $25,000 in trade journals, and about $1,600,000 on newspapers, network radio, and television for "products" and "institutional" advertising in which occur very frequent references to their packaging films and to polyethylene, both films and bottles.

C & C Beverages, plugging their beverages in tin cans and including many unfair but damaging references to glass, were spending $20,000 per month in newspapers this past summer, and undoubtedly considerably larger sums for a very heavy program of spot radio and television.

Above figures represent expenditures for space and time only. Total advertising budgets are considerably higher than these figures indicate.

COMPETITIVE MATERIALS ARE BEING PROMOTED AGGRESSIVELY

with emphasis on product rather than brand

[fol. 83]

Many competitive products are being promoted even more aggressively with packers and chain stores than with the public.

DuPont has spent hundreds of thousands of dollars promoting cellophane for "impulse buying" among manufacturers of bread, crackers, candies, etc. Each division of this company maintains extensive sales crews to detail the trade.

[Fol. 84]

TRADE PROMOTION IS AGGRESSIVE

Too

 [fol. 83]

A review of the advertising of competing industries discloses that their main drive is not for consumer recognition of an individual company's product, but rather to promote their general type of container material in competition with other container materials. And the one container material which all three major competitors (cans, paper, and plastics) center their attack on is glass.

To ignore this challenge is to run the risk of an unprofitable future in a declining market. To meet the challenge and vigorously compete for a larger share of the over-all packaging market offers the hope for a profitable and expanding future for the glass container industry.

MAJOR COMPETITION

In the

PACKAGING INDUSTRY

is

PRODUCT *vs* PRODUCT

CANS *VS* GLASS

PAPER *VS* GLASS

PLASTICS *VS* GLASS

HOW DOES GLASS COMPARE *with* COMPETITVE CONTAINER MATERIALS?

[fol. 89] 1744

It takes many varied attributes to make a good container material. Each container material excels in certain attributes. Each has certain products for which it is the best adapted container material.

This chart portrays an evaluation of the most important attributes of various types of containers made by Preston Laboratories, Butler, Pennsylvania. Versatility of glass is evidenced by its rating of Good or Excellent in 20 attributes out of 24, whereas its nearest competitor scores 16 out of 23.

However, the two points on which glass rates "Poor" often prove critical in the choice of a container; namely, weight and impact strength.

A study of the chart will disclose the strong and weak points of all principal container materials.

E - EXCELLENT
G - GOOD
F - FAIR
P - POOR

Rating... ATTRIBUTES of GLASS and OTHER MATERIALS for PACKAGING

[101 90]

	GLASS CONTAINERS	METAL CAN (SANITARY)	METAL CAN (GENERAL)	PAPER MILK CARTONS	PAPER BOX	COLLAPS. METAL TUBES	CELLOPHANE	PLIOFILM	POLYETHYLENE	POLYSTYRENE	METAL FOIL
COST	G	E	F	P	E	F	E	P	P	P	F
WEIGHT	P	G	G	E	E	G	E	E	E	E	E
STRENGTH (PRESS.)	G	F	F	P	P	F	P	F	P	P	P
STRENGTH (-IMPACT)	P	G	G	F	F	E	G	G	E	G	G
STRENGTH (PUNCT.)	E	G	G	P	P	F	P	F	E	G	P
CHEMICAL INERTNESS	E	F		G	P	P	G	G	G	G	P
TEMP. LIMIT	E (800°F)	G (350°F)	F (300°F)	P	P	F	P	P (170°F)	P (185°F)	P	P
TRANSPARENCY	E	P	P	P	P	P	E	G	P	E	P
ULTRA VIOLET PROTECTION	P to F	E	E	E	E	E	P	P	P	P	E
ULTRA VIOLET DETERIORATION	E	E	E	E	E	E	G	G	G	P	E
PERMEABILITY OF MOISTURE	E	E	E	G	P	E	G	E	E	E	E
PERMEABILITY OF OXYGEN	E	E	E	G	P	E	G	E	P	E	E
PERMEABILITY OF CARBON DIOXIDE	E	E	E	G	P	E	G	E	P	E	E
CLOSURES - EFFECTIVENESS OF SEAL	E	E	G	G	P	E			P	G	
CLOSURES - EASE OF OPENING	F to E	F to G	G	E	F	E	F	G	E	E	G
CLOSURES - RE-SEAL	E	P	P	P	P	E	P	P	G	G	P
ODOR	E	G	G	P	P	F	E	E	E	F	E
TASTE	E	G	F	P	P	G	E	E	E	E	E
"FEEL"	G	G	G	P	F	G	F	G	E	G	G
APPEARANCE	E	F	G	F	G	G	F	G	G	E	G
CONVEYOR LINE STABILITY	G	E	E	F	F				P	F	
VACUUM FILLING	E		E						P	E	
INSPECTABILITY - AFTER FILLING	E	P	P	P	P	P	E	E	F	E	P

1745

[fol. 91]

In 1951 "Sales Management" Magazine surveyed the opinion of housewives regarding containers. On this chart are listed, in the order of their importance to the housewife as disclosed by this independent survey, the features they look for in a package. Again we find glass with the best over-all rating, - winning Excellent or Good in the five most important categories.

It would appear that the glass container industry can justifiably claim to have the best package for many products and that glass has several important qualities which, if better understood by the public, should prevent invasion of its markets and open many broader markets to it. Glass has the ultimate in a smooth sanitary surface, which other container manufacturers strive mightily to approach while few even come close.

The weaknesses of glass containers (as to weight and impact strength) cry out for increased attention from the technologists.

E - EXCELLENT
G - GOOD
F - FAIR
P - POOR

Rating... FEATURES DESIRED by HOUSEWIVES

[101.92]

	GLASS CONTAINER	METAL CAN (STEEL)	METAL CAN (ALUMINUM)	PAPER MILK CARTON	PAPER BOX	CELLOPHANE BAGS & WRAPS	PLASTIC BAGS & WRAPS	COLLAPS. METAL TUBES	POLYE. FILM	POLYE. BOTT. & JARS	POLYSTYRENE BOTTLES & JARS
1. PACKAGE DOES NOT DETERIORATE	E	F to G	P	F	F	P	G	G	G	F to E	G
2. GOOD INNER SURFACE WRAP	E	F to G	P	F	F to G	G	E	G	E	E	E
3. TIGHT RESEAL	E	P	P to G	P	P	P	P	G	P	F	E
4. LEAK-PROOF	E	G	G	P	P	P	G	F	G	E	E
5. STABLE, DOESN'T TIP EASILY	G	E	E	F	F to G	P	P		P	F	G
6. "DRIBBLE-PROOF"	F to G	F to E	F to G	F				F		E	G
7. CONVENIENCE IN STORING	G	G	E	E	G	G	G	G	G	G	G
8. EASY TO OPEN	F to E	F to G	G	E	F	F	G	E	G	E	E
9. FITS HANDS	F to E	F	G	E	F to G	G	G	E	E	E	F to G
10. OPENING MARKS - CONTENTS EASY TO MEASURE	G	G		F	F to G	P	P		P	E	G
11. EASE OF CARRYING	P	E	E	G	E	E	E	E	E	E	G
12. CAN BE [illegible]	E	P	P	P	P	P	P	P	P	G	E

1242

[fol. 93]

Psychological factors, or the "feeling" which people have about glass containers or competitive containers, might involve such things as the aesthetic, - the beauty or social acceptability, the confidence inspired by the ability to see the contents and the feeling that it is safer to store leftovers in glass than in other containers. Whether real or imaginary, such preferences or prejudices could well be strong enough to offset the cost of greater shipping weight.

"Conversely, so long as the danger of glass breakage continues to be exaggerated in the public thought, that factor will be a resistance to the use of glass.

The glass container industry needs to find out the prejudices as well as the preferences of consumers and the trade regarding glass and other types of packages in order to pre-empt this knowledge to increase sales of glass containers.

[fol. 94]

PSYCHOLOGICAL FACTORS MAY DETERMINE CHOICE OF CONTAINER

ABSTRACT QUALITIES MAY PROVE MORE IMPORTANT THAN CONCRETE QUALITIES

IMAGINED ADVANTAGES OFTEN OUT-WEIGH REAL ADVANTAGES

PREJUDICES & PREFERENCES OF THE MARKET, WHEN LEARNED, MAY BE USED TO OUR ADVANTAGE

1750

[fol. 95]

It is regrettably true that we tend to forget or overlook the advantages we enjoy from familiar persons, places or things. Like the dog in Aesop's Fables who dropped the real bone from its mouth in order to grasp the seemingly more desirable one reflected in the water. Glass container users may be swayed by the imaginary advantages of other containers if not reminded of the good they are already enjoying.

[fol. 96]

GLASS HAS A PECULIAR PSYCHOLOGICAL PROBLEM

GLASS IS THE OLDEST
GLASS IS FAMILIAR
GLASS IS TAKEN FOR GRANTED

GLASS MUST BE KEPT NEW & GLAMOROUS
by
PUBLICITY
TECHNICAL IMPROVEMENTS

THE PUBLIC MUST BE MADE
GLASS-CONSCIOUS *By*
PROMOTING INTRINSIC
ADVANTAGES *of* GLASS

[fol. 98]

IF GLASS HAD JUST BEEN INVENTED-

EVERYONE WOULD BE EXCITED OVER THIS AMAZING NEW MATERIAL WITH:

SPARKLING BEAUTY
UNEQUALED CLARITY
CHEMICAL INERTNESS
IMPERMEABILITY
TASTELESSNESS
ABSOLUTE CLEANLINESS

But

GLASS IS TAKEN FOR GRANTED - VULNERABLE TO ATTACK FROM NEWER, MORE GLAMOROUS MATERIALS

[fol. 100]

HOW MUCH BUSINESS DOES GLASS STAND *to* LOSE OR GAIN ?

There is not a single glass container manufacturer who is not or will not soon be confronted with the active competition or potential competition indicated on these charts. The present glass container volume in these fields is shown in terms of 1952 shipments in gross.

[fol. 102]

COMPETITION FROM MANY SOURCES ON MANY FRONTS

● ACTIVE COMPETITION ○ POTENTIAL COMPETITION

END USE	1952 GLASS SHIPMENTS IN GROSS	METAL CANS	PAPER	PLASTIC CONTAINERS	PLASTIC FILM	METAL FOIL
BABY FOOD	6,800	●				
SALAD DRESSINGS, ETC.	5,400					
PRESERVES	4,500	○		○		
PICKLES	3,530	○			●	
CATSUP	3,144			○		
HONEY	900	●	●			
FLAVORING EXTRACTS	1,500			○		
PEANUT BUTTER	1,250			○		
SYRUPS	1,250	●		○		●
FRUIT JUICES	1,100	●				
MUSTARD	1,000			○		
COFFEE	900	●				●
VEGETABLE OILS	750	●		○		
OLIVES	735	●				
MEAT & FISH PRODUCTS	670	●				
VINEGAR	550			○		
CHERRIES (maraschino)	500			○		
SPICES	350	●				

[fol. 103]

Each item on this chart can be substantiated by actual competitive activity disclosed in information from reliable sources. The size of the potential loss in each case is an estimate based on a study of the individual items.

For example, pickles in tin cans are an actuality in Canada, where the packers claim a superior product due to lack of over-cooking during sterilizing. Lithographed cans have long been a popular container for preserves and jams in Canada. The Tea and Coffee Trade Journal carried a recent article to the effect that can manufacturers are perfecting a can for soluble coffee which is being eagerly awaited by the packers.

[fol. 104]

1759

COMPETITION FROM MANY SOURCES ON MANY FRONTS

● ACTIVE COMPETITION ○ POTENTIAL COMPETITION

END USE	1967 GLASS CONSUMPTION IN GROSS	METAL CANS	PAPER	PLASTIC CONTAINERS	PLASTIC FILM	METAL FOIL
FRUITS	300	●				
SAUCES	250			○		
BEETS	148	●				
OTHER VEGETABLES	958	●				
HORSERADISH	200					
CHEESE (processed)	1,800	●		●	●	●
MISC. DRY FOODS						
MISC. LIQUIDS						
MILK	5,150	●	●			
DRY MILK			●		●	●
SOFT DRINKS	8,344	●				
BEER	10,456	●				
WINE	3,682	○				
LIQUOR	8,618					
TOILETRIES & COSMETICS	9,211	●	●	●	●	●
PRESCRIPTIONS & DRUGS	17,048	●	●	●	●	●
CHEM. HOUSE & IND.	8,825			●		

1760

[fol. 105]

The potential competition here is self-evident with the possible exception of the jelly field. Toby Jell, a concentrated powdered jelly, has recently been introduced in the New York market, supported by a powerful advertising campaign.

COMPETITION *from* METAL CANS

IN 000'S OF GROSS PER YEAR

PRODUCT	1952 GLASS SHIPMENTS	POSSIBLE LOSS
FOODS		
BEETS	148	50
OTHER VEG. & JUICES	700	250
FRUITS	300	100
FRUIT JUICES	1,400	500
VEGETABLE OILS	750	350
SYRUPS	2,300	700
PICKLES	3,000	200
PRESERVES, JAMS, ETC.	4,500	900
COFFEE	900	500
DAIRY PRODUCTS	3,150	100
BEVERAGES		
CARBONATED BEVERAGES	8,844	2,000
BEER	10,456	4,900
WINE	2,882	600
PRESCRIPTIONS & DRUGS	17,048	500
CHEMICALS, Household & Industrial	9,925	1,500
TOTAL	65,998	12,150

[fol. 107]

COMPETITION *from* PAPER CONTAINERS

1762

IN 000'S OF GROSS PER YEAR

PRODUCT	1952 GLASS SHIPMENTS	POSSIBLE LOSS
VEGETABLES	850	150 (FROZEN)
FRUITS	300	50 (FROZEN)
PRESERVES, JAMS, JELLIES	4,500	500 (POWDERED)
HONEY	900	200
DAIRY PRODUCTS	3,150	2,000
TOTAL	9,700	2,900

[fol. 109]

1764

COMPETITION *from* METAL FOIL

IN 000'S OF GROSS PER YEAR

PRODUCT	1952 GLASS SHIPMENTS	POSSIBLE LOSS
FOODS		
SYRUP	2,300	100
COFFEE	900	100
CHEESE	1,300	100
DRY MILK	?	?
TOILETRIES & COSMETICS	8,211	100
PRESCRIPTIONS & DRUGS	17,048	200
TOTAL	29,759	600

47

[fol. 110]

Again, envelopes containing individual services of certain products may be made of plastic film and offer competition to glass containers. One of the country's top pickle packers is already merchandising dill pickles, vacuum packed in bags of plastic film.

[fol: 111]

COMPETITION *from* PLASTIC FILM

1766

IN 000'S OF GROSS PER YEAR

PRODUCT	1952 GLASS SHIPMENTS	POSSIBLE LOSS
FOODS		
PICKLES	8,000	100
PROCESSED CHEESE	1,300	300
DRY MILK	?	?
TOILETRIES & COSMETICS	8,211	200
PRESCRIPTIONS & DRUGS	17,048	400
TOTAL	29,559	1,000

The findings of this survey contradict the predictions of certain financial houses that the glass container industry stands to lose as much as forty per cent of its volume to the polyethylene bottle. While the estimates shown here are conservative, they are based upon a knowledge of the glass container industry and a first hand study of the requirements of its users, and the possibilities are large enough to warrant a positive promotion program by the industry.

The first column shows estimates of possible losses based upon the properties of polyethylene and polystyrene as they exist today. The second column assumes that advances in plastic technology will result in greatly improved physical properties as to permeability, chemical resistance to oil, and ability to withstand sterilizing temperatures, which advances will almost certainly be made.

[fol. 113]

COMPETITION from PLASTIC CONTAINERS

1768

IN 000'S OF GROSS

PRODUCT	1952 GLASS SHIPMENTS	POSSIBLE LOSS BY 1958 (1)	POSSIBLE LOSS BY 1970 (2)
FOODS			
PRESERVES	4,500	300	1,000
CATSUP	8,144		600
FLAVORING EXTRACTS	1,500	75	450
PEANUT BUTTER	1,850	100	300
SYRUPS	2,900		500
MUSTARD	1,000	75	300
VEG. OILS	750		150
VINEGAR	550	30	150
SAUCES	460	25	180
CHEESE, processed	1,300	180	300
PRESCRIPTION & DRUGS	17,048	2,200	6,000
TOILETRIES & COSMETICS	8,211	2,000	3,500
CHEMICAL, HOUSEHOLD & IND.	9,325	900	1,500
CARBOYS	?	?	?
TOTAL	51,928	6,885	14,990

(1) BASED ON PRESENT PLASTICS TECHNOLOGY
(2) BASED ON PROBABLE ADVANCES IN PLASTIC TECHNOLOGY

[fol. 114]

Now, let us see what these potential losses in business amount to in aggregate. Even though the individual estimates are believed to be conservative, the total potential loss if the glass container industry should fail to defend these markets is alarming. The indicated 25 million to 33 million gross loss over the period indicated would considerably more than offset general gains attributable to population increase.

[fol. 115]

SUMMARY

1770

POSSIBLE LOSSES to COMPETITIVE CONTAINERS

(in gross per year)

METAL CANS	13,200,000
PAPER	2,900,000
PLASTIC CONTAINERS	6,900,000 / 14,900,000
PLASTIC FILMS	1,000,000
METAL FOIL	600,000
TOTAL	24,600,000 / 32,600,000

(50)

[fol. 116]

However, there is another side to the coin, and herein lies a tremendous challenge to the glass container industry. Here again, an effort has been made to keep the estimates on the conservative side. Nevertheless we come up with the imposing total of 70 million gross of potential new business for the glass container industry.

The evaporated milk and baby formula business could be the outgrowth of the G. C. M. I. studies in the aseptic canning field. The business in powdered coffee will depend not only on conversion from ground coffee, but upon glass containers holding the preference of the public and the trade in this field. The same is true of the dried milk and cream business.

In all cases success will depend on continued technological improvement in glass containers, particularly as to weight and breakage - but of greatest importance would be positive efforts through advertising, publicity, and promotion to convince the public of the advantages of glass.

Intelligent, forceful, and persistent means must be used to convert the growing public demand for convenience into increased sales for glass containers, rather than for competitive packages, - particularly in the field of single - trip carbonated beverage and beer containers.

A potential new market of 70 million gross per year should certainly be worth the effort.

[fol. 117]

1772

POSSIBLE GAINS

PRODUCT	POTENTIAL (ANNUAL GROSS)	PRESENT PACKAGING (ANNUAL GROSS)	
FOODS			
BABY FOOD	4,400,000	CANS	4,400,000
EVAPORATED MILK & BABY FORMULAS	4,000,000	CANS	15,400,000
SYRUPS	800,000	CANS	2,500,000
FRUIT JUICES	800,000	CANS	5,000,000
FROZEN ORANGE JUICE	700,000	CANS	7,000,000
VEGETABLE OILS	250,000	CANS	?
COFFEE (powdered)	1,200,000	CANS	2,500,000
TEA (powdered)	200,000	PAPER	?
RIPE OLIVES	300,000	CANS	300,000
FRUITS	2,500,000	CANS	15,650,000
BEETS	500,000	CANS	1,500,000
OTHER VEGETABLES	1,200,000	CANS	28,300,000
DRIED MILK & CREAM	5,000,000	CANS - PAPER - GLASS	
BEVERAGES			
CARBONATED BEVERAGES	15,000,000	RETURNABLE GLASS	
BEER	80,000,000	RETURNABLE GLASS	
MISCELLANEOUS			
LOW PRESSURE AEROSOLS	500,000	CANS	700,000
MOTOR OILS	500,000	CANS	5,000,000
OTHER AUTOMOTIVE SUPPLIES	500,000	CANS	?
CHEMICALS, HOUSEHOLD & IND.	2,000,000	CANS - PAPER - NEW PRODUCTS	
TOTAL	70,350,000		

CONCLUSIONS

In terms of our problem, as stated in the Foreward, it seems to me that the conclusions of our study, shown in this chart and the one that follows, indicate that:

(1) Our competition is strong - not to be ignored.

(2) We need to raise the value of our product in the eyes of the public.

(3) To do so would protect present markets and open up broad new markets, and

(4) The prize would be worth the effort.

To raise the value of the glass container in the opinion not only of those who empty it, - but also of those who buy, fill, distribute and sell it we must:

(1) Actually continue to improve it physically, - to lighten it and strengthen it, and increase its utility and beauty and convenience.

(2) Reduce the over-all cost of the finished glass package to everyone involved, and

(3) Explain it, sells its advantages and strengthen preferences, all along the line.

To do this requires stepped up:

Market Research

Technical Research

Design Research

Glass handling engineering, and

Effective educational advertising and publicity.

CONCLUSIONS

1. THE PACKAGING MARKET IS EXPANDING
2. GLASS CONTAINER VOLUME, ABNORMALLY BOOSTED BY WAR, SHOWS SIGNS OF LEVELING OFF
3. COMPETITIVE CONTAINERS ARE ALL GROWING, NEW MATERIALS AT RAPID PACE
4. COMPETITION IS AGGRESSIVE, ACTIVELY PROMOTED, HAS THE GLAMOR OF NEWNESS
5. GLASS IS TAKEN FOR GRANTED, VULNERABLE TO ATTACK FROM NEW MATERIALS
6. THE INDUSTRY DOES NOT ENJOY ESTEEM OF OPINION LEADERS TO WHICH IT IS ENTITLED

7. GLASS STANDS TO LOSE UP TO 28% OF PRESENT VOLUME, OR GAIN 62%

8. GLASS HAS OPPORTUNITY NOW, *BEFORE NEW MATERIALS BECOME ENTRENCHED*, TO PROTECT PRESENT FRANCHISE AND SECURE NEW MARKETS

9. TO MAINTAIN POSITION, GLASS CONTAINER INDUSTRY MUST . . .

a. RESEARCH THE MARKET, STUDY ITS PSYCHOLOGY

b. KEEP UP-TO-DATE, IN DESIGN AND TECHNICAL IMPROVEMENTS

c. ERASE PUBLIC MISCONCEPTIONS ABOUT INDUSTRY & ITS PRODUCTS

d. FIGHT AGGRESSIVELY, WHERE COMPETITION IS KEEN AND GLASS IS "RIGHT"

[fol. 121]

1776

APPENDIX

Containing data on which charts are based

[fol. 122]

APPENDIX

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1778

SHIPMENTS OF GLASS CONTAINERS

[fol. 124]

SHIPMENTS OF GLASS CONTAINERS

1779

Year	ALL CLASSES Shipments	ALL CLASSES Index	NARROW NECK FOOD CONTAINERS Shipments	NARROW NECK FOOD CONTAINERS Index	WIDE MOUTH FOOD CONTAINERS Shipments	WIDE MOUTH FOOD CONTAINERS Index
1929	33,500	68	2,800	76	7,086	68
1930	32,000	65	2,740	74	7,300	70
1931	31,300	64	2,500	68	6,773	65
1932	27,100	55	2,100	57	6,094	58
1933	33,000	67	2,250	61	6,947	66
1934	35,000	71	2,820	76	8,172	78
1935	37,500	76	3,100	84	8,204	78
1936	45,575	93	3,491	94	9,571	92
1937	50,243	102	3,573	97	9,834	94
1938	43,528	88	3,172	86	9,166	88
1939	49,366	100	3,695	100	10,451	100
1940	52,494	106	3,800	103	10,990	105
1941	69,408	141	4,826	130	14,222	136
1942	79,685	162	5,552	150	19,384	185
1943	95,518	193	7,240	196	26,641	255
1944	96,471	195	7,577	205	26,445	253
1945	104,005	210	8,886	240	29,335	281
1946	113,544	230	10,479	284	34,675	332
1947	105,678	214	10,679	288	26,091	250
1948	93,961	190	9,852	267	24,325	233
1949	87,449	177	8,835	239	23,331	223
1950	105,255	214	11,060	300	28,719	275
1951	111,675	227	11,528	313	27,448	263
1952	111,425	226	11,917	324	30,774	294

Source: U. S. Department of Commerce

Notes: Shipments in thousands of gross
Index - 1939 equals 100

[fol. 125]

SHIPMENTS OF GLASS CONTAINERS

1780

Year	DAIRY PRODUCTS Shipments	Index	HOME CANNING JARS Shipments	Index	CHEMICAL HOUSEHOLD & INDUSTRIAL CONTAINERS Shipments	Index
1929	2,560	107	1,260	132	1,933	59
1930	2,311	96	960	100	1,677	51
1931	2,203	92	2,301	240	1,872	57
1932	2,116	88	1,517	158	1,953	59
1933	1,874	78	1,116	117	2,343	71
1934	1,871	78	958	100	2,383	72
1935	2,067	86	1,[illegible]	142	2,174	66
1936	2,466	103	[illegible]	93	2,625	80
1937	2,581	108	1,278	133	2,604	79
1938	2,201	92	927	97	2,738	83
1939	2,394	100	958	100	3,289	100
1940	2,456	102	722	75	3,522	107
1941	3,248	137	1,290	135	4,915	149
1942	3,316	139	2,019	210	5,175	157
1943	3,126	130	4,358	455	7,924	241
1944	2,966	124	2,890	302	8,589	261
1945	3,608	151	2,458	257	8,299	252
1946	3,897	163	2,593	271	8,269	251
1947	3,891	163	2,175	227	6,389	199
1948	3,247	136	2,117	221	6,699	204
1949	3,311	138	1,763	184	7,063	215
1950	3,695	154	1,055	110	8,739	265
1951	3,517	147	882	92	9,099	276
1952	3,150	132	N. A.	-	9,325	283

Source: U. S. Department of Commerce

Notes: Shipments in thousands of gross
Index - 1939 equals 100

[fol. 126]

SHIPMENTS OF GLASS CONTAINERS

1781

TOILETRY AND COSMETIC CONTAINERS AND MEDICINAL AND DRUG CONTAINERS

Year	TOTAL Shipments	TOTAL Index	TOILETRY & COSMETICS Shipments	TOILETRY & COSMETICS Index	MEDICINAL AND DRUGS Shipments	MEDICINAL AND DRUGS Index
1929	13,277	88				
1930	12,534	83				
1931	12,149	80				
1932	10,790	71				
1933	12,475	82				
1934	12,085	80				
1935	12,420	82				
1936	14,304	95				
1937	14,991	99				
1938	13,067	86				
1939	15,225	100				
1940	15,447	101				
1941	19,966	131				
1942	18,983	124				
1943	23,360	153				
1944	21,642	142	7,382	49 *	14,260	93 *
1945	23,629	155	8,143	53	15,486	102
1946	25,963	170	8,642	56	17,321	104
1947	20,766	136	6,243	41	14,523	95
1948	21,310	140	6,471	42	14,840	98
1949	21,165	139	6,603	43	14,562	96
1950	25,707	169	7,572	50	18,134	119
1951	25,419	167	7,844	51	17,575	116
1952	25,259	166	8,211	54	17,048	102

* Indexes for components are expressed as percentages of 1939 total shipments.

Source: U. S. Department of Commerce

Notes: Shipments in thousands of gross
Index - 1939 equals 100

[fol. 127]

1782

SHIPMENTS OF GLASS CONTAINERS

TOILETRY AND COSMETIC CONTAINERS

Year	TOTAL Shipments	TOTAL Index	NARROW NECK Shipments	NARROW NECK Index	WIDE MOUTH Shipments	WIDE MOUTH Index
1929						
1930						
1931						
1932						
1933						
1934						
1935						
1936						
1937						
1938						
1939	4,872*	100				
1940						
1941						
1942						
1943						
1944	7,382	151	5,423	111 #	1,959	40 #
1945	8,143	167	6,353	130	1,790	37
1946	8,642	177	6,986	143	1,656	34
1947	6,243	128	4,870	100	1,373	28
1948	6,471	132	4,931	101	1,540	31
1949	6,603	135	5,172	106	1,431	29
1950	7,572	155	5,977	122	1,595	33
1951	7,844	161	6,241	128	1,603	33
1952	8,211	168	6,597	135	1,614	33

* 1939 shipments of Toiletry and Cosmetic Containers are estimated by splitting total shipments in 1939 by average share of total during 1944-52 period.

Indexes for components are expressed as percentages of 1939 total shipments.

Source: U. S. Department of Commerce

Notes: Shipments in thousands of gross
Index - 1939 equals 100

[fol. 128]

SHIPMENTS OF GLASS CONTAINERS

1783

MEDICINAL AND DRUG CONTAINERS

Year	TOTAL Shipments	TOTAL Index	NARROW NECK Shipments	NARROW NECK Index	WIDE MOUTH Shipments	WIDE MOUTH Index
1929						
1930						
1931						
1932						
1933						
1934						
1935						
1936						
1937						
1938						
1939	10,353*	100				
1940						
1941						
1942						
1943						
1944	14,260	138	11,347	110#	2,913	28#
1945	15,486	149	12,331	119	3,155	30
1946	17,321	167	13,864	134	3,457	33
1947	14,523	140	11,422	110	3,101	30
1948	14,840	143	11,822	114	3,018	29
1949	14,562	140	11,659	112	2,903	28
1950	18,134	175	14,685	142	3,449	33
1951	17,575	169	13,726	132	3,849	37
1952	17,048	164	13,073	126	3,975	38

* 1939 shipments of Medicinal and Drug Containers are estimated by splitting total shipments in 1939 by average share of total during 1944-52 period.

#Indexes for componets are expressed as percentages of 1939 total shipments.

Source: U. S. Department of Commerce

Notes: Shipments in thousands of gross
Index - 1939 equals 100

[fol. 129]

SHIPMENTS OF GLASS CONTAINERS

1784

BEER BOTTLES

Year	TOTAL Shipments	TOTAL Index	RETURNABLE Shipments	RETURNABLE Index*	NON-RETURNABLE Shipments	NON-RETURNABLE Index*
1929						
1930						
1931						
1932						
1933	4,493	192	4,493	192		
1934	1,323	57	1,323	57		
1935	1,346	58	1,346	58		
1936	2,674	114	2,674	114		
1937	4,313	185	4,313	185		
1938	2,136	91	2,136	91		
1939	2,339	100	2,10[illegible]	90	231	10
1940	2,942	126	2,608	112	334	14
1941	4,636	198	3,676	157	960	41
1942	9,277	397	6,181	265	3,096	132
1943	8,319	356	6,562	281	1,757	75
1944	10,080	431	N. A.		N. A.	
1945	10,359	443	5,940	254	4,419	189
1946	6,782	290	5,904	252	878	38
1947	12,991	555	9,952	425	3,039	130
1948	7,665	328	4,100	176	3,565	154
1949	4,996	214	1,995	85	3,001	129
1950	6,366	272	3,155	135	3,211	137
1951	14,340	613	4,524	193	9,816	420
1952	10,456	447	2,258	97	8,198	350

*Returnable and non-returnable bottle shipment indexes are expressed as percent of total beer-bottle shipments in 1939.

Source: U. S. Department of Commerce

Notes: Shipments in thousands of gross
Index - 1939 equals 100

[fol. 130]

SHIPMENTS OF GLASS CONTAINERS

1785

BEVERAGE BOTTLES

Year	TOTAL Shipments	TOTAL Index	RETURNABLE Shipments	RETURNABLE Index	NON-RETURNABLE Shipments	NON-RETURNABLE Index
1929	4,829	154				
1930	4,434	141				
1931	3,692	117				
1932	2,395	76				
1933	1,531	49				
1934	1,254	40				
1935	1,327	42				
1936	2,111	67				
1937	3,133	101				
1938	2,745	87		100		100
1939	3,148	100				
1940	3,827	122				
1941	5,548	176				
1942	4,795	152				
1943	5,566	176				
1944	6,906	219	6,906	219		
1945	6,806	216	6,806	216		
1946	6,456	205	6,456	205		
1947	10,376	330	10,376	330		
1948	7,805	248	7,792	247	13	
1949	5,325	169	5,274	167*	51	2
1950	6,459	205	6,291	199	168	5
1951	6,578	209	6,398	203	180	6
1952	8,3[illegible]	265	7,897	251	44[illegible]	14

*Index for both returnable and non-returnable bottles are based on 1939 shipments for returnable bottles.

Source: U. S. Department of Commerce

Notes: Shipments in thousands of gross
Index - 1939 equals 100

60

[fol. 131]

SHIPMENTS OF GLASS CONTAINERS

1786

WINE AND LIQUOR BOTTLES

	TOTAL		WINE		LIQUOR	
Year	Shipments	Index	Shipments	Index	Shipments	Index
1929						
1930						
1931						
1932						
1933						
1934	4,150	53				
1935	5,663	72				
1936	7,447	95				
1937	7,936	101				
1938	7,376	94				
1939	7,867	100				
1940	8,788	112				
1941	10,757	137				
1942	11,184	142				
1943	8,984	114				
1944	9,412	120	2,786#	35.5#	6,626#	84.5#
1945	10,625	135	2,364	30	8,261	105
1946	14,430	183	4,017	51	10,413	132
1947	12,320	157	2,418	31	9,902	126
1948	10,942	139	3,182	40	7,760	99
1949	11,662	148	3,421	43.5	8,241	104.5
1950	13,455	171	3,746	48	9,709	123
1951	12,864	164	3,219	41	9,645	123
1952	12,200	155	3,682	47	8,518	108

#Indexes for componets are expressed as percentages of 1939 total shipments.

Source: U. S. Department of Commerce

Notes: Shipments in thousands of gross
Index - 1939 equals 100

[fol. 132] SHIPMENTS OF GLASS CONTAINERS

1787

CHEMICAL, HOUSEHOLD AND INDUSTRIAL CONTAINERS

Year	TOTAL		NARROW NECK		WIDE MOUTH	
	Shipments	Index	Shipments	Index	Shipments	Index
1929	1,933	59				
1930	1,677	51				
1931	1,872	57				
1932	1,953	59				
1933	2,343	71				
1934	2,383	72				
1935	2,174	66				
1936	2,625	80				
1937	2,604	79				
1938	2,738	83				
1939	3,289	100				
1940	3,522	107				
1941	4,915	149				
1942	5,175	157				
1943	7,924	241				
1944	8,638	262	6,850	208*	1,788	54
1945	8,299	252	6,962	211	1,337	41
1946	8,269	251	6,937	210	1,332	41
1947	6,389	194	5,367	163	1,023	31
1948	6,699	204	5,729	174	976	30
1949	7,063	215	5,990	182	1,073	33
1950	8,739	265	7,321	222	1,418	43
1951	9,099	276	7,788	236	1,310	40
1952	9,325	283	7,788	236	1,537	47

* Indexes for components are expressed as percentages of 1939 total shipments.

Source: U. S. Department of Commerce

Notes: Shipments in thousands of gross
Index - 1939 equals 100

61

[fol. 133] 1788

SHIPMENTS OF
COMPETITIVE CONTAINERS

62

[fol. 134]

SHIPMENTS OF COMPETITIVE MATERIALS

1789

Year	CORRUGATED SHIPPING CONTAINERS		FOLDING PAPER BOXES		PAPER MILK BOTTLES	
	Shipments	Index	Index Current $	Index 1939 $	Shipments	Index
1929						
1930						
1931						
1932						
1933						
1934						
1935	1,976					
1936	2,271					
1937	2,503					
1938	2,246					
1939	2,883	100	100.0	100.0		
1940	2,979	104	107	106		
1941	4,309	149	148	130		
1942	3,549	123	150	117		
1943	4,056	140	190	143		
1944	4,059	140	202	151	66,596	76
1945	4,043	140	226	166	68,452	78
1946	4,914	170	274	175	97,166	111
1947	5,097	176	360	184	115,188	132
1948	5,195	180	359	168	162,333	185
1949	5,115	176	344	172	175,000	200
1950	6,547	226	425	203	N. A.	
1951	6,384	220	550	236	259,062	296
1952	6,204	214	508	218	311,000(est.)	356

Notes: Shipments - Corrugated Shipping Containers: millions square feet surface area, monthly average.
- Folding Paper Boxes: index of value of shipments
- Paper Milk Bottles: tons

Index - 1939 equals 100 Index of Paper Box Shipments shown in current dollars and 1939 dollars.

Source: U. S. Dept of Commerce.

SHIPMENTS OF COMPETITIVE MATERIALS

1790

METAL CANS

Year	TOTAL Shipments	TOTAL Index	FOOD Shipments	FOOD Index	NON-FOOD Shipments	NON-FOOD Index
1929						
1930						
1931						
1932						
1933						
1934						
1935						
1936						
1937						
1938						
1939						
1940	182,641	100	139,713	100	42,928	100
1941	237,057	130	178,478	128	58,579	136
1942	170,258	935	157,494	113	12,764	29.7
1943	140,372	77	129,709	93	10,663	24.8
1944	172,633	95	152,253	109	20,380	47.5
1945	203,465	111	169,190	121	34,275	79.7
1946	229,960	126	192,113	139	37,847	88.2
1947	246,343	135	178,883	128	67,460	157
1948	270,429	148	193,124	138	77,305	181
1949	273,077	150	188,456	135	84,621	197
1950	324,444	178	212,579	152	111,870	260
1951	319,946	174	213,216	153	103,830	241
1952	320,136	176	212,906	152	107,230	250

Source: U. S. Department of Commerce

Shipments: Short Tons of steel used for cans (monthly average)

[fol. 136]

SHIPMENTS OF COMPETITIVE MATERIALS

1791

Year	COLLAPSIBLE METAL TUBES		POLYETHYLENE	POLYSTYRENE
	Shipments (Millions Gross)	Index	Production (Pounds)	Production (Pounds)
1929				
1930				
1931				
1932				
1933				
1934				
1935				
1936				
1937				
1938				
1939	3.5	100		
1940				
1941		150		
1942	6.0	175		
1943		160		
1944	4.7	135	9,000,000	
1945		145		
1946		155		
1947	5.5	157		66,768,000
1948		160		94,982,000
				145,296,000
1949		165		
1950		170		222,492,000
1951		177	75,000,000	311,880,000
1952	6.5	185	125,000,000	375,127,000
				412,974,000
	Source: Estimates based on fragmentary data from Collapsible Tube Manufacturers Association		Source: 1944 and 1951 - National Production Authority 1952 - Industry estimate	Source: Tariff Commission

A PLAN *of* ACTION *for the* GLASS CONTAINER INDUSTRY

[fol. 138]

1793

A PLAN OF ACTION
for the
GLASS CONTAINER INDUSTRY

As presented by Richard L. Cheney to members of Glass Container Manufacturers Institute, Inc. at the Semi-annual meeting December 1, 1953

Copy No. 183 for the confidential use of:

CHARTS shown at semi-annual meeting are reproduced on right-hand pages of this report, numbered for reference.

COMMENTS made by R. L. Cheney are condensed on left-hand pages, facing charts to which they correspond.

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[fol. 140]

1795

WHAT WE CAN LEARN *from* OTHER INDUSTRIES

[fol. 141]

In an effort to benefit by the experience of other industries, we have called upon and studied in detail the plans of six important trade associations and have studied the marketing plans of several others. The six are mentioned on these charts with an indication of the lessons to be learned from each.

[fol. 142]

AMERICAN *GAS* ASSOCIATION

1797

PROMOTION BUDGET $2,000,000. PER YEAR

Old Product kept New by...

AGGRESSIVE, CONSISTANT PROMOTION

CONSISTENT IMPROVEMENT OF STANDARDS (GP)

Weakness... GAS ELECTRIC MEMBERS

AMERICAN INSTITUTE *of* LAUNDERING

Periodic Market surveys...

AS BASIS FOR ADVERTISING

TO DIRECT TECHNICAL RESEARCH

AMERICAN MEAT INSTITUTE

PROMOTION BUDGET $2,500,000 PER YEAR

Market research used as...

BASIS FOR PLANNING

BIENNIAL CHECKS ON PROGRESS

CONSISTENT, FORCEFUL PROMOTION

AMERICAN MEAT INSTITUTE RESEARCH FOUNDATION

[fol. 143]

1798 Of most direct benefit to the Glass Container Industry were the study of the plans of the American Meat Institute and the Pennsylvania Grade Crude Oil Association. The former is particularly noteworthy because of its intelligent use of market research, and its consistent forceful advertising program guided thereby. A preliminary consumer survey by Elmo Roper disclosed their basic problem: almost everybody liked meat, however many people had a guilt complex about eating meat, as the food faddists had sold them on a bill of goods that somehow eating meat was harmful. It was not difficult to obtain much sound medical testimony to the effect that this general belief was in error. It is very impressive to see the gradual change in consumer attitude depicted in Mr. Roper's surveys made in 1947, 1949, 1951, and 1953. By 1953 meat had regained its old-time number one position in the favor of the American public as a source of protein. Theirs has been a most effective program.

From Pennsylvania Grade Crude Oil Association we could learn two very important lessons. First, is the value of consistency, and "keeping at it". Although their budget has varied little from year to year and has never been much over $250,000 per year, it has continued uninterrupted for 30 years, and the deep impression made upon the public consciousness is known to all. A second thing they have to show us is a tight economical administration which drains off a minimum of funds for "frills" and applies the major part to the productive advertising.

[fol. 144]

1799

ASSOCIATION of AMERICAN RAILROADS

INFORMATION CENTER
SHIPPER ADVISARY BOARD
Weakness... NO PROMOTION EFFORT

WESTERN BEET SUGAR PRODUCERS, INC.

BUDGET $1,000,000 PER YEAR
Program based on market research
NO EXAGGERATED CLAIMS... TELL THE FACTS
Weakness... INTRA-INDUSTRY VIEWPOINTS

PENNSYLVANIA CRUDE OIL ASSOCIATION

BUDGET $250,000 PER YEAR
Consistent program for 30 years
TIGHT ECONOMICAL ADMINISTRATION...
A PATTERN FOR GCMI

(1)

[fol. 145]

1800 We will now outline the framework of a plan of action for the glass container industry designed to meet the requirements summarized in the conclusions of the industry survey just reviewed.

The plan includes fact-finding (market research) to insure a solid foundation. It then procedes to suggest possible industry-wide activities to supplement the good work already being done by individual companies directed toward the continued improvement of the physical properties of glass containers (technical research and design research); and increased efficiency in the packaging operation (glass handling research).

Greatest emphasis is given to advertising and publicity since consumer and user understanding of and preference for glass containers is the final determining factor as to the size of future glass container markets.

With the exception of the market research phase, - which we can define quite clearly now, the other phases of this recommended plan should be recognized as nothing more than tentative outlines for the purpose of determining the approximate cost of an effective effort. The details, if the plan were adopted, would be modified or completely changed according to the findings of the market research and the recommendations of the expert individuals or agencies who would be engaged to carry them out.

[fol. 146]

A PLAN OF ACTION *for the* GLASS CONTAINER INDUSTRY

- MARKET RESEARCH
- TECHNICAL RESEARCH
- GLASS HANDLING RESEARCH
- DESIGN RESEARCH
- ADVERTISING & PUBLICITY

MARKET RESEARCH

These facts are self-evident. We need only recall the example of the American Meat Institute to appreciate the value of market research in determining the most effective approach to marketing problems, and the danger of missing the mark completely without such guidance.

MARKET RESEARCH

is essential in modern marketing

BECAUSE . . .

* CONTAINER CHOICE RESTS ULTIMATELY WITH CONSUMERS AND RETAILERS

* PSYCHOLOGICAL FACTORS AND PREJUDICE INFLUENCE CHOICE

* MARKETS ARE CONSTANTLY CHANGING IN CHARACTER, HABITS, AND THINKING

Here is the basic information we would develop and keep up to date through market research. Such information, it will be seen, would be fully as essential to guide technical and design research as it would promotional effort. It would tell us what we need to know to make our product more desirable and more functional for the public.

Properly conducted, it can be "imaginative research", discovering potential new markets for glass containers. Thus it would keep industry thinking dynamic.

[Vol. 151]

1806

MARKET RESEARCH

provides basic information

1. FIND OUT PREFERENCES AND PREJUDICES ON CONTAINERS
2. DETERMINE RELATIVE ADVANTAGES OF GLASS AND COMPETING CONTAINERS IN MINDS OF MARKET
3. UNCOVER MISCONCEPTIONS ABOUT GLASS
4. STUDY HABITS OF USE AFFECTING PREFERENCE AND DESIGN
5. DISCOVER POTENTIAL NEW MARKETS WHERE DISSATISFACTION EXISTS
6. KEEP ABREAST OF CHANGING TRENDS

(1)

Market Research program outlined here is scientifically designed to give the necessary answers as to public and group opinions within an accuracy of approximately 5%. This, while not adequate for predicting an election, would be perfectly sound for our purposes.

The plan would be to conduct the first bi-annual study before launching any promotional effort to insure that the effort will be guided in the proper direction. This study would then be repeated every two years to measure the effectiveness of the industry program and modify the approach as needed. These re-surveys would also uncover new opportunities and new threats to the industry in time to take advantage of this knowledge.

Spot surveys would be of the nature of the recent survey of the California Baby Food Market, as the need for these special studies appeared.

The continuous data collection would be carried on by a girl in the GCMI office specially trained in statistics and market research, so as to keep the market survey you have just reviewed up to date, with periodic bulletins to the industry covering developments of interest.

[fol. 153]

MARKET RESEARCH PROGRAM

1808

BI-ANNUAL MARKET STUDIES

10,000 CONSUMER FAMILIES
2,000 RETAILERS
100 WHOLESALERS AND CHAINS
50 PACKERS
100 OPINION INFLUENCING AGENCIES

SPOT SURVEYS

ON SPECIFIC PROBLEMS, WHEN AND AS NEEDED

CONTINUOUS DATA COLLECTION

GOVERNMENT STATISTICS
STATISTICS ON COMPETITION
CLIPPINGS
REPORTS ON NEW PRODUCTS

[fol. 134]

The figure for the bi-annual market study shown in this budget indicates the yearly cost. It represents an estimate of $70,000 for each such study, conducted every other year. This may seem to be a low figure, but we have every reason to believe that we can obtain such a study, complete with the highest type of analytical interpretation of the meaning of the findings to the industry.

[fol. 155]

MARKET RESEARCH

1810

BUDGET

	ANNUAL BUDGET
BI-ANNUAL MARKET STUDIES	$35,000
SPOT SURVEYS	20,000
CONTINUING DATA COLLECTION	5,000
TOTAL	$60,000

In weighing the importance of technical research to an industry such as ours, it is well to consider that the chemical industry as a whole invests over 450 million dollars per year in technical research, the majority of it in the field of organic chemistry which includes the many so-called "plastic" materials which represent one of our most aggressive competitors.

It is also interesting to know that according to a recent Conference Board report all manufacturing industry in the United States is spending an average of 2% of net sales on research. (Incidentally, 46.5% of this expenditure comes from government funds). The Conference Board report also shows that the Stone, Clay, and Glass industry in 1951 spent 1.3% of net sales on technical research (of which only 7% was supplied by the government).

1812

TECHNICAL RESEARCH

In recommending sound consideration of supplementary technical research, the fine work of individual glass container companies and the Preston Laboratories, as well as other interested organizations should not be discounted. However, the rapid pace of modern industry advancement seems to call for a broader effort.

TECHNICAL RESEARCH

HAS SPAWNED MANY NEW AND
IMPROVED COMPETING
PACKAGING MATERIALS

IN ONE SENSE WE HAVE BEEN "OUT RESEARCHED"

THE QUESTION ...

IS IT POSSIBLE THROUGH TECHNICAL
RESEARCH TO LEARN HOW TO PRODUCE
LIGHTER, STRONGER, GLASS CONTAINERS?

IT PROBABLY IS,

BECAUSE ...

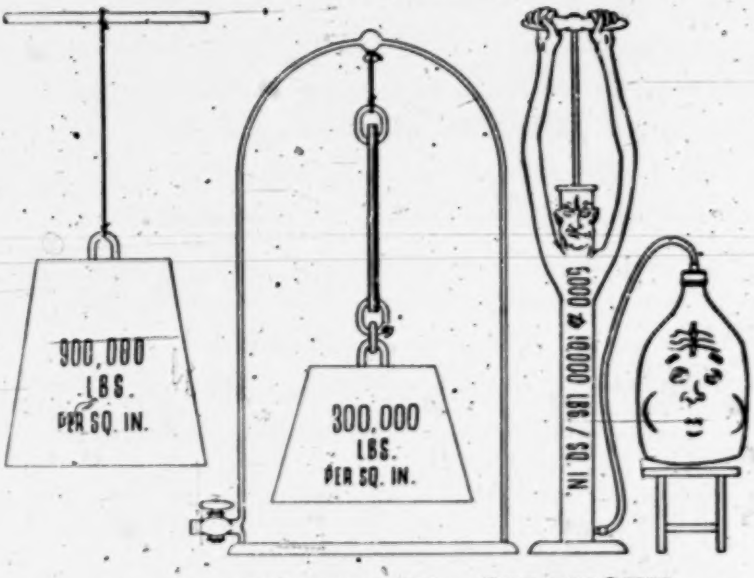
1815 [fol. 160]

It is well known that a high silica glass fibre can be made which has a tensile strength of nine hundred thousand pounds per square inch, - four times as strong as steel.

It is not quite so well known that experiments at Corning Glass Works have shown that glass need not be drawn into a fibre in order to exhibit these high strengths. They have had glass rods the size of a pencil sustain weights representing stresses of 300,000 pounds per square inch upon the glass for six months on end, - when they were maintained in a vacuum. As soon as the valve is opened and the atmosphere admitted to the presence of the glass, apparently the moisture in the atmosphere causes the strength to drop to less than 10,000 pounds per square inch within ten minutes.

We know that in a bottle we do not retain more than five to ten thousand pounds per square inch of this inherent strength of glass. If through research we could unlock the scret of these high strengths and apply it to bottles, we would have the answer to our weight and breakage problems. Even an increase of 1% in the retained strength would double the strength of our bottles.

We are UTILIZING only ONE PERCENT



of the INHERENT STRENGTH of GLASS

If we were to apply the terms of the investment business to investments made in research, we would say that "blue chip" research projects are those which will, almost without fail, give a return on the investment within a reasonable length of time.

Naturally, whatever is done in the field of technical research would have to be determined by a committee of the top research men from our industry. What is shown here is in the way of a "for instance", - an example of which might be done. The type of research institute referred to would be one such as Battelle Memorial Institute, Armour Research Institute, or Arthur D. Little Company.

A wild cat project is one whose outcome cannot be foreseen at this distance, but if successful, would bring tremendous returns on the original investment. The one suggested here is the one which might unlock the secret of glass strength. It would benefit the whole glass industry and it's reasonable to expect that the other parts of the glass industry would join with us in financing such a project if we were successful in finding the university and the right people to do the job.

TECHNICAL RESEARCH PROGRAM

1. TWO "BLUE CHIP" PROJECTS
   AT A RECONIZED RESEARCH INSTITUTE ...
   a. "THE CAUSE AND CURE OF CHECKS"
   b. "COATINGS FOR GLASS CONTAINERS"
   ... THE OUTPUT OF A FEEDER TO BE RENTED FROM A GLASS COMPANY FOR EXPERIMENTAL WORK

2. ONE "WILD CAT" PROJECT
   AT A UNIVERSITY ...
   "THE BASIC STRUCTURE OF GLASS AND GLASS SURFACES"
   ... A JOINT PROJECT WITH THE OTHER GLASS INDUSTRIES
   ... A JOB FOR TOP-FLIGHT, SOLID-STATE PHYSICISTS
   ... THE RESULTS TO BE PUBLISHED

It takes time to get started on basic research. It will be very difficult to assemble the right people and it is not expected that full scale operation on the university project could be achieved sooner than in the fourth year. The fourth year budget as shown would probably be a maximum, as it is difficult to see how you could spend at a rate much higher than this.

[fol. 165]

1820

TECHNICAL RESEARCH BUDGET

1. INSTITUTE PROJECTS...

a. "CAUSE AND CURE OF CHECKS" $75,000.

b. "COATINGS FOR GLASS CONTAINERS" 75,000.

2. UNIVERSITY PROJECTS...

"Basic Structure of Glass & Glass Surfaces"

	TOTAL	GCMI SHARE
FIRST YEAR	$100,000.	$ 50,000.
SECOND YEAR	100,000.	50,000.
THIRD YEAR	200,000.	100,000.
FOURTH YEAR AND AFTER	250,000.	125,000.

TOTAL GCMI FIRST YEAR $200,000.

1821

GLASS HANDLING RESEARCH

[fol. 167]

1822

This subject has been under discussion for over two years by the Container Design and Specification Committee.

It is generally acknowledged in the industry that more work should be done, particularly with the equipment manufacturers in order to provide glass packers with the best possible material aids towards increasing their efficiency and thereby reducing the cost of goods packaged in glass.

[fol. 168]

1823

GLASS HANDLING RESEARCH

IS NEEDED TO BROADEN
GLASS CONTAINER MARKETS

BECAUSE ...

THE RETAILER, THE DISTRIBUTOR,
THE PACKER AND THE EQUIPMENT
MANUFACTURER
STAND BETWEEN US AND
THE CONSUMER

(15)

There are many other ways and means besides those listed here whereby a glass handling engineer on the G.C.M.I. staff could be effective in improving the science of glass packaging.

GLASS HANDLING RESEARCH

will get Action through...

- PERSONAL CONFERENCES WITH EQUIPMENT ENGINEERS
- TRADE PAPER ARTICLES
- TALKS TO ASSOCIATIONS AND OTHERS
- CLASS IN UNIVERSITY "CANNERS AND FREEZER" SCHOOLS
- CURRICULA FOR UNDERGRADUATE SCHOOLS
- BULLETINS TO GLASS CONTAINER COMPANIES
- WORK ON SPECIAL PRODUCTS WITH SELECTED PACKERS
- DISTRIBUTION OF BLUE PRINTS
- COOPERATION WITH GCMI DESIGN RESEARCH PROGRAM

This is largely an educational job and it will not be an effort to duplicate the work of the many fine glass handling engineers who are presently working in the field for individual glass companies. As a matter of fact, this G. C. M. I. engineer could assume the responsibility of the overall educational job, thereby releasing individual company engineers to devote full time to their own problems.

[fol. 172]

1827

GLASS HANDLING RESEARCH PROGRAM

ONE MAN, A COMPETENT GLASS HANDLING ENGINEER WORKING FOR GCMI, CAN GET RESULTS THROUGH SPARKING COOPERATIVE EFFORT

between...

EQUIPMENT MANUFACTURERS
PACKERS' ASSOCIATIONS
UNIVERSITIES
TRADE PAPERS
SELECTED PACKERS

(18)

1828

[fol. 173]

This budget should be self-explanatory and since it is very modest, the practical results should surely outweigh the costs.

[fol. 174]

GLASS HANDLING RESEARCH 1829

BUDGET

SALARY	$12,000
TRAVEL & BUSINESS ENTERTAINMENT	5,000
REPRINTS, FOLDERS, BLUEPRINTS	10,000
	$27,000

OFFICE, STATIONERY, ETC., INCLUDED IN M & R DIVISION EXPENSE

(19)

1830

DESIGN RESEARCH

[fol. 176]

It has been suggested that a consulting industrial designer from outside the industry, accustomed as he is to studying the appearance and the functioning of consumer items in the trade and in the home, could come up with ideas which could be adapted by the Container Design and Specification Committee to G. C. M. I. recommended designs, giving them greater appeal and therefore greater acceptance and wider use. This would also stimulate progress in the thinking of the committee to make its work more effective.

An example of what might have been done is found in the dairy container field. A designer could well have hit upon the idea of square milk bottles with its great saving advantage prior to the introduction of the paper milk bottle which might have somewhat retarded the invasion of that portion of the glass container market.

[fol. 177]

1832

DESIGN RESEARCH

CAN INCREASE GLASS HOUSE EFFICIENCY THRU...

LONGER RUNS AND FEWER MOLD CHANGES

GIVING GOOD RECOMMENDED DESIGNS MAXIMUM APPEAL TO CONSUMER, RETAILER, PACKER

FOSTERING THEIR WIDER USE THRU...

- PUBLICITY
- TRADE PAPER ADVERTISING
- PRESTIGE VALUE OF OUTSIDE DESIGNER
- MORE GLAMOROUS NAMES

FURNISHING GLASS CONTAINER SALESMEN WITH...

- SELLING IDEAS, IN BULLETINS
- BROCHURES SHOWING POSSIBILITIES OF INDIVIDUALITY THRU LABEL TREATMENT, ETC.
- BULLETINS SHOWING FILLING LINE ADVANTAGES OF RECOMMENDED DESIGNS

[fol. 178]

Such an industrial designer, supplementing the market research program, might well, through imaginative design and research, develop new uses for glass containers or so increase the appeal of present containers as to widen their use.

[fol. 179]

DESIGN RESEARCH

1834

CAN BROADEN THE MARKET FOR GLASS CONTAINERS by...

ANTICIPATING MARKET NEEDS AND FORESTALLING POTENTIAL COMPETITION

DEVELOPING THE RIGHT CONTAINER FOR NEW PRODUCTS NOT NOW IN GLASS

WIDENING PRESENT USES THRU MORE FUNCTIONAL DESIGN

STIMULATING BOLD DEPARTURES FROM TRADITION TO KEEP DESIGNS MODERN

REDUCING COSTS TO PACKERS

KEEPING PACKAGE DESIGNERS CONSCIOUS OF GLASS, ITS DESIGN POTENTIALITIES

MAKING PUBLIC AWARE OF NEWNESS OF GLASS, THRU PUBLICITY AND EXHIBITS

(22)

[fol. 180]

1835

In addition to the activities already mentioned, a design research program should include the sponsoring of competition among industrial design students and photographers so that when they go out into industry and are called in on packaging problems they will be favorably inclined toward glass.

At present the plastics industry is virtually pre-empting this important means of market development.

[fol. 181]

1836

DESIGN RESEARCH

Program

COMMISSION CREATIVE DESIGNER TO . . .

- SEEK OUT NEW USES FOR GLASS CONTAINERS
- RECOMMEND FUNCTIONAL DESIGNS FOR THEM
- FASHION NEW DESIGNS FOR SPECIFIC OLD PRODUCTS
- SUBMIT IDEAS FOR PROMOTING USE OF GCMI RECOMMENDED DESIGNS

COMMITTEE ON CONTAINER DESIGN AND SPECIFICATION

- CONSIDER DESIGNER'S RECOMMENDATIONS AT BI-MONTHLY MEETINGS
- DIRECT PREPARATION OF DRAWINGS, PUBLICITY, ADVERTISING, BULLETINS AND BROCHURES
- SPONSOR COMPETITION AMONG INDUSTRIAL DESIGN STUDENTS AND PHOTOGRAPHERS

GLASS HANDLING ENGINEER, COOPERATING

[Vol. 187]

DESIGN RESEARCH 1838

BUDGET

COMMISSIONS FOR DESIGN SERVICES	$15,000
PRIZES AND EXPENSES OF CONTESTS AND EXHIBITS	5,000
	$20,000

1839

ADVERTISING *and* PUBLICITY

[fol. 185]

It is not enough to have the best container. The consumer, the packer the retailer, the distributer and their employees all exercise a choice which can operate either for or against glass containers.

They must be made to understand and to recall the advantages of glass, through educational advertising and publicity.

Several association executives have told me of a valuable by-product of their association advertising programs. Such programs almost invariably increase the morale and self-esteem of the industry, and raise the value of the industry product in the thinking of their sales people. This results in better sales effort.

[fol. 186]

ADVERTISING and PUBLICITY

1841

is needed for Glass Containers

BECAUSE . . .

* GLASS IS TAKEN FOR GRANTED
* MISCONCEPTIONS MUST BE CORRECTED
* PREJUDICES MUST BE OVERCOME
* COMPETITION IS ADVERTISING HEAVILY
* ACCEPTANCE IS NOT ENOUGH . . .
  ACTIVE PREFERENCE MUST
  BE SECURED

[fol. 187]

The accumulated evidence of this survey points unmistakably to the fact that the glass container industry has a product which is susceptible to successful promotion.

[fol. 188]

1843

ADVERTISING and PUBLICITY

can effectively increase glass container sales...

* CORRECTING MISCONCEPTIONS WILL REMOVE PREJUDICE, CREATE ACCEPTANCE
* MAKING PUBLIC CONSCIOUS OF GLASS WILL AWAKE DORMANT PREFERENCE
* PROMOTION OF DRAMATIC QUALITIES OF GLASS WILL CREATE ACTIVE CONSUMER DEMAND
* CREATION OF CONSUMER DEMAND WILL ENCOURAGE PACKERS TO USE GLASS

(11)

[fol. 189]

1844

The final copy strategy would not be determined, of course, until the results of the consumer survey were at hand and until advertising and publicity agencies had been selected.

This program would need genius level treatment to keep it from being too abstract, but such treatment could be obtained from proper agency selection.

ADVERTISING and PUBLICITY

STRATEGY

DRAMATIC PRESENTATION...

TO CREATE GLASS CONSCIOUSNESS
TO MAKE A FORCEFUL IMPRESSION

ATTACK ON A BROAD FRONT...

BABY FOOD... BEER ... FRUIT ... MILK ... ETC.

ALTERNATE ADS ... SELLING ANY ONE
USE SELLS ALL, BECAUSE IT ALL
SELLS GLASS AS A CONTAINER

CENTRAL THEME APPLICABLE TO
ALL GLASS CONTAINERS

"IT'S BETTER IN GLASS"

[fol. 191]

With the present day high cost of magazine space and television time and production it is absolutely essential to have total impact, which means using the newest techniques to obtain publicity which is sometimes referred as to uncontrolled impact (since editors may change your wording to conform to their use of the material) in addition to the controlled impact of advertising where you tell your message just as you want it to appear.

EMPHASIZE DIFFERENT QUALITIES FOR DIFFERENT USES ...

BABY FOOD..."NOTHING PROTECTS LIKE GLASS"
BEER..."IT TASTES BETTER IN GLASS"
FRUITS..."YOU CAN SEE IT'S BETTER IN GLASS"
MILK..."IT KEEPS BETTER IN GLASS"

CONTINUITY...

KEEPING EVERLASTINGLY AT IT
BRINGS SUCCESS

TOTAL IMPACT...

CONSUMER ADVERTISING
TRADE ADVERTISING
PUBLICITY

1848

[fol. 193]

It has sometimes been said that the glass container story is too abstract to be told in a general advertising program.

It is true that continual repeating of the excellent but somewhat timeworn motto "See What You Buy, Buy in Glass", is not enough to strongly affect consumer preference.

The question is, for example, how do you convey the fact that glass is chemically inert?

[fol. 194]

1849

DRAMATIC WAYS
CAN BE FOUND...
TO TELL THE STORY OF
THE ADVANTAGES OF GLASS

such as...

(38)

1850

[fol. 195]

Here is the way Corning Glass Works did it in a very effective advertisement which appeared in Business Week Magazine.

[fol. 196]

[Illustration omitted]

[fol. 197]

Here is an example of what an advertising and publicity program for the glass container industry might cover. However, as previously stated, this is not a final recommendation. The choice of media and the whole plan of campaign can only be developed when the experts from the advertising and publicity agencies have been brought into the picture.

It must be emphasized that extremely skillful treatment will be needed and strong demands will have to be made upon the agencies.

Again, the impact available through the free channels of publicity must be skillfully used to back up the advertising.

[fol. 198]

1853

ADVERTISING and PUBLICITY Program

ADVERTISING...

- CONSUMER MEDIA
- TRADE PAPERS

PRINTED MATERIAL...

- CONSUMER BOOKLETS
- SCHOOL BOOKLETS
- TRADE BOOKLETS
- PACKER BOOKLETS
- STORE DISPLAY MATERIAL

PUBLICITY...

- NEWS STORIES, PICTURES
- MAGAZINE FEATURE ARTICLES
- COLUMNISTS
- WOMEN'S PAGES
- HOME ECONOMISTS
- TELEVISION TIE-UPS
- MOTION PICTURE TIE-UPS
- EDUCATIONAL MATERIAL FOR SCHOOLS
- TRADE PAPER PUBLICITY
- INTER-INDUSTRY COOPERATION

[fol. 199]

The best available advice from advertising consultants and the managersand agencies handling other association programs, concur in the opinion that program for the glass container industry sould incorporate a minimum of $1,000,000 for time and/or space to be effective.

The allowance here for printed material covers the "merchandising" of the program which would be accomplished through direct mail to the glass container companies, their salesmen and the trade.

ADVERTISING and PUBLICITY BUDGET

Recommended Program

ADVERTISING	
SPACE AND/OR TIME	$1,100,000.
PRODUCTION	165,000.
PUBLICITY	
SERVICES, EXPENSES	80,000.
PRINTED MATERIAL	
PRODUCTION & DISTRIBUTION	110,000.
TOTAL	$1,455,000.

[fol. 201]

1856

Overall ORGANIZATION and BUDGET

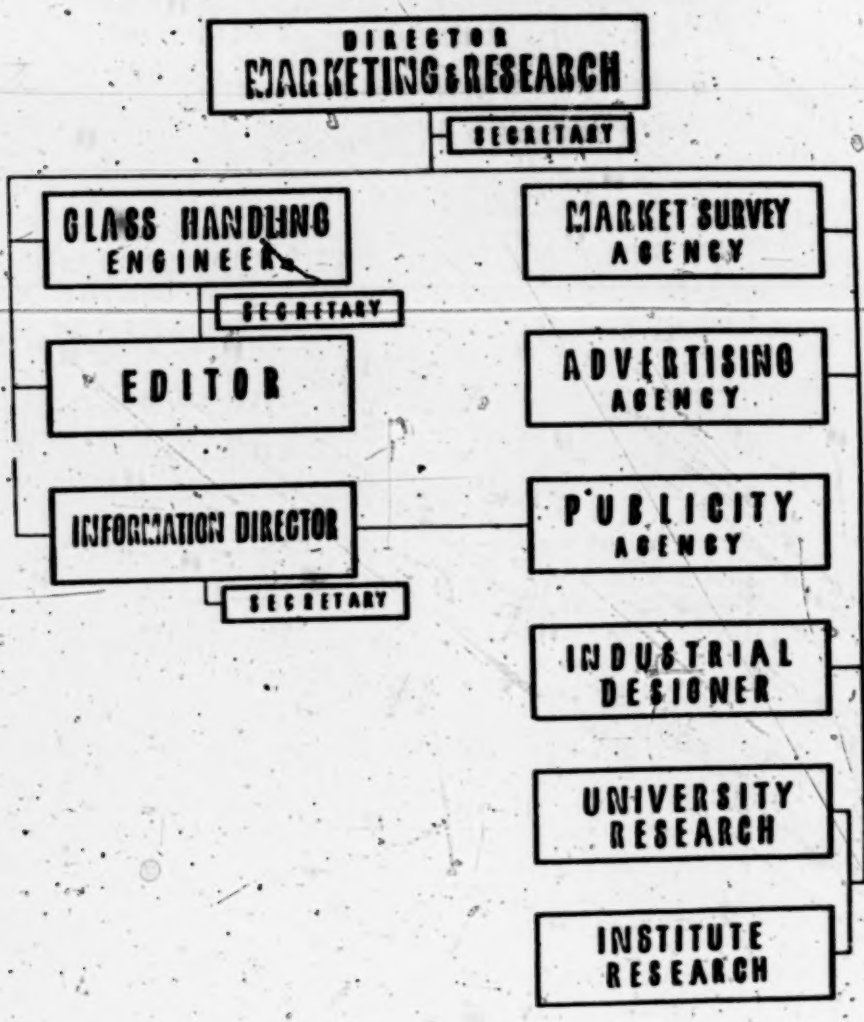
[fol. 202]

The organization shown here represents a tight, economical operation, costing considerably less than the normal allowance for management and overhead.

It contemplates that the account executive and copy writer of the advertising agency will fulfill the function of advertising manager.

The Information Director will originate publicity releases and will handle such promotional activities as speeches at conventions, etc.

ORGANIZATION CHART

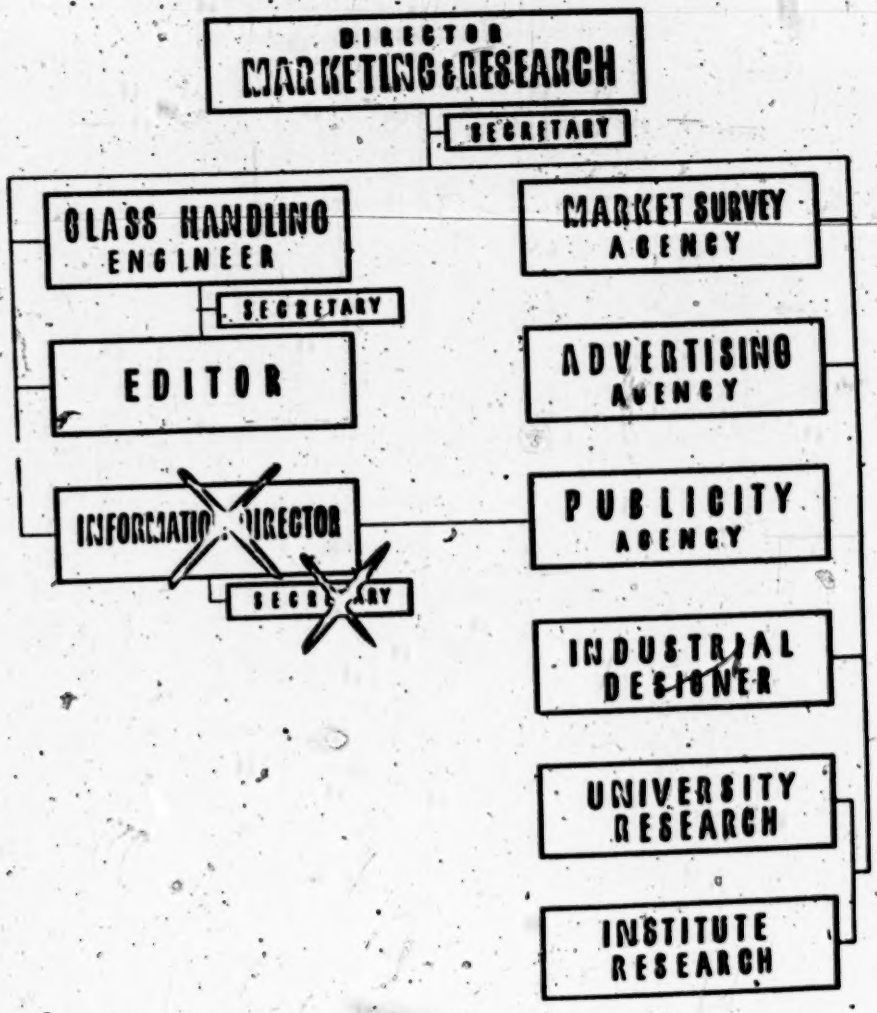


1859

[fol. 204]

On a minimum program basis, the Information Director and his secretary could be eliminated, by reducing the emphasis placed on publicity and transferring more of the work to a publicity agency.

MINIMUM PROGRAM ORGANIZATION CHART



1861

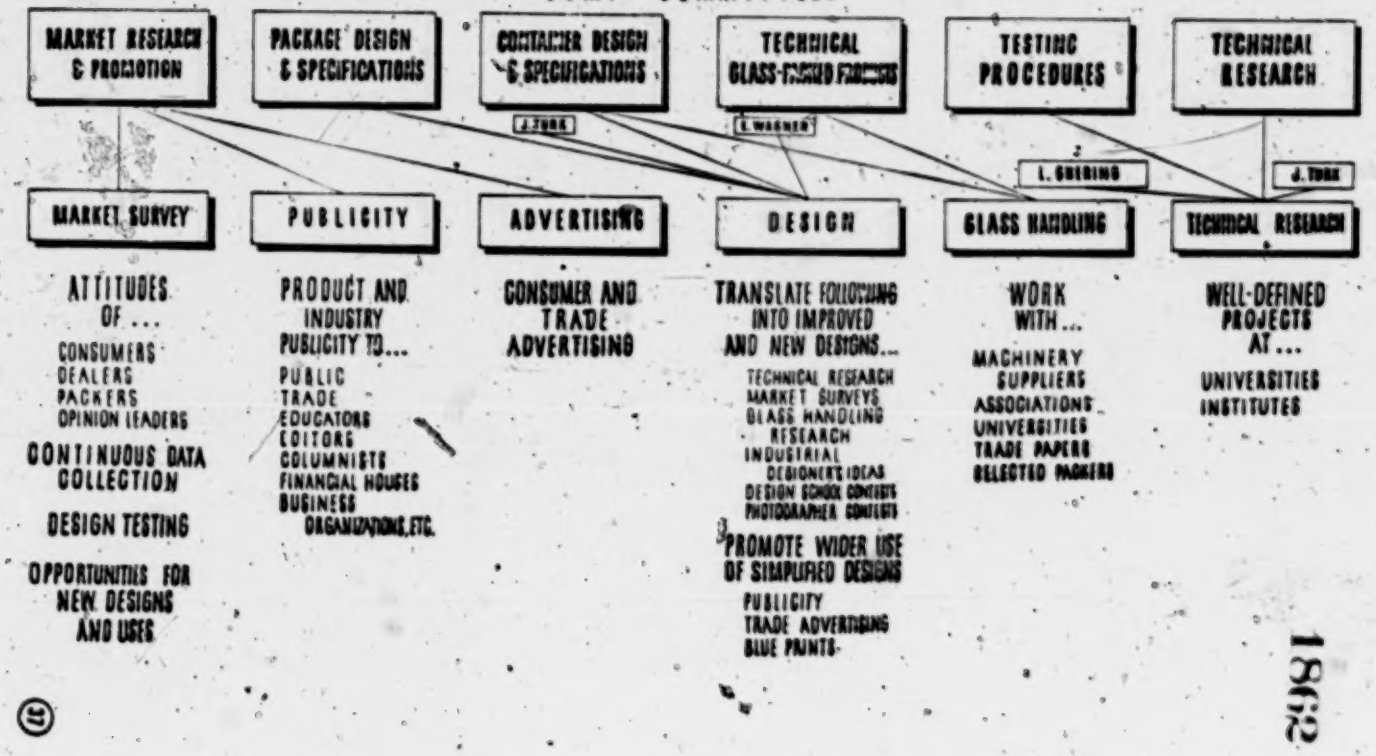
[fol. 206]

This chart shows how the proposed activities would be integrated into the present G. C. M. I. structure for effective control and guidance, and to draw upon the talents of industry committee members.

ORGANIZATION CHART

FUNCTIONS

GCMI COMMITTEES



1868

[fol. 208]

The total of the budget as shown here, represents about 3/10 of 1% of the glass container industry's annual dollar sales.

[fol. 209]

MARKETING & RESEARCH DIVISION

1864

BUDGET

Recommended Program

SALARIES	$ 78.500.
RENT & FACILITIES	8.000.
TELEPHONE & TELEGRAPH	8.000.
TRAVEL & BUSINESS ENTERTAINMENT	18.000.
STATIONERY, SUPPLIES, TAXES, ETC.	8.000.
SUB-TOTAL	$ 115,500.
MARKET RESEARCH	$ 60.000.
DESIGN RESEARCH	20.000.
GLASS HANDLING RESEARCH	10.000.
TECHNICAL RESEARCH	200.000.
ADVERTISING AND PUBLICITY	1.455.000.
	$ 1,860,500.

1865

[fol. 210]

MARKETING & RESEARCH DIVISION

BUDGET

Minimum Program

SALARIES	$60,000.
RENT & FACILITIES	6,000.
TELEPHONE & TELEGRAPH	2,400.
TRAVEL & BUSINESS ENTERTAINMENT	13,000.
STATIONERY, SUPPLIES, TAXES, ETC.	6,000.
SUB-TOTAL	$87,400.
MARKET RESEARCH	$50,000.
DESIGN RESEARCH	20,000.
GLASS HANDLING RESEARCH	[illegible].000.
TECHNICAL RESEARCH	[illegible].000.
ADVERTISING & PUBLICITY	890,000.
	$1,257,000.

ADVERTISING & PUBLICITY

BUDGET

	RECOMMENDED PROGRAM	MINIMUM PROGRAM
ADVERTISING SPACE AND/OR TIME	$650,000.	$1,100,000.
PRODUCTION	110,000.	165,000.
PUBLICITY SERVICES & EXPENSES	60,000.	80,000.
PRINTED MATERIAL	70,000.	110,000.
	$890,000	$1,455,000.

[fol. 212] GOVERNMENT'S EXHIBIT 42

Philadelphia Store Audits

Baby Food

Period of November, 1954 to October, 1955

For

Glass Container Manufacturers Institute, Inc.

Ford Sammis & Company
Marketing Economists

[fol. 213]

Ford Sammis & Company
Marketing Economists

750 Colorado Boulevard
Los Angeles 41, California
CLinton 5-7101

500 Fifth Avenue
New York 36, New York
CHickering 4-4363

June 18, 1956.

Glass Container Manufacturers Institute, Inc.
99 Park Avenue
New York, New York

Attention: Mr. Richard L. Cheney, Director Market Research & Promotion Division.

Subject: Philadelphia Store Audits—Baby Food.

Gentlemen:

Transmitted herewith is a summary report on the store audits conducted in Philadelphia super-markets on baby food sales for the period of November, 1954 to October, 1955.

Respectfully, Ford Sammis.

[fol. 214] How the Audits Are Conducted

A carefully selected group of 15 super-markets spread out over the Philadelphia Metropolitan Area represent the panel used in these audits.

Trained auditors visit each store every 8 weeks and take an actual physical inventory of all items being studied, counting warehouse stock as well as shelf stock. An audit is made of the store's invoices to determine the exact number of units of each item received by the store since the previous inventory.

Sales of each item are then computed according to the formula

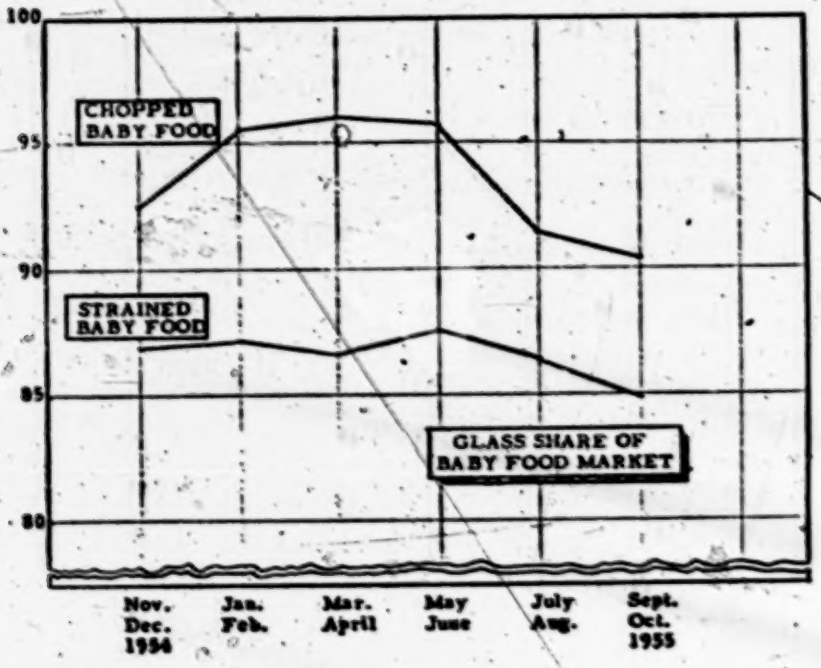
Opening inventory
plus
Purchases received
less
Closing inventory
equals
Sales during audit period.

This is an accurate, proven method of determining consumer purchases.

[fol. 215] Summary

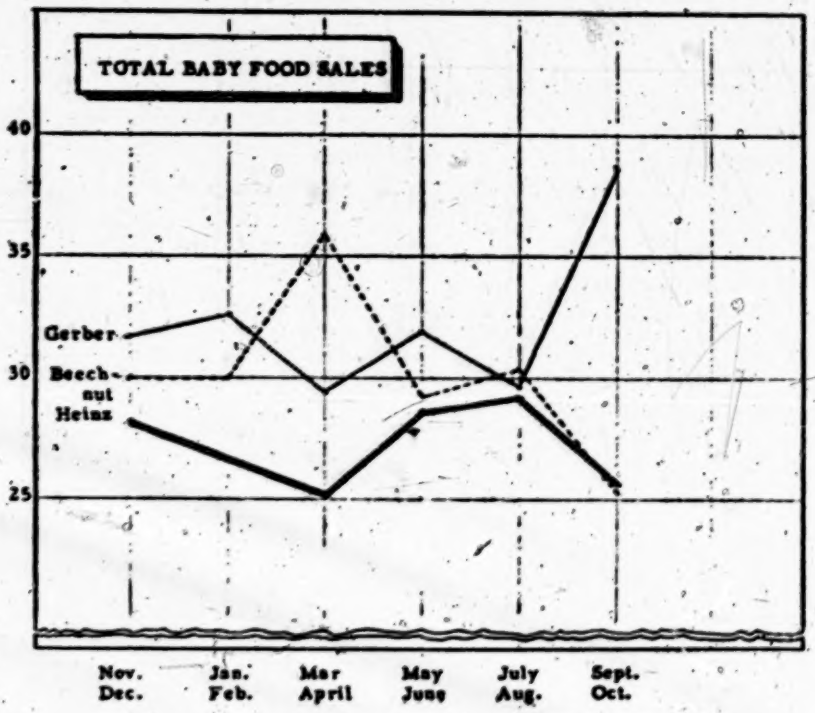
During the entire period covered by these audits, baby food in the Philadelphia area has been sold predominnately in glass. Glass has represented from 86.2% to 89.3% of total sales during the period of November, 1954 to October, 1955.

Glass has been in a stronger position in the chopped baby food field than with strained variety, which has been true in Los Angeles, also.



[fol. 216] Chopped baby food represents about 20% of total baby food sales in Philadelphia, in comparison with 35% of total sales in Los Angeles. This indicates that Los Angeles, the proverbial mecca of dieters and crackpots of all sorts, goes in stronger for adult consumption of baby food. (Or else its youngsters turn athletic at an early age and chomp chopped food when infants in Philadelphia are still only able to gum-chew the strained variety.)

Gerbers is the leading brand in Philadelphia, but by no means as great a margin as it enjoys in Los Angeles. Heinz and Beechnut are close neck-and-neck seconds to Gerber, particularly in the chopped food field.



[fol. 217] Sales of Baby Food in Philadelphia Food Stores

	1954		1955			
	Nov. Dec.	Jan. Feb.	Mar. April	May June	July Aug.	Sept. Oct.
Sales by Container						
Total Baby Food						
Glass	88.0%	89.0%	88.5%	89.3%	87.3%	86.2%
Tin	12.0	11.0	11.5	10.7	12.7	13.8
Strained Baby Food						
Glass	86.9	87.2	86.6	87.6	86.4	84.9
Tin	13.1	12.8	13.4	12.4	13.6	15.1
Chopped Baby Food						
Glass	92.5	95.6	96.0	95.8	91.5	90.5
Tin	7.5	4.4	4.0	4.2	8.5	9.5
Sales by Type of Baby Food						
Strained	79.6	79.8	78.6	79.6	81.2	78.9
Chopped	20.4	20.2	21.4	20.4	18.8	21.1
Sales by Brands						
Total Baby Food						
Gerber	31.8%	32.7%	29.4%	32.0%	29.8%	37.2%
Heinz	28.3	26.6	25.1	28.9	29.4	25.7
Beechnut	30.0	30.0	35.9	29.2	30.4	25.4
All others	9.9	10.7	9.6	9.9	10.4	11.7
Strained Baby Food						
Gerber	32.3	33.9	28.7	32.1	28.9	38.8
Heinz	27.0	25.8	24.4	28.4	29.4	25.4
Beechnut	29.1	27.9	35.8	28.0	30.7	23.4
All others	11.6	12.4	11.1	11.5	11.0	12.4
Chopped Baby Food						
Gerber	40.0	28.3	32.4	31.4	34.3	31.7
Heinz	31.6	30.1	27.6	30.1	29.2	26.7
Beechnut	33.4	37.9	36.2	33.6	28.4	33.0
All others	5.0	3.7	3.8	4.8	8.1	8.6

[fol. 218] GOVERNMENT'S EXHIBIT 43

Baby Food Container Situation

1956

For

Glass Container Manufacturers Institute, Inc.

Ford Sammis & Company
Marketing Economists

[fol. 219]

Ford Sammis & Company
Marketing Economists

750 Colorado Boulevard
Los Angeles 41, California
CLinton 5-7101

500 Fifth Avenue
New York 36, New York
CHickering 4-4363

December 7, 1956.

Glass Container Manufacturers Institute, Inc.
99 Park Avenue
New York 16, N. Y.

Attention: Mr. Richard L. Cheney, Director, Market Research and Promotion

Subject: Baby Food Container Situation—1956

Gentlemen:

This report summarizes data on baby food containers from G.C.M.I. national consumer and retailer surveys during the past three years, and from store audits conducted in Los Angeles stores since October, 1954. In certain instances, where applicable, reference is made to a consumer survey conducted throughout California in 1953 for the West Coast Sub-Committee.

The charts used are those shown at the Semi-Annual Meeting of G.C.M.I. at Phoenix in November, 1956.

All data in this report apply to the area West of the Mississippi, where tin and glass are in active competition for the baby food market. East of the Mississippi, baby food sales and preference have been 90% glass for several years.

Respectfully, Ford Sammis.

[fol. 220] GOVERNMENT'S EXHIBIT 44

Los Angeles Store Audits

Baby Food

Period of November, 1954 to April, 1957

for

Glass Container Manufacturers Institute, Inc.

Ford Sammis & Company
Marketing Economists

[fol. 221]

Ford Sammis & Company
Marketing Economists

750 Colorado Boulevard
Los Angeles 41, California
CLinton 5-7101

500 Fifth Avenue
New York 36, New York
CHickering 4-4363

June 7, 1957.

Glass Container Manufacturers Institute, Inc.
99 Park Avenue
New York 16, N. Y.

Attention: Mr. Richard L. Cheney

Subject: Los Angeles Store Audits—Baby Food

Gentlemen:

Transmitted herewith is a report on the store audits conducted in Los Angeles super-markets on baby food sales for the period November, 1954 to April, 1957.

This report is for your confidential information.

Respectfully, Ford Sammis.

[fol. 222] GOVERNMENT'S EXHIBIT 45

Baby Food Container Situation

1958

for

Glass Container Manufacturers Institute, Inc.

Ford Sammis & Company
Marketing Economists

[fol.223]

Ford Sammis & Company
Marketing Economists

750 Colorado Boulevard
Los Angeles 41, California
CLinton 5-7101

54 Mill Lane
Huntington, New York
HAmilton 7-4791

October 1, 1958.

Glass Container Manufacturers Institute, Inc.
99 Park Avenue
New York 16, N. Y.

Attention: Mr. Richard L. Cheney, Executive Director & Marketing Manager

Subject: Baby Food Container Situation, 1958

Gentlemen:

This report summarizes data on the baby food container situation from national consumer surveys conducted annually for G. C. M. I. since 1954. It has been prepared for the confidential information of your organization and its member companies.

The sole purpose of this report is to portray the situation affecting baby food *containers*. However, in order to present the container situation clearly and completely it is necessary to cover brand preference as well as container preference, since the two are inextricably inter-related.

Sincerely, Ford Sammis.

[fol. 224] GOVERNMENT'S EXHIBIT 46

Survey of California Baby Food Market

for

Glass Container Manufacturer's Institute, Inc.

Copy No. 11 for the confidential use of Mr. W. H. Stephenson

Ford Sammis
Marketing Economist

[fol. 225]

Ford Sammis
Marketing Economist

530 West Sixth Street, Los Angeles 14
TRinity 9549

September 24, 1953.

Glass Container Manufacturers Institute
8 West 40th Street
New York 18, N. Y.

Attention: Mr. Richard Cheney

Gentlemen:

Transmitted herewith is report on "Survey of California Baby Food Market." This survey was conducted to secure factual information required to determine the following objectives:

(1) Can sales of baby food in glass jars be increased in California?
(2) Will promotion by Glass Container Manufacturers Institute be effective in increasing sales?
(3) Approximately how much will it cost to do the job, and how long will it take to show significant results?
(4) What strategy and what media will accomplish the task most effectively and efficiently?

This report covers the findings from surveys of 800 mothers with babies under 2 years old, 200 grocery stores, and 34 wholesaler and chain store headquarters. Samples used in the surveys represent a balanced cross-section of the entire State of Calfiornia.

Recommendations are presented in a separate letter to the West Coast Sub-Committee on Market Research and Promotion.

Respectfully, Ford Sammis.

FS:ht

[fol. 226] GOVERNMENT'S EXHIBIT 47

Los Angeles Store Audits

Soft Drinks

Period of November, 1954 to October, 1956

For

Glass Container Manufacturers Institute, Inc.

Ford Sammis & Company
Marketing Economists

[fol. 227]

Ford Sammis & Company
Marketing Economists

750 Colorado Boulevard
Los Angeles 41, California
CLinton 5-7101

500 Fifth Avenue
New York 36, New York
CHickering 4-4363

January 7, 1957.

Glass Container Manufacturers Institute, Inc.
99 Park Avenue
New York, New York

Attention: Mr. Richard L. Cheney, Director of Market Research and Promotion Division

Subject: Los Angeles Store Audits—Soft Drinks

Gentlemen:

Transmitted herewith is a report on the store audits conducted in Los Angeles super-markets on soft drink sales for the period of May-October, 1956. This supplements and brings up-to-date the report previously submitted covering the period November 1954 to April 1956. This report is for your confidential information.

Respectfully, Ford Sammis.

[fol. 228] GOVERNMENT'S EXHIBIT 48

Soft Drink Container Situation in Los Angeles

1956

for

Glass Container Manufacturers Institute, Inc.

Ford Sammis & Company
Marketing Economists

[fol. 229]

Ford Sammis & Company
Marketing Economists

750 Colorado Boulevard
Los Angeles 41, California
CLinton 5-7101

500 Fifth Avenue
New York 36, New York
CHickering 4-4363

December 7, 1956.

Glass Container Manufacturers Institute, Inc.
99 Park Avenue
New York 16, N. Y.

Attention: Mr. Richard L. Cheney, Director
Market Research and Promotion

Subject: Soft Drink Container Situation in Los Angeles—1956

Gentlemen:

This report summarizes the soft drink container situation in the Los Angeles market as reflected by two consumer surveys conducted in October, 1955, and October, 1956. Each survey consisted of personal interviews with 900 consumers (evenly divided among men, women and children). Additional data are presented from store audits conducted in Los Angeles stores since November, 1954.

Cordially, Ford Sammis.

[fol. 230] GOVERNMENT'S EXHIBIT 49

Soft Drink Market Survey
For
Glass Container Manufacturers Institute, Inc.

Ford Sammis & Company
Marketing Economists

[fol. 231]

Ford Sammis
Marketing Economist

530 West Sixth Street, Los Angeles 14
Trinity 9549

March 1, 1955.

Glass Container Manufacturers Institute, Inc.
99 Park Avenue
New York 16, New York

Attention: Mr. Richard L. Cheney, Director

Market Research & Promotion Division

Gentlemen:

Transmitted herewith is report on "Soft Drink Container Market Survey," conducted at your request for the information of your Institute and member companies.

Purpose of this survey was to investigate:

(a) Extent and strength of consumer and retailer preference for bottles or cans as soft drink containers
(b) Motivations affecting container preference
(c) Characteristics of the soft drink market

Respectfully, Ford Sammis.

[fol. 232] GOVERNMENT'S EXHIBIT 50

Long Angeles Store Audits

Soft Drinks

Period of November, 1954 to July, 1957

for

Glass Container Manufacturers Institute, Inc.

Ford Sammis & Company
Marketing Economists

[fol. 233]

Ford Sammis & Company
Marketing Economists

750 Colorado Boulevard
Los Angeles 41, California
CLinton 5-7101

54 Mill Lane
Huntington, New York
HAmilton 7-4791

July 29, 1957.

Glass Container Manufacturers Institute, Inc.
99 Park Avenue
New York 16, N.Y.

Attention: Mr. Richard L. Cheney

Subject: Los Angeles Store Audits—Soft Drinks

Gentlemen:

Transmitted herewith is a report on the store audits conducted in Los Angeles super-markets on soft drink sales covering the period of November, 1954 to July, 1957.

This report is for your confidential information.

Respectfully, Ford Sammis.

[fol. 234] GOVERNMENT'S EXHIBIT 51

Survey on Canned Soft Drinks in Philadelphia

For

Glass Container Manufacturers Institute, Inc.

Ford Sammis
Marketing Economist

[fol. 235]

Ford Sammis
Marketing Economist

530 West Sixth Street, Los Angeles 14
Trinity 9549

June 17, 1954.

Glass Container Manufacturers Institute, Inc.
8 West 40th Street
New York 18, New York

Attention: Mr. Richard L. Cheney, Director

Market Research & Promotion Division

Gentlemen:

Transmitted herewith is report on "Survey on Canned Soft Drinks in Philadelphia" conducted at your request for the confidential information of your organization and its members.

Purpose of this survey was to study consumer and retailer reaction to canned soft drinks and to determine to what extent cans have penetrated the soft drink market.

Philadelphia was chosen because this was one of the first markets where canned soft drinks were introduced in 1953, and has been subject to intense promotion on this product for the past year and a half.

Respectfully, Ford Sammis.

FS:ht.

[fol. 236] GOVERNMENT'S EXHIBIT 52

An Appraisal of the Success of the One-Way Beer Bottle in the Baltimore Market and a Comparison with the Detroit Market

Glass Container Manufacturers Institute, Inc.
February 1955

[fol. 237] McKinsey & Company
Management Consultants

New York, Washington, Boston, Chicago, San Francisco,
Los Angeles

60 East 42nd Street
New York 17, N.Y.
February 23, 1955.

Mr. Richard L. Cheney
Director of Market Research
Glass Container Manufacturers Institute Inc.
New York, New York

Dear Mr. Cheney:

The visual material contained herein was presented to the Beer Bottle Marketing Sub-Committee on February 16, 1955.

The Committee requested photostats of this material, as it was presented, for further study.

Summary of Conclusions

The Baltimore success of one-ways will be difficult to reproduce because of elements unique to the Baltimore situation. These elements are:

1. Motivation—a highly motivated leading brewer was a key factor in the one-ways' success.
2. Environment—the nature of the Baltimore market peculiarly favored one-ways.
3. Action—exceptionally skillful action was taken on the part of the Baltimore brewer in the important areas of selling, pricing, promotion, and advertising.

The failure of one-ways in Detroit can be traced to a far less favorable combination of motivation, environment, and action in that market.

[fol. 238] Report Organization

The report is divided into the following major sections:

Nature of the study
Appraisal of the Baltimore market for one way bottles
Cost, margin, and price data of a leading brewer
Summary of factors affecting the success of one-ways in Baltimore
Market comparison—Baltimore versus Detroit
Why the Baltimore success will be difficult to duplicate.

Exhibits are found at the end of the report.

We appreciate the opportunity of working with you on this very interesting assignment.

Respectfully submitted, McKinsey & Company.

[fol. 239] GOVERNMENT'S EXHIBIT 53

Distribution & Sales of One-Way Beer Bottles in Virginia
October, 1956

for

Glass Container Manufacturers Institute, Inc.

Ford Sammis & Company
Marketing Economists

[fol. 240]

Ford Sammis & Company
Marketing Economists

750 Colorado Boulevard, Los Angeles 41, California
CLinton 5-7101

500 Fifth Avenue, New York 36, New York
CHickering 4-4363

December 11, 1956.

Glass Container Manufacturers Institute, Inc.
99 Park Avenue
New York 16, N. Y.

Attention: Mr. Richard L. Cheney, Director
Market Research & Promotion

Subject: Distribution & Sales of One-Way Beer Bottles in Virginia—October, 1956

Gentlemen:

This report covers a survey made among 136 off-premise beer outlets in Virginia during the latter part of October, 1956—5 months after sale of one-way bottles became legal. Store panels surveyed cover all types of outlets—supermarkets, small grocery stores, on-off sale taverns, service post exchanges, and drug stores. Each type of store was represented in the sample in proportion to its importance as a beer outlet, as determined by a consumer survey conducted in June, 1956.

Sales data were obtained from store manager's estimates of their sales. While not as reliable as actual store audits, the data are believed to be reasonably accurate because Virginia stores are required to pay cash on delivery for all beer, giving store managers intimate knowledge of beer purchases.

Respectfully, Ford Sammis.

[fol. 241] GOVERNMENT'S EXHIBIT 54

Consumer Survey Among Virginia Beer Drinkers
January 1957

for

Glass Container Manufacturers Institute, Inc.

Ford Sammis & Company
Marketing Economists

[fol. 242]

Ford Sammis & Company
Marketing Economists

750 Colorado Boulevard, Los Angeles 41, California
CLinton 5-7101

500 Fifth Avenue, New York 36, New York
CHickering 4-4363

March 1, 1957.

Glass Container Manufacturers Institute, Inc.
99 Park Avenue
New York 16, N. Y.

Attention: Mr. Richard L. Cheney, Director
Market Research and Promotion

Subject: Consumer Survey Among Virginia Beer Drinkers, January, 1957.

Gentlemen:

This survey of personal interviews with 1037 beer drinking families was conducted in January, 1957, as a follow-up on a similar survey made in June, 1956, when one-way bottles were first legalized for off premise sale in Virginia.

Interviews were distributed equally in Alexandria, Richmond, Norfolk, and Roanoke. Advertising campaigns were conducted in the first three cities throughout the last six months of 1956 by G. C. M. I. and certain breweries sponsoring one-way bottles. Roanoke was used as a control market.

Reference is made to reports on the first consumer survey and on distribution surveys of retail beer outlets, for complete analysis of the Virginia beer situation.

This survey was conducted for the confidential information of your Institute and member companies.

Respectfully, Ford Sammis.

[fol. 243] GOVERNMENT'S EXHIBIT 55

Distribution & Sales of One-Way Beer Bottles in Virginia
June, 1956 to October, 1957

for

Glass Container Manufacturers Institute, Inc.

Ford Sammis & Company
Marketing Economists

[fol. 244] Ford Sammis & Company
Marketing Economists

750 Colorado Boulevard, Los Angeles 41, California
CLinton 5-7101

54 Mill Lane, Huntington, New York
HAmilton 7-4791

December 6, 1957

Glass Container Manufacturers Institute, Inc.
99 Park Avenue
New York 16, N. Y.

Attention: Mr. R. L. Cheney, Executive Director

Subject: Distribution & Sales of One-Way Beer Bottles in Virginia—June, 1956 to October, 1957

Gentlemen:

This report covers surveys made among 136 off-premise beer outlets in Virginia in October, 1956, February, 1957, and October, 1957. Store panels surveyed cover all types of outlets—super-markets, small grocery stores, on-off sale taverns, service post exchanges, and drug stores. Each type of store was represented in the sample in proportion to its importance as a beer outlet, as determined by a consumer survey conducted in June, 1956.

Sales data were obtained from store manager's estimates of their sales. While not as reliable as actual store audits, the data are believed to be reasonably accurate because Virginia stores are required to pay cash on delivery for all beer, giving store manager's intimate knowledge of beer purchases.

Respectfully, Ford Sammis.

[fol. 245] GOVERNMENT'S EXHIBIT 56

Glass Container Manufacturers Institute

Market Research & Promotion Division

BB-#16

October 22, 1958.

To the Beer Bottle Manufacturers

Gentlemen:

Several people from our industry were invited to an informal meeting in the offices of Container Corporation of America on the 16th floor of 99 Park Avenue, New York, to see a new wrap-around style of six pack carrier for the new one-way beer bottle presently shown on the GCMI tentative drawing C-16600-T.

Their presentation was very interesting and they indicated that they would shortly have machines available that could automatically package six bottles of beer in this wrap-around carrier and insert four of the carriers in a case along with a divider.

These wrap-around six pack carriers will be sold for something less than $30.00 per thousand and the automatic machines were quoted at $15,000 to $18,000 each and they have a speed of about 300 bottles per minute. They will probably be sold or leased to brewers.

The Container Corporation also had two or three ideas on outer cartons (to hold four to six packs) which they presented.

Mr. Robert M. Bennett, a sales manager of Container Corporation, will be glad to furnish any interested glass container manufacturers with samples and information on these items.

Within two weeks he plans a cross-country trip to make a presentation to a number of regional and national brewers in hopes of selling some installations.

Attached in dittoed form are figures which he presented to the meeting showing their estimates of packaging ma-

terial costs covering this bottle in their wrap-around six pack (at $29.25/M), in two types of outer packs:

(a) A special case with short, die-cut top flaps designed to catch under the crowns, and
(b) Full height trays

[fol. 246] Estimates for cans in both trays and forty-eight pack, RSC cartons are also shown, and comparisons made between the two forms of packaging.

You will note in the attached charts, figures covering returnable partitions which is their suggested method of getting the empty glass to the brewer in the outer case, which will in turn be used by the brewer. Something of this kind is necessary since the glass company will not handle the six packs but they will be furnished flat to the brewer.

Each page has blanks in which the reader may insert his own estimates where they differ from theirs.

I am sure Mr. Bennett will be glad to answer any questions any of you may have about this new six pack carrier.

We felt it was a matter of sufficient interest that it should be relayed to you in the present form.

Sincerely, R. L. Cheney.

Attachment.

[fol. 247]

Packaging Material Costs

New Lightweight Non-Returnable Bottle in 200 lb. Special Case

Bottles (Including Regular Slotted Construction & Carton Set-up)		=3.87 per gross	per gross
Differential on Special Case (20.00/M) (...../M)	=0.12 per gross	per gross	
Elimination of Carton Setup	=0.050 per gross	per gross	
Total Saving		=0.17 per gross	per gross
	Net Bottle Cost	=3.700 per gross	per gross
Net Bottle Cost (3.70 per gross) (..... per gross)	=0.15410 per six Pack	.....	per six Pack
Body Labels (0.6775/M) (...../M)	=0.00400 per six Pack	.....	per six Pack
Crowns (0.3075 per gross) (..... per gross)	=0.01300 per six Pack	.....	per six Pack
Six Packs (29.25/M) (...../M)	=0.02925 per six Pack	.....	per six Pack
.040 Chip Cross Pack (5.00/M) (...../M)	=0.00125 per six Pack	.....	per six Pack
.055 Returnable Fibre Partition (Including cost+Brewery labor+Return Freight)	=0.00230 per six Pack	.....	per six Pack
Total Cost	=0.20390 per six Pack	.....	per six Pack

[fols. 248-249]

Packaging Material Costs

New Lightweight Non-Returnable Bottle in 175 lb. Trays

Bottles (Including tray and carton set-up)	=3.60 per gross	.....per gross
Elimination of Carton Set-up	=0.05 per gross	.....per gross
Net Bottle Cost	=3.55 per gross	.....per gross
Net Bottle Cost (3.55 per gross) (.....per gross)	=0.14790 per six Pack	.....per six Pack
Body Labels (0.6775/M) (...../M)	=0.00400 per six Pack	.....per six Pack
Crowns (0.3075 per gross) (.....per gross)	=0.01300 per six Pack	.....per six Pack
Six Pack (29.25/M) (...../M)	=0.02925 per six Pack	.....per six Pack
.040 Chip Cross Pack (5.00/M) (...../M)	=0.00125 per six Pack	.....per six Pack
.055 Returnable Fibre Partition (including cost+brewery labor+return freight)	=0.00230 per six Pack	.....per six Pack
Total	=0.19770 per six Pack	.....per six Pack

[fol. 250]

Comparison of Packaging Costs

Tray Pack Cans	0.25880 per six pack	.....per six pack
New Non-Returnable Bottle in Tray	0.19770 per six pack	.....per six pack
Platform Differential	0.06120 per six pack	.....per six pack
17% Distributors Mark-up	0.01180 per six pack	.....per six pack
Difference at Distributors Level	0.07300 per six pack	.....per six pack
25% Retail Mark-up	0.01825 per six pack	.....per six pack
Difference at Retail Level	0.09125 per six pack	.....per six pack

1903

[fol. 251]

Packaging Material Costs

12 oz. Flat Top Cans in 175 lb. 48 Pack Regular Slotted Construction

2 Color Cans (30.03/M) (...../M)	=0.18 per six Pack	.....per six Pack
Lids (6.24/M) (...../M)	=0.037 per six Pack	.....per six Pack
2 Color Regular Slotted Construction (115.00/M) (...../M)	=0.014 per six Pack	.....per six Pack
2 Color 6-Pack (27.00/M) (...../M)	=0.027 per six Pack	.....per six Pack
Total	=0.258 per six Pack	.....per six Pack

[fol. 252]

Comparison of Packing Costs

48 Pack Cans		
New Non-Returnable Bottle in Tray	0.25800 per six pack	.....per six pack
	0.19770 per six pack	.....per six pack
Platform Differential	0.06030 per six pack	.....per six pack
17% Distributors Mark-up	0.01025 per six pack	.....per six pack
Difference at Distributors Level	0.07055 per six pack	.....per six pack
25% Retail Mark-up	0.01764 per six pack	.....per six pack
(20% on selling price=25% on cost)		
Difference at Retail Level	0.08819 per six pack	.....per six pack

[fol. 253]

Comparison of Packaging Costs

48 Pack Cans		
New Non-Returnable Bottle in Special Case	0.25800 per six pack	.....per six pack
	0.20390 per six pack	.....per six pack
Platform Differential	0.05410 per six pack	.....per six pack
17% Distributors Mark-up	0.00920 per six pack	.....per six pack
Difference at Distributor Level	0.06330 per six pack	.....per six pack
25% Retail Mark-up	0.01577 per six pack	.....per six pack
(20% on selling price=25% on cost)		
Difference at Retail Level	0.07907 per six pack	.....per six pack

[fol. 254]

Returnable .053 Fibre Partition

Cost

50.00 per thousand÷25 trips÷4	=0.0005 per six pack	
.... per thousand÷.. trips÷4		=.....per six pack
Brewery Labor		
3.00 per hour÷750 cases per hour÷4 six packs	=0.001 per six pack	
.... per hour÷... cases per hour÷4 six packs		=.....per six pack
Return Freight		
99.00 per 100 miles÷30 thousand partitions÷4	=0.0008 per six pack	
..... per 100 miles÷.. thousand partitions÷4		=.....per six pack
Total Partition Cost	0.0023 per six pack	.....per six pack

[fol. 255]

Comparison of Packaging Costs

Tray Pack Cans	0.25890 per six pack	.....per six pack
New Non-Returnable Bottle in Special Case	0.20390 per six pack	.....per six pack
Platform Differential	0.05500 per six pack	.....per six pack
17% Distributors Mark-up	0.00935 per six pack	.....per six pack
Difference at Distributor Level	0.06435 per six pack	.....per six pack
25% Retail Mark-up	0.01609 per six pack	.....per six pack
Difference at Retail Level	0.08044 per six pack	.....per six pack

1905

GLASS CONTAINER MANUFACTURERS INSTITUTE
MARKET RESEARCH & PROMOTION DIVISION

gm

BB-#15
July 7, 1958

To the Beer Bottle Manufacturers

Subject: Trends in Beer Packaging

Gentlemen:

Enclosed is a chart showing graphically the trends in beer packaging as between returnable bottles, one-ways and cans.

You will note that returnable bottles continue to lose position and that most of their loss has moved into cans although 1956 and 1957 showed some leveling off in this trend toward cans and some small improvement in the position of one-way bottles.

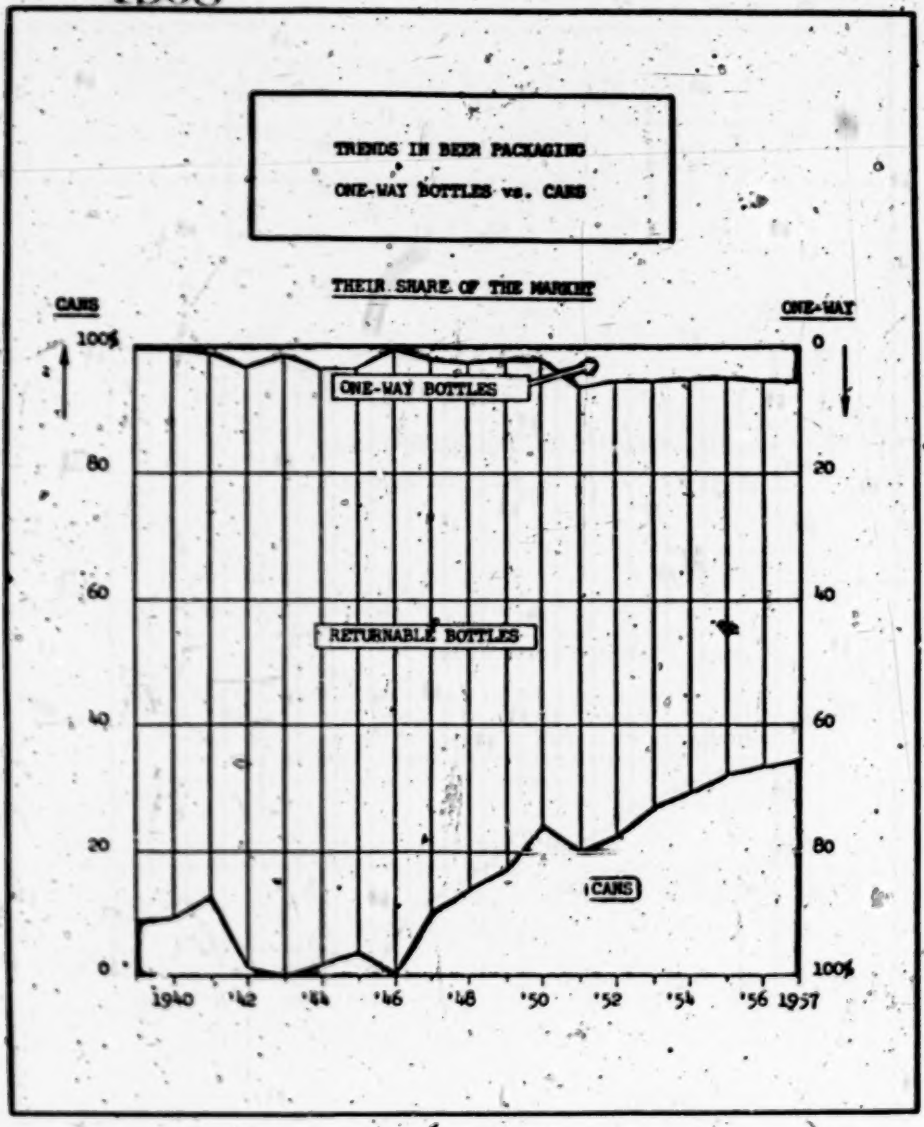
We do not have data on quart bottles and so the position of glass may be somewhat better than this chart shows.

Sincerely,

R.L. Cheney

Enclosure.

[fol. 257] 1908


TRENDS IN BEER PACKAGING
ONE-WAY BOTTLES vs. CANS
THEIR SHARE OF THE MARKET
CANS
ONE-WAY
100%
80
60
40
20
0
0
20
40
60
80
100%
ONE-WAY BOTTLES
RETURNABLE BOTTLES
CANS
1940
'42
'44
'46
'48
'50
'52
'54
'56
1957

GLASS CONTAINER MANUFACTURERS INSTITUTE, Inc.

Glass

BB-#6
January 29, 1957

To the Beer Bottle Manufacturers

ONE WAY BEER SALES IN VIRGINIA

Gentlemen:

We have just received our first report from the Virginia Alcoholic Beverage Control Board, of actual sales of beer in No Deposit bottles in that state. In their letter of January 21, 1957, they define these data (shown below) as:

"a tabulation of beer sales in cases by container types for the months of July, August, and September, 1956. This tabulation is 99% complete and is based on monthly reports to us by licensed Virginia distributors."

COMMONWEALTH OF VIRGINIA
Case Sales of Beer by Container Types
July - August - September, 1956

	Non-Ret.	%	Ret.	%	Cans	%	Total
July	59,726	4.0	502,080	33.6	931,855	62.4	1,493,661
August	69,658	4.8	501,582	35.0	862,613	60.2	1,433,853
September	56,334	5.1	413,132	37.6	630,379	57.3	1,099,845
Totals	185,718	4.6	1,416,794	35.2	2,424,847	60.2	4,027,359

For comparison we summarize on the attached sheet data previously sent you, covering earlier periods when No Deposit bottles were not permitted in Virginia.

Sincerely,

R. L. Cheney

Attachment.

[fol. 259]

1910

BB-#6
January 29, 1957

COMMONWEALTH OF VIRGINIA
RELEASE OF CROWNS AND CAN LIDS BY
VIRGINIA TAX COMMISSIONER FOR SALES OF MALT BEVERAGES

o July - August - September, 1955

	CROWNS(in Gross)		CAN LIDS(in Gross)		TOTAL
July	102,350	45.6%	122,143	54.6%	224,493
August	62,110	31.9%	132,837	68.1%	194,947
September	73,887	36.4%	129,012	63.6%	202,899
Totals	238,347	38.3%	383,992	61.7%	622,339

oo Year Ending

June 30, 1954	1,211,432	52.2%	1,107,860	47.8%	2,319,292
June 30, 1955	1,061,218	46.8%	1,206,664	53.2%	2,267,882
June 30, 1956	1,049,303	43.6%	1,357,690	56.4%	2,406,993

Note: CROWNS shown went on returnable bottles except for some No-deposits sold to Armed Services installations, as No-deposits were not permitted in Virginia before July, 1956.

o From Ford Sammis & Co. letter of July 23, 1956
oo From H. W. Kuni's letter to Beer Bottle Manufacturers of August 9, 1956

GLASS CONTAINER MANUFACTURERS INSTITUTE, Inc.

Glass

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
59

BB-#7
March 27, 1957

To the Beer Bottle Manufacturers

ONE WAY BEER SALES IN VIRGINIA

Gentlemen:

From the Virginia Alcoholic Beverage Control Board we have just received the figures shown below for the months of October, November and December, 1956:

COMMONWEALTH OF VIRGINIA
Case Sales of Beer by Container Types
October - November - December, 1956

	Non-Ret.	%	Ret.	%	Cans	%	Total
October	68,021	6.2	416,031	37.6	621,104	56.2	1,105,156
November	49,545	5.2	376,310	39.2	534,169	55.6	960,024
December	51,929	5.2	384,571	38.3	566,569	56.5	1,003,069
Total	169,495	5.5	1,176,912	38.4	1,721,842	56.1	3,068,249

We repeat here the figures for July, August and September given you in Bulletin BB-#6 dated January 29, 1957:

July	59,726	4.0	502,080	33.6	931,855	62.4	1,493,661
August	69,658	4.8	501,582	35.0	862,613	60.2	1,433,853
September	56,334	5.1	413,132	37.6	630,379	57.3	1,099,845
Total	185,718	4.6	1,416,794	35.2	2,424,847	60.2	4,027,359
6 Months Total	355,213	5.0	2,593,706	36.6	4,146,689	58.4	7,095,608

As before, these represent a tabulation of beer sales in cases from virtually all licensed Virginia distributors.

For comparison we summarize on the attached sheet data previously sent you covering earlier periods when No-Deposit bottles were not permitted in Virginia.

Sincerely,

Attachment.

R. L. Cheney

COMMONWEALTH OF VIRGINIA
RELEASE OF CROWNS AND CAN LIDS BY
VIRGINIA TAX COMMISSIONER FOR SALES OF MALT BEVERAGES

*July - August - September, 1955

	CROWNS (In Gross)		CAN LIDS (In Gross)		TOTAL
Total	238,347	38.3%	383,992	61.7%	622,339
*October - November - December, 1955					
Total	200,295	49.1%	207,584	50.9%	407,879
6 Months Total	438,642	42.6	591,576	57.4	1,030,218
**Year Ending					
June 30, 1954	1,211,432	52.2%	1,107,860	47.8%	2,319,292
June 30, 1955	1,061,218	46.8%	1,206,664	53.2%	2,267,882
June 30, 1956	1,049,303	43.6%	1,357,690	56.4%	2,406,993

Note: CROWNS shown went on returnable bottles except for some No-deposits sold to Armed Services installations, as No-deposits were not permitted in Virginia before July, 1956.

* From Ford Sammis & Co. letter of July 23, 1956
** From H. W. Kuni's letter to Beer Bottle Manufacturers of August 9, 1956.

GLASS CONTAINER MANUFACTURERS INSTITUTE inc.

Glass

BB-#8
June 3, 1957

To the Beer Bottle Manufacturers

ONE WAY BEER SALES IN VIRGINIA

Gentlemen:

From the Virginia Alcoholic Beverage Control Board we have recently received the figures shown below for the months of January, February and March, 1957:

COMMONWEALTH OF VIRGINIA
Case Sales of Beer by Container Types
January - February - March, 1957

	Non-Ret.	%	Ret.	%	Cans	%	Total
January	44,516	5.4	316,045	38.4	461,846	56.2	822,407
February	44,721	5.6	306,413	38.0	454,167	56.4	805,301
March	51,828	6.0	322,711	37.5	485,438	56.5	859,977
Total	141,065	5.7	945,169	38.0	1,401,451	56.3	2,487,685

Figures covering earlier periods were as follows:

3rd Quar. 1956	185,718	4.6	1,416,794	35.2	2,424,847	60.2	4,027,359
4th Quar. 1956	169,495	5.5	1,176,912	38.4	1,721,842	56.1	3,068,249

As before, these represent a tabulation of beer sales in cases from virtually all licensed Virginia distributors.

Sincerely

R. L. Cheney

R. L. Cheney

[fol. 263] 1914 GOVERNMENT'S EXHIBIT 61

GLASS CONTAINER MANUFACTURERS INSTITUTE, Inc.

Glass

BB-#13
August 29, 1957

To the Beer Bottle Manufacturers

ONE WAY BEER SALES IN VIRGINIA

Gentlemen:

From the Virginia Alcoholic Beverage Control Board we have recently received the figures shown below for the first six months of 1957:

COMMONWEALTH OF VIRGINIA
Case Sales of Beer by Container Types

1957	Non-Ret.	%	Ret.	%	Cans	%	Total
January	44,516	5.4	316,045	38.4	461,846	56.2	822,407
February	44,721	5.6	306,413	38.0	454,167	56.4	805,301
March	51,828	6.0	322,711	37.5	485,438	56.5	859,977
1st Quarter	141,065	5.7	945,169	38.0	1,401,451	56.3	2,487,685
April	57,661	6.0	332,676	34.4	576,221	59.6	966,558
May	91,190	7.7	360,940	30.6	726,951	61.7	1,179,081
June	58,459	6.0	310,037	31.9	603,484	62.1	971,980
2nd Quarter	207,310	6.6	1,003,653	32.2	1,906,656	61.2	3,117,619
Total	348,375	6.2	1,948,822	34.8	3,308,107	59.0	5,605,304

Figures covering earlier periods were as follows:

3rd Quarter 1956	185,718	4.6	1,416,794	35.2	2,424,847	60.2	4,027,359
4th Quarter 1956	169,495	5.5	1,176,912	38.4	1,721,842	56.1	3,068,249

As before, these represent a tabulation of beer sales in cases from virtually all licensed Virginia distributors.

Sincerely,

R. L. Cheney

GLASS CONTAINER MANUFACTURERS INSTITUTE

MARKET RESEARCH & PROMOTION DIVISION

gm

Industry Letter #SD-14
November 24, 1958

To the Soft Drink Bottle Manufacturers

SOFT DRINK CAN STATISTICS

Attached is a table showing Department of Commerce figures on short tons of tinplate used in the manufacture of soft drink cans for the first nine months of 1958 compared with the same period in 1957 and 1956.

These data are also shown in graphic form.

On the basis of investigations made in the field by certain of our member companies we estimate that approximately 50% of the soft drinks canned in this country are shipped offshore to Army PX, Navy ships stores, and similar installations.

Non-Returnable Bottle Shipments

Shipments of one-way soft drink bottles for the first nine months of 1958 total 1,041,000 gross and represented a decrease of about 0.6% below shipments for the same period of 1957.

R. L. Cheney, Executive Director
and Marketing Manager

Attachments.

[fol. 265]

1916

METAL CANS FOR SOFT DRINKS

SHIPMENTS (in short tons of steel consumed)

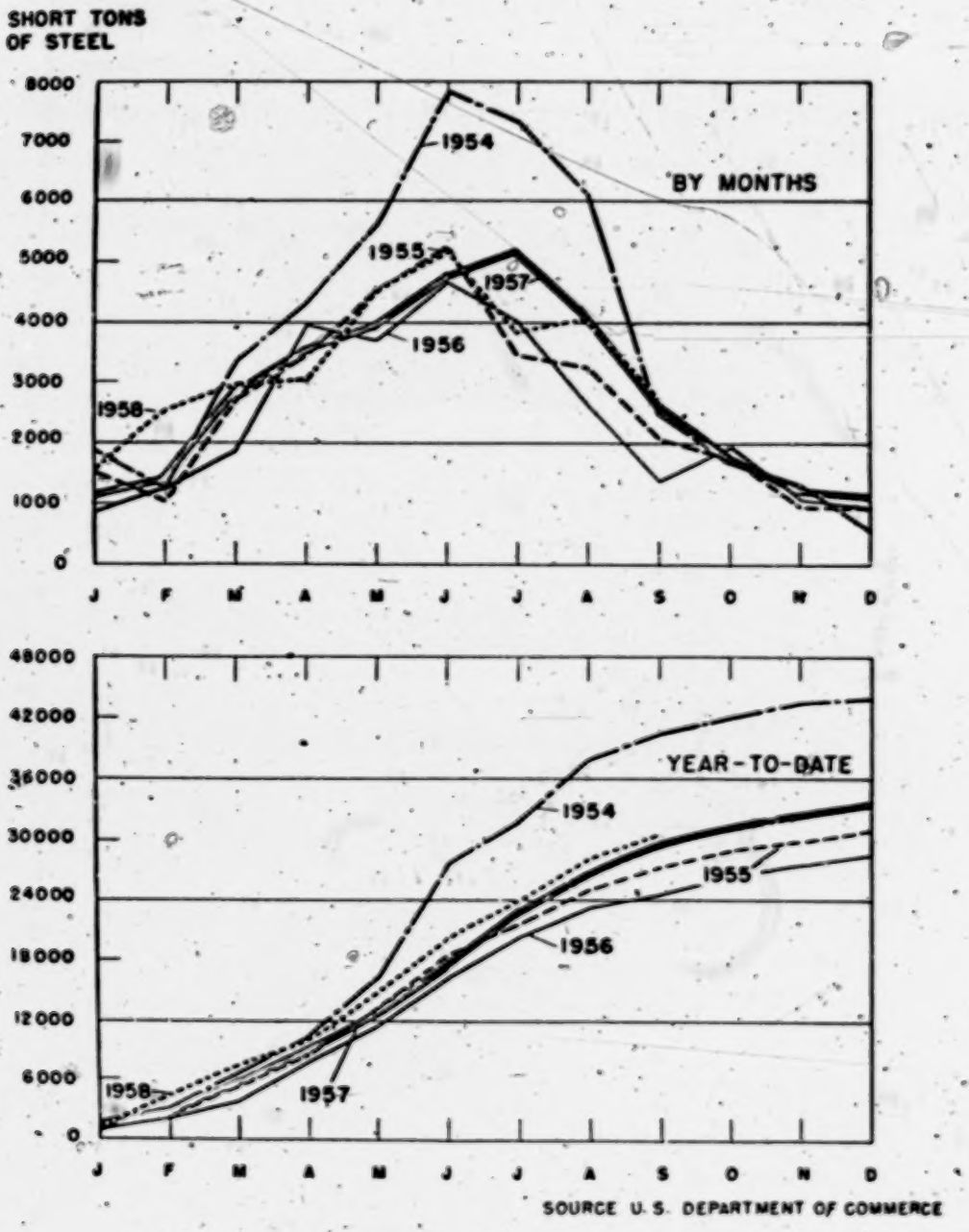
Month	Monthly 1958	1957	1956	% Change 1958/57	Year-to-date 1958	1957	1956	% Change 1958/57
January	1790	1233	854	↑45.2	1790	1233	854	↑45.2
February	2525	1404	1263	↑79.8	4315	2637	2117	↑63.6
March	2981	2864	1880	↑04.1	7296	5501	3997	↑32.6
April	3049	3576	3986	-14.7	10345	9077	7983	↑14.0
May	4569	3957	3710	↑15.5	14914	13034	11693	↑14.4
June	5222	4722	4670	↑10.6	20136	17756	16363	↑13.4
July	3846	5161	4013	-25.5	23982	22917	20376	↑ 4.6
August	4060	4050	2670	↑ 0.2	28042	26967	23046	↑ 4.0
September	2757	2662	1414	↑ 3.6	30799	29629	24460	↑ 3.9
October		1732	1923			31361	26383	
November		1258	1096			32619	27479	
December		1124	950			33743	28429	

Source: U. S. Department of Commerce
Facts for Industry
Metal Cans

[fol. 266]

1917

SHIPMENTS: METAL CANS FOR SOFT DRINKS



SOURCE U. S. DEPARTMENT OF COMMERCE

GLASS CONTAINER MANUFACTURERS INSTITUTE

MARKET RESEARCH & PROMOTION DIVISION

gm

Industry Letter #SD-13
August 28, 1958

To the Soft Drink Bottle Manufacturers

SOFT DRINK CAN STATISTICS

Attached is a table showing Department of Commerce figures on short tons of tinplate used in the manufacture of soft drink cans for the first half of 1958 compared with the same period in 1957 and 1956.

These data are also shown in graphic form.

On the basis of investigations made in the field by certain of our member companies we estimate that approximately 50% of the soft drinks canned in this country are shipped offshore to Army PX, Navy ships stores, and similar installations.

Non-Returnable Bottle Shipments

Shipments of one-way soft drink bottles for the first half of 1958 total 678,000 gross and represented an increase of about 2% over shipments for the same period of 1957.

R. L. Cheney, Executive Director
and Marketing Manager

Attachments.

[fol. 268]

METAL CANS FOR SOFT DRINKS

1919

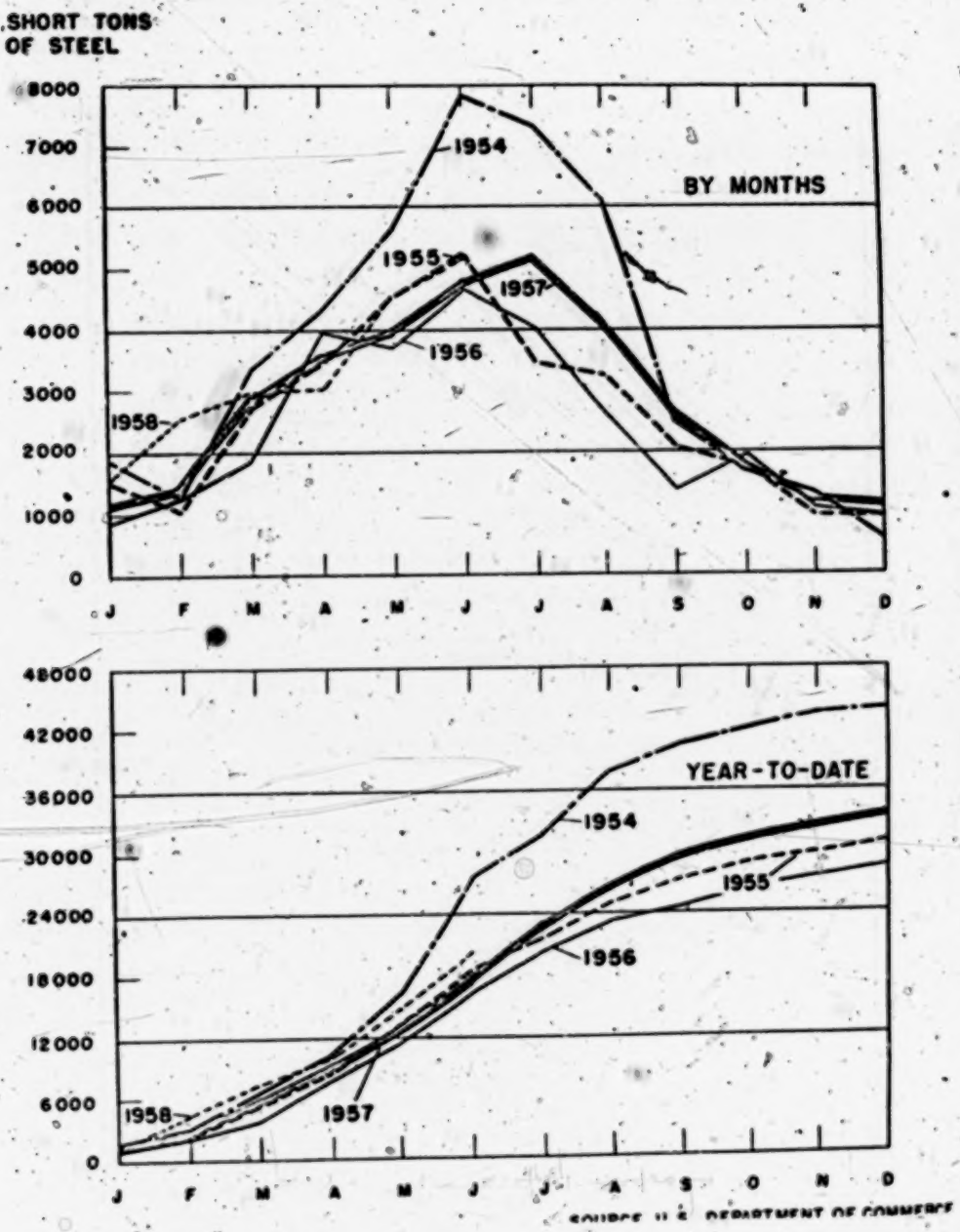
SHIPMENTS (in short tons of steel consumed)

Month	Monthly 1958	1957	1956	% Change 1958/57	Year-to-date 1958	1957	1956	% Change 1958/57
January	1790	1136	854	/57.6	1790	1136	854	/57.6
February	2525	1404	1263	/79.8	4315	2540	2117	/69.9
March	2981	2864	1880	/04.1	7296	5404	3997	/35.0
April	3049	3576	3986	-14.7	10345	8980	7983	/15.2
May	4569	3957	3710	/15.5	14914	12937	11693	/15.3
June	5222	4722	4670	/10.6	20136	17659	16363	/14.0
July		5161	4013			22820	20376	
August		4050	2670			26870	23046	
September		2662	1414			29532	24460	
October		1732	1923			31264	26383	
November		1258	1096			32522	27479	
December		1124	950			33646	28429	

Source: U. S. Department of Commerce
Facts for Industry
Metal Cans

[fol. 269] 1920

SHIPMENTS: METAL CANS FOR SOFT DRINKS



GLASS CONTAINER MANUFACTURERS INSTITUTE

gm

MARKET RESEARCH & PROMOTION DIVISION

Industry Letter #SD-10
July 22, 1958

To the Soft Drink Bottle Manufacturers

Gentlemen:

The attached report is sent to you at the suggestion of the Committee on Market Research and Promotion.

In view of the current activities in the promotion of canned beverages, the Committee felt you might find this useful in reminding your bottler customers of the heavy promotion which GCMI continues to put behind carbonated beverages in glass bottles.

This is a very substantial "total impact" program, using a broad array of advertising, publicity and promotional tools, but directed to the right targets; and it represents spending where it counts. It has the cumulative effect of being in the fourth continuous year of activity.

Extra copies of the report are available.

Sincerely,

R. L. Cheney

Attachment.

[fol. 271] 1922

GLASS CONTAINER MANUFACTURERS INSTITUTE

MARKET RESEARCH & PROMOTION DIVISION

gm

A

SUMMARY

of the

G C M I

1958

Continuous National Program

Designed to strengthen the

already overwhelming preference

for

SOFT DRINKS IN GLASS BOTTLES

GLASS CONTAINER MANUFACTURERS INSTITUTE

gm

MARKET RESEARCH & PROMOTION DIVISION

Industry Letter MSD-8
June 2, 1958

To the Soft Drink Bottle Manufacturers

SOFT DRINK CAN STATISTICS

Attached is a table showing Department of Commerce figures on short tons of tinplate used in the manufacture of soft drink cans for the first quarter of 1958 compared with the first quarter of 1957 and 1956.

These have also been plotted on graphs showing 1954 as well, for your information.

Non-Returnable Bottles Growing

Shipments of one-way soft drink bottles for the first quarter of 1958 were 16.3% over first quarter of 1957.

R. L. Cheney, Executive Director
and Marketing Manager

Attachments.

[fol. 273] **1924** METAL CANS FOR SOFT DRINKS

SHIPMENTS (in short tons of steel consumed)

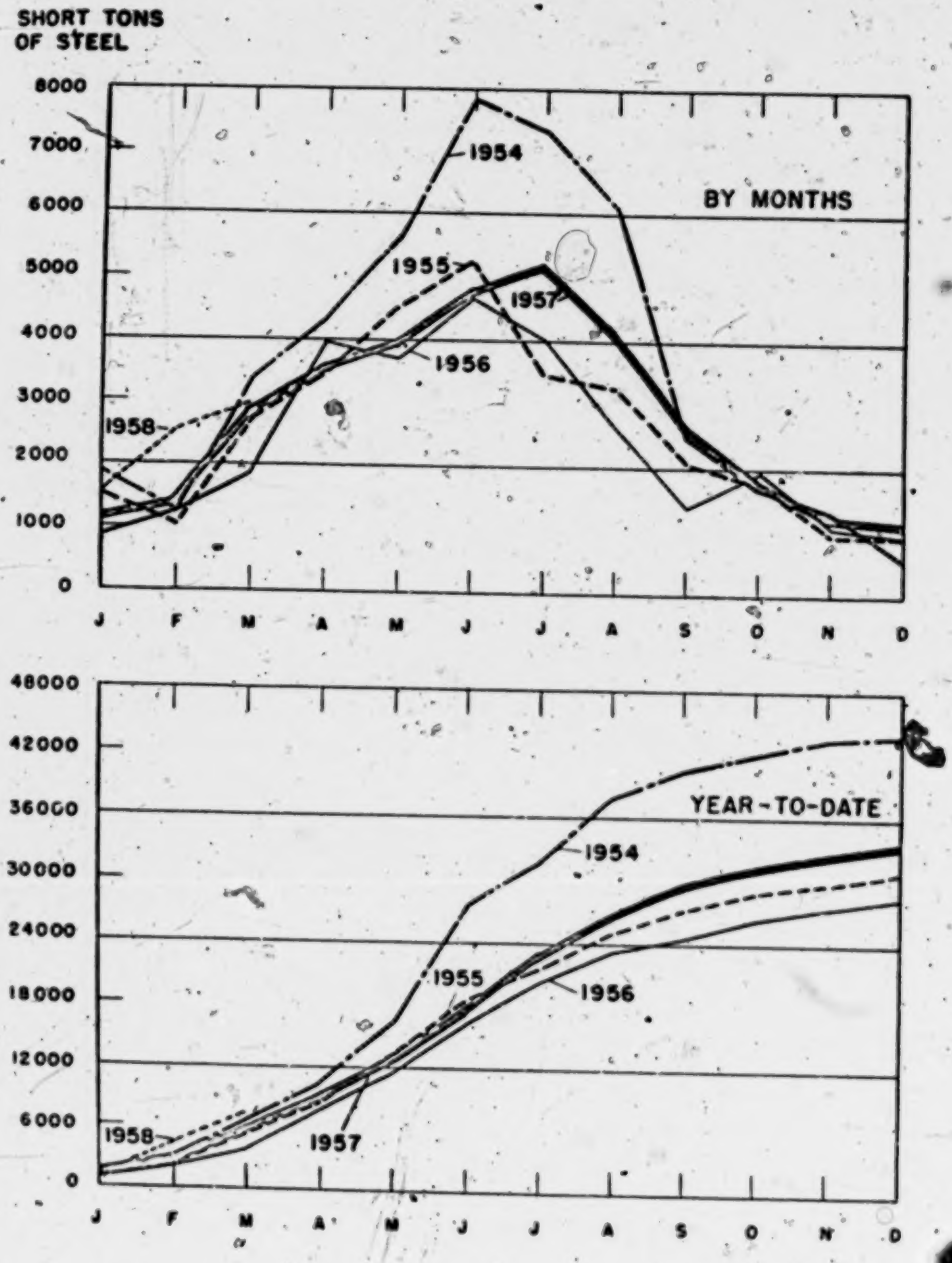
Month	Monthly 1958	1957	1956	% Change 1958/57	Year-to-date 1958	1957	1956	% Change 1958/57
January	1790	1136	854	/57.6	1790	1136	854	/57.6
February	2525	1404	1263	/79.8	4315	2540	2117	/69.9
March	2981	2864	1880	/04.1	7296	5404	3997	/35.0
April		3526	3986			8980	7983	
May		3957	3710			12937	11693	
June		4722	4670			17659	16363	
July		5161	4013			22820	20376	
August		4050	2670			26870	23046	
September		2662	1414			29532	24460	
October		1732	1923			31264	26383	
November		1258	1096			32522	27479	
December		1124	950			33646	28429	

Source: U. S. Department of Commerce
Facts for Industry
Metal Cans

[fol. 274]

1925

SHIPMENTS: METAL CANS FOR SOFT DRINKS



GLASS CONTAINER MANUFACTURERS INSTITUTE

MARKET RESEARCH & PROMOTION DIVISION

gm

Industry Letter #SD-7
March 12, 1958

To the Soft Drink Bottle Manufacturers

SOFT DRINK CAN STATISTICS

Attached is a table showing Department of Commerce figures on short tons of tinplate used in the manufacture of soft drink cans for 1957 compared with the years 1956 and 1955.

These have also been plotted on graphs showing 1954 as well, for your information.

Non-Returnable Bottles Growing

Shipments of one-way soft drink bottles for 1957 were 7.2% over 1956.

R. L. Cheney, Executive Director
and Marketing Manager

Attachments.

[Col. 2&6]

METAL CANS FOR SOFT DRINKS

1927

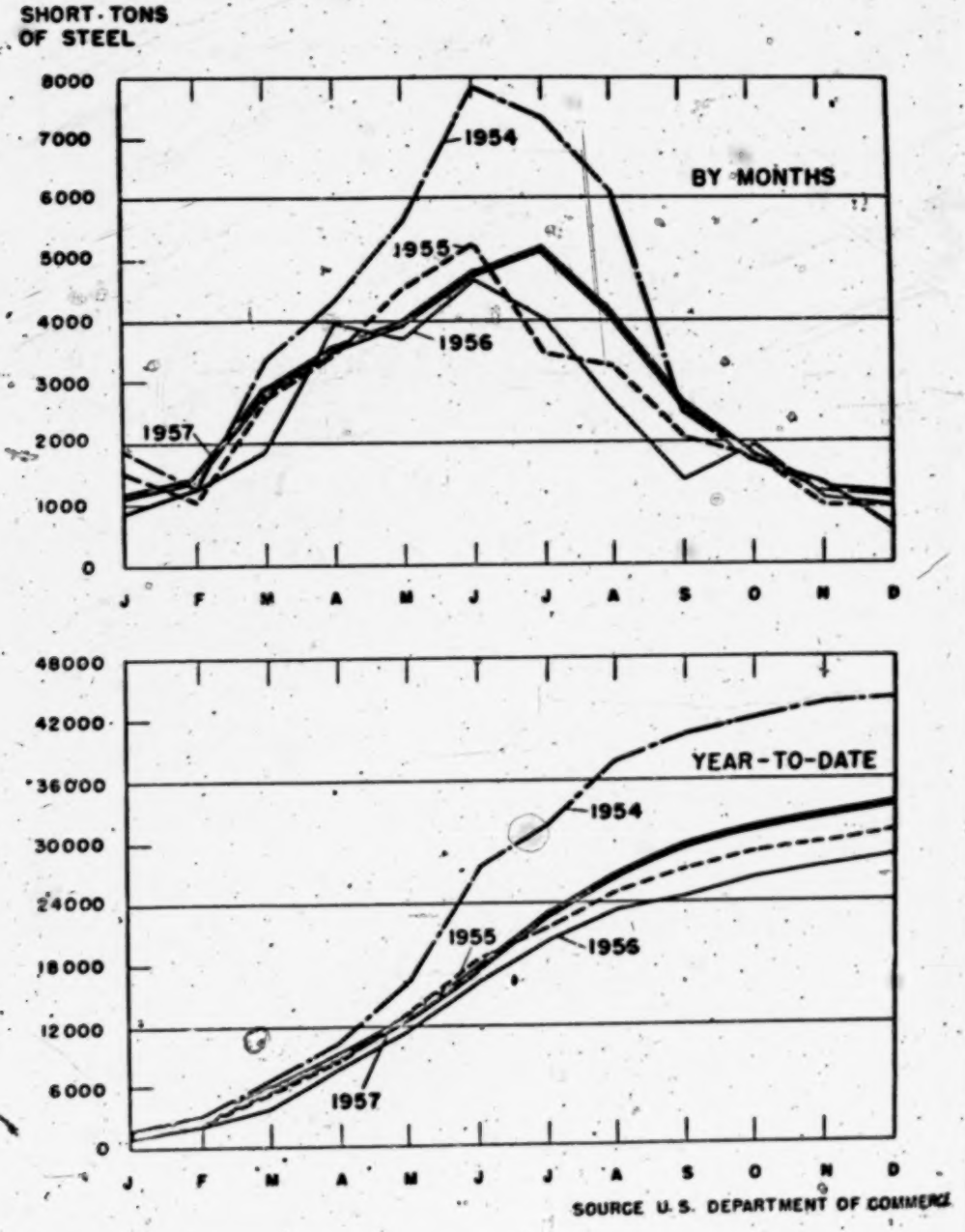
SHIPMENTS (In short tons of steel consumed)

Month	Monthly 1957	1956	1955	% Change 1957/56	Year-to-date 1957	1956	1955	% Change 1957/56
January	1136	854	1522	↑33.0	1136	854	1522	↑33.0
February	1404	1263	1020	↑11.2	2540	2117	2542	↑20.0
March	2864	1880	2707	↑52.3	5404	3997	5249	↑35.2
April	3576	3986	3446	-10.3	8980	7983	8695	↑12.5
May	3957	3710	4514	↑ 6.7	12937	11693	13209	↑10.6
June	4722	4670	5223	↑ 1.1	17659	16363	18432	↑ 7.9
July	5161	4013	3441	↑28.6	22820	20376	21873	↑12.0
August	4050	2670	3237	↑51.7	26870	23046	25110	↑16.6
September	2662	1414	2081	↑88.3	29532	24460	27191	↑20.7
October	1732	1923	1752	- 9.9	31264	26383	28943	↑18.5
November	1258	1096	922	↑14.8	32522	27479	29865	↑18.4
December	1124	950	945	↑18.3	33646	28429	30810	↑18.4

Source: U. S. Department of Commerce
Facts for Industry
Metal Cans

[fol. 277] 1928

SHIPMENTS: METAL CANS FOR SOFT DRINKS



SOURCE U.S. DEPARTMENT OF COMMERCE

[fol. 278] GOVERNMENT'S EXHIBIT 67

GLASS CONTAINER MANUFACTURERS INSTITUTE inc.

Glass

Industry Letter #SD-6
August 13, 1957

To the Soft Drink Bottle Manufacturers.

SOFT DRINK CAN STATISTICS

Attached is a table showing Department of Commerce figures on short tons of tinplate used in the manufacture of soft drink cans for the first half of 1957 compared with the first half of 1956 and 1955.

These have also been plotted on graphs showing 1954 as well, for your information.

1957 Beverage Can Sales Leveling Off

The earlier gains over 1956 were not sustained in the second quarter, and shipments for the first six months stand at 7.9% above 1956, and somewhat below 1955.

Non-Returnable Bottles Growing

Shipments of One-Way soft drink bottles for the first six months of 1957 were 8.5% over 1956.

Returnables showed further gains in July, reducing the lag behind 1956 for the first six months to 12.3%.

R. L. Cheney, Director
Market Research and Promotion

Attachments.

[fol. 279]. 1930

METAL CANS FOR SOFT DRINKS

SHIPMENTS. (In short tons of steel consumed)

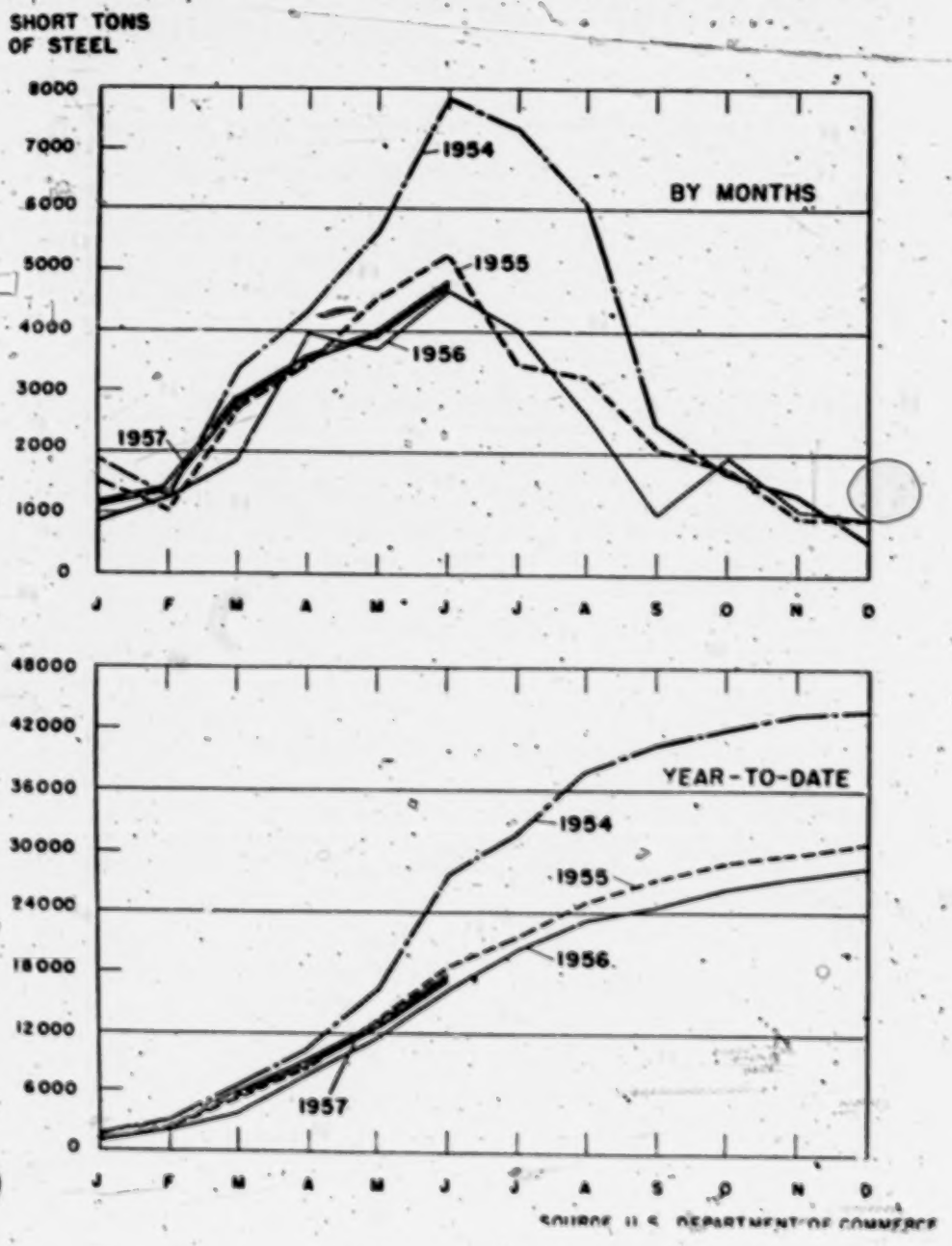
Month	Monthly 1957	1956	1955	% Change 1957/56	Year-to-date 1957	1956	1955	% Change 1957/56
January	1136	854	1522	/33.0	1136	854	1522	/33.0
February	1404	1263	1020	/11.2	2540	2117	2542	/20.0
March	2864	1880	2707	/52.3	5404	3997	5249	/35.2
April	3576	3986	3446	-10.3	8980	7983	8695	/12.5
May	3957	3710	4514	/ 6.7	12937	11693	13209	/10.6
June	4722	4670	5223	/ 1.1	17659	16363	18432	/ 7.9
July		4013	3441			20376	21873	
August		2670	3237			23046	25110	
September		1414	2081			24460	27191	
October		1923	1752			26383	28943	
November		1096	922			27479	29865	
December		950	945			28429	30810	

Source: U. S. Department of Commerce
Facts for Industry
Metal Cans

[fol. 280]

1931

SHIPMENTS: METAL CANS FOR SOFT DRINKS



SOURCE U.S. DEPARTMENT OF COMMERCE

GLASS CONTAINER MANUFACTURERS INSTITUTE, Inc.

Glass

Industry Letter #SD-5
June 6, 1957

To the Soft Drink Bottle Manufacturers

SOFT DRINK CAN STATISTICS

Attached is a table showing Department of Commerce figures on short tons of tinplate used in the manufacture of soft drink cans for the first quarter of 1957 compared with the first quarter of 1956 and 1955.

These have also been plotted on graphs showing 1954 as well, for your information.

1957 Shows Upturn in Beverage Cans

You will note that for the first time in three years the sale of tin cans for carbonated beverages has turned upwards and for the first quarter of the year stands 35.2% above 1956.

Non-Returnable Glass Bottles Growing

For the first four months of 1957 one-way glass bottles for carbonated beverages are up 6.2% over 1956.

Returnable soft drink bottles are off 32.7% for the first four months although shipments started to pick up in April with a 17.7% gain over April 1956.

R. L. Cheney, Director
Market Research and Promotion

Attachments.

[fol. 282]

METAL CANS FOR SOFT DRINKS

1933

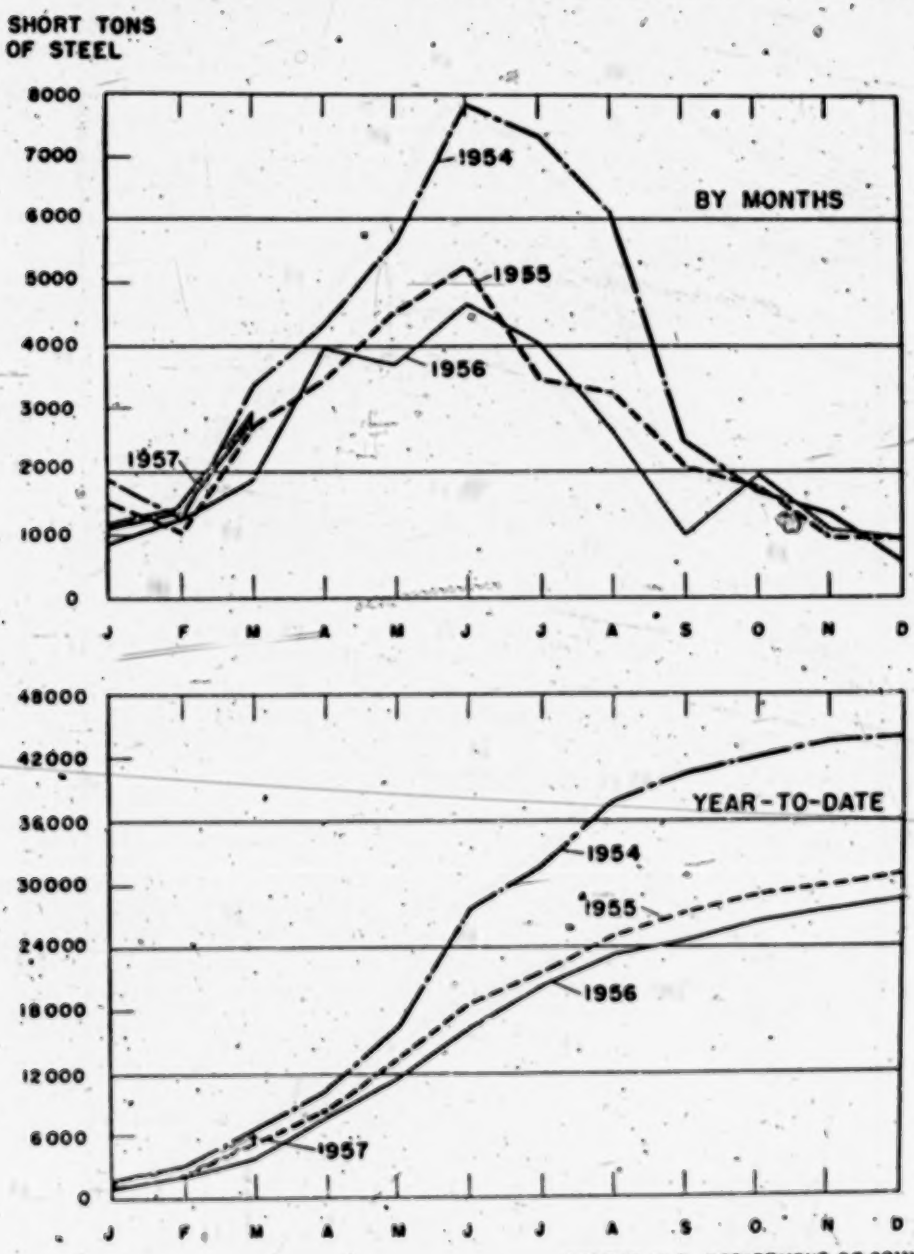
SHIPMENTS (in short tons of steel consumed)

Month	Monthly 1957	1956	1955	% Change 1957/56	Year-to-date 1957	1956	1955	% Change 1957/56
January	1136	854	1522	/33.0	1136	854	1522	/33.0
February	1404	1263	1020	/11.2	2540	2117	2542	/20.0
March	2864	1880	2707	/52.3	5404	3997	5249	/35.2
April		3986	3446			7983	8695	
May		3710	4514			11693	13209	
June		4670	5223			16363	18432	
July		4013	3441			20376	21873	
August		2670	3237			23046	25110	
September		1414	2081			24460	27191	
October		1923	1752			26383	28943	
November		1096	922			27479	29865	
December		950	945			28429	30810	

Source: U. S. Department of Commerce
Facts for Industry
Metal Cans

{fol. 283} 1934

SHIPMENTS: METAL CANS FOR SOFT DRINKS



SOURCE U. S. DEPARTMENT OF COMMERCE

GLASS CONTAINER MANUFACTURERS INSTITUTE inc.

Glass

Industry Letter #SD-4
March 1, 1957

To the Soft Drink Manufacturers

SOFT DRINK CAN STATISTICS

Attached is a table showing Department of Commerce figures on short tons of tinplate used in the manufacture of soft drink cans for the year 1956 compared with 1955.

These have also been plotted on graphs showing 1954 as well, for your information.

1956 Shows Continued Decline in Beverage Cans

It will be noted that use of tinplate for carbonated beverage cans for the year 1956 represents a decline of 7.9% compared to 1955, and a 35.2% decline compared to 1954.

Non-Returnable Glass Bottles Holding Their Own

Shipments of one-way glass bottles for carbonated beverages were up 0.9% in 1956 over 1955, and 23.4% over 1954.

Returnable soft drink bottles continue to show gains, 1956 being 7.9% above 1955, and 46.6% above 1954.

R. L. Cheney, Director
Market Research and Promotion

Attachments.

1936

[fol. 285]

METAL CANS FOR SOFT DRINKS

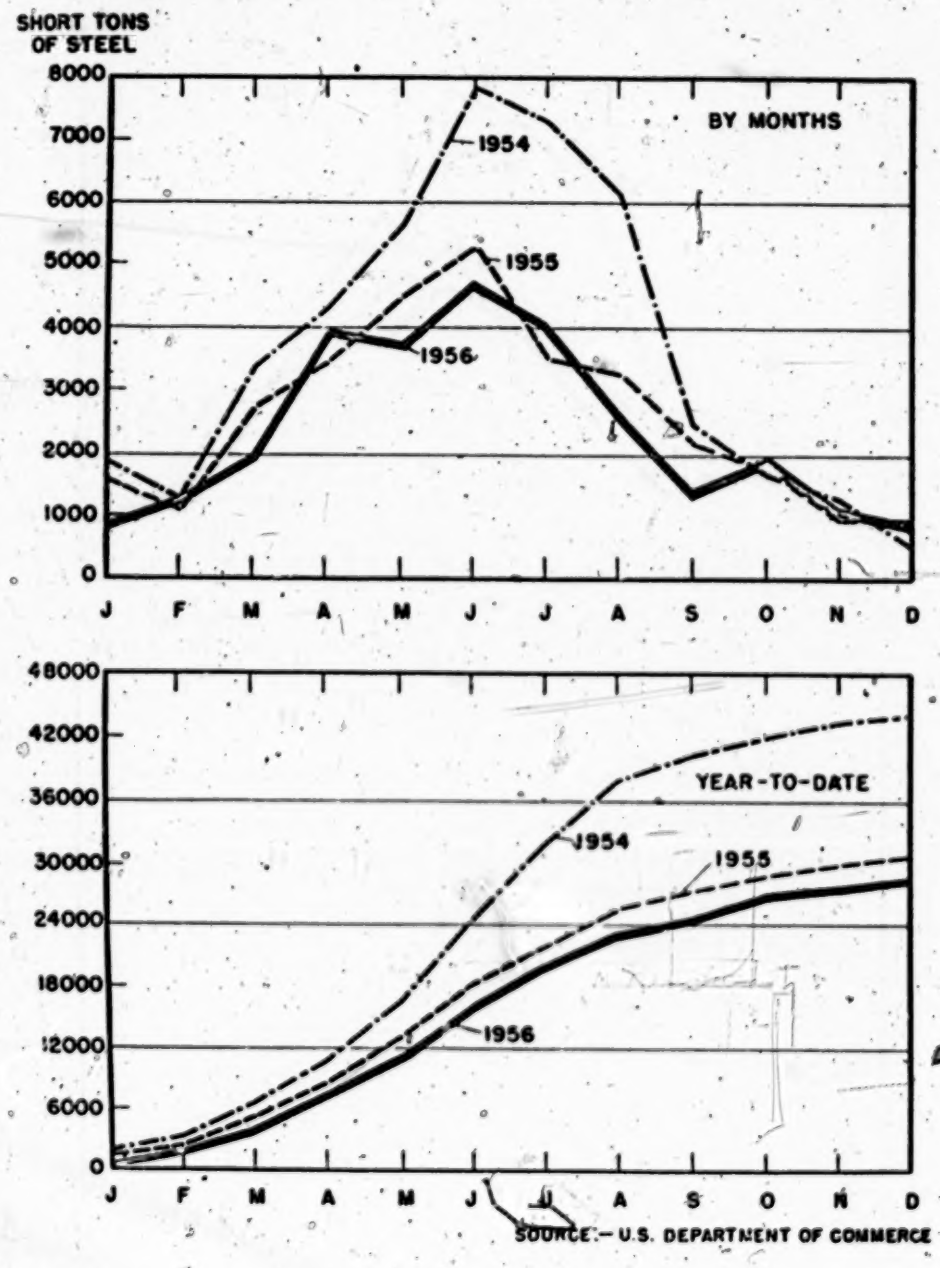
SHIPMENTS (In short tons of steel consumed)

Month	Monthly 1956	Monthly 1955	% Change	Year-to-date 1956	Year-to-date 1955	% Change
January	832	1522	-45.3	832	1522	-45.3
February	1249	1020	+22.5	2081	2542	-18.1
March	1876	2707	-30.7	3957	5249	-24.6
April	3965	3446	+15.1	7922	8695	- 8.9
May	3710	4514	-17.8	11632	13209	-11.9
June	4670	5223	-10.6	16302	18432	-11.6
July	4013	3441	+16.6	20315	21873	- 7.1
August	2670	3237	-17.5	22985	25110	- 8.5
September	1414	2081	-32.1	24399	27191	-10.3
October	1923	1752	+ 9.8	26322	28943	- 9.1
November	1096	922	+18.9	27418	29865	- 8.2
December	950	945	+ 0.5	28368	30810	- 7.9

Source: U. S. Department of Commerce
Facts for Industry
Metal Cans

1937

SHIPMENTS: METAL CANS FOR SOFT DRINKS



[fol. 287] 1938 GOVERNMENT'S EXHIBIT 70

GLASS CONTAINER MANUFACTURERS INSTITUTE, Inc.

Glass

Industry Bulletin #28
October 26, 1955

SOFT DRINK CAN STATISTICS

Starting with May of this year the Department of Commerce has been giving monthly statistics of tin plate used in the manufacture of soft drink cans. These appear in "Facts for Industry - Metal Cans." (Series M75D) Corresponding months of last year and year-to-date figures are shown.

1955 Shows Marked Decline in Beverage Cans

Figures just received for August show soft drink can shipments to be down 47.2% from August 1954; and year-to-date, down 33.6% from last year.

Glass Bottles Show Gain

Conversely, shipments of one-way glass bottles for soft drinks were up 74.5% in August over August 1954, and up 22.1% for the year-to-date.

Returnable bottles show even larger gains: 78.0% for the month and 34.0% for the year-to-date.

A tabulation of the beverage can figures is attached, along with a chart showing the trend.

R. L. Cheney, Director
Market Research and Promotion

Attachments.

[fol. 288]

METAL CANS FOR SOFT DRINKS

1939

SHIPMENTS (In short tons of steel consumed)

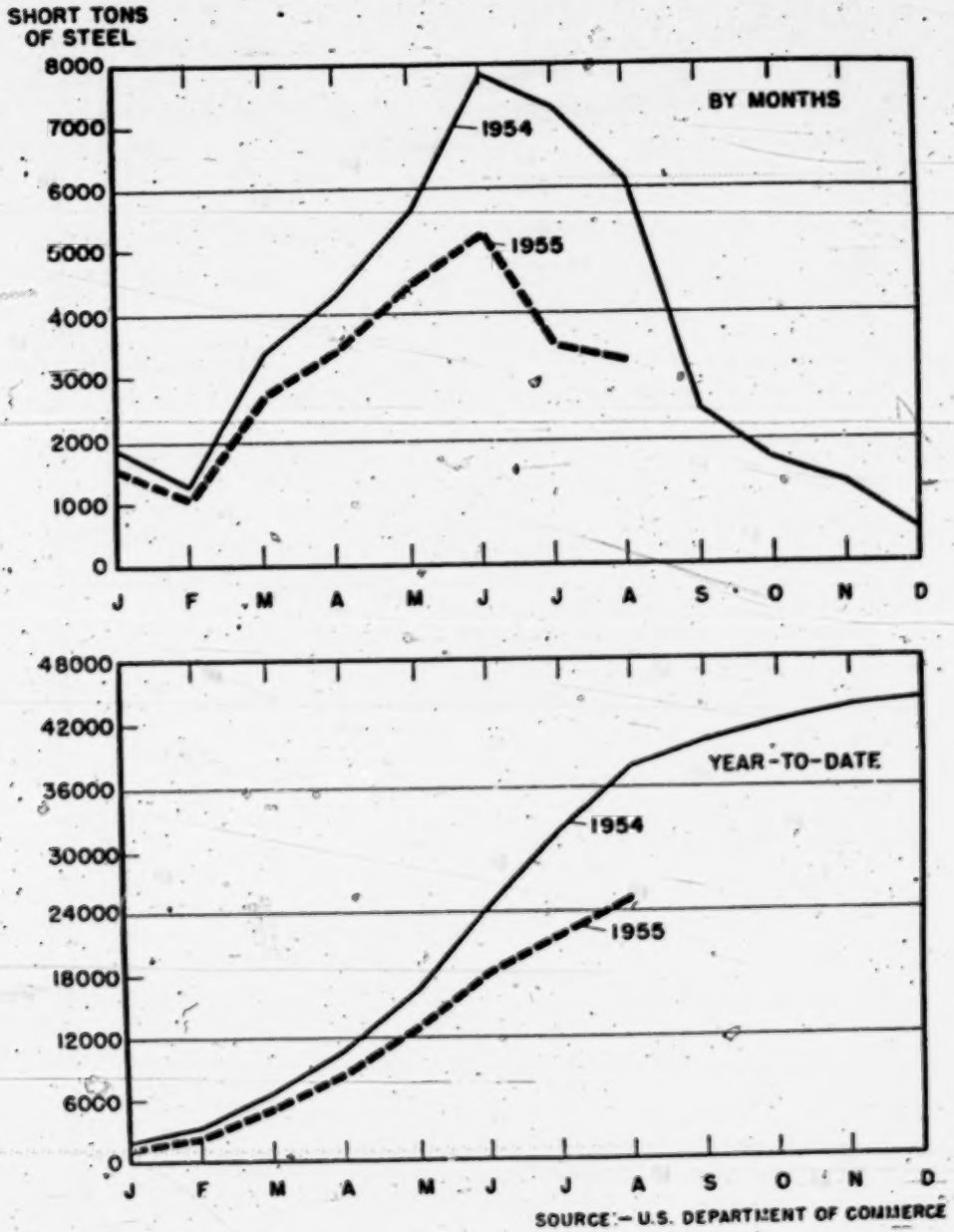
Month	Monthly 1955	Monthly 1954	% Change	Year-to-date 1955	Year-to-date 1954	% Change
January	1522	1894*		1522	1894*	
February	1020	1285*		2542	3179*	
March	2707	3384*		5249	6563*	
April	3446	4309*		8695	10872	-20.0%
May	4514	5636	-19.9%	13209	16508	-20.0%
June	5223	7841	-33.4%	18432	24349	-24.3%
July	3441	7356	-53.2%	21873	31705	-31.0%
August	3237	6126	-47.2%	25110	37831	-33.6%
September		2471			40302	
October		1695			41997	
November		1310			43307	
December		567			43874	

*Estimate

Source: U. S. Department of Commerce
Facts for Industry
Metal Cans

[fol. 289] 1940

SHIPMENTS: METAL CANS FOR SOFT DRINKS



1941

[fol. 290] GOVERNMENT'S EXHIBIT 71

GLASS CONTAINER MANUFACTURERS INSTITUTE, Inc.

Glass

Industry Bulletin #19
March 10, 1955

CAN COMPANIES

CARBONATED BEVERAGE PROGRAM

At a panel discussion held at the meeting of the Illinois Bottlers of Carbonated Beverages in Chicago on March 3, 1955 Mr. Arthur Staley of Continental Can Company made two announcements of interest.

He stated that final statistics showed that the number of carbonated beverage cans produced in 1954 was between 450,000,000 and 500,000,000 cans. If all had been filled, - and he inferred that they had not, - this would represent considerably less than 2% of the total soft drink business in 1954.

The other announcement which he made was to the effect that Continental Can Company, American Can Company, and the steel industry as a whole would announce within one month an extensive advertising program in support of carbonated beverage cans.

R. L. Cheney
Director
Market Research and Promotion

1942

[fol. 291] GOVERNMENT'S EXHIBIT 72

GLASS CONTAINER MANUFACTURERS INSTITUTE inc.

Glass

Industry Bulletin #32
March 7, 1956

TREND TO SMALLER SIZES

We think the following excerpt from Len Kanter's column in the February 20 issue of FOOD TOPICS (page 41) to be worth your special attention:

NEW TASTE TREATS

Gradually, with the greater impetus on self-service, combined with new taste desires of our populace, plus a fast tempo of living and convenience, the shift in canned goods has been towards smaller sizes. Surely, every operator must take this shift of consumer desires into his planning for the size of gondolas and facings of the individual important vegetable items.

Canned goods which for some time had been taking a back seat in sales certainly can offer a continued profit for every operator, when we recognize that the canned goods department of every super is still the very base of our existence.

The advent and greater importance of the 8-ounce and 10-ounce can cannot be over emphasized. I know, and every statistical report will prove the one fact, that as we get to smaller and smaller units of cans, our profit structure improves. Who among us can fight with the combination of satisfying the consumer in stocking the smaller cans and thus also increase our operational profit?

In 1955, consumers spent an estimated 67 billion dollars for food. It is important to remember that in the same year the per capita consumption of canned vegetables jumped an important 38% over the years 1935-1939. Today, 6% of all canned vegetables are in 8-ounce cans, compared to a 3% figure registered only five years ago.

Gondola space, plus performance, plus service to consumers, add up to only one thing: the 8-ounce cans and 10-ounce cans are easily the two most important sizes to be considered in our canning marketing fervor.

1943

Glass

Surely, the time is ripe for us to reconsider the entire stocking of our supers. Are we carrying the proper sizes not only of cans, but also the numerous products in glass? Perhaps, we are filling up our gondolas with products in sizes that do not warrant the space they presently occupy. The time of carrying items for variety only or to please a limited number of customers is past. It behooves us to closely reconsider every item of merchandise, in retrospect.

Glass containers should enjoy a substantial part of this expanding market for 8 and 10-ounce sizes in fruits, vegetables and specialty items. Perhaps your sales organizations will want to give this special attention.

R. L. Cheney, Director
Market Research and Promotion

[fol. 293] GOVERNMENT'S EXHIBIT 73

GLASS CONTAINER MANUFACTURERS INSTITUTE inc.

Glass

Industry Bulletin #38
August 21, 1956

SOFT DRINK CAN STATISTICS

Attached is a table showing Department of Commerce figures on short tons of tinplate used in the manufacture of soft drink cans for the year 1956, to date, compared with 1955.

These have also been plotted on graphs showing 1954 as well, for your information.

1956 Shows Continued Decline in Beverage Cans

It will be noted that use of tinplate for carbonated beverage cans for the first six months of 1956 represents a decline of 11.6% compared to the same period for 1955, and a 33.1% decline compared to the same period for 1954.

Non-Returnable Glass Bottles Holding Their Own

For this same period, shipments of one-way glass bottles for carbonated beverages are virtually the same for the first six months of 1955 and are up 19.3% over the same period of 1954.

Returnable soft drink bottles continue to show gains, the first six months of 1956 being 12.7% above 1955 and 43.8% above 1954.

R. L. Cheney, Director
Market Research and Promotion

Attachments.

[fol. 294]

1945

METAL CANS FOR SOFT DRINKS

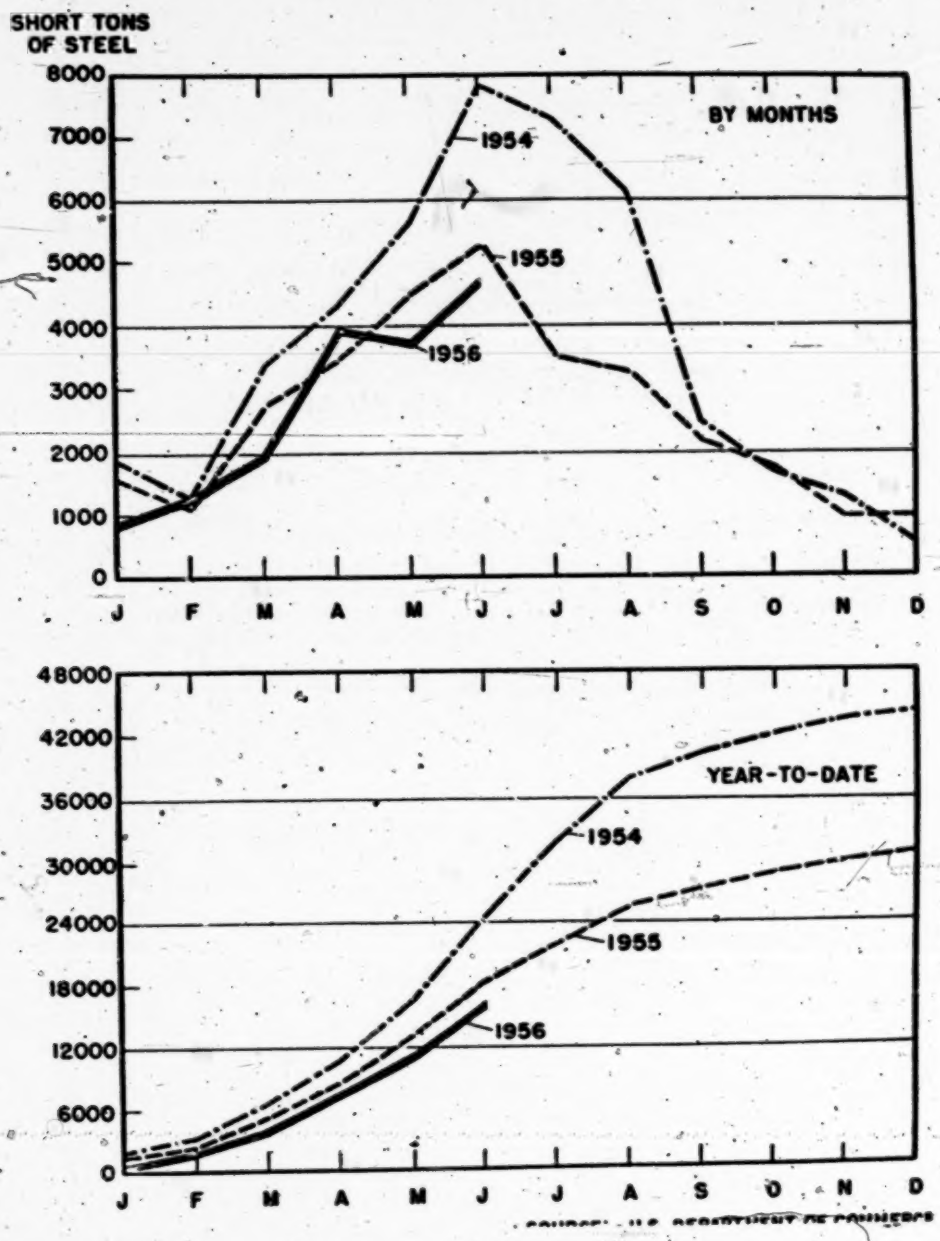
SHIPMENTS (In short tons of steel consumed)

Month	Monthly 1956	Monthly 1955	% Change	Year-to-date 1956	Year-to-date 1955	% Change
January	832	1522	-45.3	832	1522	-45.3
February	1249	1020	22.5	2081	2542	-18.1
March	1876	2707	-30.7	3957	5249	-24.6
April	3965	3446	15.1	7922	8695	- 8.9
May	3710	4514	-17.8	11632	13209	-11.9
June	4670	5223	-10.6	15302	18432	-11.6
July		3441			21873	
August		3237			25110	
September		2081			27191	
October		1752			28943	
November		922			29865	
December		945			30810	

Source: U. S. Department of Commerce
Facts for industry
Metal Cans

[fol. 295] 1946

SHIPMENTS: METAL CANS FOR SOFT DRINKS



[fol. 296] GOVERNMENT'S EXHIBIT 74 1947

CONTAINER MANUFACTURERS INSTITUTE, INC

99 PARK AVENUE • NEW YORK 16, N. Y.
MURRAY HILL 8-8833

S-177
February 21, 1958

TO: The Industry

FROM: John B. Carroll

SUBJECT: Beer Container Trends--Year 1957.

National beer consumption in 1957 amounted to 84,353,800 barrels, approximately 1.0% below total beer consumption in 1956. While total packaged beer decreased fractionally from its 1956 total, draft beer was down 3.0% from the previous year.

Beer can shipments in 1957 amounted to 54,238,500 gross, an increase of 3.2% over 1956 shipments. Non-returnable beer bottle shipments totaled 8,494,000 gross, an increase of 3.2%. Returnable bottle shipments amounted to 2,343,000 gross, a decrease of 5.5% from the previous year's totals.

Nearly 35.0% of all packaged beer went into cans in 1957. Non-returnable bottles accounted for 5.4% of the total packaged market. Returnable bottle shipments accounted for the remainder, 59.8%.

In checking earlier annual reports, we have noted the following change in total packaged beer market participation.

	Percentage of Packaged Market		
Period	Cans	Non-Returnable	Returnable
Year 1951	20.6	6.8	72.6
Year 1957	34.8	5.4	59.8

JBC/dm

[fol. 297] **1948** COMPARISON OF PACKAGED AND DRAFT BEER SALES IN THE U.S.A.

(in thousands of barrels of 31 gallons each)

PERIOD	PACKAGED	DRAFT	TOTAL	% PACKAGED	% DRAFT
Year 1955	66,179.6	18,798.3	84,977.3	77.9	22.1
Year 1956	67,087.0	17,921.1	85,008.1	78.9	21.1
% Change	+ 1.4	- 4.7			
1956					
January	4,369.5	1,255.9	5,625.4	77.7	22.3
February	4,487.7	1,314.9	5,802.6	77.3	22.7
March	5,370.2	1,420.2	6,790.4	79.1	20.9
1st Quarter	14,227.4	3,991.0	18,218.4	78.1	21.9
April	5,315.3	1,435.6	6,750.9	78.7	21.3
May	6,516.6	1,665.5	8,182.1	79.6	20.4
June	6,978.7	1,694.3	8,673.0	80.5	19.5
2nd Quarter	18,810.6	4,795.4	23,606.0	79.7	20.3
July	7,079.4	1,697.3	8,776.7	80.7	19.3
August	7,189.9	1,825.0	9,014.9	79.8	20.2
September	5,031.3	1,393.0	6,424.3	78.3	21.7
3rd Quarter	19,300.6	4,915.3	24,215.9	79.7	20.3
October	5,151.5	1,518.3	6,669.8	77.2	22.8
November	4,778.9	1,391.7	6,170.6	77.4	22.6
December	4,818.0	1,309.4	6,127.4	78.6	21.4
4th Quarter	14,748.4	4,219.4	18,967.8	77.8	22.2
Year 1956	67,087.0	17,921.1	85,008.1	78.9	21.1
1957					
January	4,464.3	1,224.6	5,688.9	78.5	21.5
February	4,329.6	1,240.5	5,570.1	77.7	22.3
March	5,118.7	1,319.9	6,438.6	79.5	20.5
1st Quarter	13,912.6	3,785.0	17,697.6	78.6	21.4
April	5,570.0	1,422.2	6,992.2	79.7	20.3
May	6,569.5	1,631.1	8,200.6	80.1	19.9
June	6,655.0	1,592.0	8,247.0	80.7	19.3
2nd Quarter	18,794.5	4,645.3	23,439.8	80.2	19.8
July	7,441.8	1,749.3	9,191.1	81.0	19.0
August	6,785.2	1,696.6	8,481.8	80.0	20.0
September	5,429.6	1,453.9	6,883.5	78.9	21.1
3rd Quarter	19,656.5	4,899.8	24,556.4	80.0	20.0
October	5,080.2	1,437.3	6,517.5	77.9	22.1
November	4,464.0	1,258.8	5,722.8	78.0	22.0
December	5,064.5	1,355.2	6,419.7	78.9	21.1
4TH Quarter	14,606.7	4,051.3	18,660.0	78.3	21.7
Year 1957	66,972.4	17,381.4	84,353.8	79.4	20.6
% Change Year	-0.2	-3.0	-0.8		

[fol. 298]

COMPARISON OF SHIPMENTS OF SINGLE SERVICE & RETURNABLE CONTAINERS WITH VOLUME OF BEER PACKAGED

1949

Shipments of New Containers
(in thousands of gross)

PERIOD	TIN CANS New Shipment	TIN CANS % Pkgd. Volume	NON-RETURN. BOTTLES New Shipment	NON-RETURN. BOTTLES % Pkgd. Volume	RETURNABLE BOTTLES New Shipment	RETURNABLE BOTTLES % Pkgd. Volume New and Used
Year 1955	49,622.8	32.2	8,011.0	5.2	2,444.0	62.6
Year 1956	52,579.7	33.6	8,232.0	5.3	2,478.0	61.1
% Change	+5.9		+2.8		+1.3	
1956						
January	3,012.7	29.6	501.0	4.9	84.0	65.5
February	3,042.9	29.1	511.0	4.9	149.0	66.0
March	4,138.6	33.1	667.0	5.3	273.0	61.6
1st Quarter	10,194.2	30.8	1,679.0	5.1	506.0	64.2
April	4,651.6	37.6	644.0	5.2	340.0	57.2
May	4,855.9	32.0	816.0	5.4	367.0	62.6
June	6,306.6	38.8	921.0	5.7	358.0	55.5
2nd Quarter	15,814.1	36.1	2,381.0	5.4	1,065.0	58.5
July	6,601.5	40.0	934.0	5.7	236.0	54.3
August	5,604.9	33.5	997.0	6.0	265.0	60.5
September	4,066.9	34.9	502.0	4.3	103.0	60.8
3rd Quarter	16,293.3	36.2	2,433.0	5.4	604.0	58.4
October	4,499.6	37.5	744.0	6.2	103.0	56.3
November	2,571.4	23.1	456.0	4.1	72.6	72.8
December	3,207.1	28.6	539.0	4.8	126.0	66.6
4th Quarter	10,278.1	29.9	1,739.0	5.1	303.0	65.0
Year 1956	52,579.7	33.6	8,232.0	5.3	2,478.0	61.1
1957						
January	3,346.7	32.2	487.0	4.7	90.0	63.1
February	2,974.1	29.5	438.0	4.3	70.0	66.2
March	4,234.6	35.5	674.0	5.7	215.0	58.8
1st Quarter	10,555.4	32.6	1,599.0	4.9	375.0	62.5
April	5,309.4	40.9	681.0	5.2	230.0	53.9
May	5,648.8	36.9	893.0	5.8	407.0	57.3
June	5,323.1	34.3	916.0	5.9	417.0	59.8
2nd Quarter	16,281.3	37.2	2,490.0	5.7	1,054.0	57.1
July	6,554.0	37.8	998.0	5.6	359.0	56.6
August	5,710.9	36.1	1,218.0	7.1	225.0	56.8
September	4,339.4	34.3	460.0	3.6	35.0	62.1
3rd Quarter	16,604.3	36.3	2,576.0	5.6	659.0	58.1
October	3,785.8	32.0	689.0	5.8	84.0	62.2
November	3,131.4	30.1	675.0	6.5	90.0	63.4
December	3,872.6	32.8	465.0	3.9	81.0	63.3
4th Quarter	10,789.8	31.7	1,829.0	5.4	255.0	62.9
Year 1957	54,232.5	34.8	8,494.0	5.4	2,343.0	59.8
% Change Year	+3.2		+3.2		-5.5	

[fol. 299]

1956 SHIPMENTS OF GLASS CONTAINERS FOR BEER COMPARED TO ALL GLASS CONTAINERS

(number of short tons)

PERIOD	ALL GLASS CONTAINERS	TOTAL BEER BOTTLES	% TOTAL	NON-RETURNABLE BOTTLES	% TOTAL	RETURNABLE BOTTLES	% TOTAL
Year 1955	5,513,059	472,657	8.6	344,703	6.3	127,954	2.3
Year 1956	5,642,822	482,592	8.6	359,334	6.4	123,258	2.2
% Change	+2.4	+2.1		+4.2		-3.7	
1956							
January	381,203	26,132	6.9	21,718	5.7	4,414	1.2
February	399,859	29,679	7.4	22,408	5.6	7,271	1.8
March	499,616	42,687	8.5	28,614	5.7	14,07	2.8
1st Quarter	1,280,678	98,498	7.7	72,740	5.7	25,758	2.0
April	438,450	46,750	10.7	30,107	6.9	16,643	3.8
May	493,432	57,026	11.5	38,107	7.7	18,919	3.8
June	501,698	57,803	11.5	40,386	8.0	17,417	3.5
2nd Quarter	1,433,580	161,579	11.3	108,600	7.6	52,979	3.7
July	467,266	51,604	11.0	39,695	8.5	11,909	2.5
August	638,325	53,170	8.3	41,126	6.4	12,044	1.9
September	418,591	26,404	6.3	21,686	5.2	4,718	1.1
3rd Quarter	1,524,182	131,178	8.6	102,507	6.7	28,671	1.9
October	602,208	37,610	6.2	32,290	5.4	5,320	0.9
November	410,052	23,090	5.6	19,562	4.8	3,528	0.9
December	392,122	30,637	7.8	23,635	6.0	7,002	1.8
4th Quarter	1,404,382	91,337	6.5	75,487	5.4	15,850	1.1
Year	5,642,822	482,592	8.6	359,334	6.4	123,258	2.2
1957							
January	402,884	25,216	6.2	20,698	5.1	4,518	1.1
February	381,603	22,755	6.0	19,097	5.0	3,658	1.0
March	438,250	41,087	9.4	29,757	6.8	11,330	2.6
1st Quarter	1,222,737	89,058	7.3	69,552	5.7	19,506	1.6
April	464,047	40,940	8.8	29,624	6.4	11,316	2.4
May	537,167	58,843	10.9	38,310	7.1	20,533	3.8
June	516,973	60,118	11.6	39,205	7.6	20,913	4.0
2nd Quarter	1,518,192	159,901	10.5	107,139	7.0	52,762	3.5
July	506,051	60,859	12.0	41,966	8.3	18,893	3.7
August	743,267	57,734	7.8	46,844	6.3	10,890	1.5
September	367,589	38,788	10.6	20,010	5.4	18,778	5.1
3rd Quarter	1,616,907	157,381	9.7	108,820	6.7	48,561	3.0
October	505,537	34,438	6.8	29,868	5.9	4,570	0.9
November	481,499	34,144	7.1	29,194	6.1	4,950	1.0
December	352,222	24,363	6.7	19,321	5.3	5,042	1.4
4th Quarter	1,345,258	92,945	6.9	78,383	5.8	14,562	1.1
Year	5,707,094	499,285	8.7	363,894	6.4	135,391	2.4
% Change Year	+1.1	+3.5		+1.3		+9.8	

[fol. 300]

SHIPMENTS OF BEER CANS COMPARED TO TOTAL TIN MILL PRODUCTS FOR ALL CANS
(number of short tons)

1951

PERIOD	ALL TYPES OF CANS	BEER CANS	% BEER CANS TO TOTAL
Year 1955	4,483,999	724,166	16.2
Year 1956	4,785,671	767,319	16.0
% Change	+6.7	+6.0	
1956			
January	293,131	43,965	15.0
February	299,670	44,406	14.8
March	341,237	60,397	17.7
1st Quarter	934,038	148,768	15.9
April	483,628	67,883	14.0
May	338,367	70,864	20.9
June	405,083	92,035	22.7
2nd Quarter	1,227,078	230,782	18.8
July	448,529	96,339	21.5
August	593,912	81,795	13.8
September	533,261	59,642	11.2
3rd Quarter	1,575,702	237,776	15.1
October	516,540	65,665	12.7
November	265,169	37,526	14.2
December	267,144	46,802	17.5
4th Quarter	1,048,853	149,993	14.3
Year	4,785,671	767,319	16.0
1957			
January	314,488	48,840	15.5
February	280,395	43,402	15.5
March	323,791	61,978	19.1
1st Quarter	918,674	154,220	16.8
April	506,425	77,482	15.3
May	338,575	82,439	24.3
June	360,561	77,682	21.5
2nd Quarter	1,205,561	237,599	19.7
July	452,994	95,646	21.1
August	546,223	83,342	15.3
September	495,903	63,327	12.8
3rd Quarter	1,495,120	242,315	16.2
October	405,874	55,248	13.6
November	290,880	45,696	15.7
December	292,210	56,515	19.3
4th Quarter	988,964	157,461	15.9
Year	4,608,319	791,595	17.2
% Change Year	-3.7	+3.2	

[fol. 301] 4952 GOVERNMENT'S EXHIBIT 75

CONTAINER MANUFACTURERS INSTITUTE, INC
99 PARK AVENUE • NEW YORK 16, N. Y.
MURRAY HILL 2-8999

6-183
August 25, 1958

TO: The Industry

FROM: John B. Carroll

SUBJECT: Beer Container Trends--First Half of 1958

The total volume of beer sold during the first half of 1958 amounts to 40,714,900 barrels, which is a decrease of 1.0% from the same period last year. Both packaged volume and draft for this period showed slight decreases from the same period last year.

Returnable bottle shipments in the first half of 1958 amounted to 2,914,000 gross, 33.9% more than shipments in the first half of 1957. It accounted for 58.5% of total packaged volume.

Non-returnable bottle shipments amounted to 4,126,000 gross, a slight increase over the 4,089,000 gross for the same period last year. Its share of the market was 5.5% of total packaged beer volume.

Beer can shipments reached 27,169,900 gross, an increase of 1.2% over the same period last year. It accounted for 36.0% of total packaged beer volume as compared with 35.2% last year.

jbc;eb

[fol. 302]

COMPARISON OF PACKAGED AND DRAFT BEER SALES IN THE U.S.A.

(in thousands of barrels of 31 gallons each)

1953

PERIOD	PACKAGED	DRAFT	TOTAL	% PACKAGED	% DRAFT
Year 1956	67,086.9	17,921.2	85,008.1	78.9	21.1
Year 1957	66,972.4	17,381.4	84,353.8	79.4	20.6
% Change	- 0.2	- 3.0	- 0.8		
1957					
January	4,464.3	1,224.6	5,688.9	78.5	21.5
February	4,329.6	1,240.5	5,570.1	77.7	22.3
March	5,118.7	1,319.9	6,438.6	79.5	20.5
1st Quarter	13,912.6	3,785.0	17,697.6	78.6	21.4
April	5,570.0	1,422.2	6,992.2	79.7	20.3
May	6,569.5	1,631.1	8,200.6	80.1	19.9
June	6,655.0	1,592.0	8,247.0	80.7	19.3
2nd Quarter	18,794.5	4,645.3	23,439.8	80.2	19.8
Six Months	32,707.1	8,430.3	41,137.4	79.5	20.5
1958					
January	4,693.7	1,244.2	5,937.9	79.0	21.0
February	4,093.5	1,141.2	5,234.7	78.2	21.8
March	4,949.6	1,303.3	6,252.9	79.2	20.8
1st Quarter	13,736.8	3,688.7	17,425.5	78.8	21.2
April	5,319.6	1,426.8	6,746.4	78.9	21.1
May	6,359.8	1,603.6	7,963.4	80.0	20.0
June	7,008.4	1,571.2	8,579.6	81.7	18.3
2nd Quarter	18,687.8	4,601.6	23,289.4	80.2	19.8
Six Months	32,424.6	8,290.3	40,714.9	79.6	20.4
% Change Six Months	- 0.9	- 1.7	- 1.0		

[fol. 303]

1954

COMPARISON OF SHIPMENTS OF SINGLE SERVICE & RETURNABLE CONTAINERS WITH VOLUME OF BEER PACKAGED

Shipments of New Containers
(in thousands of gross)

PERIOD	TIN CANS New Shipment	TIN CANS % Pkgd. Volume	NONRETURN. BOTTLES New Shipment	NONRETURN. BOTTLES %Pkgd. Volume	RETURNABLE BOTTLES New Shipment	RETURNABLE BOTTLES %Pkgd. Volume New and Used
Year 1956	52,579.7	33.6	8,232.0	5.3	2,476.0	61.1
Year 1957	54,238.5	34.8	8,494.0	5.4	2,343.0	59.8
% Change	+ 3.2		+ 3.2		- 5.5	
1957						
January	3,354.4	32.2	487.0	4.7	90.0	63.1
February	2,974.1	29.5	438.0	4.3	70.0	66.2
March	4,234.6	35.5	674.0	5.7	215.0	58.8
1st Quarter	10,563.1	32.6	1,599.0	4.9	375.0	62.5
April	5,309.4	40.9	681.0	5.2	230.0	53.9
May	5,648.8	36.9	893.0	5.8	407.0	57.3
June	5,323.1	34.3	916.0	5.9	417.0	59.8
2nd Quarter	16,281.3	37.2	2,490.0	5.7	1,054.0	57.1
Six Months	26,844.4	35.2	4,089.0	5.4	1,429.0	59.4
1958						
January	3,718.1	34.0	520.0	4.8	62.0	61.2
February	3,360.6	35.2	464.0	4.9	95.0	59.9
March	4,075.3	35.3	626.0	5.4	229.0	59.3
1st Quarter	11,154.0	34.8	1,610.0	5.0	386.0	60.2
April	4,194.6	33.8	672.0	5.4	407.0	60.8
May	5,338.4	36.0	831.0	5.6	667.0	58.4
June	6,482.9	39.7	1,013.0	6.2	454.0	54.1
2nd Quarter	16,015.9	36.8	2,516.0	5.8	1,528.0	57.4
Six Months	27,169.9	36.0	4,126.0	5.5	1,914.0	58.5
% Change Six Months	+ 1.2		+ 0.9		+33.9	

[fol. 304]

1955

SHIPMENTS OF GLASS CONTAINERS FOR BEER COMPARED TO ALL GLASS CONTAINERS

(number of short tons)

PERIOD	ALL GLASS CONTAINERS	TOTAL BEER BOTTLES	% TOTAL	NON-RETURNABLE BOTTLES	% TOTAL	RETURNABLE BOTTLES	% TOTAL
Year 1956	5,642,822	482,592	8.6	359,334	6.4	123,258	2.2
Year 1957	5,707,094	499,285	8.7	363,894	6.4	135,391	2.4
% Change	+1.1	+3.5		+1.3		+9.8	
Year 1957							
January	405,578	25,240	6.2	20,600	5.1	4,640	1.1
February	383,843	22,682	5.9	19,031	5.0	3,651	1.0
March	438,916	41,079	9.4	29,555	6.7	11,524	2.6
1st Quarter	1,228,337	89,001	7.2	69,186	5.6	19,815	1.6
April	458,453	40,827	8.9	29,522	6.4	11,305	2.5
May	529,773	58,734	11.1	38,221	7.2	20,513	3.9
June	507,276	59,960	11.8	39,068	7.7	20,892	4.1
2nd Quarter	1,495,502	159,521	10.7	106,811	7.1	52,710	3.5
Six Months	2,723,839	248,522	9.1	175,997	6.5	72,525	2.7
Year 1958							
January	422,035	26,345	6.2	23,062	5.5	3,283	0.8
February	426,059	24,159	5.7	19,233	4.5	4,926	1.2
March	442,250	38,869	8.8	27,419	6.2	11,450	2.6
1st Quarter	1,290,344	89,373	6.9	69,714	5.4	19,659	1.5
April	446,928	49,571	11.1	29,669	6.6	19,902	4.5
May	520,460	67,782	13.0	35,733	6.9	32,049	6.2
June	515,045	65,307	12.7	43,356	8.4	21,951	4.3
2nd Quarter	1,482,433	182,660	12.3	108,758	7.3	73,902	5.0
Six Months	2,772,777	272,033	9.8	178,472	6.4	93,561	3.4
% Change Six Months	+1.8	+9.5		+1.4		+29.0	

1956

[fol. 305]

SHIPMENTS OF BEER CANS COMPARED
TO TOTAL TIN MILL PRODUCTS FOR ALL CANS
(number of short tons)

PERIOD	ALL TYPES OF CANS	BEER CANS	% BEER CANS TO TOTAL
Year 1956	4,785,671	767,319	16.0
Year 1957	4,608,319	791,595	17.2
% Change	-3.7	+3.2	
1957			
January	314,689	48,952	15.6
February	280,447	43,402	15.5
March	323,986	61,798	19.1
1st Quarter	919,122	154,152	16.8
April	506,985	77,482	15.3
May	339,323	82,435	24.3
June	361,774	77,682	21.5
2nd Quarter	1,208,082	237,599	19.7
Six Months	2,127,204	391,751	18.4
1958			
January	323,648	54,260	16.8
February	305,458	49,042	16.1
March	352,212	59,473	16.9
1st Quarter	981,318	162,775	16.6
April	319,748	61,213	19.1
May	365,343	77,906	21.3
June	407,669	94,608	23.2
2nd Quarter	1,092,760	233,727	21.4
Six Months	2,074,078	396,502	19.1
% Change Six Months	- 2.5	+ 1.2	

Volume III

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 367

UNITED STATES, APPELLANT,

vs.

CONTINENTAL CAN COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED AUGUST 13, 1963

JURISDICTION NOTED OCTOBER 28, 1963

SUPREME COURT OF THE UNITED STATES

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Volume III

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77—Industry Bulletin #66 dated November 3, 1958 from R. L. Cheney transmitting excerpts from GCMI-Giant Study	316	1960
79—Excerpts of report entitled, "Survey of Consumer Preference for Food Containers", with transmittal letter dated January 25, 1955 from Ford Sammis to Glass Container Manufacturers Institute, Inc.	319	1963

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107—Proposed Budget for 1959, Market Research and Promotion Division by GCMI, Inc., dated September 25, 1958	472	2119
108—Minutes of meeting, Market Research and Promotion Committee, and West Coast Subcommittee, by R. L. Cheney, Secretary, November 12, 1956	475	2120
109—Minutes of meeting, Market Research and Promotion Task Committee, by R. L. Cheney, Secretary, January 15, 1957	478	2123
110—Minutes of meeting, Market Research and Promotion Task Committee, by R. L. Cheney, Secretary, September 11, 1957	480	2125
111—Minutes of meeting, Market Research and Promotion Task Committee, by R. L. Cheney, Secretary, September 16, 1958	482	2127
112—Minutes of meeting, Advertising Advisory Committee, by R. L. Cheney, Secretary, August 26, 1958	484	2129
113—Minutes of meeting, Beer Bottle Subcommittee, by R. L. Cheney, Secretary, June 26, 1956	486	2130
114—Minutes of meeting, Beer Bottle Subcommittee, by R. L. Cheney, Secretary, July 26, 1956	488	2132
115—Minutes of meeting, Beer Bottle Subcommittee, by R. L. Cheney, Secretary, March 26, 1957	490	2134
116—Minutes of meeting, Beer Bottle Subcommittee, by R. L. Cheney, Secretary, August 21, 1958	492	2136
117—Technical Committee on Glass Packed Products, Special Subcommittee on Nuclear Tests, Semi-Annual Report of Activities for the period May to September 1957 to the Board of Trustees of Glass Container Manufacturers Institute	496	2139
118—Committee on Market Research and Promotion, Semi-Annual Report of Activities for the period November 1955 to May 1956 to the Board of Trustees of Glass Container Manufacturers Institute	498	2141
119—Committee on Market Research and Promotion, Semi-Annual Report of Activities for the period May 1956 to November 1956 to the Board of Trustees of Glass Container Manufacturers Institute	505	2151

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121—Committee on Market Research and Promotion, Semi-Annual Report of Activities for the period May 1957 to September 1957 to the Board of Trustees of Glass Container Manufacturers Institute	519	2169
122—Committee on Market Research and Promotion, Semi-Annual Report of Activities for the period October 1957 to May 1958 to the Board of Trustees of Glass Container Manufacturers Institute	525	2178
123—Committee on Market Research and Promotion, Semi-Annual Report of Activities for the period May 1958 to November 1958 to the Board of Trustees of Glass Container Manufacturers Institute	532	2187
124—Committee on Market Research and Promotion, Subcommittee on Beer Bottles, Semi-Annual Report of Activities for the period May 1955 to November 1955 to the Board of Trustees of Glass Container Manufacturers Institute	539	2196
125—Committee on Market Research and Promotion, Subcommittee on Beer Bottles, Semi-Annual Report of Activities for the period October 1957 to May 1958 to the Board of Trustees of Glass Container Manufacturers Institute	540	2197
126—Committee on Market Research and Promotion, Subcommittee on Beer Bottles, Semi-Annual Report of Activities for the period May 1958 to November 1958 to the Board of Trustees of Glass Container Manufacturers Institute	544	2203
127—Committee on Market Research and Promotion, Subcommittee on Milk Bottle Promotion, Semi-Annual Report of Activities for the period May 1957 to September 1957 Semi-Annual Report of Activities for the period of May 1957 to September 1957 of the Committee on Market Research and Promotion, Subcommittee on Beer Bottles to the Board of Trustees of Glass Container Manufacturers Institute	545	2204

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130—Committee on Market Research and Promotion, Subcommittee on Beer Bottles, Semi-Annual Report of Activities for the period May 1956 to November 1956 to the Board of Trustees of Glass Container Manufacturers Institute	558	2221
131—Committee on Container Design and Specifications Semi-Annual Report of Activities for the period November 1955 to May 1956 to the Board of Trustees of Glass Container Manufacturers Institute	560	2223
138—"Fifth Annual Consumer Survey on Containers" prepared by Benton & Bowles, Inc., December, 1947 (excerpts)	564	2229
145—Minutes of a Special Meeting of the Administrative Committee for the Research Division of Can Manufacturers Institute, Inc., November 17, 1941 (excerpt)	688	2245
147 & 148—Digest of Recommendations presented to the Administrative Committee of the Research Division of Can Manufacturers Institute on November 17, 1941 by Dr. Miller McClintock, Director	689	2246
156—Minutes of a Special Meeting of the Administrative Committee for the Research Division of Can Manufacturers Institute, Inc., May 11, 1942 (excerpts)	691	2248
158—Minutes of a Special Meeting of the Administrative Committee for the Research Division of Can Manufacturers Institute, Inc., June 1, 1942 (excerpt)	692	2249
160—Financial statement, Research Division, Can Manufacturers Institute, Inc., May 1, 1942-April 30, 1943	693	2251
166—Minutes of a Special Meeting of the Administrative Committee for the Research Division of Can Manufacturers Institute, Inc., December 14, 1942	694	2251

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185—"The HE I.S. Glass-Forming Machines", informational booklet	710	2268
235A—Memorandum dated 1/18/54 from CGB to MAH re Narrow Mouth Prices	725	2285
235B—Memorandum dated 3/15/54 from CGB to SLR re Glass Container Price Increases	726	2285
235C—Report of R. M. Koehrman re Sales Policy Meeting July 29 and 30, 1954	727	2286
235D—Report of R. M. Koehrman re Sales Policy Meeting February 23 and 24, 1954	734	2296
304—Pamphlet entitled "Articles of Incorporation and Code of Regulations" of Glass Container Manufacturers Institute, Inc., June 5, 1945, as amended	739	2305
317—Bulletin 30-L, 2d Ed., entitled "Processes for Low-Acid Canned Foods in Glass Containers", by National Canners Association, Research Laboratory, September, 1955	776	2337
318—Bulletin 26-L, 8th Ed., entitled "Processes for Low-Acid Canned Foods in Metal Containers", by National Canners Association, Research Laboratory, December, 1955	821	2382
348—Study of Can Costs versus 1-way Bottle Cost to Brewer, Owens-Illinois Glass Company, dated May 4, 1956, prepared by Glass Container Comptroller's Department	879	2441
348A—Study of Can vs. Glass Prices—Florida Fruit Packs, dated April 1, 1955, prepared by Comptroller's Department, Glass Container Division	884	2443
348B—Study of Quart 1-way Beer Containers, Glass vs. Tin, Owens-Illinois Glass Company, dated June 4, 1956, prepared by Glass Container Comptroller's Department	886	2446
348C—"Sources of Information, Can vs. Glass Prices—1942 = 1946 vs. 1-1-57", prepared by Comptroller's Department, Glass Container Division, 2/27/57	892	2449
348D—"1-Way Beer Prices", a comparative study prepared by Comptroller's Department, Glass Container Division, April 23, 1958	894	2453
348E—"Cans vs. Jars Price Per Thousand—Ground Coffee," report dated October 21, 1958 by Instant Products Division	896	2454

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348G—Memorandum dated April 27, 1959 from Comptroller's Department, Glass Container Division, re Beer Containers—One-Way Glass vs. Tin	898	2456
348H—Memorandum dated May 6, 1959, with charts attached, from Comptroller's Department, Glass Container Division, re Can vs. Glass Prices	899	2457
349—Report dated April 2, 1958 re prices of containers for detergents and liquid waxes and polishes	902	2459
349A—Memorandum dated March 19, 1959, with tables attached, from Comptroller's Department, Closure & Plastics Division, re detergent containers	905	2461
349B—Report dated October 30, 1957, re prices of containers for detergents and liquid waxes and polishes	910	2466
357—List of Revlon products, March 1958 to October 1959	913	2469
363—List, dated June 21, 1960, of glass container machines shipped by Embart Manufacturing Company to Hazel-Atlas Glass Company and Hazel-Atlas Division of Continental Can Company	914	2470
364—Letter dated October 21, 1958, from Embart Manufacturing Company to U. S. Dept. of Justice re inquiry concerning glassware forming machines and related subjects, with attachments	918	2473
400—Memorandum dated January 10, 1954, from Dana Hill to R. G. Fisher transmitting report "Tin vs. Glass—United States and Canada"	967	2519
400A—Memorandum dated November 24, 1947, from R. S. Hatfield to G. H. Muth, transmitting data sheets	979	2531
401—"The Packaged Syrups Market"—An appraisal of the Metal Container's Competitive Position—Commercial Research Department, April 1949 (excerpt)	988	2541
402—"The Market for Peanut Butter in Cans"—a report by the Commercial Research Department, November 25, 1952	993	2544

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405A—Packaging Engineering Report, Progress Report No. 1, dated November 21, 1956, entitled "Test Pack of American Home Foods' Soluble Coffee in Savorlock Cans", with Tables I and II	1018	2567
406—Excerpts from pamphlets issued by Continental Can Company entitled "Continental's Coffee Container—Sales Information"	1023	2575
407—Pamphlet of Continental Can Company entitled "Instant Coffee by Chase & Sanborn"	1028	2581
408—Memorandum dated July 21, 1955, from R. D. Cleaves to P. L. Brachle, Central Division, Continental Can	1045	2591
409—Memorandum dated August 18, 1955, from R. D. Cleaves, to Sales Department List A-2	1049	2595
411—Report entitled "Container Requirements for Coffee, Soluble" by H. P. Lankelma, Jr., Special Products Section, prepared June 15, 1955, revised May 1, 1956	1054	2602
412—Excerpt from report entitled "Instant Coffee Container Study", dated February 15, 1955, conducted for Continental Can Company by National Family Opinion, Inc.	1059	2609
413—Excerpt of report entitled "Folger Soluble Coffee Can Investigation in Kansas City, November 1955", issued by Commercial Research Dept., December 1955	1063	2612
415B—Report entitled "Promotion of Baby Food in Cans—Structural Changes in Cans and Advertising Programs", dated July 13, 1953	1065	2614
415C—Memorandum dated February 10, 1947, from G. H. Muth to Messrs. Pearson, Fogarty and Brachle	1072	2623
416—Excerpt of report entitled "Report of Consumer Survey made in Philadelphia on Baby Food for Continental Can Company, Inc."	1077	2628

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419A, 419B, 419C—Memorandum dated July 5, 1945, from S. T. Frame, Manager of Market Analysis, to Messrs. Fogarty, Perin and Falk re Baby Food Survey	1089	2636
420—Excerpt of report entitled "Use, Attitudes and Opinions of Cans vs. Glass Jars for Prepared Baby Food Among Young Mothers and Doctors" by S-D Surveys, Inc., February, 1954	1100	2649
421A—Memorandum dated August 13, 1953, from S. B. Smart to W. K. Neuman	1101	2650
423-427—Reports on packaging guides for pressure dispensed foods: barbecue sauce, chocolate syrup, salad dressings, dressings for salad, whipped toppings	1132	2654
429—Report entitled "Liquid Detergents, Analysis of the Potential Market for Metal Cans" with transmittal letter dated January 19, 1954, from D. H. Walker to L. C. Mackelden	1145	2671
434—Report entitled "Comparative Costs, Single Trip versus Returnable Beer Containers, Year 1943, reprinted from 'American Brewer'", dated June 4, 1947	1171	2693
435—Memorandum dated June 10, 1947, from G. H. Muth to T. C. Fogarty	1177	2700
436—Report entitled "Comparative Delivered Costs, 12 oz. Non-Returnable Beer Bottle vs. 12-oz. Flat Top and Cap Sealed Beer Cans", dated August 7, 1947	1181	2704
438—Letter dated June 30, 1949, from Commercial Research Department to All District Sales Managers re One-Way Single Trip Beer Bottle Prices (attachments omitted in printing)	1183	2705
439—Letter dated July 11, 1949, from M. M. Dukehart, Jr., to All District Sales Managers, with data sheets attached	1184	2706
440—Memorandum dated October 31, 1952, from D. H. Walker to M. M. Dukehart, with report attached entitled "Current and Prospective Markets for Beer Packages Smaller than 12 Ounces"	1188	2709

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441—Memorandum dated December 31, 1952, from D. H. Walker to M. M. Dukehart	1200	2727
442—Excerpt from report entitled "A Comprehensive National Study of Consumer Preferences for Different Types of Beer Containers", dated January 1954	1206	2734
445—Report entitled "Retail Level Study of New Quart Beer Can Acceptance in Chicago" with transmittal memorandum dated February 21, 1956, from Dana Hill to C. H. Buckley	1210	2738
446—Report entitled "Carbonyl Compounds in Schlitz Beer (Test Pack C659)", dated December 5, 1957	1217	2743
448—Report on packaged beer trends entitled "June Packaged Sales Soar", dated August 25, 1958	1222	2748
543—Report entitled "Beer Can Shipments", dated March 25, 1952, with table attached	1224	2751
588—Report entitled "Beer Trends", dated July 9, 1948	1226	2754
589—Memorandum dated June 9, 1948, from L. E. Dake re beer sales and production, with tables attached	1229	2758
600—Pamphlet entitled "ABC's—Canning" of Continental Can Company	1232	2761
600B—Memorandum dated May 26, 1953, from D. H. Walker to M. M. Dukehart, Jr.	1251	2781
601—Memorandum dated August 7, 1953, from D. H. Walker to C. H. Buckley	1254	2785
612—Excerpt of report entitled "Attitude of Grocery Chains toward Canned Soft Drinks" by Continental Can Company, dated December 13, 1954	1257	2789
613—Report entitled "A New Look at Soft Drinks in Cans", by C. H. Buckley, dated March 4, 1955	1258	2790
617—Memorandum dated March 1956, from C. H. Buckley to L. A. Carey, with tables attached	1264	2797
641—Excerpt from "Canned Foods, Merchandiser Digest", issue of May 1957	1269	2803
642—"Canned Foods, Merchandiser Digest", issue of August 1957	1270	2804

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649—Excerpt of newsletter entitled "Foods-in-glass News" Vol. II, No. 4, dated June 1957	1274	2808
656—Excerpt of "Canned Foods Newsletter for Brokers" dated May 1958	1277	2812
669, 671—Advertisements of Hazel-Atlas Glass appearing in various trade journals	1279	2814
675—Proof of advertisement of Continental Can Company to appear in 1955-56 Directory of Breweries	1281	2817
684—Release #1113, dated August 31, 1955 to Sales List A-2, entitled "Publicity that makes Continental stand out", enclosing various newspaper clippings (excerpt)	1282	2818

[fol. 306-307] GOVERNMENT'S EXHIBIT 76

Research Department—Kenyon & Eckhardt, Inc.

Copy #46

The GCMI-Giant Study

A Study of the Optimum Utilization of Glass Jars and Cans in the Fruit and Vegetable Sections of a Modern Supermarket

Prepared for
Glass Container Manufacturers Institute
With the cooperation of
Giant Food Shopping Center, Inc.,
Washington, D. C.

by Kenyon & Eckhardt, Inc.
March 1958

Copyright, 1958

[fol. 308] Why The Study Was Done

[fol. 309] There is a great deal of competition for shelf space in the supermarket. New products are perpetually introduced and existing products turn up in an increasing number of diverse sizes and packages. This variety poses a serious problem for the grocer.

On the one hand, he is besieged by salesmen and pressured by consumers. On the other hand, he has only a limited amount of shelf space at his disposal.

Accordingly, he must constantly cut and trim, adjust and improvise, eliminate slow-moving products as he takes on others which he hopes wil move in volume.

These decisions are difficult ones to make, particularly since the pressure of each day's problems makes it almost impossible for him to proceed according to any systematic plan.

[fol. 310] The present study was undertaken as a contribution in this area—to provide facts which will be of help to the grocer in deciding how best to utilize glass jars and cans in planning the arrangement of his shelves.

There are many product areas in which no particular packaging competition exists. Rickles, for example, are almost universally packaged in glass, while soups are packaged in cans. Many other products, however, are available to the consumer in both types of packaging. And most important in this area are the packaged fruits and vegetables, which not only account for a good share of total grocery volume, but also fill a substantial portion of the grocer's shelves.

Accordingly, we have singled out the fruit and vegetable sections of the modern supermarket for study. With respect to these sections, we have tackled the following problems

Assuming that the grocer wants to maximize sales, which of several alternatives should he adopt? Should he con-[fol. 311] centrate on glass jars, or should he concentrate on cans? Or, should he carry some combination of glass jars and cans? Should he carry some products in cans only and other products in jars only, or should he carry the same products both in cans and in jars? What proportion of glass jars to cans should he carry on his shelves? And how, finally, should he handle the different types of pack-

aged products? Should he concentrate all glass jars in a separate glass section or should he disperse them throughout his fruit and vegetable sections?

The experiments in this study were designed to answer these questions.

[fol. 312] How The Study Was Done

[fol. 313] The study was conducted in four large modern supermarkets of the Giant Chain in the Washington, D. C. area. The following four stores participated:

Store A #32—40 Arlington Blvd., Falls Church, Va.
Store B #20—8706 Georgia Avenue, Silver Springs, Md.
Store C #31—4804 Indian Head Highway, Maryland
Store D #29—3336 Wisconsin Ave., N. W., Washington, D. C.

With the cooperation of the Giant Chain Management, and of the managers of the four stores, the packaged fruit and vegetable sections of the stores were turned into a laboratory from April 8, 1957 to July 2, 1957. During this time, two series of experiments were conducted in the stores. These experiments consisted of systematically rearranging the shelves of the stores for two-week periods, and of measuring resulting sales.

At the end of each two-week period, a detailed audit was taken of the fruit and vegetable sections of the stores. Furthermore, two full time research supervisors visited *each* of the four stores (two times a day on Mondays, Tuesdays, and Wednesdays, and three times a day on Thursdays, Fridays, and Saturdays) to make certain that the shelves had not been disturbed except for the normal flow of merchandise from them. The same research supervisors kept daily counts of the movement of products from the shelves. [fols. 314-315] Making use of the bi-weekly audit data, of delivery records, and of the detailed daily reports of the supervisors, it was possible to compute the volume of movement of each of the products involved in the experiment for each of the four stores, for each of the two-week periods.

Thus, we are now in a position to assess the effects on sales of the various experimental shelf display patterns which were instituted in the course of the study.

[fol. 316] GOVERNMENT'S EXHIBIT 77

Glass Container Manufacturers Institute
Market Research & Promotion Division

Industry Bulletin #66
November 3, 1958

GCMI-Giant Study

Attached is your copy of the GCMI-Giant Stores Study consisting of three parts as follows:

1. A 24-page booklet reporting pertinent results of this extensive GCMI merchandising study.
2. Seven single sheets—blue—presenting detailed reports on individual products covered in the Study.
3. A "how-to-use"—background bulletin.

Reference to the booklet will show you that this is a very carefully conducted, well-authenticated study of the dramatic merchandising power of glass packaging for retail food store items.

It is our hope that this booklet with its enclosed work sheets will serve as a productive sales tool for the sales departments of GCMI glass container and closure member companies, serving to demonstrate to packers the sales possibilities of glass packs, and thereby opening up new or enlarged accounts.

Quantity copies of this booklet are available upon request. Each copy will be sent with the seven work sheets enclosed inside the front cover and instruction sheets attached.

R. L. Cheney, Executive Director and Marketing Manager.

[fol. 317] How to Use the GCMI-Giant Study

This is a research study on how glass sells. It is for your use with fruit and vegetable packers who ought to put part of their pack into glass containers—or expand glass packs which they already have.

You may also find it useful for other products—such as

juices, health and beauty aids, spices, household cleaning aids, beer, etc.

When you call on a packer:

1. Use the booklet to give him findings for *all* products; to show the over-all merchandising power of the glass container.
2. Then use the Individual Product Data Sheet which fits his *specific* sales problem.
3. Leave a copy of the booklet—and of the Individual Product Data Sheet—with him. (Additional copies are available to GCMI members on request.)
4. Use the material with discretion. Before making your call, examine it carefully to see how it can best fit into your sales story.

Background

The GCMI-Giant Study gears into three *basic* areas of food merchandising:

The way women shop in today's supermarkets.

The retailer's need for maximum sales in *presently available shelf space.*

The packer's desire to increase *over-all* sales

How Women Shop In Food Stores

Research shows us that—

—Written shopping lists are disappearing.

—Customers depend increasingly upon the *store itself.* In the words of Progressive Grocer's Super Valu Study: "She looks for reminders within the giant shopping list that is the supermarket." DuPont studies show that instore decisions have gone up 20% in the last 10 years.

[fol. 318] —Yet in today's big food marts (again, by Super Valu) to *really* shop the store she must *see* 260 items every minute.

—And the mental labor involved in making the many in-store decisions required, causes her to shop in a semi-dazed condition.

Therefore, anything which causes her to shop *more* slowly: which attracts her attention and brings her *out* of the daze caused by shopping.

Produces Greater Store Sales Over-all—and Particularly for Items She Will *See* and Buy on Impulse:

The GCMI-Giant Study gives retailers and packers an important new profit idea, comparable in selling power to "related item displays," "loss leaders," etc.

Glass Containers In Engineered Merchandising.

It proves, by careful research, that glass containers are a *merchandising tool* for both packer and retailer—

—They work like actual Point of Sale material, like bright spots of color in a black and white ad; acting as "stoppers" for customers wandering listlessly past supermarket shelves.

—So, for the retailer, they not only sell *themselves*—but they produce sales for items in other containers as well. They produce greater store sales over-all, with present shelf space.

—For the packer they create *extra* sales. This is *plus* business—not just a swap of sales in glass for sales in tin.

[fol. 319] GOVERNMENT'S EXHIBIT 79

Survey of Consumer Preference for Food Containers

For

Glass Container Manufacturers Institute, Inc.

Ford Sammis & Company
Marketing Economists

[fol. 320]

Ford Sammis
Marketing Economist
530 West Sixth Street, Los Angeles 14
Trinity 9549

January 25, 1955

Glass Container Manufacturers Institute, Inc.
99 Park Avenue
New York 16, N.Y.

Attention: Mr. Richard L. Cheney, Director Market Research and Promotion Division

Gentlemen:

Transmitted herewith is report on "Survey of Consumer Preference For Food Containers," conducted at your request for the information of your Institute and its member companies.

Purpose of this survey was to study fields where glass containers have not been traditionally used, to investigate.

(a) Extent and strength of consumer preference for glass or other types of containers in each field,
(b) Consumer motivations affecting container preference—why certain containers are preferred, why other types are not liked,
(c) Characteristics of the market for each type of product.

Emphasis has been placed on consumer preference because, in the final analysis, that is what determines the type of container which will ultimately be used for any given field.

Respectfully, Ford Sammis

[fol. 321] Survey of Consumer Preference for Food Containers

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[fol. 322] Description of Survey

The survey consists of personal interviews with 8,021 housewives, conducted in 94 cities, towns, and rural areas in 42 states. The sample represents a complete and representative cross-section of all U. S. families, balanced in proportion to population by geographic regions, size of city, socio-economic level, race and other market characteristics. Rural areas and farms have been included in proper proportion. Field work was done during August, 1954.

Statistical accuracy is insured by the large sample, which permits detailed analysis of the findings. The census regions illustrated on the map below have been used for regional breakdowns.

In considering the data, it should be realized that all reason questions were "open-ended." The answers recorded were those given voluntarily by respondents on their own initiative, without any reasons being suggested to them. This survey, therefore, reflects those factors that are at the top of consumers' consciousness.

[fol. 323] Summary

Major findings of this survey of food products which have not been traditionally packed in glass are as follows:

1. Glass has secured dominant consumer preference positions in baby food and instant coffee, where it has been in general use for several years, although it lags behind cans in the regular coffee field. Consumer preference is

   7.4 to 1 for glass for baby food
   5 to 1 for glass for instant coffee
   2.4 to 1 for cans for regular coffee

2. Strong latent demand exists in several new fields where glass containers are not now generally used, including

   Intermittent use products (not used up in one serving)
   Products with high acid content
   Impulse items

3. Glass is preferred for many intermittent use products, such as condiments, cooking ingredients, spreads, spices, prepared sauces, rice, salt, etc. Consumer preference on four selected intermittent use products are

   4 to 1 for glass for salad & cooking oil
   4 to 1 for glass for dry milk
   2.6 to 1 for glass for ripe olives
   1.1 to 1 for glass for chocolate sauce & other ice cream toppings

[fol. 324] 4. Glass is preferred for acid products, like tomato juice, tomato sauce, tomato paste, sauerkraut, lemon juice, fruit juices, Consumer preference is

   1.5 to 1 for glass for tomato juice

5. Glass containers stimulate sales of impulse items, where decision to buy is made after consumer sees product in stores. Consumers like eye appeal and visibility of product in glass containers for impulse items such as

   Specialty products, not regularly purchased
   Products with high color or eye appeal
   Products were quality varies among brands
   Products that are unique in appearance

6. Basic qualities of glass motivate consumer preference. For products studied in this survey, chief reasons consumers like glass containers are

   Safe for storing foods in container after opening
   Visibility of contents
   Ability to reseal tightly
   Ease of handling and opening
   No effect on flavor
   Eye appeal, attractiveness

[fol. 325] GOVERNMENT'S EXHIBIT 80

Glass Container National Survey
1954
Summary

Ford Sammis
Marketing Economist

[fol. 326]

Ford Sammis
Marketing Economist

530 West Sixth Street, Los Angeles 14,
Trinity 9549

October 25, 1954.

Glass Container Manufacturers Institute, Inc.
99 Park Avenue
New York 16, New York

Attention: Mr. R. L. Cheney, Manager Market Research & Promotional Division

Gentlemen:

Transmitted herewith is our summary of the Glass Container National Survey—1954.

This survey has been conducted at your request for the confidential information of your Institute and its members. This report is not to be reproduced in whole or in part without our permission.

Respectfully, Ford Sammis.

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How Can Present Positions Be Improved?

Three Phase Problem:

Overcome Negative Reactions 36
Correct Misconceptions 37
Promote Positive Advantages 38

Trade Problems 40

[fol. 328] Purpose

To study preferences, prejudices and habits affecting use of glass containers, comprehensive national surveys were conducted during August, 1954, among consumers, retailers, wholesalers and chain store organizations.

Omnibus Coverage

Utilizing a broad approach, 28 different product classifications have been investigated, involving over 3¼ million individual answers to questions asked in more than 12,000 personal interviews conducted by trained investigators. Actually, this project represents 5 or 6 separate surveys, all conducted concurrently.

Complete Cross-Section of Population

Because container choice rests ultimately with consumers, major emphasis has been placed on study of consumer habits, preferences and prejudices.

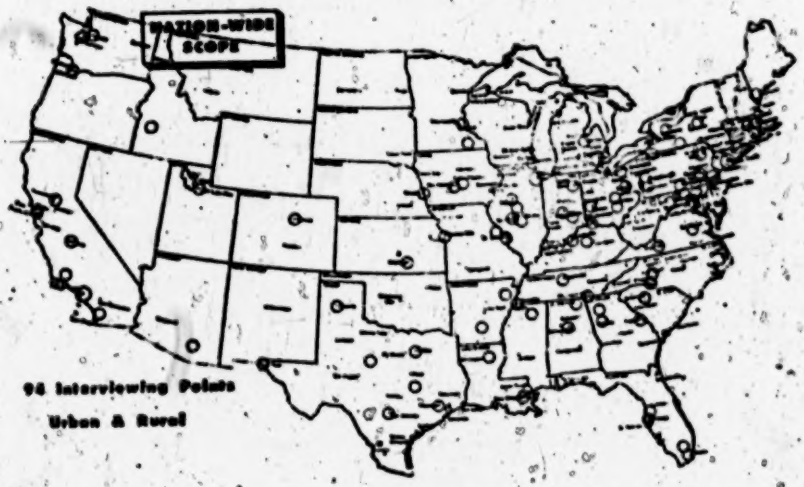
The consumer survey consists of personal interviews in homes with 8,000 housewives, 1,000 men and 1,000 children. All three samples have been balanced geographically, by city size, by socio-economic level, by age, and other market characteristics. Rural areas and farms were included in proper proportion.

The survey thus represents a complete and representative cross-section of the entire U. S. population.

[fol. 329] The retailer survey consists of nation-wide samples of 1,200 grocery stores and 600 drug stores (balanced in proportion to size of store) and spot samples of 100 liquor stores and 100 hardware stores. In addition, depth interviews have been conducted with officials of representative wholesale and chain organizations in various parts of the country.

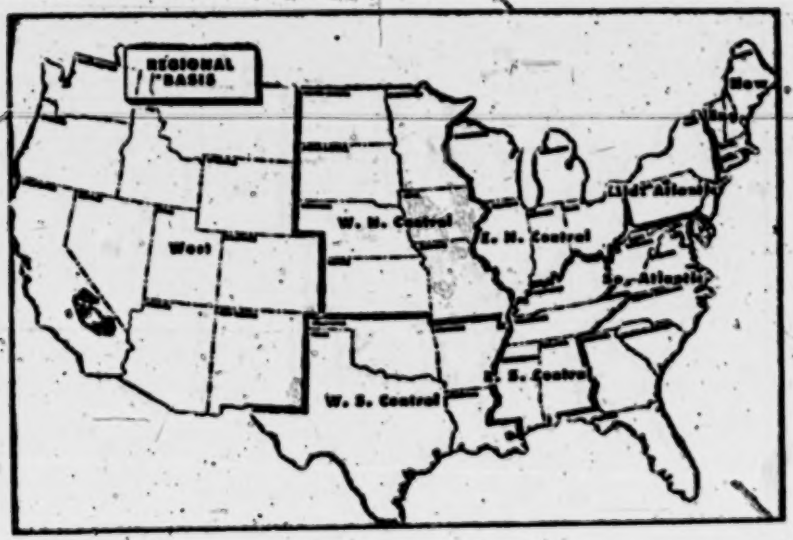
Nation-Wide Scope

Interviews were conducted in 94 interviewing points in 42 states, as shown by the red circles on the map. This provides geographic dispersion and insures that the survey reflects local variations in habits and preferences.



[fol. 330] Regional Basis

The large samples provide statistical accuracy and also permit detailed analysis by geographic regions. The Census regions illustrated on the map have been used in this study as the most useful common denominator.



The vast fund of facts accumulated in this survey will be presented in separate reports on beer, soft drinks, baby food, milk and other product classifications. This is a general summary of the major findings—a quick bird's-eye view of the whole picture.

In order to facilitate the most practical application of the survey data, this report is divided into 3 sections:

First—How does glass stand in consumer preference?
Second—What markets are most critical?
Third—How can present positions be improved?

[fol. 331] GOVERNMENT'S EXHIBIT 81

National Consumer Surveys on Glass Containers

1955

Conducted By

Ford Sammis & Company

Marketing Economists

[fol. 332]

Ford Sammis & Company
Marketing Economists

750 Colorado Boulevard, Los Angeles 41

April 20, 1956.

Glass Container Manufacturers Institute
99 Park Avenue
New York 16, N. Y.

Attention: Mr. Richard L. Cheney, Manager
Market Research and Promotion Division

Gentlemen:

Transmitted herewith is a summary report on the National Consumer Surveys on Glass Containers conducted in October, 1955. This is the second annual survey in G.C.M.I.'s continuing market research program, and consists of two parts:

(a) National survey of 4,000 housewives, representing a complete cross-section of all families in the United States.

(b) Test market surveys totaling 4,600 interviews, representing cross-sections of the total population (men, women and children over 10) in Akron, Dallas, Milwaukee, Los Angeles and Washington, D. C., where special campaigns were conducted on soft drinks and milk.

Objectives of G.C.M.I.'s continuing market research program are:

1. To measure market trends on basic factors affecting sales of glass containers.
2. To intensively study specific problems of current importance. In the 1955 survey, the principal specific problem surveyed was effectiveness of the G.C.M.I. advertising campaign.

3. To develop new facts on consumer and trade preferences, prejudices and habits affecting glass and competing containers, thus continually adding to our storehouse of knowledge.

Charts in the attached report are grouped under these three headings.

Respectfully, Ford Sammis.

[fol. 333] National Consumer Surveys
On Glass Containers—1955

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[fol. 334] GOVERNMENT'S EXHIBIT 82

National Market Survey on Glass Containers
1956

Summary

Conducted By

Ford Sammis & Company
Marketing Economists

for

Glass Container Manufacturers Institute, Inc.

[fol. 335]

Ford Sammis & Company
Marketing Economists

750 Colorado Boulevard
Los Angeles 41, California
CLinton 5-7101

500 Fifth Avenue
New York 36, New York
CHickering 4-4363

December 27, 1956.

Glass Container Manufacturers Institute, Inc.
99 Park Avenue
New York 16, N. Y.

Attention: Mr. Richard L. Cheney, Director Market Research and Promotion

Subject: National Market Survey on Glass Containers, 1956

Gentlemen:

This report is a summary of the national market survey conducted in August, 1956. Charts are those shown at the Semi-Annual Meeting at Phoenix, Arizona on November 13.

The survey consists of personal interviews with nation-wide cross-sections of

5103 housewives
2554 men
1254 retail grocery store managers.

Data on baby food from the 1956 national survey have been presented in a separate report.

Respectfully, Ford Sammis.

[fol. 336]

National Market Survey On Glass Containers—1956

Summary & Table of Contents

For details, see page

Beer

Glass preference is increasing, and can sales have now reached their consumer preference level, indicating a slow-down in future growth 1

Soft Drinks

Glass preference is increasing. Can sampling is slowing up and can sales are not growing, due to lack of consumer preference and poor distribution 4

Milk

Glass preference has decreased slightly for home-delivered milk in medium size cities and for store-bought milk in small towns and rural areas. Store buying is on an increasing trend 14

Dry Milk

Paper boxes have outstripped glass in consumer preference, because brand leaders are packed in paper 17

Liquid Detergent

Can preference is increasing steadily, now outweighs glass 3½ to 1, due to use of cans by all leading brands. Consumer acceptance of liquid type for heavy duty detergent is low 20

General

Preference is shifting for tomato juice, holding steady for instant coffee. Many opportunities exist for glass-packed fruits and vegetables 24

DYNAMICS OF THE CONTAINER MARKET

Summary of Talk Delivered to
Glass Container Manufacturers Institute
at the Annual Meeting, May 22, 1956,
White Sulphur Springs, West Virginia

FORD SAMMIS & COMPANY
MARKETING ECONOMISTS

[fol. 338]

1984 FORD SAMMIS & COMPANY

730 COLORADO BOULEVARD
LOS ANGELES 41, CALIFORNIA
Clinton 5-7101

500 FIFTH AVENUE
NEW YORK 36, NEW YORK
Oldsbury 6-4363

Glass Container Manufacturers Institute, Inc.
99 Park Avenue
New York 16, N. Y.

Attention: Mr. Richard L. Cheney, Director
Market Research and
Promotion Division

Gentlemen:

Transmitted herewith is summary of a talk given before your members at the Annual Meeting, May 22, 1956.

Since the charts used in this talk speak for themselves in most instances, comments are included only where necessary to convey data not shown by chart.

Respectfully,

Ford Sammis

CONTAINER DYNAMICS

CONTENTS

	Page
Theory of Container Dynamics	1
Case Studies	
Baby Food	4
Dry Milk	6
Liquid Detergents	9
Tomato Juice	12

DYNAMICS OF THE CONTAINER MARKET

CONTAINER DYNAMICS

Every consumer product tends to standardize on a single type of container. Glass has become the standard, traditional container for a host of products, including catsup, salad dressings, salad oil, instant coffee, prune juice, mayonnaise, peanut butter, jams and syrup. Other products have standardized on tin cans - regular coffee, evaporated milk, dog food, and most fruits, vegetables and juices.

However, no traditional market is ever secure for any type of container. Marketers are apt to try out new containers at any time, in their constant search for ways to increase sales.

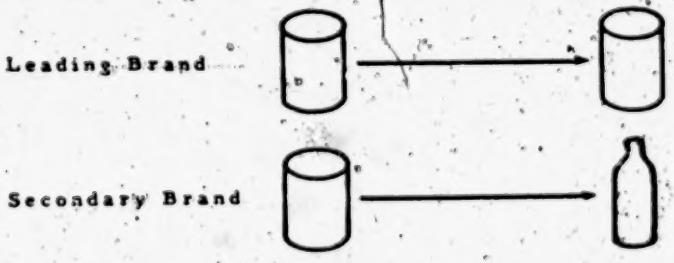
When this happens, the result is a period of container competition, which may run through one or more of three separate stages.

Container Competition - Stage 1

Consumers usually have an inherent preference for a particular type of container for any given product. They also have definite brand preferences. When brand preference and container preference come into conflict, brand preference usually proves to be the stronger. But not always, and not for all persons.

A new container can become a potent sales force for a brand, if strong consumer preference exists (or is promoted) for that type of container. Recognizing this, secondary brands are constantly trying out new types of containers as sales incentive. While leading brands are ordinarily satisfied to maintain the status quo, secondary brands are willing to gamble to improve their positions.

Stage 1 of container competition occurs when a new type of container is first introduced by a secondary brand.



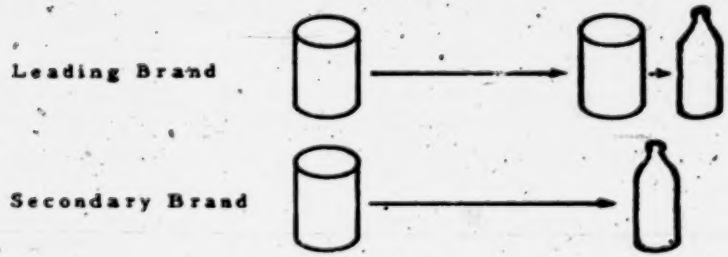
Stage 1 was reached in the instant coffee field during the past year. Folger test-marketed tin cans for their instant coffee in more than a dozen midwest markets. In spite of special promotions, the new container did not take hold with the public, and has recently been withdrawn from the market. Glass remains the standard instant coffee container, at least for the time being.

[fol. 342] 1988

Container Competition - Stage 2

If a secondary brand increases its sales during the period when it is introducing a new type of container, the sales increase is usually attributed to the new container, by marketer and competitors alike. Advertising, product changes or other factors may actually be more important than the new container, but circumstantial evidence points to the container.

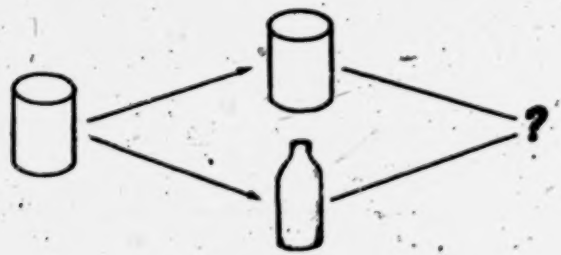
Leading brands are not prone to sit idly by while competitors cut into their share of the market. They tend to cover competitors' bets by offering both traditional and new types of containers to their customers. This creates Stage 2 of container competition.



Container Competition - Stage 3

When leading brands are available in a choice of containers, consumers container preference is no longer in conflict with their brand preferences. They can have the brand they want in the container they want. Sales of leading brands under these circumstances seek the level of consumer preference for each type of container.

If preference for one type of container greatly exceeds preference for the other type, the products then tends eventually to standardize once again on a single type of container - the container most consumers prefer. This process is subject to promotion of container by brand marketers or container manufacturers. The alternate outcome can be favorable to either the new or the traditional container.



Container competition has recently gone through all three stages in the fields of regular coffee, salad oil, and soft drinks. Cans have won out for coffee, glass for salad oil and soft drinks.

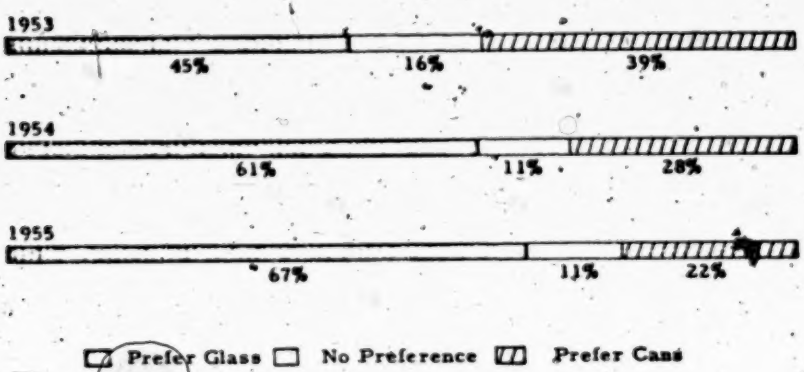
Other fields where glass is currently engaged in container competition with other types of containers are described in the following case studies, presented in chart form.

BABY FOOD
(WEST OF MISSISSIPPI)

CONTAINER COMPETITION IN STAGE ONE

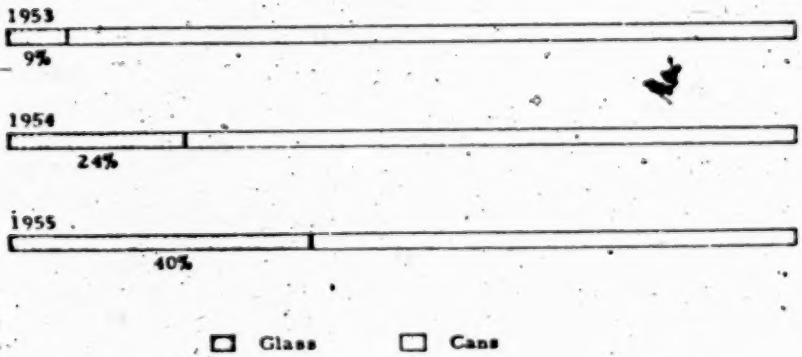
BABY FOOD
(WEST OF MISSISSIPPI)

CONSUMER PREFERENCE HAS BEEN IN FAVOR OF GLASS



BABY FOOD
(WEST OF MISSISSIPPI)

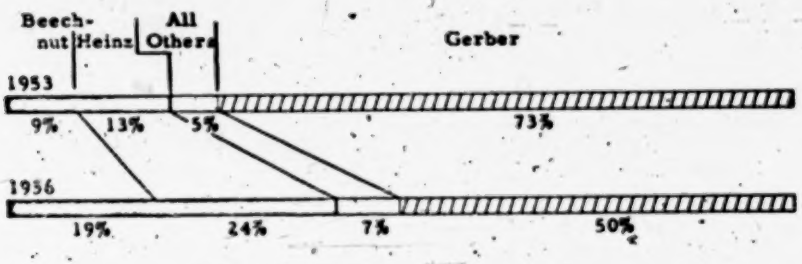
GLASS SALES ARE CATCHING UP WITH CONSUMER PREFERENCE



[fol. 346] 1992

BABY FOOD
(WEST OF MISSISSIPPI)

BRAND LEADER MAY SOON BE FORCED INTO GLASS TO OFFSET SALES DECLINE.



COMMENTS

Container competition in the baby food market is confined to the area West of the Mississippi. In the East, glass has over 90% of the market.

Consumer preference in the West is 3 to 1 in favor of glass, and glass sales are growing rapidly toward the preference level. In 1953, Beechnut was the only brand offered in glass in this area. Heinz was in cans in 1953, and had 13% of the market. Since switching to glass, its share has gone up to 24%, and Beechnut has increased to 19%.

Store audits conducted in a panel of Los Angeles super-markets reveal the following sales trend:

SALES OF BABY FOOD IN LOS ANGELES SUPER MARKETS

	% in Glass
Oct. - Nov. 1954	34%
Dec. - Jan 1955	36
Feb - Mar	37
April - May	40
June - July	34
Aug - Sept.	39
Oct. - Nov.	38
Dec. - Jan. 1956	43
Feb. - March	43

Heinz and Beechnut gains (in glass) have been at the expense of the brand leader, Gerber (in tin). It is reported that Gerber has started to offer both glass and tin in several Western markets. This indicates that baby food container competition is now entering Stage Two.

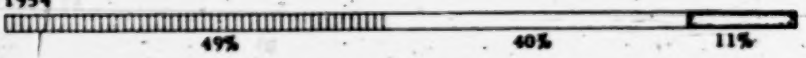
DRY MILK

CONTAINER COMPETITION IN STAGE TWO

[fol. 348] 1994

DRY MILK

GLASS HELD DOMINANT CONSUMER PREFERENCE POSITION BEFORE CARNATION ENTERED FIELD.

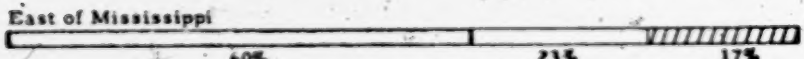


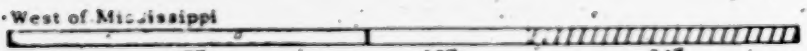
WITH CONTAINER AND BRAND COMPETITION, PREFERENCE HAS SHARPENED. GLASS HAS GAINED, BUT OTHER CONTAINERS HAVE GAINED MORE.

Prefer Glass No Preference Prefer other Containers

DRY MILK

GLASS IS STRONGEST EAST OF THE MISSISSIPPI



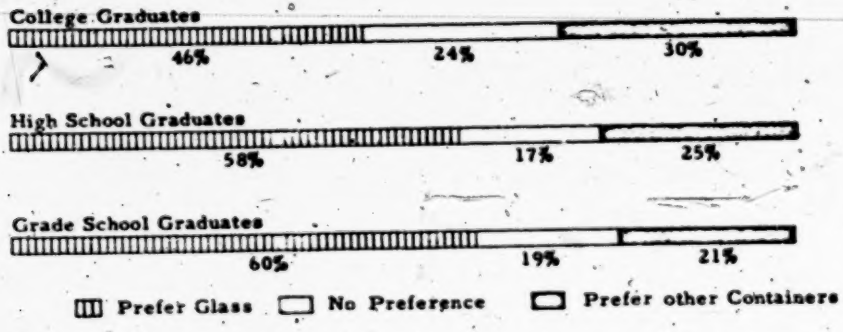


Prefer Glass No Preference Prefer Other Container

[fol. 349]

DRY MILK

COMPETING CONTAINERS HAVE GREATEST STRENGTH AMONG OPINION LEADERS



[fol. 350]

1996

DRY MILK

COMPETITION IS STRONGER WITH YOUNGER HOUSEWIVES.

COMMENTS

Before Carnation entered the market in a paper box, there was no active container competition in the dry milk field. Preference among users was heavily in favor of glass, but 40% had no preference on container.

During the past year there has been active container competition between leading brands. Carnation has merchandised its paper box and Pet has featured its glass jar in TV commercials. Result has been to focus consumer attention on container and to sharpen container preference (81% of all users now have a definite container preference). Glass is still the preferred container, but has not gained relatively as much as competing containers.

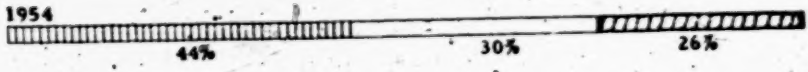
Dry milk container competition has recently entered Stage Two: Pet is now offering a giant size in paper box, retaining glass jars for regular size package.

LIQUID DETERGENT

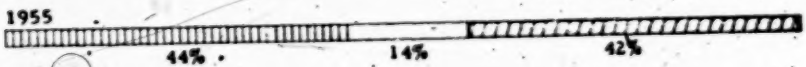
CONTAINER COMPETITION IN STAGE THREE

LIQUID DETERGENT

INTRODUCTION OF LIQUID LUX IN CANS MET A LARGE WAITING CONSUMER PREFERENCE.

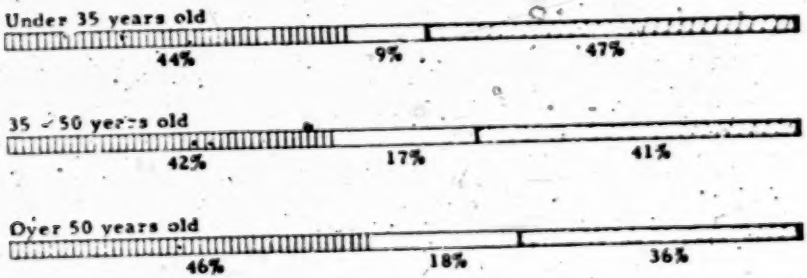


LIQUID LUX FOCUSSED ATTENTION ON CONTAINER, CREATED INCREASED PREFERENCE FOR CANS, FORCED P & G TO OFFER CANS IN SELF DEFENSE.



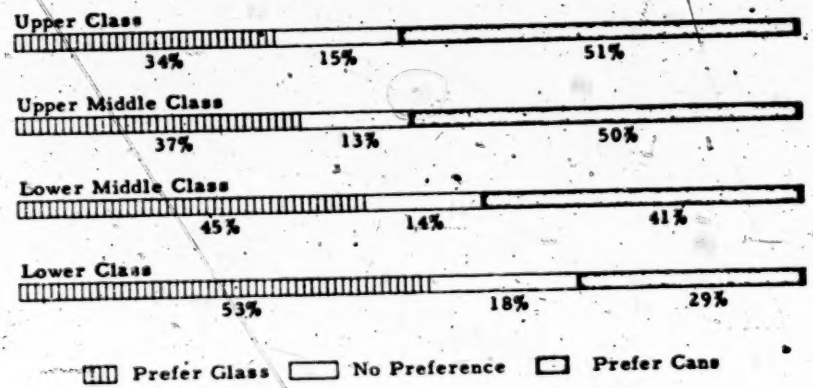
LIQUID DETERGENT

EVENTUAL OUTCOME LOOKS FAVORABLE TO CANS, BECAUSE YOUNGER PEOPLE PREFER CANS



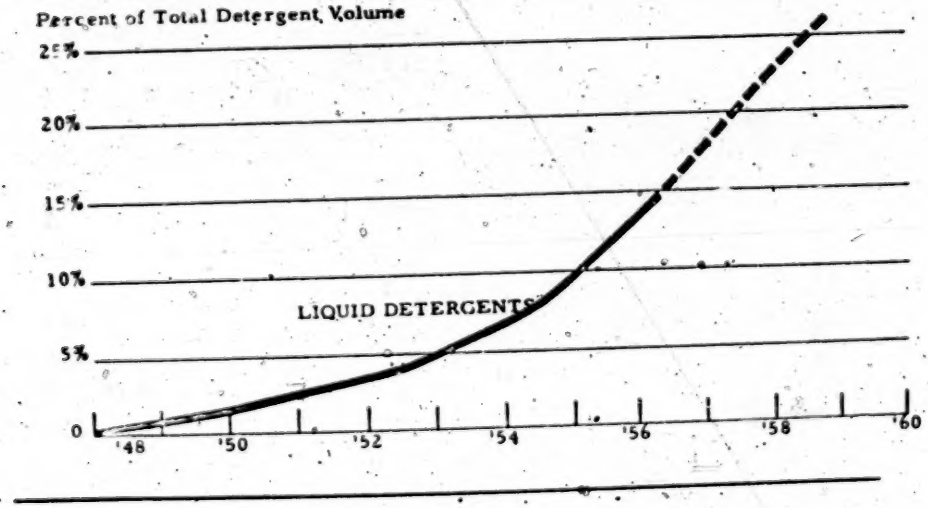
LIQUID DETERGENT

OPINION INFLUENCING GROUPS PREFER CANS



LIQUID DETERGENT

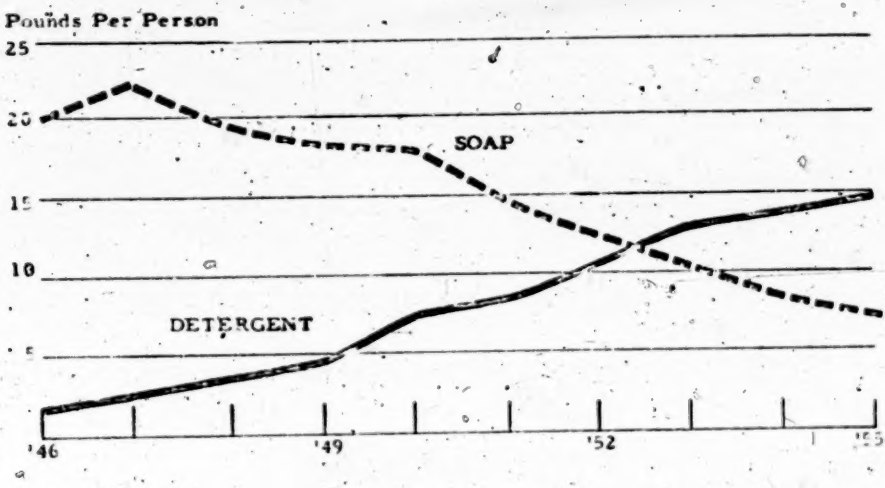
ULTIMATE WINNER OF LIQUID DETERGENT CONFLICT MAY GAIN THE ENTIRE DETERGENT BUSINESS.



[fol. 354] 2000

LIQUID DETERGENT

LIQUID DETERGENT WINNER MAY TAKE OVER SOAP VOLUME, TOO



COMMENTS

In the short period since Liquid Lux entered the market in cans, container competition has progressed rapidly to Stage Three. The brand leader, Joy, is now packed in both glass and tin, and many other brands have introduced tin cans.

Container competition is not confined to dishwashing detergents. All major brands are starting to pack heavy duty detergents in cans. Several marketers feel that eventually all detergents will be sold in liquid form.

Primary impetus for spreading use of cans for liquid detergent is the [illegible] success of Liquid Lux. Within the industry, this success is attributed to Lux's drip-proof can. However, a pilot survey among consumers indicates that the can was relatively unimportant factor. The most important factors in buying Liquid Lux have been (1) the well-known, well-established Lux name, (2) the fact that Liquid Lux is a very good product—exceptionally [illegible] and easy on the hands.

[fol. 355]

2001

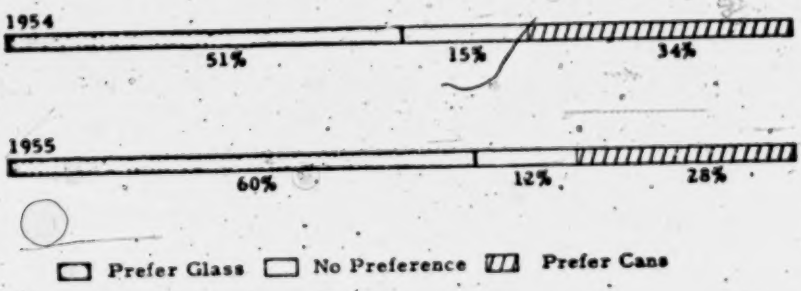
TOMATO JUICE

POTENTIAL CONTAINER COMPETITION

AN OPPORTUNITY FOR GLASS

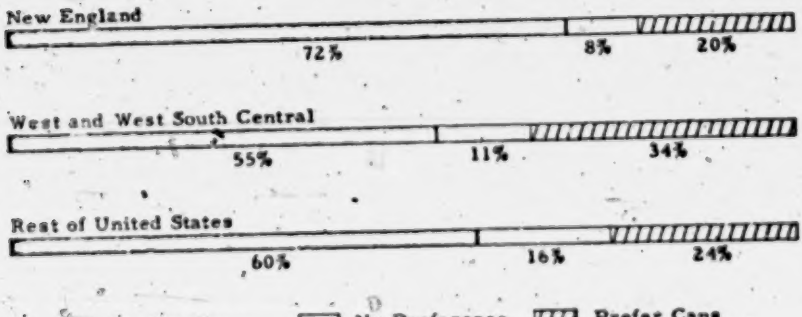
TOMATO JUICE

CONSUMER PREFERENCE IS 2 TO 1 FOR GLASS, AND GROWING STRONGER



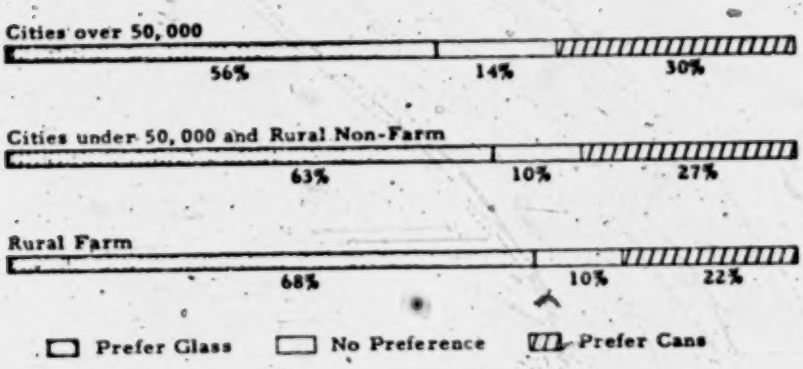
TOMATO JUICE

ACCEPTANCE OF GLASS IS HIGH IN ALL AREAS



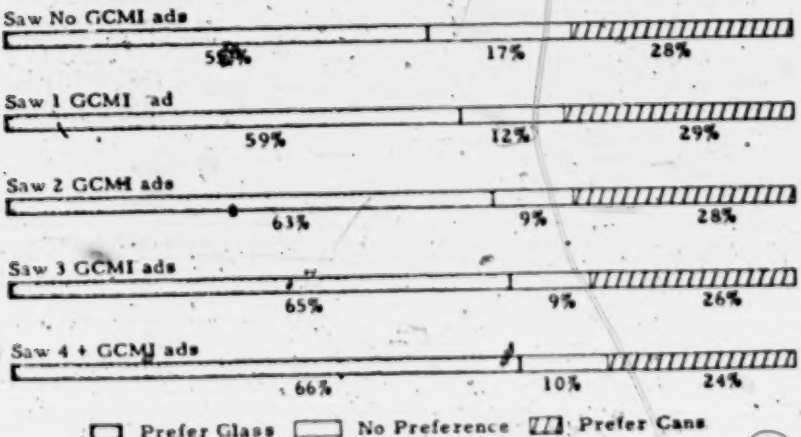
TOMATO JUICE

SMALL TOWN AND RURAL MARKETS OFFER BEST OPPORTUNITY



TOMATO JUICE

GLASS PREFERENCE CAN BE INCREASED THROUGH ADVERTISING



[fol. 358] 2004

TOMATO JUICE

POTENTIAL VOLUME IS LARGE.

90% of all U. S. families are users

Annual Sales = 4,650,000 gross units

Glass now has less than 4% of tomato juice volume

165,000 Gross ■

If sales paralleled consumer preference, glass would have

2,700,000 Gross [redacted]

If this goal is accomplished, all will eventually go to glass

4,650,000 Gross [redacted]

COMMENTS

Glass packed tomato juice has been on the market for some time, but none of the brands packed in glass have wide consumer acceptance. Therefore, glass accounts for only 4% of total tomato juice sales.

Consumer preference for glass is so high that glass sales would increase materially if one or more of the major brands offered a glass pack, particularly if the container were featured in advertising and merchandising.

Glass preference is growing, the increase during the past year being most noticeable in New England. A well-known packer comments as follows on this point:

"It so happens that for the past couple of years we carried on an extensive advertising campaign in New England - one of our better markets for our Tomato Juice in glass, and we have shown very excellent results in total volume of sales which would bear out the decided improvement in preference as shown in your report."

20005

GLASS CONTAINER MOTIVATIONS

Chart-talk delivered at Annual Meeting

of

Glass Container Manufacturers Institute, Inc.

at

White Sulphur Springs, West Virginia

May 22, 1957

FORD SAMMIS & COMPANY

[fol. 360]

Glass Container Motivations

[fol. 361]

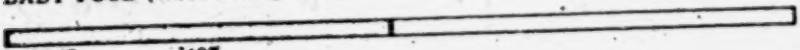
CONSUMERS ARE NOT NORMALLY CONTAINER CONSCIOUS

BRAND PREFERENCE MAY OUTWEIGH CONTAINER PREFERENCE

(% of those preferring glass who use glass)

TOMATO JUICE

BABY FOOD (West Coast)



A principle early established in the motivational research studies conducted for GCMI is that consumers are not normally "container conscious." They are inclined to take containers for granted, without devoting much thought to them, and concentrate their attention on the product inside the container.

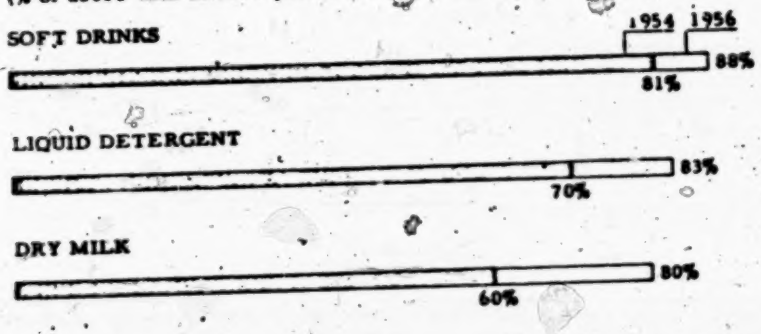
A corollary to this principle is that brand preference usually outweighs container preference. For example, in the chart above, it is shown that only 5% of those who prefer glass for tomato juice actually buy tomato juice in glass. While this is partly caused by spotty distribution of glass-packed tomato juice, lack of distribution is not a controlling factor in a similar situation existing for baby food. On the West Coast, where baby food is available in both glass and tin in practically every super-market, only 49% of those who prefer glass actually buy glass-packed baby food.

CONTAINER CONSCIOUSNESS

IS INCREASING

THE "NO PREFERENCE" GROUP IS GETTING SMALLER

(% of users with definite preference on containers)



Consumer consciousness of containers becomes more prevalent and active under two conditions:

(1) When containers are brought to their attention, particularly through advertising

(2) When a choice of containers is available for a specific product.

It is only natural, therefore, that container consciousness has been increasing during the past two years, as a result of advertising by GCMI and manufacturers of other containers, coupled with active container competition in the fields of fresh milk, dry milk, liquid detergents, beer and soft drinks.

For those products, the result of increased container consciousness has been to sharpen consumer preference for one container or another. For example, in 1954, only 81% of all soft drink users had a definite container preference, the remaining 19% having no preference between cans and bottles. By 1956, all but 12% had acquired a definite container preference.

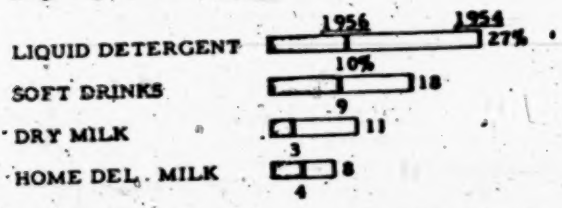
With liquid detergents and dry milk, the increase in container consciousness and preference is even more marked.

[fol. 363]

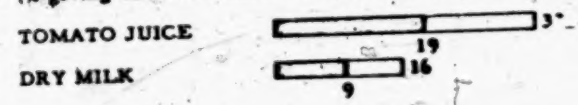
ATTENTION IS FOCUSSING ON SPECIFIC CONTAINER QUALITIES

"HABIT" IS A LESS IMPORTANT MOTIVATION

(% giving habit as reason for preferring glass containers)



(% giving habit as reason for preferring competing containers)

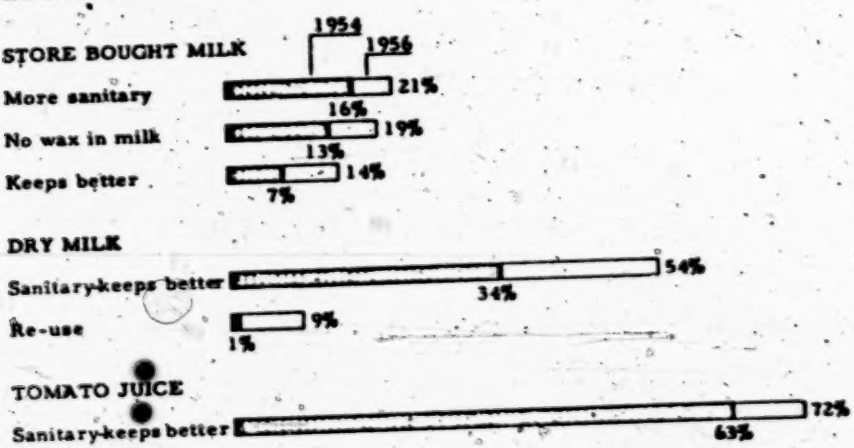


A concommitant of the recent increase in container consciousness has been focussing consumer attention on specific container qualities.

This is illustrated in the chart above by decrease in the generalized reason of "habit" as a motivation for preference of both glass and competing containers.

In 1954, 27% of those preferring glass jars for liquid detergent gave habit as a reason for preference. In 1956 as a result of consciously considering the advantages of glass vs. tin cans for this product, mention of habit dropped to 10% being replaced by such specific qualities as visibility of contents, ease of handling, and attractive appearance.

SANITARY FEATURES OF GLASS GAIN INCREASED RECOGNITION



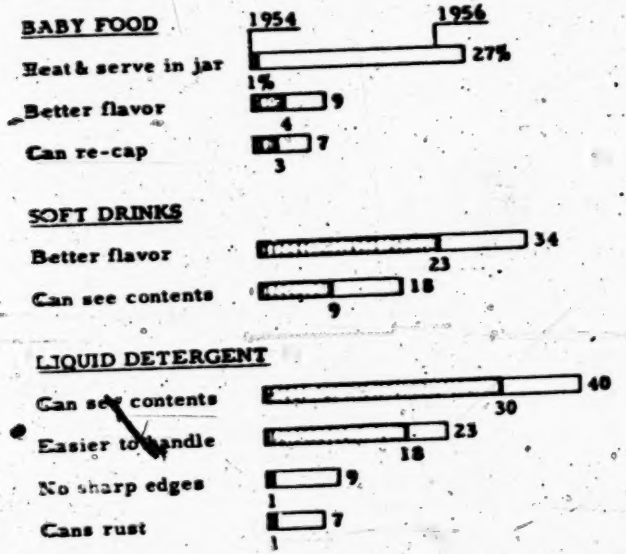
The three qualities of glass containers that have evidenced the greatest gains in consumer acceptance and recognition are: sanitary features, flavor, and transparency.

Increased impact of the sanitary features of glass (germ-free, lack of product contamination, safe storage of unused portions in opened containers) are apparent for store-bought milk, dry milk, and tomato juice. With dry milk this factor is the major motivation, being mentioned by 54% of all who prefer glass jars, an increase from 34% mention in 1954.

Re-use, though minor, is a motivation of growing importance with dry milk. So is freedom of wax in the milk for store-bought fresh milk.

[fol. 365]

MORE IMPORTANCE ATTACHED TO FLAVOR AND VISIBILITY



Better flavor, as a reason for preferring glass, was mentioned by more persons in 1956 than in 1954 for baby food and soft drinks. The increase for soft drinks was 23% to 34%.

Visibility of contents has increased for both soft drinks and liquid detergent. In the latter product, the increase has been from 30% to 40% of all who prefer glass.

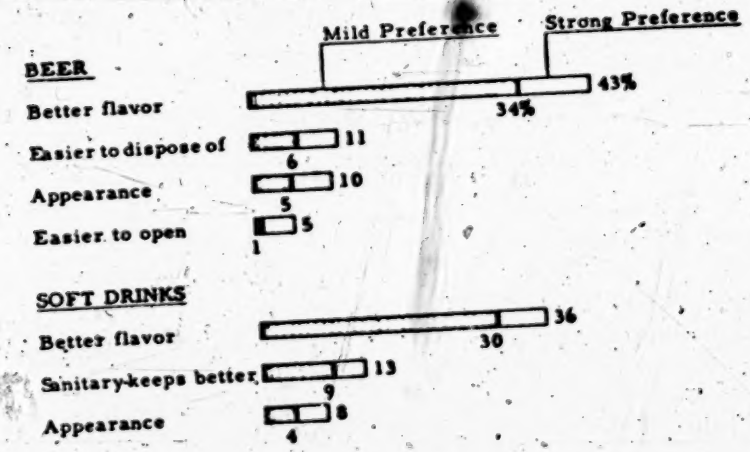
One of the most dramatic examples of rapid emergence of a minor factor into a major motivation has occurred with baby food. In 1954, so little mention was made of ability to heat and serve in the container that no place was made for it in the IBM code of reasons for preferring glass baby food jars.

By 1955, heating in and serving from glass jars was listed by so many consumers that an investigation of causes was instituted. It was traced down to a single commercial on the GCMI television program where this use was dramatically demonstrated.

The agency inserted this appeal into magazine copy in the 1955-56 campaigns, and the result is that this factor is now the second most important motivation for baby food jars, being exceeded only by ability to store unused portions safely in the opened jar.

[fol. 366]

STRENGTH OF PREFERENCE IS FOUNDED ON SECONDARY AS-WELL AS MAJOR MOTIVATIONS

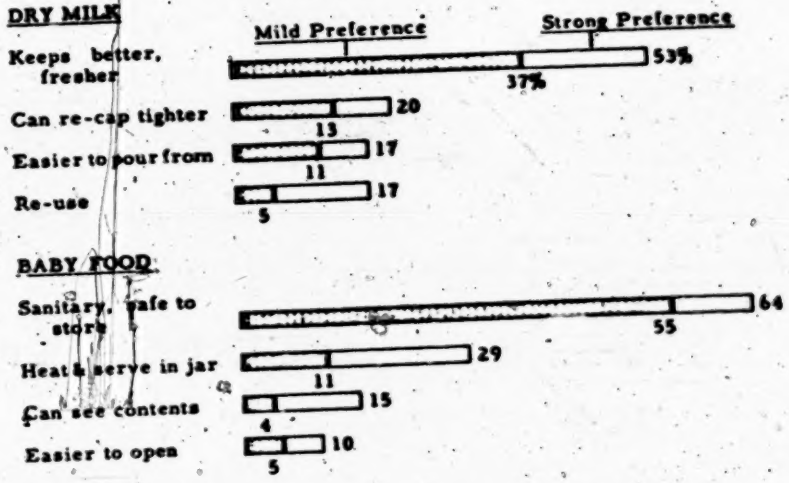


Rating of relative importance of various motivations is shown later on in this report for eight different products. The charts on this and the following page show that it isn't just the major factors that create strong preference for glass.

With beer, better flavor was mentioned by 43% of those having a strong preference for glass, but by only 34% of those whose preference for glass may be classified as mild. Better flavor, therefore, is a factor that creates greater strength of preference. So are the factors of ease of disposal, appearance, and ease of opening.

For soft drinks, the principal factors creating strong glass preference are flavor, sanitary features, and appearance.

[fol. 367]



Ability to safely store unused portions in the container is the principal factor affecting strength of preference for dry milk and baby food.

For dry milk, ability to re-cap and ease of removing contents are secondary factors. Re-use works in reverse, being less important to those who have a strong preference than to those having a mild preference.

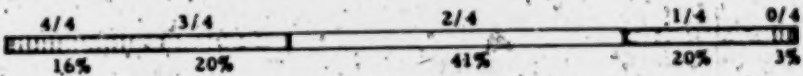
For baby food, ability to heat and serve in the container, visibility of contents and ease of opening are secondary factors creating strong preference for glass.

[fol. 3624] 2014

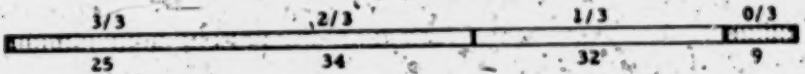
CONTAINER PREFERENCE DOESN'T CARRY OVER BETWEEN PRODUCTS

THERE IS VERY LITTLE "GENERAL" GLASS PREFERENCE

Preference For Glass - Users of 4 Products



Preference For Glass - Users of 3 Products



It was pointed out in 1954 that consumers consider each product as completely independent and different, as far as containers are concerned. The same consumer may prefer tin cans for beer; glass bottles for soft drinks. Container preference doesn't naturally carry over from one product to other products.

Such a carryover is, of course, an objective of GCMI's promotional campaign and is part of the advertising strategy. But it will take time to change consumer psychology and thought habits.

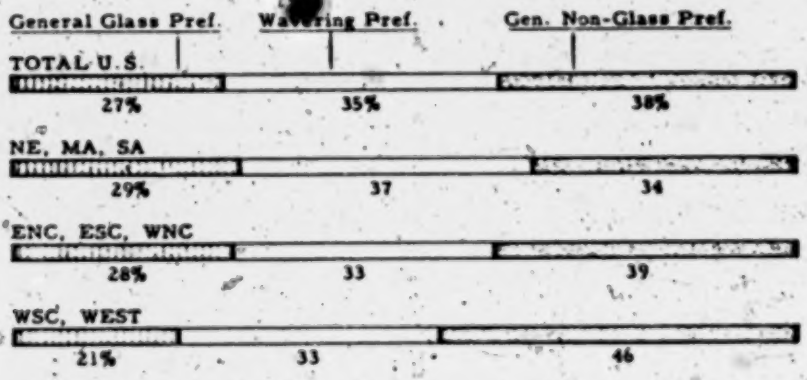
In an attempt to measure the degree of glass preference carryover between products existing at the present time, four products were selected where there might be a reasonable expectancy of inter-relation in container preference. These products were: liquid detergent, dry milk, fresh milk, and tomato juice.

It was found that among users of all four products, 16% preferred glass for all of them, 20% preferred glass for three out of the four, with 41% completely divided on container preference. In like manner, the majority of persons who use three of the four products, prefer glass for either one or two of the three products they use.

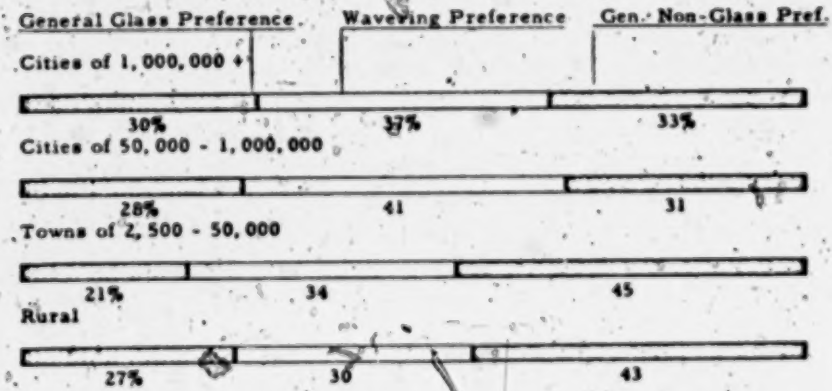
It may be concluded that from this that a certain amount of "general glass preference" exists, but its extent is limited at the present time to less than one-fourth of the population.

[fol. 369]

"GENERAL" GLASS PREFERENCE IS STRONGEST IN NORTHEAST, WEAKEST IN WEST



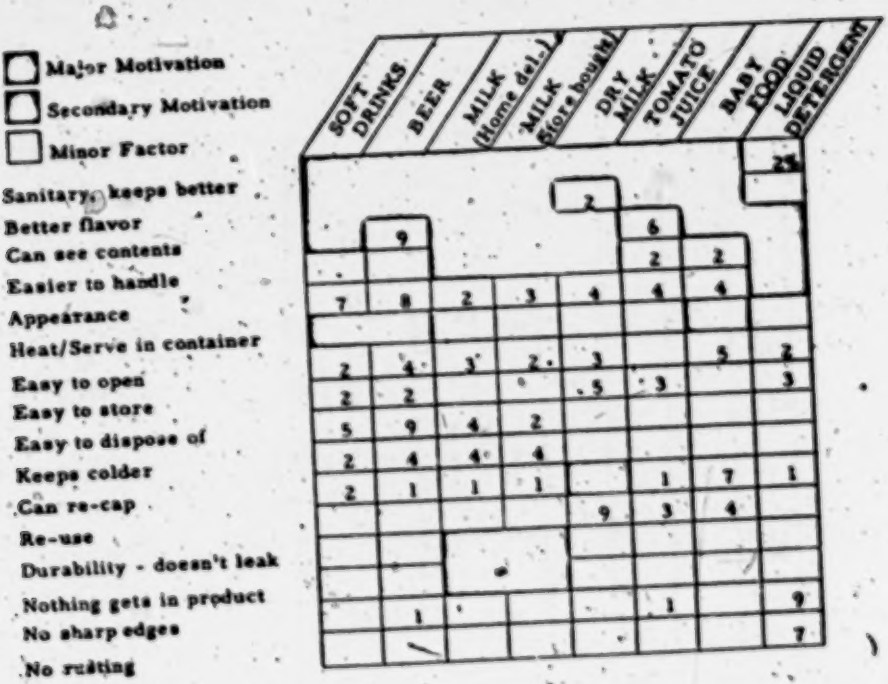
"GENERAL" GLASS PREFERENCE IS STRONGEST IN LARGE CITIES



From the chart on the preceding page, it may be considered that those who prefer glass for 3 or 4 out of four products used, or 2 or 3 out of 3 products used, possess "general glass preference." The above charts show geographic and city size variations.

General glass preference is strongest in Northeastern states, weakest in the West. It is also strongest in large cities, weakest in small towns.

EACH PRODUCT INVOLVES DIFFERENT MOTIVATIONS, WITH VARYING EMPHASIS



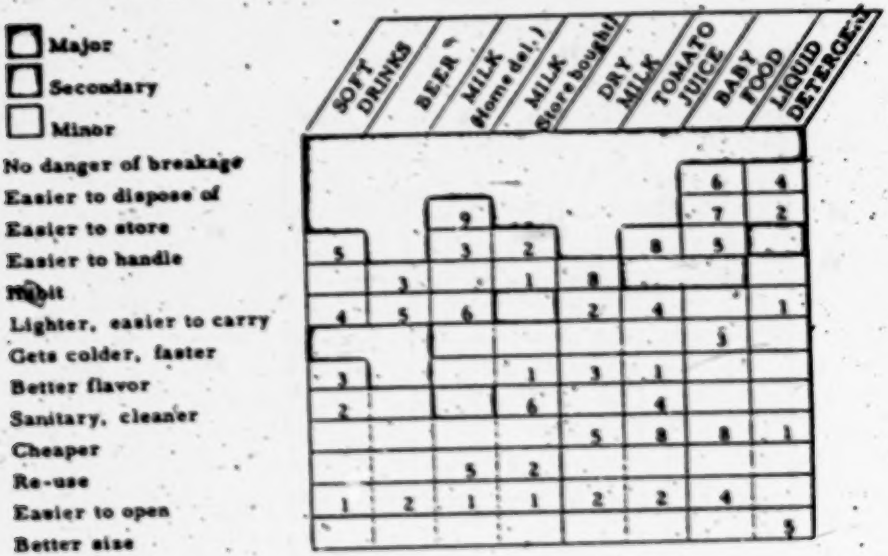
This chart sets forth the motivations for preferring glass for eight different products. Figures represent the percent of those preferring glass who mentioned each factor as a reason for prefereece.

Factors have been classified into major, secondary and minor factors for each product by color symbols. It will be noted that the sanitary features of glass are the most generally applied major factor, closely followed by better flavor. However, relative importance of these and other factors vary considerably from product to product.

Motivating factors are listed in the order of relative importance among all product classes combined.

(Note: Heat/Serve in container means "like to drink out of bottles" for beer and soft drinks.)

MOTIVATIONS ON COMPETING CONTAINERS



Danger of breakage is the most generally mentioned reason for preferring some other container than glass. It is a major motivation for competing containers with soft drinks, tomato juice, baby food and liquid detergent, and a secondary factor for all other products.

Ease of disposal of competing containers is the next most important factor working against glass, being a major factor with fresh milk and dry milk.

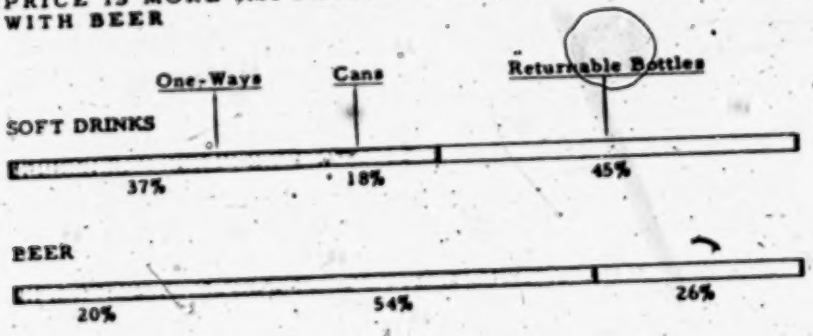
Factors are listed in their relative importance for all products combined.

[fol. 372]

PRICE IS IMPORTANT ONLY

WITH BEER AND SOFT DRINKS

PRICE IS MORE IMPORTANT WITH SOFT DRINKS THAN WITH BEER

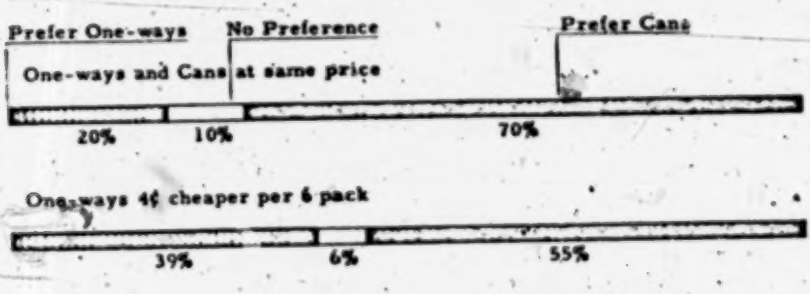


The chart above illustrates preference between cans, one-way bottles, and returnable bottles with the only difference in price being 2¢ refund on returnable bottles when taken back to the store. Preference for returnable bottles under these conditions is, in effect, a measure of extent of price consciousness among consumers.

For soft drinks, 45% prefer returnable bottles over either of the disposal containers. For beer 26% prefer returnable bottles. It may be concluded that price is a factor with both beer and soft drinks, but is more important with soft drinks.

[fol. 37;]

PRICE DIFFERENTIAL DOUBLES PREFERENCE FOR ONE-WAYS VS. CANS FOR CONSUMER'S FAVORITE BRAND OF BEER

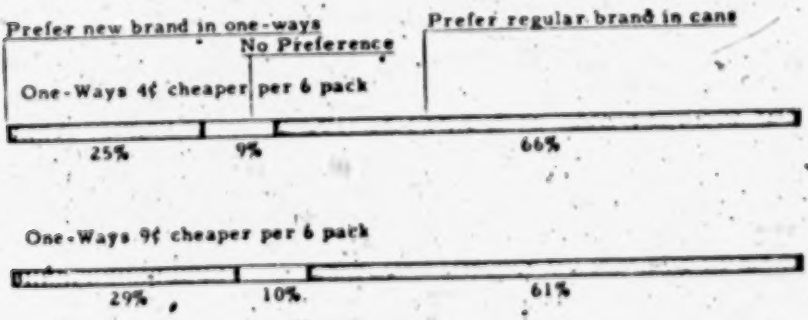


(Survey of Virginia Beer Drinkers - June, 1956)

In the survey of Virginia beer drinkers conducted in June, 1956, consumers were asked to choose between one-ways and cans for their favorite brand (a) at the same price and (b) with one-ways priced 4¢ lower per six pack. 20% chose one-ways at the same price as cans, 39% chose one-ways when they were 4¢ cheaper.

A NEW BRAND CAN GAIN 25% OF BEER MARKET WITH PRICE DIFFERENTIAL ON ONE-WAYS

Another approach used in this survey was preference between consumer's favorite brand in cans and some other brand in one-way bottles (a) 4¢ cheaper per six pack, and (b) 9¢ cheaper. 25% chose the other brand in one-way bottles at a 4¢ differential, and when the differential was increased to 9¢ preference for one-way bottles went up to 29¢. This has been confirmed by actual sales tests in Norfolk where one-way bottles priced at 6 99¢ have secured 23% of total beer sales in stores carrying one-ways.



(Survey of Virginia Beer Drinkers - Jan. 1957)

[fol. 374] 2020

CONSUMER PREFERENCES AND MOTIVATIONS ON CONTAINERS 1954 - 1957

Chart Talk presented at
Semi-Annual Meeting of
Glass Container Manufacturers Institute
Virginia Beach, Virginia
October 1, 1957

FORD SAMMIS & COMPANY

[fol. 373]

FORD SAMMIS & COMPANY 2021

730 COLORADO BOULEVARD
LOS ANGELES 41, CALIFORNIA
Clinton 5-7101

84 MILL LANE
HUNTINGTON, NEW YORK
HAmilton 7-4791

November 20, 1957

Glass Container Manufacturers Institute, Inc.
99 Park Avenue
New York 16, New York

Attention: Mr. Richard L. Cheney

Subject: Consumer Preferences & Motivations on Containers, 1954-1957

Gentlemen:

Transmitted herewith are reproductions of charts shown before your Semi-Annual Meeting at Virginia Beach on October 1, 1957, together with a transcript of my remarks.

This presentation represents both a summary of the 1957 national consumer survey and important trends which have taken place since 1954 in the container field.

Very truly,

Ford Sammis

Consumer Preference & Motivations On Containers

1954 - 1957

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[fol. 377]

CONSUMER PREFERENCE FOR GLASS

1954 - 1957

- Since 1954, there have been many changes in consumer preferences on containers. Out of nine important products, consumer preference has remained static on only three -- home-delivered milk, beer, and baby food.

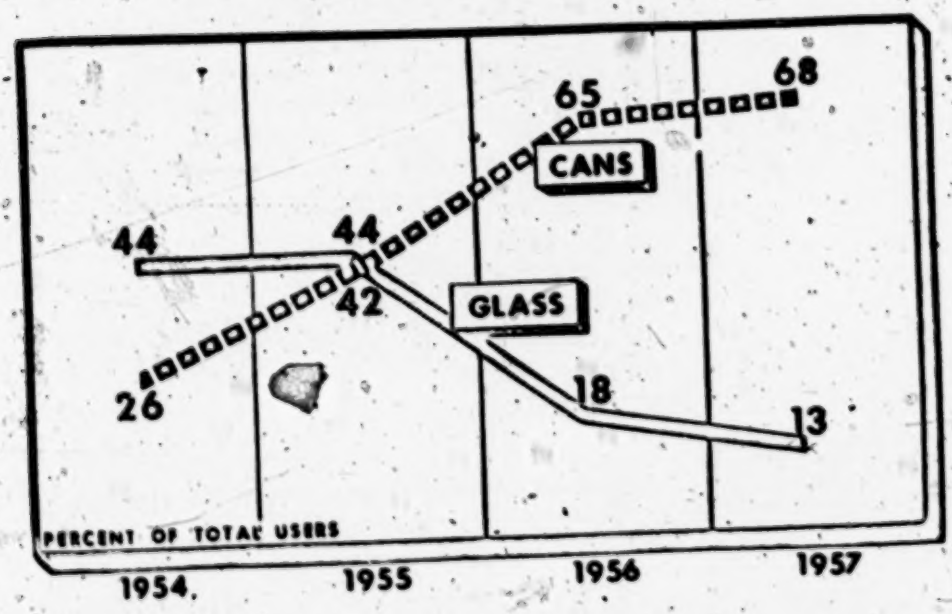
Preference for glass has increased materially for store-bought milk, soft drinks, and fruits and vegetables. Glass has lost ground in consumer container preference for liquid detergents, dry milk and tomato juice.

What has happened since 1954 in each of these product classifications is shown on the following charts.

(Fol. 378)

LIQUID DETERGENT-

CONSUMER CONTAINER PREFERENCE



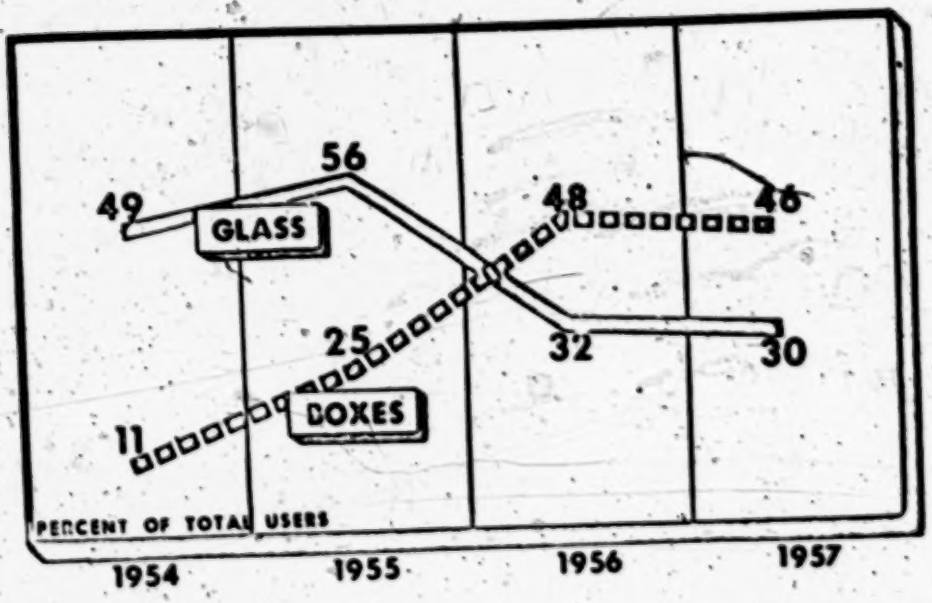
In 1954, 44% of all liquid detergent users preferred glass, in contrast to 26% preference for tin cans. By the following year, can preference had caught up to glass, and has continued to climb since then to its present position of 63%.

During 1956 and 1957, a large number of brands were introduced to the market in cans. Joy is the only leading brand still packed in glass jars, and Joy is available in cans as well as jars. During this period, preference for glass has dropped rapidly to the low level of 13% in 1957.

[Vol. 379]

DRY MILK

CONSUMER CONTAINER PREFERENCE



In 1954, glass enjoyed almost a 5 to 1 preference over cardboard boxes among dry milk users.

Carnation, with its new type of non-hygroscopic dry milk packed in a cardboard box, has made great gains in consumer acceptance since 1955, and is currently in No. 2 sales position. Along with Carnation's increase in sales has been a corresponding increase in preference for boxes to a current level of 46% of the market.

Glass preference has dropped to 30%.

[fol. 380]

DRY MILK-

CONTAINER MOTIVATIONS

GLASS

	1954	1957
STAY FRESHER	34%	49%
DOESN'T CAKE	-	25
Easier to handle	16	10
Can See Contents	12	6
Habit	11	6
Re-use	-	7
Can Re-cap	20	5

BOXES

	1954	1957
EASIER DISPOSAL	3%	20%
STORES BETTER	10	20
NO BREAKAGE	24	19
EASIER TO HANDLE	5	14
HABIT	-	12
BRAND IS IN BOXES	-	11
Cheaper	1	7
More Sanitary	32	5

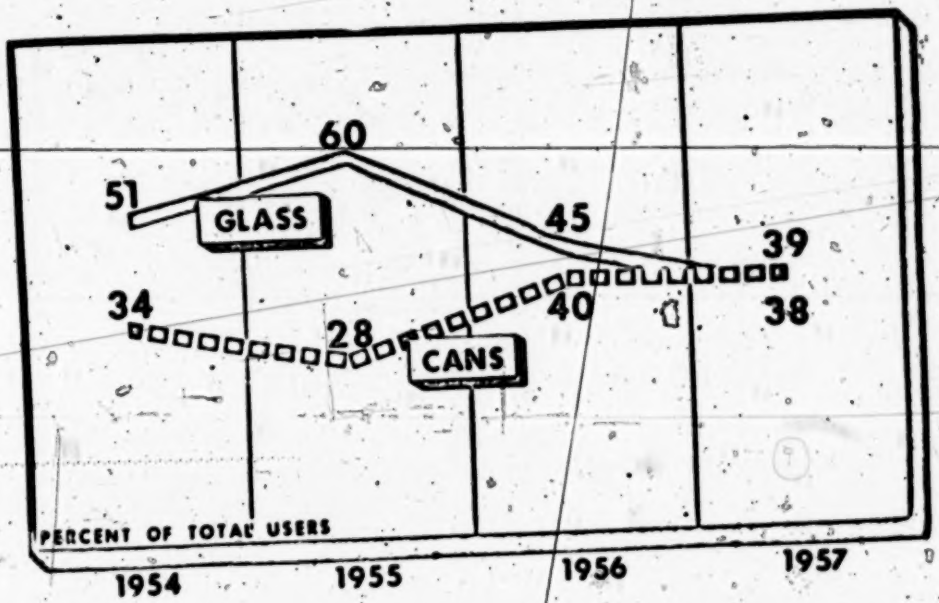
Principal motivation for preferring glass for dry milk is its ability to keep the product fresh, without caking. This quality wasn't recognized as much in 1954, before Carnation was put on the market, as it is today, when consumers have had a chance to compare hygroscopic products, like Pet, with the non-hygroscopic Carnation, which doesn't require an air-tight container to remain non-caking.

Easier disposal and better storage, principal box motivations, have increased in importance since 1954. Danger of breakage of glass, on the other hand, is less important than 4 years ago.

[Vol. 381]

TOMATO JUICE-

CONSUMER CONTAINER PREFERENCE



In spite of the fact that only a small percentage of the tomato juice pack is marketed in glass, 38% of all tomato juice users prefer glass. This is equal to the preference for tin cans.

During the previous 4 years, glass preference was even higher than it is now -- 60% in 1955. The decline is believed to be due to the increased percentage being packed in small size cans, eliminating the need for storing unused portions in the container. Under these circumstances, the major advantage of glass doesn't come into play.

[fol. 382] 2028

TOMATO JUICE-

CONTAINER MOTIVATIONS

GLASS

	1954	1957
STORE IN JAR		67%
BETTER FLAVOR		23
Habit		5
Can See Contents		4
Re-use		3
More Attractive		3

CANS

	1954	1957
NO BREAKAGE	20%	29%
HABIT	33	22
BRAND IS IN CANS		18
STORES BETTER		15
Cheaper		6
Sanitary		5

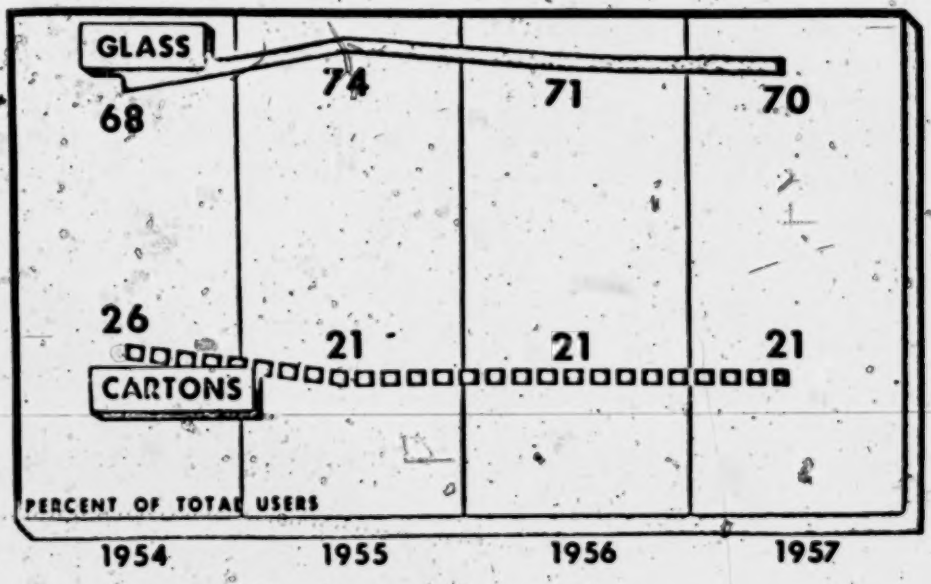
The dominant reason for preferring glass for tomato juice is consumers' belief that unused portions can safely be stored in glass, mentioned by 67% of those preferring glass. While this factor is non-operative in relation to small size cans which are used up in a single serving, it might become important when coupled with possible price savings of large size glass containers vs. small single-use tin cans.

Secondary motivation for glass is better flavor.

There are no strong basic reasons for preferring tin cans for tomato juice, except price (mentioned by 6% of those preferring tin cans).

HOME-DELIVERED MILK-

CONSUMER CONTAINER PREFERENCE



There has been virtually no change in consumer preference for home-delivered milk containers during the past three years. Glass remains in a dominant position, with 3 1/2 times the preference of cartons.

HOME-DELIVERED MILK-

CONTAINER MOTIVATIONS

GLASS

	1954	1957
CARTONS LEAK		28%
MORE SANITARY	20	27
BETTER FLAVOR		25
NO WAX IN MILK	14	23
EASIER TO HANDLE	16	10
Can See Contents		6
Habit	11	6
Gets Colder	10	5

CARTONS

	1954	1957
EASIER DISPOSAL		72%
NO BREAKAGE		27
STORES BETTER		11
Re-use	2	7
More Sanitary		6
Easier To Handle		6
Lighter		5

There have been no changes (except re-use) in any of the factors motivating preference for cartons. The dominant motivation is easier disposal, mentioned by 72% of those preferring cartons for home-delivered milk.

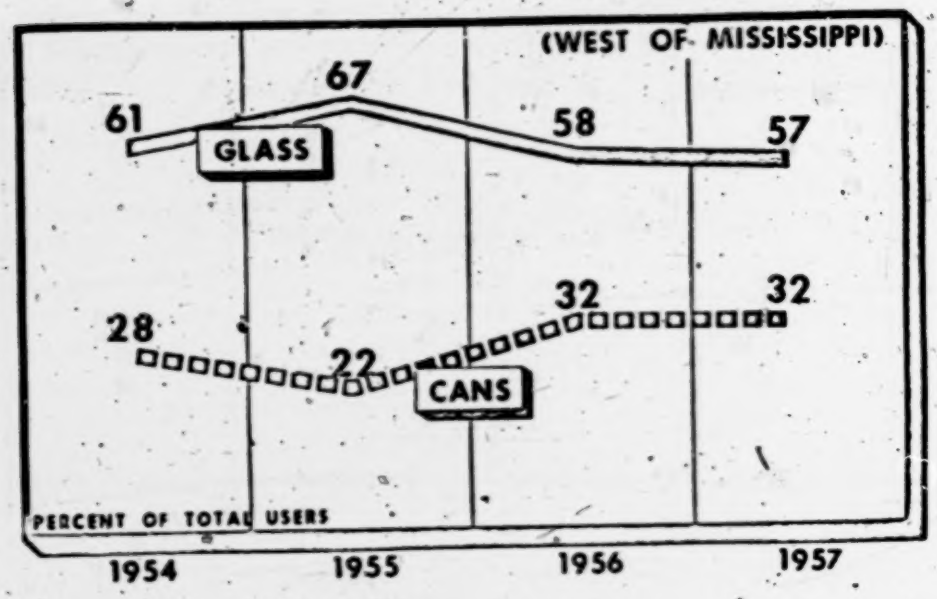
On the other hand, several changes have taken place in relative importance of reasons for preferring bottles. "More sanitary" has increased in importance, from 20% to 27%. This factor has been stressed in G. C. M. I. advertising. "No wax in milk" has increased from 14% to 23%, which may be a result of the "clean taste" appeal used in G. C. M. I. ads.

Several minor factors have decreased in mention.

[fol. 385]

BABY FOOD-

CONSUMER CONTAINER PREFERENCE



This chart relates only to the area west of the Mississippi, where glass jars are in competition with tin cans for the baby food market.

Container preference has remained fairly stable during the last four years in the baby food field. Preference for glass has consistently been above 57%, can preference has not risen above 32%. Thus, in consumer preference, glass leads tin 2 to 1, whereas almost the reverse situation exists in sales, due to the dominance of Gerber, the only major brand still packed in tin in this area.

BABY FOOD-

CONTAINER MOTIVATIONS

GLASS

	1954	1957
STORE IN JAR		80%
HEAT & SERVE IN JAR	-	11
Habit	4	7
Better Flavor		6
Can See Contents		6
Easier To Handle		4
Re-use	8	3

CANS

	1954	1957
NO BREAKAGE		35%
CHEAPER	13	30
BRAND IS IN CANS		20
HABIT		17
Stores Better	21	4
Easier To Handle	13	4
Lighter	8	3

In 1954, Beechnut was the only brand in glass in the area West of the Mississippi, and its distribution and sales penetration was so low that few baby food users had had any direct experience with glass-packed baby food. Asking their preference on container was therefore largely a hypothetical question.

Since then, Heinz has entered the market in glass and there is hardly a super-market that doesn't carry glass-packed baby food. An interesting change in motivations has developed from the 1954 hypothetical situation to the condition of actual experience existing in 1957.

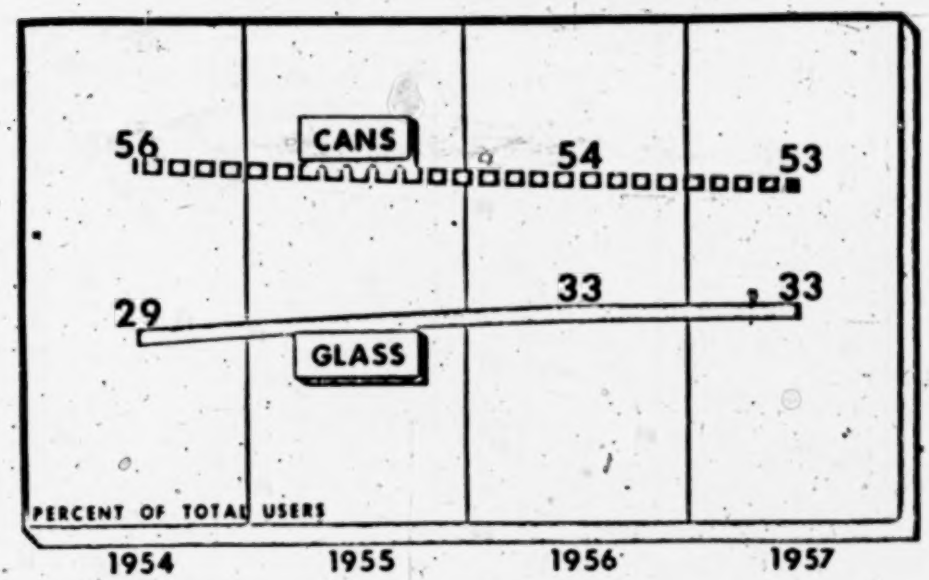
As consumers have been able to see cans and jars side by side, they have changed their minds regarding cans' supposed superiority on storing better, easier to handle and lightness. Conversely, it has become apparent to more of them that cans are cheaper, which has made this a major motivational factor.

Increased experience with glass has brought about a lower valuation placed on re-use.

[fol. 387]

BEER-

CONSUMER CONTAINER PREFERENCE



Beer container preference has exhibited no violent fluctuations, but there has been a slight increase in acceptance of glass as a beer container, as shown above. This chart represents preference between cans and one-way bottles at the same price. One-third of all beer drinkers currently prefer one-way bottles over cans.

[fol. 388]

BEER-

CONTAINER MOTIVATIONS

GLASS

	1954	1957
BETTER FLAVOR	36%	55%
DRINK FROM CONTAINER	12	19
Keeps Better		13
Can See Contents	6	10
Easier To Handle	2	6
Gets Colder		6
Habit		6

CANS

	1954	1957
GETS COLDER	26%	44%
STORES BETTER	26	35
NO BREAKAGE	23	32
BETTER FLAVOR		19
EASIER DISPOSAL		10
Lighter		6
Easier To Handle	1	6
Drink From Can	8	5

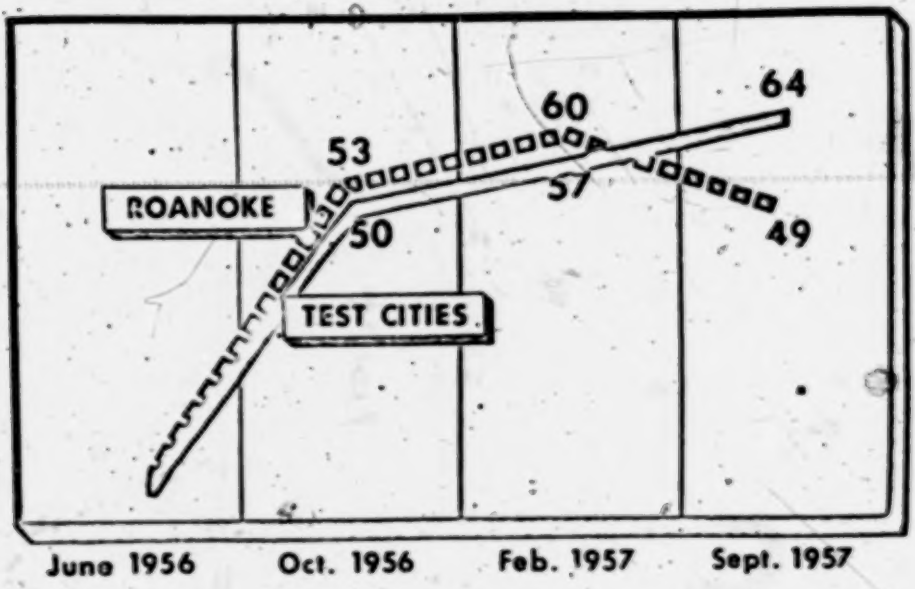
Motivations, unlike preference, have undergone considerable change in the beer field. All major motivations for both cans and one-way bottles are getting stronger, indicating that consumers are giving more serious consideration to beer containers.

Better flavor for bottles has increased from 36% to 55% of those who prefer bottles. The factor of drinking from the bottle is also up.

For cans, there is greater importance of getting colder (which also means gets cold faster and stays cold longer), ease of storage, and no danger of breakage. Liking to drink from the can is less important.

BEER-

ONE-WAY DISTRIBUTION IN VIRGINIA



In June, 1956, one-way beer bottles were legalized in Virginia. Several brewers entered the market with one-ways, accompanied by radio and TV advertising. GCMI conducted a newspaper advertising campaign in three test markets - Alexandria, Richmond and Norfolk.

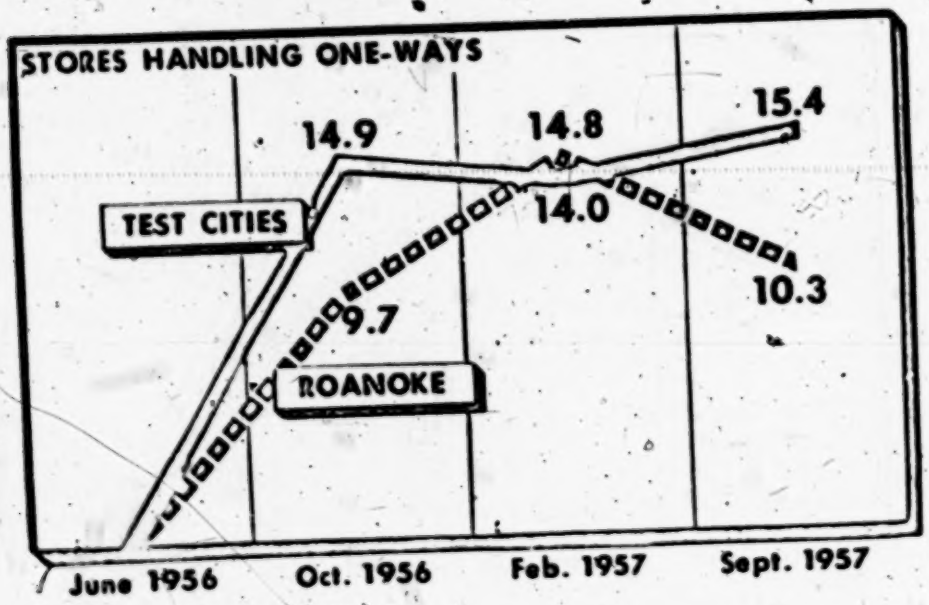
This chart shows the percentage of beer outlets handling any brand of one-way bottles in the three test markets, and in Roanoke, a control city where no advertising was done.

One-ways achieved 50% - 53% distribution in both test and control cities within four months after legalization, going up to 57% - 60% by February, 1957. Since then, distribution has dropped off in Roanoke, where no advertising was done, but has continued to climb to 64% in the test cities.

[Col. 3B]

BEER-

ONE-WAY SHARE OF MARKET IN VIRGINIA



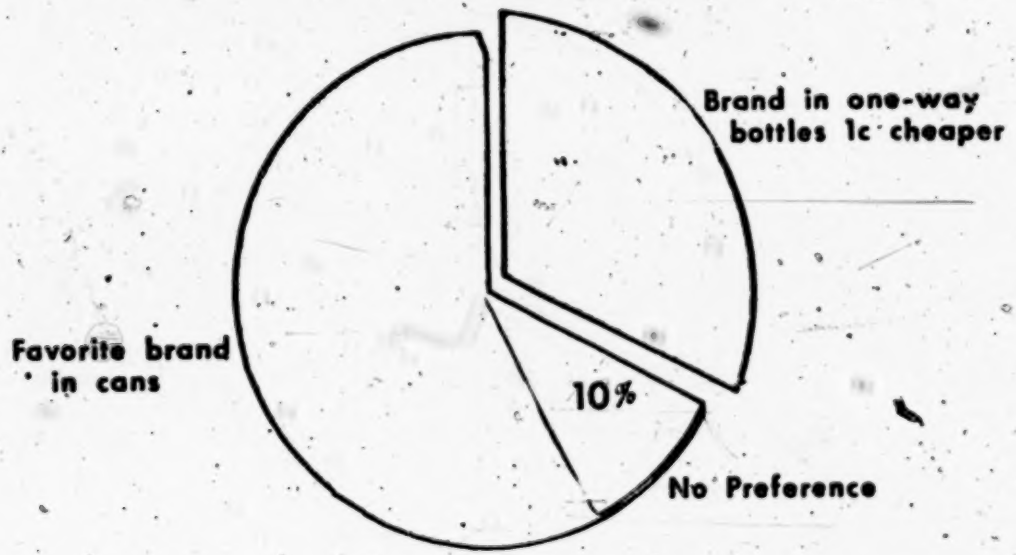
In the test cities, one-way sales climbed rapidly within four months to 14.9% of total beer sales in those stores handling one-way bottles. Sales have stayed at this level ever since, increasing slightly to 15.4% in September, 1957.

In Roanoke, where no advertising was done, sales increased at a slower rate, but reached a level equal to the test cities in February, 1957. Since then, however, Roanoke sales have declined to 10.3% of total beer volume.

[fol. 321]

BEER-

FAVORITE BRAND IN CANS VS. SOME OTHER BRAND IN ONE-WAY BOTTLES, 1c CHEAPER



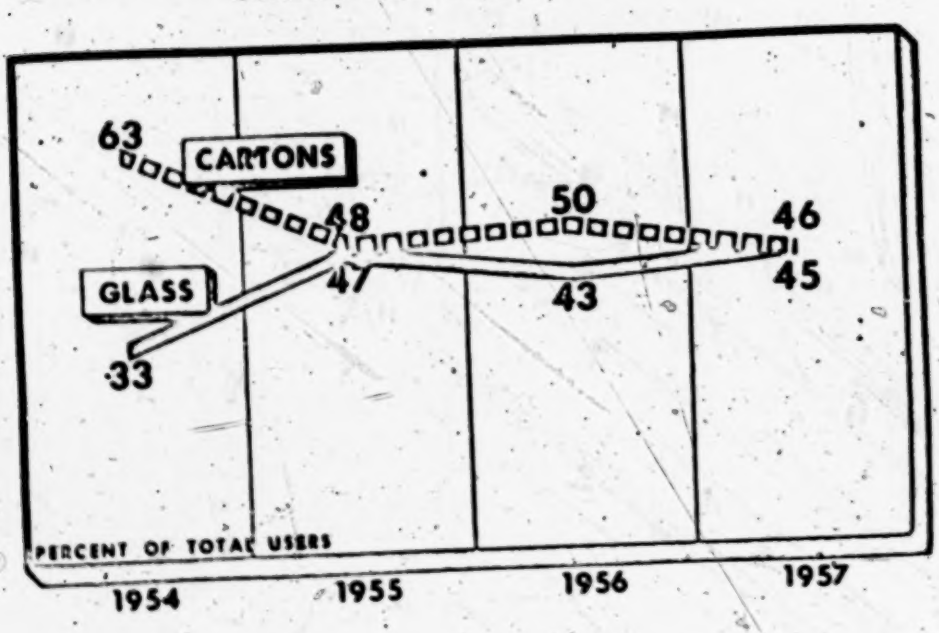
In Virginia, the three brewers who achieved greatest success with one-way bottles priced them at 6/99¢, compared with 6/$1.08 for sectional brand cans and 6/$1.25 for premium brand cans.

Under this price situation, surveys conducted in Virginia indicated that 29% of all beer drinkers would switch from their favorite brand in cans to a lower priced brand in one-way bottles. Sales results in the Norfolk area confirmed this finding.

To determine whether this same sensitivity to lower price existed in other parts of the country, the same question was asked of all beer drinkers in the national survey sample in August, 1957. 32% indicated they would switch to some other brand in one-ways, if that brand were 1¢ cheaper.

STORE-BOUGHT MILK-

CONSUMER CONTAINER PREFERENCE



In 1954, it was found that a surprisingly large 33% of all store buyers of milk preferred glass bottles, even though practically no milk was sold in bottles through stores at that time.

Since then, preference for bottles has increased to 46%, slightly higher than the existing preference for cartons.

[fol. 393]

STORE-BOUGHT MILK-

CONTAINER MOTIVATIONS

GLASS

	1954	1957
CARTONS LEAK		33%
MORE SANITARY	16	30
NO WAX IN MILK	13	30
BETTER FLAVOR		23
Easier To Handle	14	7
Can See Contents	10	5
Gets Colder		5

CARTONS

	1954	1957
EASIER DISPOSAL	67%	72%
NO BREAKAGE		19
STORES BETTER		10
More Sanitary	3	8
Lighter	20	7
Easier To Handle	2	6
Re-use		4
Habit		4

The principal motivation for cartons is easier disposal (not having to take bottles back to the store), mentioned by 72% of those preferring cartons. "Cartons are lighter," which was an important reason in 1954 has dropped to only 7% mention in 1957, probably because few persons can remember what it used to be like to carry bottled milk home from the store.

A number of changes have taken place in bottle motivations. "More sanitary" and "no wax in milk" have doubled in importance, becoming major motivations. (See comments on G.C.M.I. advertising under Container Motivations for home-delivered milk).

2040

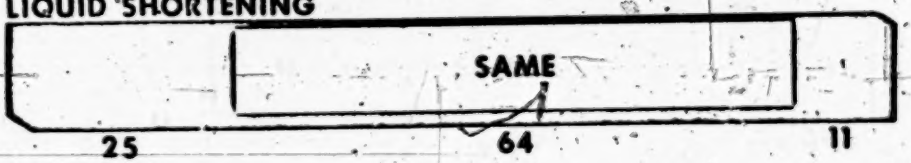
[for 394]

SALAD & COOKING OIL

CONSUMER CONTAINER PREFERENCE

USE, COMPARED TO YEAR AGO

LIQUID SHORTENING

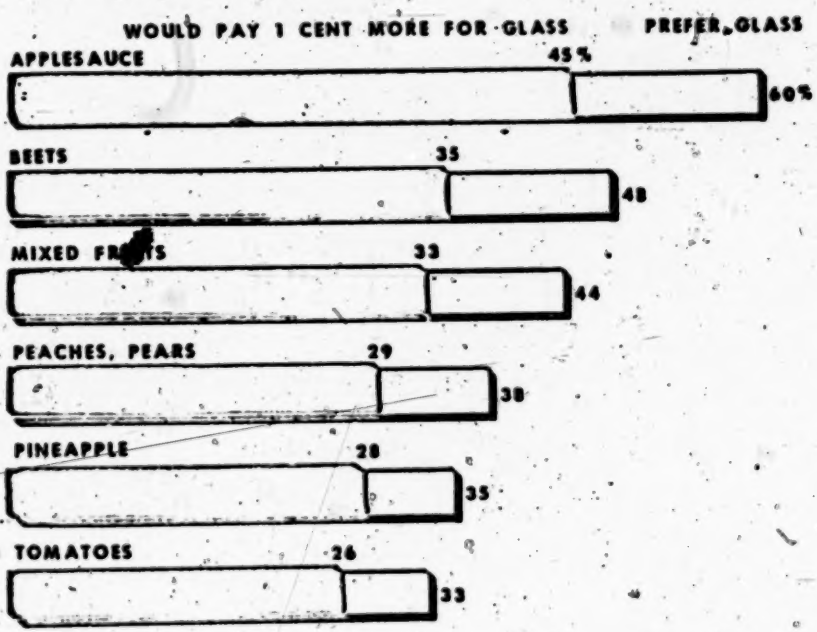


SOLID SHORTENING

As shown by the top bar, 68% of all salad oil users prefer glass, giving glass a 5 to 1 ratio over tin.

The two bottom bars reveal a trend from solid to liquid type shortening that is currently taking place. 20% are using less solid shortening than they did a year ago. 25% are using more liquid shortening.

FRUITS & VEGETABLES



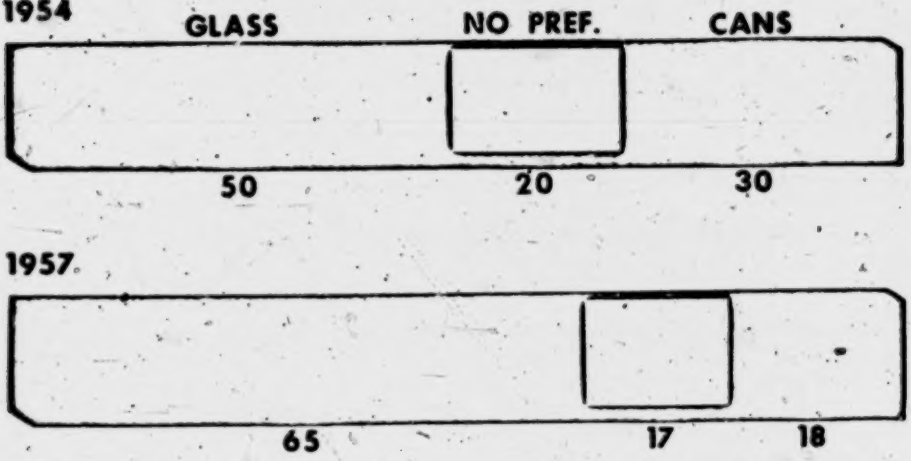
The total lengths of the bars above (red plus yellow) show the percentage of users who prefer glass for each product listed. The red portion of the bars reflects the percent of users who would pay 1¢ more per jar to obtain glass.

It is obvious from this chart that there exists not only wide acceptance of glass in the fruit and vegetable field, but also that there is a genuine consumer demand for glass.

60% of all applesauce users prefer glass; 45% are willing to pay 1¢ more per jar for glass. The same situation, in lesser degree, exists for the other products shown.

SOFT DRINKS-

CONSUMER CONTAINER PREFERENCE



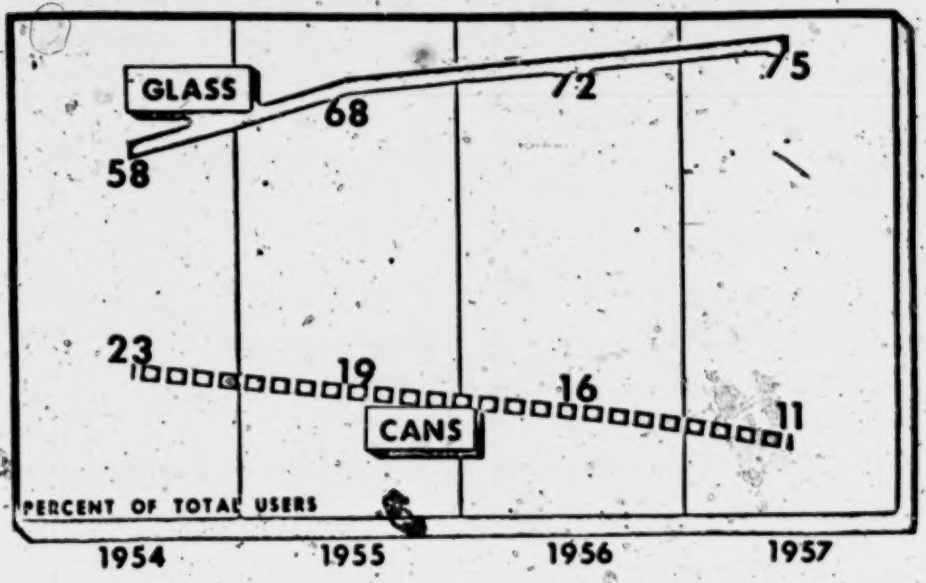
Consumer preference for bottles as a soft drink container has increased from 50% to 65% since 1954. Conversely, can preference has decreased from 30% to 18%. This chart covers a complete cross-section of soft drink users - men, women and children of all ages.

[fol. 397]

2043

SOFT DRINKS- WOMEN

CONSUMER CONTAINER PREFERENCE



To show the trend in soft drink container preference year by year, the above chart on women drinkers only indicates that can preference has been steadily declining, while bottle preference has been steadily rising.

This chart, and the preceding one, reflect preference between cans and one-way bottles at the same price, which measures preference for container material without extraneous factors. A measure of preference which takes into account the 2¢ differential on returnable bottles is as follows:

	All Users	Men	Women	Children
Prefer returnable bottles	55%	43%	54%	62%
Prefer one-way bottles	22%	27%	27%	15%
Prefer cans	9%	12%	6%	9%
No preference	14%	16%	13%	14%

[Vol. 386] 2044

SOFT DRINKS-

CONTAINER MOTIVATIONS

GLASS

	1954	1957
BETTER FLAVOR	24%	37%
DRINK FROM BOTTLE	18	27
SANITARY		14
CAN SEE CONTENTS	8	13
HABIT		12
Easier To Handle	3	9
Can Re-cap	2	5

CANS

	1954	1957
NO BREAKAGE	39%	54%
GETS COLDER, FASTER	11	22
STORES BETTER	13	18
EASIER DISPOSAL		12
Better Flavor		8
Easier To Handle	1	7
Habit	1	5
Lighter		4

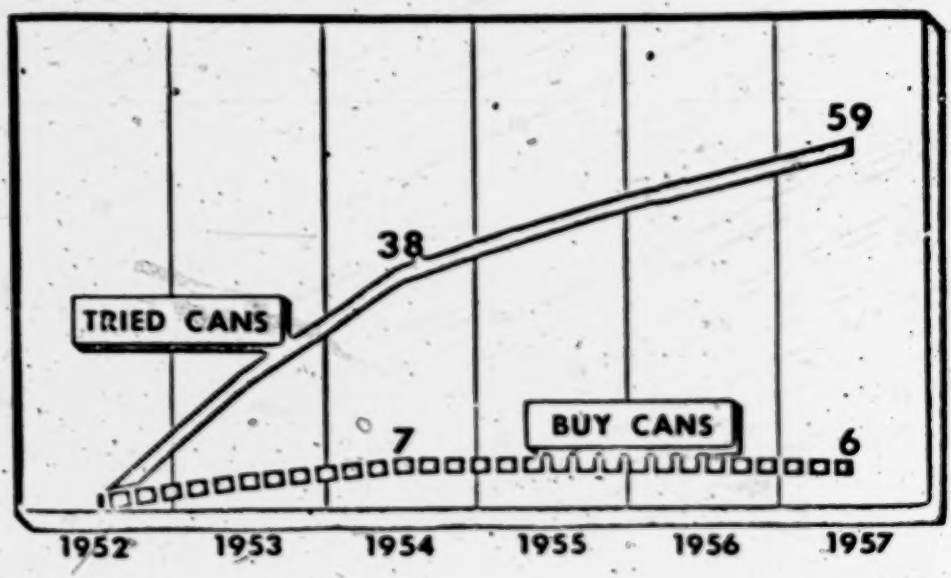
Better flavor and drinking from bottle are leading reasons for preferring bottles for soft drinks. Both have increased in importance since 1954, along with visibility of contents and ease of handling.

No danger of breakage is the most important factor affecting can preference. Since can preference has declined to the hard core of real can lovers, this factor has become of greater significance percentage-wise.

2045

SOFT DRINKS-

SAMPLING & SALES OF CANS



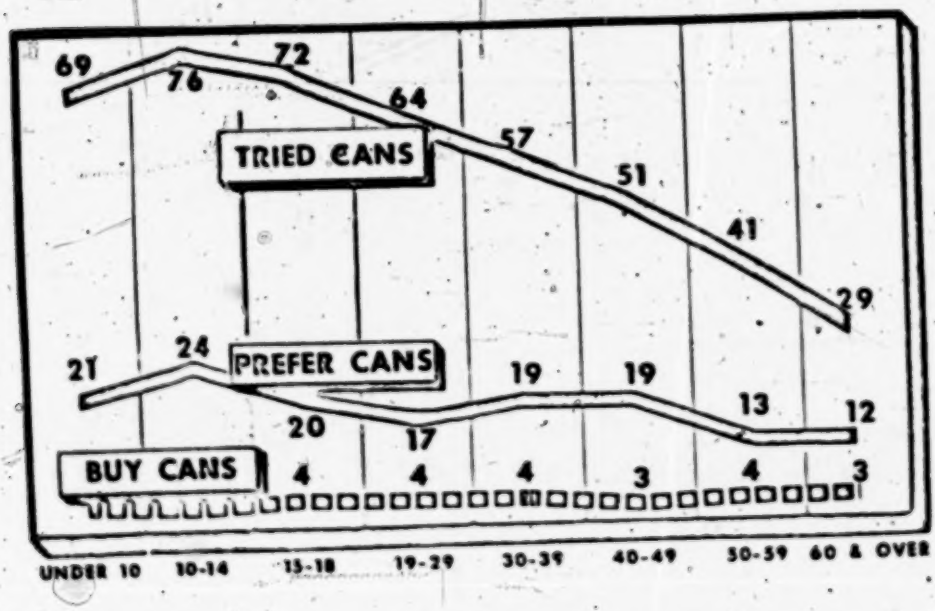
It is possible to reconstruct from G. C. M. I. national consumer surveys a complete history of can penetration since canned soft drinks were first put on the market in 1952.

Within two years, bottlers of canned soft drinks had succeeded in getting 38% of all soft drink users in the United States to try their product. By 1957, a total of 59% had tried canned soft drinks, but rate of penetration of the market is slowing down.

In spite of this wide sampling campaign, few persons have switched permanently to cans. At no time since 1952 have more than 7% of total soft drink users been regular purchasers of cans. Furthermore, most of those who buy cans also buy bottles, more bottles than cans.

SOFT DRINKS-

CAN PENETRATION BY AGE GROUPS



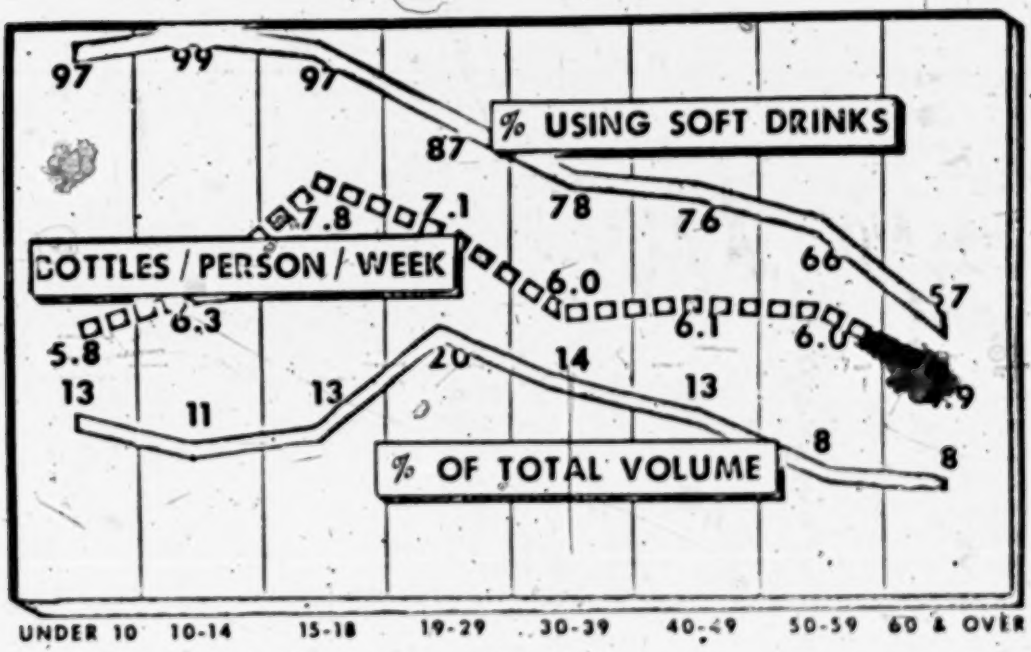
Canned soft drinks have had their greatest success with children, reaching their peak in the 10 - 14 year age group (sub-teenagers). 76% of this group have tried cans.

Penetration of the can-sampling campaign falls off steadily as age increases. Only 29% of the 60 and over group have tried canned soft drinks.

Preference for cans over one-way bottles decreases slightly with age, but regular use is steady. However, sales of canned soft drinks don't constitute over 4% of total soft drink purchasers in any age group.

SOFT DRINKS-

CONSUMPTION BY AGE GROUPS



This chart shows soft drink consumption by age groups, regardless of type of container.

The top bar represents percent of total persons (both sexes) in each age group who use soft drinks. The dotted bar shows the average number of bottles per person per week for soft drink users in each age group.

It is obvious that soft drinks are virtually a universal beverage among children and teen-agers, with highest per capita consumption among the high school group. Extent of use drops off steadily as age increases, but per capita consumption remains at a level plateau of 6 bottles per week until age 60.

The bottom line represents the percent of total soft drink volume consumed by each age group. The 10-18 year old group (covering two columns of the chart) accounts for 24% of total volume. However, from an advertising standpoint, the 19-39 group may be more important, since they not only account for 34% of total volume themselves, but are also the parents of the high per capita children.

[fol. 402] GOVERNMENT'S EXHIBIT 85

Minutes of Meeting

Market Research and Promotion Committee
GCMI Conference Room
New York, New York

April 14, 1954

Present:

F. B. Pollock, Chairman—Thatcher Glass Manufacturing Co., Inc., J. S. Algeo—Hazel-Atlas Glass Company, C. G. Bensinger—Owens-Illinois Glass Company, E. J. Costa—Crown Cork and Seal Company, J. C. Feagley—Armstrong Cork Company, W. V. Fisher—Anchor Hocking Glass Corporation, J. S. Heuisler—Maryland Glass Corporation, G. A. Mengle—Brockway Glass Company, Inc., P. O'C. White—White Cap Company.

Absent:

E. F. Ball—Ball Brothers Company, Inc., F. H. May—Foster-Forbes Glass Company.

Others Present:

R. L. Cheney—GCMI, S. B. DeMerell—Anchor Hocking Glass Corporation, J. W. Fisher—Ball Brothers Company, Inc., V. L. Hall—GCMI.

1. Call to Order.

The meeting was called to order by Chairman Pollock, who presided. Mr. Cheney acted as Secretary.

2. The minutes of the previous meeting, held on November 10, 1953 were approved as issued by the Secretary.

3. Plans and Organization—Progress Report.

(a) Mr. Cheney reported that good progress has been made in the basic Market Research phase of the Division activity. Continuing data collection is proceeding under the direction of a trained research assistant, and a library type file is set up, containing current data from some 35

business publications, all government sources, newspapers, and many research organizations and associations.

(b) Mr. Ford Sammis has been engaged on a retainer and per diem basis (for extra time) as Market Research consultant. Other organization progress has been disappointing. In spite of widespread search and over thirty interviews, neither a satisfactory Public Information Director nor Packaging Engineer has yet been located.

[fol. 403] 4. Depth Survey.

The plans for Depth Studies on Glass Containers presented by Ford Sammis in his proposal of March 15, 1954, were discussed and a progress report was given of the work accomplished to date. Numerous suggestions were made as to the proposed areas of opinion to be studied, and Mr. Cheney was instructed to listen to recordings of early interviews and guide the survey in line with Committee recommendations.

The Committee expressed a desire to hear sample recorded interviews at its next meeting. The target date for completion of the survey being May 15th, the Committee requested that Mr. Sammis report on this at the May membership meeting.

5. Task Groups.

Mr. Cheney requested the Committee to recommend two task groups made up of Sales Managers to whom he could turn for guidance as needed. Upon motion duly made, seconded and unanimously passed, it was

> Resolved that the Board of Trustees be requested to appoint two task groups comprised of representatives of the following member companies:

Glass Company Task Group

Anchor Hocking Glass Corporation
Armstrong Cork Company
Ball Brothers Company, Inc.
Brockway Glass Company, Inc.
Carr-Lowrey Glass Company
Glass Containers, Inc.
Hazel-Atlas Glass Company

Lamb Glass Company
Laurens Glass Works, Inc.
Maryland Glass Corporation
Owens-Illinois Glass Company
Thatcher Glass Manufacturing Co., Inc.

Closure Company Task Group

Anchor Hocking Glass Corporation
Armstrong Cork Company
Bernardin Bottle Cap Co., Inc.
Crown Cork & Seal Company
Owens-Illinois Glass Company.
White Cap Company

[fol. 404] 6. Baby Food Situation.

A quick survey of the St. Louis baby food market had been made by GCMI staff members and was presented, and the national market for baby foods in glass was studied and discussed. Further action was deferred for three months.

7. Carbonated Beverage Situation.

Mr. Cheney gave a report of the recent West Coast Sub-Committee meeting wherein the seriousness of the competition from soft drink cans was emphasized. He read a resolution of the Sub-Committee recommending that a consumer and dealer attitude survey be conducted in California and in an appropriate eastern market, to determine the progress and acceptance of the can as a soft drink container.

Recent developments and reports of the progress of cans in markets across the country were reviewed, and a One-Way bottle "test market" merchandising program proposed by a soft drink parent company was discussed. It was the consensus of the Committee that the GCMI newspaper advertising program suggested by the latter company could not be considered at this time.

The Director of Market Research and Promotion was instructed that the Committee policy with regard to the soft drink situation for the present was to keep close watch of new developments, to recommend and promote the use of One-Way bottles in those markets where there was a consumer demand for a No-Deposit package, and to recommend, as the occasion arises, that individual bottlers pro-

tect their industry by vigorously advertising the advantages of beverages in bottles.

Soft Drink Survey. Upon motion duly made, seconded and unanimously carried, the Director was authorized to proceed with a Survey of Consumer & Retailer Attitudes toward soft drinks in cans, in the Philadelphia and California areas, as proposed by the Ford Sammis organization in its letter of March 26, 1954.

8. Beer and Soft Drink Packaging Cost Studies.

After reviewing a report covering the need and use to be made of certain proposed packaging cost studies in the beer and soft drink fields, the Committee asked the Director to obtain definite proposals from two or three cost engineering agencies, outlining specifically what information would be obtained, together with a definite plan as to its use. This is to be discussed further at the next meeting, and a special survey of beer distributors is to be considered.

9. Milk Bottle Public Relations Committee.

Messrs. Hall and Cheney reported progress made by the Milk Bottle Public Relations Committee, particularly as to [fol. 405] the Buffalo and Milwaukee test compaigns. No survey data of results is yet available but dealer reaction indicates considerable success. The Committee has recommended a third test campaign in the St. Louis area, and Mr. Hall reported that milk bottle manufacturers representing over 90% of milk bottle production had signified their desires to contribute to a fund to aggregate $35,000 for this purpose, at the rate of 5 cents per gross of milk bottles shipped, until the total is reached, and that the Committee recommends approval of this project.

Upon motion duly made, seconded and unanimously passed, it was

> Resolved that the recommendation of the Milk Bottle Public Relations Committee be approved and that the Board of Trustees be requested to authorize the proposed program.

10. Publicity Activities.

Examples of continued bad press notices regarding glass containers based on inaccurate, uninformed or biased views, were cited, along with opportunities for constructive publicity. It was the consensus of the meeting that these situations should be promptly handled, and that this pointed up the need for early engagement of a Public Information Director.

11. Next Meeting.

It was decided to hold the next meeting of this Committee at The Greenbrier, White Sulphur Springs, West Virginia, at 1:00 P.M. on Sunday, May 16, 1954.

12. Adjournment.

There being no further business, the meeting adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

RLC:H

[fol. 406] GOVERNMENT'S EXHIBIT 86

Minutes of Meeting

Market Research and Promotion Committee

The Greenbrier
White Sulphur Springs, West Virginia

Sunday, May 16, 1954

Present:

F. B. Pollock, Chairman—Thatcher Glass Manufacturing Co., Inc., J. S. Algeo—Hazel-Atlas Glass Company, E. F. Ball—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, E. J. Costa—Crown Cork and Seal Company, J. C. Feagley—Armstrong Cork Company, W. V. Fisher—Anchor Hocking Glass Corporation, J. S. Heuisler—Maryland Glass Corporation, G. A. Menglo—Brockway Glass Company, Inc., P. O'C. White—White Cap Company.

Absent:

F. H. May—Foster-Forbes Glass Company.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI, S. F. Davis—Owens-Illinois Glass Company, S. B. DeMerell—Anchor Hocking Glass Corporation, Fred E. Fuller—GCMI General Counsel, V. L. Hall—GCMI, H. C. Herger—Pierce Glass Company, J. P. Levis—Owens-Illinois Glass Company, C. R. Megowen—Owens-Illinois Glass Company, Ford Sammis—Marketing Economist, F. H. Wright—GCMI.

1. Call to Order.

The meeting was called to order by the Chairman, Mr. F. B. Pollock, who presided. Mr. Cheney acted as Secretary.

2. Plans and Organization—Progress Report.

Mr. Bush Barnum, new GCMI Public Information Director, was introduced to the Committee, and Mr. Cheney's recommendations concerning plans for hiring a Packaging Economics Engineer capable of handling important, high level contacts, were approved by the Committee. With the exception of an Editor, to be hired later, this would complete the proposed organization.

3. Packaging Cost Studies—Beer and Soft Drinks.

Proposals were submitted by the Director of M. R. & P. from three management engineering firms, for diagnostic [fol. 407] and cost studies covering the packing and distribution of beer and soft drinks in cans vs. One-Way bottles. A thorough discussion followed which disclosed the Committee opinion to be that top priority should be given to a thorough diagnostic study of all phases of the merchandising and distribution of beer and soft drinks in One-Way bottles as compared to cans, with special emphasis on distributor activity and bottling house costs. A task group consisting of C. G. Bensinger, E. J. Costa, S. B. DeMerell, and G. A. Mengle was appointed by the Chairman to assist in the selection of an outside agency to handle this study.

4. Brochure of Charts and Statistics.

The Committee reviewed the dummy of a proposed brochure for glass company salesmen and for very limited distribution to business editors, giving the basic statistics on the glass container and other industries contained in "A Survey of the Market Problems of the Glass Container Industry" as presented by Mr. Cheney at Fort Lauderdale.

Photostatic copies were taken by the Committee members for further study—suggestions or additions to be submitted to the Director as soon as possible.

5. Plan for Retail Store Panels.

A plan for Retail Store Panels in Philadelphia and Los Angeles, which would furnish a means for continuing audits covering the relative sales of soft drinks in cans and bottles, and of tinned and glassed baby foods, was discussed.

The Director was authorized to proceed with a plan for such store panels, as proposed by the Ford Sammis organization on March 23, 1954.

6. Depth Survey Techniques.

Mr. Ford Sammis reviewed the results of the Depth Surveys recently completed, and played tape recordings of actual interviews for the Committee. The plans to present a report of these surveys at the membership meeting were approved.

7. Publicity.

The opportunity for constructive publicity and the need for correcting mis-statements concerning the industry were stressed by the Committee, and plans were approved to handle the basic requirements of this situation during the coming months prior to undertaking any broad program of product publicity and advertising, which may later be recommended. This activity will provide a means, under the present budget, for dealing with the immediate needs of the Soft Drink situation.

[fol. 408] 8. Joint Meeting with Soft Drink Manufacturers.

Representatives of all companies manufacturing soft drink bottles were then invited to join the meeting, and Mr. Ford Sammis gave a report of the Consumer and Dealer Surveys covering soft drinks in cans and bottles in the Philadelphia and California areas.

There was a lengthy discussion of the competition being offered by the soft drink can, and the need was expressed for earliest possible distribution of GCMI drawings covering recommended designs for One-Way carbonated beverage bottles, and also for material in pamphlet form setting forth the advantages of glass bottles.

It was suggested that the Trustees be requested to set up a special committee of soft drink bottle manufacturers to keep track of continuing developments in this field and to recommend action when needed. Mr. Cheney said he would convey this suggestion to the Board.

9. Adjournment.

There being no further business, the meeting adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

RLC:H

[fol. 409] GOVERNMENT'S EXHIBIT 87

Minutes of Meeting

Market Research and Promotion Committee
GCMI Conference Room
New York, New York

September 22, 1954

Present:

F. B. Pollock, Chairman—Thatcher Glass Mfg. Co., Inc., J. S. Algeo—Hazel-Atlas Glass Company, E. F. Ball—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, E. J. Costa—Crown Cork and Seal Company, Inc., J. C. Feagley—Armstrong Cork Company, W. V. Fisher—Anchor Hocking Glass Corporation, J. S.

Heuisler—Maryland Glass Corporation, G. A. Mengle—Brockway Glass Company, Inc., P. O'C. White—White Cap Company.

Absent:

E. D. Easterby—Laurens Glass Works, Inc.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI, S. B. DeMerell—Anchor Hocking Glass Corporation, Fred E. Fuller—GCMI General Counsel, V. L. Hall—GCMI, H. W. Kuni—GCMI, Ford Sammis—Marketing Economist, W. C. Schade—Ball Brothers Company, Inc.

1. Call to Order.

The meeting was called to order by the Chairman, Mr. E. B. Pollock, who presided. Mr. Cheney acted as Secretary.

The Chairman stated that this meeting was called especially to review the results of the Market Research program to date; that the director and staff of the Market Research and Promotion Division had been asked to make "recommendations . . . . . that might be undertaken which looked promising" as instructed in the resolution establishing the division; that division studies indicated recommendations; that the purpose of the meeting was Committee consideration of the division recommendations; that, in consequence, time would not be taken for detailed division activities since the previous meeting on August 12, 1954.

2. Minutes of Previous Meeting.

The minutes of the meeting held on August 12, 1954 were approved as issued by the Secretary.

[fol. 410] 3. Consumer and Dealer Attitude Surveys.

Ford Sammis presented information on (1) his depth survey, (2) his Philadelphia and California soft drink studies and (3) the nationwide consumer and dealer survey.

The last named is an extremely broad undertaking, involving 10,000 consumers, 2000 retailers and a total of some

3,000,000 individual answers to be collated. In the course of the time available, it was only possible for Mr. Sammis to give highlights of his extensive program. This material was also covered in confidential, numbered reports issued only to Committee members and entitled "National Container Survey, Preliminary Summary, September 22, 1954".

4. Beer Container Diagnostic Study.

Three representatives of McKinsey & Company,—Everett Smith, William Graham and David Fox,—presented an oral report of their recent beer survey. Written reports will be submitted to Committee members at a later date.

5. Milk Bottle Test Markets Results.

R. L. Cheney presented summaries of recent test campaigns in Buffalo and Milwaukee and written reports were given to the Committee.

6. Recommended Industry Program.

Mr. Cheney then presented a 25 page report to the Committee entitled "A Recommended Program for the Glass Container Industry" which included the following sections:

Forward
Competitive Industries
Industry Trends
Defining the Problem
Aims and Objectives
A Total Impact Program including:—
Market Research
Public Information
Consumer Advertising Program
Choosing an Agency
Merchandising and Trade Promotion
Conclusion

After full discussion, the following resolution was duly moved, seconded and unanimously adopted:

Resolved, that the Committee on Market Research and Promotion recommends to the Trustees that the percentage of assessment which the Budget Committee has

[fol. 411] proposed to finance all regular activities of the Standing Committees, amounting to 14/100 of 1% be augmented by 16/100 of 1% to provide funds for an advertising and promotional program as submitted by the Committee herewith, making the membership dues for the year 1955 total 30/100 of 1% of net sales; Resolved Further, that the Committee recommends to the Trustees that at the time the budgets for 1956 and 1957 are under consideration there be included an assessment of 16/100 of 1% to finance advertising and promotional activities.

Respectfully submitted, R. L. Cheney, Secretary.

RLC:CH

[fol. 412] GOVERNMENT'S EXHIBIT 88

Minutes of Meeting

Market Research and Promotion Committee
The Broadmoor
Colorado Springs, Colo.

October 24, 1954

Present:

F. B. Pollock, Chairman—Thatcher Glass Mfg. Co., Inc., J. S. Algeo—Hazel-Atlas Glass Company, E. F. Ball—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, E. J. Costa—Crown Cork and Seal Company, Inc., J. C. Feagley—Armstrong Cork Company, J. S. Heuisler—Maryland Glass Corporation, G. A. Mengle—Brockway Glass Company, Inc., P. O'C. White—White Cap Company, E. D. Easterby—Laurens Glass Works, Inc.

Absent:

W. V. Fisher—Anchor Hocking Glass Corporation.

Present from West Coast Sub-Committee:

K. C. White, Chairman—Owens-Illinois Glass Company, F. L. Bower—Hazel-Atlas Glass Company, R. H. Dallas—Maywood Glass Company, F. W. McDonald—Glass Con-

tainers, Inc., William Simkins—Latchford-Marble Glass Company.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI, S. B. De-Merell—Anchor Hocking Glass Corporation, Fred E. Fuller—GCMI General Counsel, V. L. Hall—GCMI, Ford Sammis—Marketing Economist, W. C. Schade—Ball Brothers Company, Inc., G. F. Rieman—Ball Brothers Company, Inc., P. R. Goetz—Ball Brothers Company, Inc.

1. Call to Order.

The meeting was called to order by the Chairman, Mr. F. B. Pollock, who presided. Mr. Cheney acted as Secretary.

2. Minutes of Previous Meeting.

The minutes of the meeting held on September 22, 1954 were approved as issued by the Secretary.

[fol. 413] 3. Review of Proposed Presentation to the Membership.

Mr. Cheney then reviewed a 25 page report entitled "A Recommended Program for the Glass Container Industry" dated October 24, 1954, which was the same as the document of the same name dated September 2, 1954 which had been reviewed by the Committee at its previous meeting, except that two or three sections had been considerably condensed since the speakers at the following days' membership meetings would cover the sections orally and with charts.

He outlined the plan of the Market Research and Promotion Department for presenting the Committee's recommendation to the Industry at the meetings on the two following days, including the provision for a report illustrated by charts by Ford Sammis covering the results of the major marketing research survey that had recently been completed.

After discussion, upon motion duly made and seconded the following resolution was unanimously adopted:

Resolved, that Mr. Cheney be authorized to present "A Recommended Program for the Glass Container Industry"

as reviewed with this Committee today, to the Membership at its meetings on October 25 and October 26 with the proviso that he precede it with a statement to the effect that this recommended program represents the best thinking of the Committee at the present time in the light of present market research findings and industry problems as they currently appear, but that it should not be assumed that the execution of the plan would necessarily follow the recommendation as presented here except in general outline, but that if approved by the Membership any plan as put into effect would be with the approval of the Committee and the Board of Trustees.

4. West Coast Marketing Problems.

The members of the West Coast Sub-Committee then reviewed the marketing problems of the glass container industry in the West Coast area. Highlighted were the fact that the position of the 1-way beer bottles had declined in that market; intensive competition has been encountered from canned soft drinks, particularly in the Los Angeles and San Francisco areas; a second packer has switched 100% to glass for baby food in the California market and the two glass-packed baby foods in that area are advertising heavily and are apparently gaining in market position; and joint efforts between the bottle manufacturers and the California Nevada Manufacturers of Carbonated Beverages were reported to have been quite successful in meeting the advent of cans in the Los Angeles market.

[fol. 414] 5. Next meeting.

It was decided to hold the next meeting of the subcommittee at 8:30 A. M. Wednesday morning, October 27, 1954.

6. Adjournment.

There being no further business, the meeting was adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 415] GOVERNMENT'S EXHIBIT 89

Minutes of Meeting

Market Research and Promotion Committee
The Broadmoor
Colorado Springs, Colo.

October 27, 1954

Present:

F. B. Pollock, Chairman—Thatcher Glass Mfg. Co., Inc., J. S. Algeo—Hazel-Atlas Glass Company, E. F. Ball—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, E. J. Costa—Crown Cork and Seal Company, Inc., J. C. Feagley—Armstrong Cork Company, J. S. Heuisler—Maryland Glass Corporation, G. A. Mengle—Brockway Glass Company, Inc., P. O'C. White—White Cap Company, E. D. Easterby—Laurens Glass Works, Inc.

Absent:

W. V. Fisher—Anchor Hocking Glass Corporation.

Present from West Coast Sub-Committee:

K. C. White, Chairman—Owens-Illinois Glass Company, F. L. Bower—Hazel-Atlas Glass Company, R. H. Dallas—Maywood Glass Company, F. W. McDonald—Glass Containers, Inc., William Simkins—Latchford-Marble Glass Company.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI, S. B. DeMerell—Anchor Hocking Glass Corporation, V. L. Hall—GCMI, Ford Sammis—Marketing Economist, W. C. Schade—Ball Brothers Company, Inc., G. F. Rieman—Ball Brothers Company, Inc., P. P. Goetz—Ball Brothers Company, Inc.

1. Call to Order.

The meeting was called to order by the Chairman, Mr. F. B. Pollock. Mr. Cheney acted as Secretary.

2. Selection of an Advertising Agency.

With the approval by the members on a previous day of "A Recommended Program for the Glass Container Industry" and the report of the Budget Committee, the Chairman [fol. 416] stated that he thought it was in order to authorize the selection of an advertising agency by the Director of Market Research and Promotion. He stated that the Director had requested the appointment of a special three-man sub-committee of advertising managers to aid in this selection.

Therefore, after discussion, upon motion duly made and seconded the following resolutions were unanimously adopted:

> Resolved, that the Director of Market Research and Promotion proceed with the selection of an advertising agency in line with the plans for such selection outlined by him to the Committee this day, and
>
> Resolved, that Anchor Hocking Glass Corporation, Armstrong Cork Company and Owens-Illinois Glass Company be requested to supply the services of their advertising managers to act as a special Advisory Committee to the Director of Market Research and Promotion in connection with this selection.

3. Soft Drink Industry Talks.

The Director was instructed to circulate his talk which is to be made at several meetings of soft drink manufacturers to all members of G.C.M.I. He was also instructed to prepare a story for the brewing industry and for the dairy industry, setting forth the facts about those two industries which were incorporated in his soft drink talk.

4. Financial Analysts Program.

The Director was instructed to send copies of the material furnished to the financial analysts at New York and Boston to the financial analysts of the various insurance companies throughout the country.

5. Recommendations for use of the labor press.

Mr. Cheney then read a letter from the Glass Bottle Blowers Association recommending that a substantial amount of the advertising funds of G.C.M.I. be devoted to the labor press. It was the opinion of the Committee that it was too early to consider this matter at this time and the Director was asked to so advise the union.

[fol. 417] 6. N. C. A. Promotional Program.

The Director was instructed to refer to the Glass Container Task Group of the Market Research and Promotion Committee any questions or problems involved in cooperation with the N. C. A. promotional program.

7. Further report of West Coast activities.

Members of the West Coast Sub-Committee then continued a report of the marketing situation facing the glass container industry on the West Coast. The discussion was principally concerned with the opportunities for the sale of 1-way bottles for the carbonated beverage industry on the West Coast and it was reported that there seemed to be one or two success stories in the making for this container in southern California.

It was the concensus of the meeting that the office of the Market Research and Promotion director should keep more closely in touch with the West Coast Sub-Committee, for an interchange of views and adequate communication covering activities of the parent committee and the subcommittee, and of the office of the Director.

8. Adjournment.

There being no further business, the meeting was adjourned.

Respectfully submitted, R. L. Cheney, Secretary

[fol. 418] GOVERNMENT'S EXHIBIT 90

Minutes of Meeting

Market Research and Promotion Committee
GCMI Conference Room
New York, N. Y.

March 1, 1955

Present:

F. B. Pollock, Chairman—Thatcher Glass Manufacturing Company, Inc., J. S. Algeo—Hazel-Atlas Glass Company, E. F. Ball—Ball Brothers Company, Inc., E. J. Costa—Crown Cork and Seal Company, Inc., W. V. Fisher—Anchor Hocking Glass Corporation, G. A. Mengle—Brockway Glass Company, Inc., P. O'C. White—White Cap Company.

Absent:

C. G. Bensinger—Owens-Illinois Glass Company, E. D. Easterby—Laurens Glass Works, Inc., J. C. Feagley—Armstrong Cork Company, J. S. Heuisler—Maryland Glass Corporation.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI, S. F. Davis—Owens-Illinois Glass Company, S. B. DeMerell—Anchor Hocking Glass Corporation, J. A. Giddings—Brockway Glass Company, Inc., R. H. Hetzel—Armstrong Cork Company.

1. Call to Order.

The meeting was called to order by the Chairman, Mr. F. B. Pollock. Mr. Cheney acted as Secretary.

2. Minutes of Previous Meetings.

The minutes of the meetings held October 24, 1954 and October 27, 1954 were approved as issued by the Secretary.

3. 1955 Advertising and Promotion Plan.

The following representatives of Kenyon & Eckhardt,

Inc., GCMI's advertising agency, were then invited to join the meeting and were introduced by Mr. Cheney:

D. J. Maggini, Account Supervisor
R. B. Shirey, Account Executive
Miss Leslie Munro, Creative Chief
G. M. Ule, Research Director
Hal Davis, Director of Publicity & Promotion
J. P. Braun, Media Director

[fol. 419] The representatives of the agency then presented a "1955 Advertising Recommendation for the Glass Container Manufacturers Institute," and copies of this plan were distributed to those present and later mailed to absentees. Proposed advertisements were presented partly in preliminary photographs and partly in rough art work form.

After answering questions from the Committee members the representatives of the advertising agency left the meeting.

Mr. Cheney then explained that the plan as presented today was a modification of a plan reviewed the week before by an advisory group of advertising managers from the industry. Their many very helpful criticisms, suggestions and recommendations had been taken into account in bringing the plan to its present form although because of differing views on certain points and because of the need of accommodating the overall desires of the industry as he understood them, the Director alone assumed responsibility for the plan in its present form.

Mr. Cheney then presented the budget covering the plan presented by the agency which was as follows:

Budget

Advertising and Promotion

National Magazines (Space & Production)	$ 513,000
Television (Space & Production)	188,000
Trade Papers	30,000
Labor Papers	20,000
Merchandising and Publicity	75,000
Local Market Campaigns	232,000
Contingencies	2,800
	$1,060,800

The Director then recommended that in addition to the advertising and promotion plan just covered, $50,000 be appropriated for general publicity to be carried out under the direction of Bush Barnum, GCMI Public Information Director, and $22,000 be appropriated to continue the milk bottle promotional program for the balance of 1955. With these additions the total budget for advertising, promotion and publicity is $1,132,800 which was in conformance with the 1955 budget for GCMI as approved by the Board of Trustees and the members.

After many questions and considerable discussion of the plan as presented, upon motion duly made, seconded and unanimously carried, it was

> Resolved, That the Market Research and Promotion Committee approve the plans for the 1955 advertising and promotion and publicity as presented by the Director of Market Research and Promotion and the advertising agency and authorizes the Director to proceed to work out the details and put the plan into action.

[fol. 420] 4. Report of Beer Bottle Subcommittee Activities.

Mr. Cheney then reviewed the recent meeting of the Beer Bottle Sub-committee of this committee. He stated that the Board of Trustees had constituted this Beer Bottle Subcommittee as a subcommittee of the Committee of Market Research and Promotion, transferring it from the Committee on Container Design and Specifications since it appeared that its activities would be henceforth in the field of market research and promotion.

The committee had met and received a report from the representatives of McKinsey and Company covering their study of the possibilities of duplicating the marketing success which the one-way beer bottle was enjoying in Baltimore to the Detroit market. After hearing the report it had been the consensus of the Beer Bottle Subcommittee that in the absence of basic changes in the marketing pattern of beer in the Detroit market that it would not be

possible to duplicate the Baltimore experience there. The Subcommittee felt that in the light of all studies made to date it was not clear what course GCMI should take in the promotion of glass bottles for beer and it invited the parent committee to review the McKinsey and Company report and had recommended that the Director ask the Kenyon & Eckhardt research and marketing people to study this problem and see if recommendations for action could be developed.

The great importance of the beer container market to the glass container industry was stressed and the Director was urged to take every possible step towards developing activity in this connection which would offer promise of success.

5. 1955 Market Research Plans.

Mr. Cheney then presented plans for continuing the market research activities of the Institute in 1955, which plans were approved by the committee as submitted.

In this connection, upon motion duly made, seconded and unanimously carried, it was

> Resolved, That the "Glass Container National Survey 1954—Summary" as presented by Ford Sammis to the membership meeting at Colorado Springs, and as shown to this committee in printed form be held at GCMI on a library loan basis to GCMI members.

6. Committee Directives.

As means of increasing the value of the GCMI advertising and promotion campaign to its members the Market Research and Promotion division was directed by the committee to:

[fol. 421] 1. Send a summary of the Kenyon & Eckhardt report to the membership to inform them of the program.

2. Keep them advised of progress on the various parts of the plan.

3. Furnish the membership with advance proof of all

ads at least thirty days prior to their first appearance in the media.

4. Contact the advertising agencies of customer industries and associations of those industries, explaining our program endeavoring to obtain cooperation in their advertising.
5. Prepare and make available to the members in the necessary quantities material explaining the program, including advance proof of the advertising, and all other useful information about it that could be placed in the hands of the sales people in the industry for their use in merchandising the program in their contacts with the trade.

7. Adjournment.

There being no further business, the meeting adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 422] GOVERNMENT'S EXHIBIT 91

Minutes of Meeting

Market Research and Promotion Committee
The Greenbrier
White Sulphur Springs, West Virginia

May 8, 1955

Present:

F. B. Pollock, Chairman—Thatcher Glass Manufacturing Company, Inc., J. S. Algeo—Hazel-Atlas Glass Company, E. F. Ball—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, E. J. Costa—Crown Cork and Seal Company, Inc., E. D. Easterby—Laurens Glass Works, Inc., J. C. Feagley—Armstrong Cork Company, W. V. Fisher—Anchor Hocking Glass Corporation, G. A. Mengle—Brockway Glass Company, Inc., P. O'C. White—White Cap Company.

Absent:

J. S. Heuisler—Maryland Glass Corporation.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI, S. B. DeMerell—Anchor Hocking Glass Corporation, Fred E. Fuller—GCMI General Counsel, V. L. Hall—GCMI, F. B. Hess—Brockway Glass Company, Inc., M. R. Hellrung—Owens-Illinois Glass Company, P. I. Heuisler, Jr.—Maryland Glass Corporation, F. W. McDonald—Glass Containers, Inc., R. H. Roper—Laurens Glass Works, Inc., F. H. Wheaton—Wheaton Glass Company, F. H. Wright—GCMI.

1. Call to Order.

The meeting was called to order by the Chairman, Mr. F. B. Pollock. Mr. Cheney acted as Secretary.

2. Advertising and Promotion Program.

The Chairman stated that as directed by the committee at its last meeting the Market Research and Promotion department has issued Advertising and Promotion Bulletin No. 1 dated April 18, 1955 giving the industry in complete, but condensed outline form the details of the GCMI 1955 Advertising and Promotion program which had been approved by this committee at its previous meeting. He then asked Mr. Cheney to review the progress that had been made in this program since the last meeting which he did. He told of the working relations that have been developed with Kenyon & Eckhardt, the advertising agency, and pointed out that they had developed in a very satisfactory [fol. 423] way and that he was very pleased with the energy and enthusiasm with which they were attacking our problems and with the quality of the personnel assigned to GCMI.

Slides were shown covering the photographic art work and layouts of the first four in the series of national magazine advertisements (covering milk, two soft drinks and baby foods). A slide was shown covering tentative photographic art work for the fifth advertisement covering staples, and a slide was shown covering artist layouts for the ad covering cosmetics.

Each of these was discussed and many suggestions and recommendations were submitted for the improvement of the advertisements. Now that the program has been launched and enough lead time will be available to do so, Mr. Cheney was asked to submit ads in advance to informed members of the industry for their advice.

Concerning the staples ad it was the consensus that the catsup was to- dark in color, the mustard too orange in color, the catsup bottle looked too unrealistic and should contain more catsup and should give some evidence of having been poured from with residual catsup on the inferior upper side walls. It was suggested that the blue background be changed as it gave the glass a green cast which is undesirable in catsup bottles.

In the cosmetics ad it was pointed out that the artist's conception showed bottles that were too large and not cosmetic type in appearance, and it was recommended that the most distinctive possible bottles be included while still avoiding private molds. A lotion bottle should be included as well as an opal jar and a fancy perfume. It was suggested that GCMI ask cosmetic bottle manufacturers to submit samples of appropriate bottles for the advertisement. The theme of the ad was thought to be very good.

In discussing the labor press to be used for GCMI advertising, it was the consensus of the committee that GCMI funds could not be used for advertisements in the Retail Clerk's publication over the signature of one of the labor unions in the glass container industry. If this magazine will not accept advertising from other than a labor union, it could not be included in any way in GCMI's program.

The Market Research and Promotion division was instructed to furnish the industry with a list of the dates on which the GCMI commercials would appear on the NBC "Home Show" television show.

3. Presentation of Committee Report—May 9 and 10.

Mr. Cheney then outlined his proposed plan for presenting the report of this committee to the GCMI membership on the following two days as outlined in the printed program for those meetings and the plans were approved by the committee.

[fol. 424] 4. Marketing Research Activity.

Mr. Cheney then outlined the proposed plans for marketing research activtities in 1955 including laboratory tests comparing glass with competitive container materials, 1955 consumer surveys, the means of measuring campaign results, and proposals for breaking down the data of the 1954 survey. These plans were approved.

5. Beer Bottle Subcommittee Activity and Plans.

The schedule for this meeting did not allow time for presentation to this committee of the McKinsey and Company report which had been reviewed by the Beer Bottle Subcommittee. However, the problems of the industry in this area have been submitted to Kenyon & Eckhardt for their study and recommendations as to ways and means to attack this problem.

6. Soft Drink Industry Reaction to GCMI Activity.

Mr. Cheney reported that reaction to his talks to eight state associations and the national convention of ABCB seemed to have been favorable. The headquarters of ABCB have been informed of GCMI's advertising and promotion plans for 1955 and have reacted very enthusiastically, inviting him and Mr. Barnum to present these plans to a meeting of virtually all of the state presidents and secretaries of bottling industry associations and officers and directors of ABCB, at their meeting in Washington on the afternoon of May 9. The committee approved this presentation.

7. Statement and Recommendations from a GCMI Member.

The Chairman stated that he had invited Mr. Frank H. Wheaton, Jr. to present a statement and recommendations to this committee. Mr. Wheaton pointed out that the market research findings of the Market Research and Promotion department clearly revealed the need for more technical research on the part of the glass container industry and the improvement of its product in order to maintain its competitive position with other packaging industries. He presented his views as to how best some of this research

could be carried out by members of the industry. The industry members expressed much interest in the subject, and a willingness to explore individually ways and means of carrying out this research, but it was the consensus that it was beyond the jurisdiction of this committee and therefore a subject on which this committee could not take any specific action.

8. Adjournment.

There being no further business, the meeting was adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 425] GOVERNMENT'S EXHIBIT 92

Minutes of Meeting

Market Research and Promotion Committee
GCMI Conference Room
New York, N. Y.
September 28, 1955

Present:

F. B. Pollock, Chairman—Thatcher Glass Manufacturing Company, Inc., J. S. Algeo—Hazel-Atlas Glass Company, E. F. Ball—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, J. C. Feagley—Armstrong Cork Company, W. V. Fisher—Anchor Hocking Glass Corporation, J. S. Heuisler—Maryland Glass Corporation, G. A. Mengle—Brockway Glass Company, Inc., P. O'C. White—White Cap Company.

Absent:

E. J. Costa—Crown Cork and Seal Company, Inc., E. D. Easterby—Laurens Glass Works, Inc.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI, S. B. DeMerell—Anchor Hocking Glass Corporation, Fred E. Fuller—GCMI General Counsel, V. L. Hall—GCMI.

1. Call to Order.

The meeting was called to order by the Chairman, Mr. F. B. Pollock. Mr. Cheney acted as Secretary.

2. In Memoriam, Joseph M. Nester.

The meeting was opened with a period of silence, in memory of the late Joseph M. Nester as an expression of the deep affection and regard in which he was held by all members of the Committee, and in gratitude for the outstanding leadership he had given to the Institute and to the Committee during his year as president of GCMI.

3. Proposed Advertising and Promotion Program for 1956.

The representatives of Kenyon & Eckhardt, Inc. who were to present the agency's recommendations for 1956 advertising and promotion campaign for GCMI then joined the meeting. Those present from the agency were:

W. B. Lewis, President
R. B. Shirey, Account Executive,
G. M. Ule, Research Director
J. P. Braun, Media Director
Hal Davis, Director of Publicity and Promotion
Miss Leslie Munro, Creative Chief

[fol. 426] The representatives of Kenyon & Eckhardt then presnted the "1956 Advertising Recommendation for the Glass Container Manufacturers Institute." Copies of this presentation were distributed to those present and later mailed to absentee committee members. The presentation consisted of the following parts:

I The Problem
II Media Recommendation
III Promotion
IV Summary of Costs
V Copy Planning
VI Special Recommendations

Following the presentation committee members asked many questions of the agency representatives and furnished them with background information on the glass container industry and its relation with the various markets for its products which might have been overlooked in the preparation of the advertisements. In addition to questions and suggestions on details of the art work and copy of the advertisements, particular points questioned were the use of Parents' Magazine with its high cost per thousand of readers, the advisability of using the juice ad at all in its present approach, and the need for much more emphasis on work with the supermarket and other retailers.

On this latter point it was the consensus of the committee that one of the biggest problems of the glass container industry was the negative attitude of the supermarket operators and other retailers towards products packed in glass. Great emphasis was placed upon the need for sufficient activity directed toward the retail trade to at least change the unfriendly attitude towards glass to a neutral one.

Following this the representatives of the agency retired and the committee meeting continued.

4. Proposed Budget for 1956.

Mr. Cheney then presented a proposed budget for 1956, copy of which is attached to these minutes. It covers:

A—Operating Expenses and Market Research Activities	$ 238,300
B—Advertising and Promotion Expenses	1,200,784
C—That portion of Advertising and Promotion Expenses as recommended by Kenyon & Eckhardt	1,102,784

Under B, Advertising and Promotion Expenses, it was pointed out that $50,000 was included for General Publicity Expense, to be carried out under the direction of Mr. Bush Barnum in his capacity as Public Information Director. It is proposed that this fund be used to develop a motion picture for GCMI which could be used for presentation to men's and women's clubs, association meetings, conventions, etc. and so designed that it could be used on

television as a public service or educational feature, in whole and in part. In addition, a budget of $48,000 was included for continuation of the Milk Bottle Promotional Program along present lines.

[fol. 427] 5. Beer Bottle Subcommittee Activity.

The Director of Market Research and Promotion reported that the Subcommittee on Beer Bottles had approved a plan for the research, promotion, and merchandising personnel of Kenyon & Eckhardt to make a thorough study of beer distribution in a typical medium-sized market with a view to developing and later testing in that market a plan for promoting the use of glass bottles for beer. Funds for this purpose ($50,000) were included and not yet expended, in the 1955 budget, and funds for extension of any successful resulting pattern to one or two additional markets were available in accumulated surplus of marketing funds carried forward from 1954.

6. Approval of Plans and Budgets.

Following this there was a further discussion of the plan presented by the agency, the budgets and related material. Among the questions raised but left for further consideration by the Market Research and Promotion department were the advisability of including a beer ad in the magazine schedule, the possibility of finding other media for beer ads, the possibility of using the labor papers for the beer ads, and a question as to value of magazine advertising during the month of August. On the latter point the Director was asked to check readership studies with the agency and see if it would be advantageous to drop this month and use the money elsewhere.

The Chairman stated, and the Committee was in agreement that the last section, VI—"Special Recommendations" —deserved and required much attention from the Market Research and Promotion department. Mr. Cheney stated that he understood that paragraph 2, "Product Improvement," did not come within the jurisdiction of this committee or its budget but that he understood that individual members were expanding the technical research involved and that plans for making research facilities along these

lines available to the industry as a whole were being discussed and considered by the industry.

He said that paragraph 1, "Product Research," paragraph 3, "Merchandising Aids," and paragraph 4, "Merchandising Facts" could be handled within the market research activities of the department and that the budget included $20,000 which could be applied to these activities.

It was the consensus of the committee that these activities justified greater attention, and the Director was asked to develop specific plans to cover these areas, with special emphasis on item 4, and to reappraise the overall budget with a view to the possibility of assigning some of the funds now earmarked for national magazine advertising to this area, if necessary.

Chairman Pollock said he felt the committee should realize that the 1956 plan devotes its full budget for advertising to national media and does not include any local programs or promotions as was previously planned. After further discussion of the plan and budget, upon motion [fol. 428] duly made, seconded, and unanimously carried, it was

> Resolved, That the Market Research and Promotion Committee approve the proposed budget dated September 28, 1955, as submitted, subject to the availability of funds from that portion of members' dues representing 16/100 of 1% of dollar sales to cover that portion of the budget designated "B—Advertising and Promotion"; and
>
> Resolved further, That they approve the basic plan of media advertising, promotion and merchandising; and
>
> Resolved further, That after further study, portions of the media budget may be applied to Section VI of the agency recommendation entitled "Special Merchandising Recommendations"; and
>
> Resolved further, That diversion of funds for this purpose, if any, be recommended to the next scheduled meeting of the Market Research and Promotion Committee which is to be held at Miami Beach in November, prior to the membership meeting.

7. Invitation to Address ABCB Convention.

Mr. Cheney reported that he had been invited to make a brief talk at the ABCB Convention at Miami on November 16 concerning GCMI advertising and promotion plans and the general subject of soft drinks in glass bottles. The committee approved his making this talk and authorized Mr. Cheney to announce at that time that GCMI would have an advertising and promotion program in 1956 which would include soft drinks in glass bottles.

8. Committee Report to GCMI Membership Meeting.

It was proposed that this committee make a report to the membership on the morning of Wednesday, November 30, which would include an introduction by Chairman Pollock, a review of 1955 advertising and promotion activities by R. L. Cheney, a report of the 1955 nationwide consumer attitude survey by Ford Sammis, and a presentation of the advertising and promotion program for 1956 by R. L. Cheney, and R. B. Shirey and Miss Leslie Munro of Kenyon & Eckhardt, Inc.

On motion duly made, seconded and unanimously carried, it was

> Resolved, That this committee should give the proposed report to the membership, subject to the approval of the Program Committee and the Board of Trustees.

9. Competitors' Advertising.

Examples of advertising by members of packaging industries which compete with the glass container industry were [fol. 429] discussed and it was the consensus of the committee that some of this advertising bordered on the unethical. It was hoped that this type of advertising would cease.

10. Next meeting.

It was decided to hold the next meeting of this subcommittee at the Fontainebleau Hotel at Miami Beach, Florida at 3:00 P.M. on Monday, November 28, 1955, preceding the

meeting of the Board of Trustees which is to be held at 5:00 P. M. that afternoon.

11. Adjournment.

There being no further business, the meeting adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 430] GOVERNMENT'S EXHIBIT 93

Proposed Budget for 1956

Market Research and Promotion Division

Glass Container Manufacturers Institute, Inc.

September 28, 1955

[fol. 431] A

Market Research and Promotion Division
Operating Expenses and Market Research Activities

Operating Expenses	1955 Budget	1956 Budget
Salaries	$ 80,000	$ 84,000
Rent	12,800	12,800
Stationery & Supplies	5,000	6,000
Postage	3,000	5,000
Telephone & Telegraph	4,000	5,000
Travel & Maintenance	15,000	15,000
Publications & Services	1,000	1,500
Printing & Mailing Expense	15,000	15,000
Committee Meeting Expense	2,000	2,000
Market Research Activities		
Retainer-Market Consultant	12,000	12,000
Research & Surveys	60,000	60,000
Contingencies	22,200	20,000
Total	$232,000	$238,300

[fol. 432] B

Advertising & Promotion

	1955 Budget	1956 Budget
Publicity (General—Motion Picture)	$ 50,000	$ 50,000
Milk Bottle Promotional Program	22,000	48,000
Advertising & Promotion		
As recommended by Kenyon & Eckhardt (See Schedule C)	1,058,000	1,102,784
Contingencies	2,800	
	$1,132,800(1)	$1,200,784(2)

Revenue @ 16/100 of 1¢ is estimated.
(1) to provide $1,100,000 in 1955.
(2) to provide $1,133,333 in 1956.

[fol. 433] C

Advertising and Promotion as recommended by Kenyon & Eckhardt, Inc

Advertising		
National Magazines		
Space	$852,784	
Trade Papers	60,000	
Labor Publications	25,000	
Production	75,000	
Total Media		$1,012,784
Promotion and Publicity		
Home Economics & Publicity Service	45,000	
Media Merchandising	10,000	
Monthly Merchandising Mailer	30,000	
Reserve	5,000	
Total Promotion and Publicity		90,000
Grand Total		$1,102784

[fol. 434] GOVERNMENT'S EXHIBIT 94

Minutes of Meeting

Market Research and Promotion Task Committee
GCMI Conference Room
New York, New York

November 2, 1955

Present:

J. S. Algeo—Hazel-Atlas Glass Company, S. B. DeMerell—Anchor Hocking Glass Corporation, W. H. Ellis—Lamb Glass Company, The, John H. Funkey—Carr-Lowrey Glass Company, James A. Giddings—Brockway Glass Company, Inc., Kenneth Hay—Ball Brothers Company, Inc., Roger H. Hetzel—Armstrong Cork Company, P. I. Heuisler, Jr.—Maryland Glass Corporation, P. S. Holmquest—Thatcher Glass Manufacturing Co., Inc., R. H. Roper, Jr.—Laurens Glass Works, Inc., Kevin Solon—Owens-Illinois Glass Company.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI.

1. Call to Order.

The meeting was called to order by R. L. Cheney who requested that a chairman be selected. Upon a motion duly made and seconded, Mr. Hetzel was unanimously elected chairman.

2. Purpose of Meeting.

Mr. Cheney outlined the purpose of the meeting: to review the 1956 Advertising and Promotion Program.

3. 1956 Advertising and Promotion Program.

Mr. Cheney then outlined the 1956 program and presented the following schedule:

February	Instant Coffee	Ladies' Home Journal McCall's
March	Fruits	Ladies' Home Journal Good Housekeeping Family Circle Woman's Day
April	Household Chemicals	McCall's Good Housekeeping Family Circle Woman's Day

[fol. 435]

May	Milk	Ladies' Home Journal McCall's Good Housekeeping Family Circle Woman's Day
June	Soft Drinks	Ladies' Home Journal McCall's Good Housekeeping Family Circle Woman's Day
July	Beer	McCall's Family Circle Woman's Day
August	Soft Drinks	Ladies' Home Journal Good Housekeeping Family Circle Woman's Day

September	Baby Food	Ladies' Home Journal McCall's Good Housekeeping Family Circle Woman's Day
October	Juice ?	Ladies' Home Journal McCall's Good Housekeeping Woman's Day
November	Cosmetic	Ladies' Home Journal Good Housekeeping McCall's Family Circle

Roughs of the ten proposed advertisements were next gone over one at a time. Each was considered from the following viewpoints: General approach based on sales potentials and sales problems of the industry; artwork and copy approach; containers used; closures used; other props; other details including labels, quantity of product, etc.

4. Merchandising of the Advertisements.

Merchandising of the advertisements was next discussed. Points covered included lead time to members, lead time to packers, best means of approach in each instance, etc. It was agreed that a twelve-week lead time to members was most advisable, and that this timetable would be established as early in the new year as possible.

[fol. 436] Retailer advertising and promotion, beer bottle plans, promotion and publicity and home economics were next outlined by Mr. Cheney and discussed by the Committee.

5. Next Meeting.

The next meeting was tentatively set for early February.

Respectfully submitted R. L. Cheney, Secretary.

[fol. 437] GOVERNMENT'S EXHIBIT 95

Minutes of Meeting

Market Research and Promotion Committee
GCMI Conference Room
New York, New York
September 26, 1956

Present:

F. B. Pollock, Chairman—Thatcher Glass Manufacturing Company, Inc., J. S. Algeo—Hazel-Atlas Glass Company, E. F. Ball—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois, S. B. DeMerell—Anchor Hocking Glass Corporation, T. S. Gallagher—Crown Cork & Seal Company, Inc., J. S. Heuisler—Maryland Glass Corporation, P. Malloy—Crown Cork & Seal Company, Inc., G. A. Mengle—Brockway Glass Company, Inc., P. O'C. White—White Cap Company.

Absent:

E. D. Easterby—Laurens Glass Works, Inc., J. C. Feagley—Armstrong Cork Company.

Others Present:

Bush Barnum—GCMI, J. B. Carroll—GCMI, R. L. Cheney—GCMI, V. L. Hall—GCMI, D. L. Keys—Kenyon & Eckhardt, Inc., H. W. Kuni—GCMI, R. B. Shirey—Kenyon & Eckhardt, Inc.

1. The reading of the minutes of the preceding meeting on May 20, 1956 was waived.

2. The recommended advertising and promotion program for 1957 was presented by R. B. Shirey and D. L. Keys in behalf of Kenyon & Eckhardt. Divided into parts,

I. The problem
II. Advertising
  A. Consumer Media
  B. Copy Strategy
  C. Labor Advertising
  D. Trade Advertising

III. Publicity

A. Consumer
B. Trade

IV. Merchandising the Advertising
V. Merchandising Research
VI. Store-Wide "Glass Festival"

[fol. 438] the sixty-one page report was presented in detail by the agency representatives. Included were layouts of ten consumer ads for 1957 and accompanying copy. Presentation of the program and accompanying discussion took about three hours.

3. Mr. Cheney presented the proposed Market Research and Promotion budget for 1957.

4. After discussion, upon motion duly made, seconded and unanimously carried, it was

Resolved, That the Market Research and Promotion Committee recommend to the Board of Trustees the adoption of the 1957 advertising budget totaling $1,236,775 as proposed.

5. At Mr. Cheney's request, the department was authorized to announce early phases of the 1957 program to bottlers and packers, and to proceed with the first three consumer and trade ads in the 1957 program so that timetables could be maintained.

6. Mr. Cheney reported on various phases of the Virginia One-Way Beer Bottle Program, and discussion followed.

7. Beer studies in Syracuse were briefly reported by Mr. Cheney and the Committee was advised that the full report on the Syracuse study would be forthcoming from Kenyon & Eckhardt in the near future.

8. The advertising and promotion effort put behind soft drinks in the Los Angeles area was covered by Mr. Cheney.

9. The nationwide consumer and dealer attitude survey currently underway was also outlined by Mr. Cheney who stated a report of the results would be made by Mr. Sammis at the next Committee meeting.

10. It was agreed that the next meeting of the Market Research and Promotion Committee would be held at the

Phoenix Biltmore on Monday afternoon, November 12, at two o'clock and that the West Coast Subcommittee should be invited to attend.

11. There being no further business the meeting was adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 439] GOVERNMENT'S EXHIBIT 96

Minutes of Meeting

Market Research and Promotion Committee
GCMI Conference Room
New York, New York
January 16, 1957

Present:

F. B. Pollock, Chairman—Thatcher Glass Manufacturing Company, Inc., E. F. Ball—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois, J. C. Feagley—Armstrong Cork Company, J. M. Foster—Foster-Forbes Glass Company, T. S. Gallagher—Crown Cork & Seal Company, Inc., G. A. Mengle—Brockway Glass Company, Inc., P. O'C. White—White Cap Company.

Absent:

J. S. Algeo—Continental Can Company, Inc., Hazel-Atlas Glass Division, E. D. Easterby—Laurens Glass Works, Inc., W. V. Fisher—Anchor Hocking Glass Corporation, J. S. Heuisler—Maryland Glass Corporation.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI, S. B. DeMerell—Anchor Hocking Glass Corporation, F. H. Wright—GCMI.

1. Call to Order.

The meeting was called to order at 9:30 A. M. by Chairman Pollock.

2. Minutes of Previous Meeting.

The minutes of the preceding meeting on November 12, 1956, were approved as issued by the secretary.

3. Los Angeles 1957 Soft Drink Program.

Mr. Cheney read the resolution passed by the M R & P Committee on November 12 and reported on current activities. Highlights of recent surveys in the Los Angeles area by Ford Sammis were presented.

4. Report of the Task Committee Meeting of January 15, 1957.

A. As recommended by the Task Committee, it was decided that no-deposit bottles would not be promoted in national advertising.

B. Baby Food Problem. Following extensive discussion, upon motion duly made, seconded and unanimously carried, the Task Committee recommendation of the preceding day was approved. This recommendation favored continuing [fol. 440] the past and present baby food jar promotion without extension.

C. RAB Insignia. Mr. Cheney reported that the Task Committee voted definitely against inclusion. No further action was taken.

5. Recommended Milk Bottle Program.

Following considerable discussion, action on a proposed milk bottle program was tabled.

6. Virginia Beer Bottle Program.

Mr. Cheney reported on the recent Virginia effort, adding that a meeting of the Beer Bottle Committee would be called on or about February 13, at which time the final results of the Syracuse Study and their recommendations would be presented by the agency.

7. Review of the Magazine Ads.

The 1957 ads were then reviewed. In various stages of production, each ad was commented on in turn. Reception, in the main, was favorable.

8. Merchandising Research.

Mr. Cheney reviewed the forthcoming merchandising research program in six stores—each of which does a 3½ million dollar volume—in the Giant Food chain in and around Washington, D. C.

9. New Business.

It was suggested that GCMI should participate in the forthcoming Jamestown project.

There was a discussion of trends in the packaging of liquid detergents. Comments were made about disparagement of glass containers in the advertising of packers of ammonia in cans and of manufacturers of plastic containers. Mr. Cheney was requested to present our views to these advertisers.

10. Adjournment.

There being no further business, the meeting was adjourned at 12:30.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 441] GOVERNMENT'S EXHIBIT 97

Revised Budget For 1957

Market Research And Promotion Division
Glass Container Manufacturers Institute, Inc.

May 15, 1957

[fol. 442] **Revised**

1957 G.C.M.I. Advertising and Promotion Budget
(Kenyon & Eckhardt, Inc.)

	Original Budget	Budget with Increases	Amount (over) or Under	Revised Budget
Consumer Magazine	$ 743,500	$ 810,100	($ 66,600)	$ 724,100
Trade Advertising (incl. Glass Packer)	105,000	102,000	3,000	77,800
Labor Press	30,000	30,000	.....	30,000
Production (All Media)	100,000	113,940	(13,940)	113,940
Promotion—Merchandising	85,275	85,275	.....	73,175
Merchandising—Research	60,000	68,000	(8,000)	68,000
Contingency Fund	.....	35,000	(35,000)	35,000
Total	$1,123,775	$1,244,315	($120,540)	$1,122,015

[fol. 443] **Consumer Magazine Cancellations**

Publication	Advertisement	Issue Date	Cost
Ladies' Home Journal	Soft Drink #1	July	$26,411.25
Good Housekeeping	Baby Food	Sept.	19,360.00
Woman's Day	Soft Drink #2	Aug.	13,600.00
McCall's	Juice	Oct.	26,642.00
Family Circle	None	None	None
Budget Reduction			$86,013.25

[fol. 444] **Trade Advertising Changes**

Publication	Rate	Advertisement	Date	Total Budget Change
Chain Store Age	$2,292.00	Baby Food Cosmetics	Aug. Oct.	$ 4,584.00
Progressive Grocer	3,445.00	Soft Drink #2 Cosmetics	July Oct.	6,890.00
Super Market Merchandising	1,383.50	Soft Drink #2 Juices	July Sept.	2,767.00
Nargus Bulletin	2,359.50	Beer Juices	June Sept.	4,719.00
Voluntary & Cooperative Groups Magazine	1,165.00	Beer Juices	June Sept.	2,330.00
Supermarket News	498.80	Soft Drink #2 Cosmetics	July 8 Sept. 30	997.60
Food Topics	960.00	Baby Food Cosmetics	Aug. Oct.	1,920.00
Budget Reduction				$24,207.60

[fol. 445]

Revised

1957 Overall Advertising and Promotion Budget

	Original Budget	Revised Budget
Advertising and Promotion (Kenyon & Eckhardt, Inc.)	$1,123,775	$1,122,015
Publicity, General	65,000	79,000
Milk Bottle Promotional Program	48,000	48,000
Total	$1,236,775	$1,249,015

[fol. 446] GOVERNMENT'S EXHIBIT 98

Minutes of Meeting

Market Research And Promotion Committee
White Sulphur Springs, West Virginia

May 20, 1957

Present:

J. M. Foster, Acting Chairman—Foster-Forbes Glass Company, E. F. Ball—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, E. D. Easterby—Laurens Glass Works, Inc., J. C. Feagley—Armstrong Cork Company, J. S. Heuisler—Maryland Glass Corporation, G. A. Mengle—Brockway Glass Company, Inc., P. O'C. White—White Cap Company.

Absent:

F. B. Pollock, Chairman—Thatcher Glass Manufacturing Co., Inc., W. V. Fisher—Anchor Hocking Glass Corporation.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI, S. B. DeMerell—Anchor Hocking Glass Corporation, J. W. Fisher—Ball Brothers Company, Inc., Fred E. Fuller—General Counsel, W. J. Green—Thatcher Glass Manufacturing Co., Inc., V. L. Hall—GCMI, F. B. Hess—Brockway Glass Company, Inc., S. V. Tuttas—Crown Cork & Seal Company, Inc., F. H. Wright—GCMI.

1. Call to Order.

The meeting was called to order at 1:30 P. M. by Acting Chairman Foster who presided in Mr. Pollock's absence. Mr. Cheney served as secretary.

2. Minutes of the Previous Meeting.

Upon motion made, seconded and unanimously carried, the minutes of the previous meeting were approved as issued by the secretary.

3. Congratulatory Wire.

The secretary was directed to send a congratulatory telegram in the name of the full committee to Mr. and Mrs. Pollock on the birth of Robert Evans Pollock.

4. Cosmetic Ad.

Mr. Cheney explained that a transichrome version of the tenth and last consumer advertisement in the 1957 series would be on display in the general meeting room the [fol. 447] following morning. Members of the committee were asked to look at this transichrome and give their opinions to Mr. Cheney.

5. Report of Beer Bottle Subcommittee.

(A) Mr. Cheney discussed the Syracuse Study and presented the following recommendation unanimously approved by the Beer Bottle Subcommittee: Kenyon & Eckhardt does not recommend proceeding with the proposed marketing tests in the Syracuse area in the absence of a favorable economic relationship at the retail level, such as now exists in Maryland and Virginia. A motion was then made, seconded and unanimously carried that the Market Research and Promotion Committee accept the recommendation of the Subcommittee but that the matter be kept under advisement for future action at such time as the basic situation appeared favorable.

(B) Mr. Cheney discussed the forthcoming 1957 promotional program for one-way beer bottles in Virginia and the following recommendation approved by the Beer Bottle Subcommittee: That $40,000 be appropriated from existent

funds to continue the Virginia program during the summer of 1957. A motion was then made, seconded and unanimously carried that the Market Research and Promotion Committee accept the recommendation of the Subcommittee.

6. Review of Progress and Costs of Advertising and Promotion Program.

Mr. Cheney next presented detailed studies of increased advertising costs and presented a revised budget for 1957, copy attached. Discussion followed.

7. Next Meeting.

Due to the early date of the 1957 Fall meeting, the next committee meeting was scheduled for Tuesday, August 27, 1957, at GCMI headquarters. At this time a recommended advertising program for 1958 will be presented for committee consideration.

8. Adjournment.

There being no further business, Acting Chairman Foster declared the meeting adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 448] GOVERNMENT'S EXHIBIT 99

Minutes of Meeting

Market Research and Promotion Committee
GCMI Conference Room
New York, New York

August 27, 1957

Present:

F. B. Pollock, Chairman—Thatcher Glass Manufacturing Company, Inc., E. E. Ball—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, J. C. Feagley—Armstrong Cork Company, J. M. Foster—Foster-Forbes Glass Company, P. O'C. White—White Cap Company.

Absent:

E. D. Easterby—Laurens Glass Works, Inc., W. V. Fisher—Anchor Hocking Glass Corporation, J. S. Heuisler—Maryland Glass Corporation, G. A. Mengle—Brockway Glass Company, Inc., S. V. Tuttas—Crown Cork & Seal Company, Inc., Dr. A. W. Wishart—Knox Glass, Inc.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI, S. B. DeMerell—Anchor Hocking Glass Corporation, J. W. Fisher—Ball Brothers Company, Inc., Walter Furlow—Knox Glass, Inc., V. L. Hall—GCMI, Anderson F. Hewitt—Kenyon & Eckhardt, Inc., Douglas L. Keys—Kenyon & Eckhardt, Inc., Robert B. Shirey—Kenyon & Eckhardt, Inc.

1. Call to Order.

The meeting was called to order at 10:00 A. M. by Chairman Pollock. Mr. Cheney served as secretary.

2. Minutes of Previous Meeting.

Upon motion made, seconded and unanimously carried, the minutes of the previous meeting were approved as issued by the secretary.

3. Promotional Recommendation.

Representatives of Kenyon & Eckhardt (Messrs. Lewis, Hewitt, Shirey and Keys) presented a 58-page recommendation for GCMI advertising and promotion in 1958.

Eleven rough layouts of 1958 advertisements, together with the tentative scheduling thereof, were also presented to the Committee for consideration.

[fol. 449]. Each layout was discussed in detail as were other phases of the proposed campaign.

The recommended media list called for eight four-color insertions in the following six consumer publications: McCall's, Ladies' Home Journal, Good Housekeeping, Family Circle, Woman's Day and Reader's Digest. The total recommended budget for advertising and promotion for 1958 amounted to $1,666,353.

Following departure of agency representatives, the recommended program and budget (copy of which is attached to these minutes) were further discussed.

In answer to questions it was stated that elimination of Reader's Digest from the proposed schedule would reduce the budget by $336,040 (space and production), leaving a total budget of $1,330,313. It was further reported that this sum would fall within the amount of income that could be realized in 1958 by continuing the present rate of dues applicable to Advertising and Promotion (i.e., 16/100 of 1% of dollar sales out of total dues of 30/100 of 1%).

Upon motion duly made, seconded and unanimously carried, it was

Resolved, That the Market Research and Promotion Committee approves the proposed Advertising and Promotion Program for 1958 with the exclusion of Reader's Digest from the schedule, and recommends to the Board of Trustees the adoption of the 1958 budget totaling $1,330,313, and it was

Resolved further, That the possibility of adding Reader's Digest to the consumer advertising schedule be further discussed at subsequent meetings of this committee.

4. Title Change.

Upon a motion duly made, seconded and unanimously carried, it was

> Resolved, That the Market Research and Promotion Committee recommend to the Board of Trustees that Bush Barnum's title be changed from Director of Public Information to Director of Advertising and Public Information.

5. Next Meeting.

It was decided to hold the next meeting of the committee at The Cavalier, Virginia Beach, Virginia, on Monday afternoon, September 30, 1957, at 1:30 P. M.

6. Adjournment.

There being no further business, Chairman Pollock declared the meeting adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 450] GOVERNMENT'S EXHIBIT 100

Proposed Budget for 1958

Market Research and Promotion Division
Glass Container Manufacturers Institute, Inc.

August 27, 1957

[fol. 451] A

Advertising and Promotion as recommended by Kenyon & Eckhardt, Inc.

Advertising	1957 Revised Budget	1958 Budget	Amount (over) or under 1957
National Magazines			
Space	$ 724,100	$1,170,868	($446,768)
Trade Papers (Inc. Glass Packer)	77,800	57,485	20,315
Labor Publications	30,000	30,000	.....
Production (all media)	113,940	120,000	(6,060)
Total Media	$ 945,840	$1,378,353	($432,513)
Promotion, Publicity & Merchandising			
Publicity, Consumer & Trade	$ 13,900	$ 10,885	$ 3,015
Educational Publicity	.....	9,315	(9,315)
Merchandising the Advertising	42,775	47,300	(4,525)
Glass Festival	16,500	37,975	(21,475)
Merchandising Research	68,000	19,525	44,475
Total	$ 141,175	$ 125,000	$ 16,175
Contingency	$ 35,000	$ 35,000	.....
Total	$1,122,015	$1,538,353	($416,338)

[fol. 452] B

Total Advertising & Promotion

Advertising and Promotion	1957 Revised Budget	1958 Budget	Amount (over) or under 1957
(Kenyon & Eckhardt, Inc.)	$1,122,015	$1,538,353	($416,338)
Publicity, General	79,000	80,000	(1,000)
Milk Bottle Promotional Program	48,000	48,000	.....
Total	$1,249,015	$1,666,353	($417,338)

[fol. 453] C

Advertising & Promotion Income

Dues Rate Year	—	16/100 of 1%	Increase
1955		$1,108,218	
1956		$1,172,728	+5.8%
1957		$1,278,073	+8.9%
1958 (est.)		$1,333,333	+4.3%

Dues Rate Year	20/100 of 1%
1958 (est.)	$1,666,666

[fol. 454] GOVERNMENT'S EXHIBIT 101

Minutes of Meeting

Market Research and Promotion Committee
The Cavalier
Virginia Beach, Virginia

September 30, 1957

Present:

F. B. Pollock, Chairman—Thatcher Glass Manufacturing Company, Inc., E. F. Ball—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, E. D. Easterby—Laurens Glass Works, Inc., J. C. Feagley—Armstrong Cork Company, J. M. Foster—Foster-Forbes Glass Company, J. S. Heuisler—Maryland Glass Corporation, G. A. Mengle—Brockway Glass Company, Inc., S. V. Tuttas—Crown Cork & Seal Company, Inc., P. O'C. White—White Cap Company.

Absent:

W. V. Fisher—Anchor Hocking Glass Corporation, Dr. A. W. Wishart—Knox Glass, Inc.

Others Present:

Bush Barnum—GCMI, R. W. Butler—Crown Cork & Seal Company, Inc., E. S. Campbell—Northwestern Glass Company, R. L. Cheney—GCMI, S. B. DeMerell—Anchor Hocking Glass Corporation, J. W. Fisher—Ball Brothers Com-

pany, Inc., Fred E. Fuller—General Counsel, R. E. Graham—Owens-Illinois Glass Company, W. J. Green—Thatcher Glass Manufacturing Company, Inc., V. L. Hall—GCMI, M. A. Hellrung—Owens-Illinois Glass Company, Ford Sammis—Ford Sammis & Company, J. G. Turk—GCMI, F. H. Wright—GCMI.

1. Call to Order.

The meeting was called to order at 1:45 P. M. by Chairman Pollock. Mr. Cheney served as secretary.

2. Minutes of Previous Meeting.

Upon motion made, seconded and unanimously carried, the minutes of the previous meeting on August 27, 1957, were approved as issued by the secretary.

[fol. 455] 3. Ratification of Previous Actions.

Because a quorum was not present at the August 27 meeting, absent committee members were polled by mail. Mr. Cheney announced that the two actions in question were thereby made unanimous.

4. Report of Task Committee Meeting.

Mr. Cheney reported briefly on the meeting of the Task Committee held at GCMI headquarters on September 11, 1957.

5. Future Committee Meetings.

It was suggested by Mr. Cheney, and approved by the committee, that the committee meetings be scheduled as follows in 1958: first, Advertising Advisory Committee; second, Task Committee; third, Market Research and Promotion Committee. The change makes it possible to present plans to the Task Committee prior to final presentation to the parent committee.

6. 1958 Advertising Program.

(a) The following schedule of consumer advertisements for 1958 was presented and approved:

February—Drugs
March—Coffee
April—Household Chemicals

May—Soft Drink #1 and Beer
June—Soft Drink #2
July—Spices
August—Baby Foods
September—Milk
October—Applesauce
November—Jam and Peanut Butter

(b) Roughs of five ads either revised or new to the committee were presented on slides and approved.

The ecktachrome of the February drug ad was presented and approved with favorable comment.

(c) Upon motion duly made, seconded and unanimously carried, a revised advertising and promotion budget totaling $1,336,178 was established.

7. Virginia Consumer Survey.

Ford Sammis reported on a recent survey of beer bottle sales and distribution in the state of Virginia. Copies of this study will be mailed to committee members shortly.

[fol. 456] 8. West Coast Subcommittee Recommendation.

Frank Wright, reporting on unanimous agreement at a meeting of the West Coast Subcommittee in San Francisco on September 17, 1957, recommended to the parent committee that $50,000 be allocated from the national budget to promote one-way bottles for both soft drinks and beer in the Los Angeles area in 1958.

Following considerable discussion, the committee directed Mr. Cheney to earmark $50,000 in funds for a possible program in Los Angeles in 1958 with the provisos 1) that full details of the proposed program be submitted to the parent committee for further consideration at its next meeting, and 2) that, should the program go forward, the appropriation from the national budget be matched dollar for dollar by GCMI member companies operating on the West Coast.

9. Next Meeting.

No date was set for the next meeting. It is hoped, however, to hold it in conjunction with the Trustees meeting now scheduled for December 5.

10. Adjournment.

There being no further business, Chairman Pollock declared the meeting adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 457] GOVERNMENT'S EXHIBIT 102

Minutes of Meeting

Market Research and Promotion Committee
GCMI Conference Room
New York 16, New York

December 4, 1957

Present:

G. A. Mengle, Chairman—Brockway Glass Company, Inc., E. D. Easterby—Laurens Glass Works, Inc., J. W. Fisher—Ball Brothers Company, Inc., J. M. Foster—Foster-Forbes Glass Company, W. J. Green—Thatcher Glass Manufacturing Company, Inc., S. V. Tuttas—Crown Cork & Seal Company, Inc., P. O'C. White—White Cap Company.

Absent:

C. G. Bensinger—Owens-Illinois Glass Company, J. C. Feagley—Armstrong Cork Company, W. V. Fisher—Anchor Hocking Glass Corporation, J. S. Heuisler—Maryland Glass Corporation, A. W. Wishart—Knox Glass, Inc.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI, S. B. DeMerell—Anchor Hocking Glass Corporation, Fred E. Fuller—General Counsel, V. L. Hall—GCMI.

1. Call to Order.

The meeting was called to order at 10:45 A. M. by Chairman Mengle. Mr. Cheney served as secretary.

2. Minutes of Previous Meeting.

Upon motion made, seconded and unanimously carried, the minutes of the previous meeting on September 30, 1957, were approved as issued by the secretary.

3. Progress Report—1957 Program.

Mr. Cheney reported on the 1957 advertising program, on the use of 2,750 "Your Glass Festival Kits" in retail food stores throughout the country, and gave a preliminary report on the merchandising research conducted in four Giant food stores in the Washington D. C. area. Mr. Barnum reported on general publicity activities for the year.

4. Progress Report—1958 Program.

The committee approved an ecktachrome of the milk advertisement scheduled for next September. Comment was generally favorable. Other advertisements in the 1958 schedule were discussed briefly, as were general publicity [fol. 458] activities for the coming year.

An agency budget, revised to accommodate a rate increase, was presented. The total remained unchanged at $1,208,178.

In discussing Gallup & Robinson and Starch rating services, Mr. Cheney reported that the registration of GCMI advertisements by Gallup & Robinson scored 13.7 compared with 12.1 for the average of all packaging advertisements checked by Gallup & Robinson. The same firm has also reported that GCMI advertisements are second in order of rank of 26 different associations tested during the past two years, the GCMI average being 14.2 compared with an average of 6.1 for the 26 associations whose advertisements were checked.

5. Los Angeles Soft Drink Program—1958.

Mr. Cheney reported on his visit to the West Coast late in October, and copies of a plan prepared by Kenyon & Eckhardt and subsequently modified, were distributed to those present. Mr. Fuller discussed the legal aspects of a supporting merchandising program.

Following considerable discussion, upon motion duly

made, seconded and unanimously passed, the following resolution was adopted:

Resolved, That the Market Research and Promotion Committee accepts the revised recommendation of the West Coast Subcommittee as submitted by Mr. R. L. Cheney, to this meeting, covering an advertising and promotion program in support of glass bottles for soft drinks, in the Los Angeles, California area from May through September, 1958, at a total budget of $50,000, of which $25,000 is to be supplied from the accumulated surplus of previous year's GCMH advertising and promotion funds subject to this sum's being matched by voluntary contributions from the California members, and it is further

Resolved, That this program shall consist of the following activities:

(1) A radio spot advertising program covering the advantages of glass bottles for soft drinks, with particular reference to returnable bottles and to no-deposit bottles.

(2) a. A test promotion involving an advertising allowance to cover space within the newspaper advertisements of cooperating chain stores, devoted to soft drinks in glass bottles, together with allotment of adequate shelf spacings for beverages in both returnable and no-deposit bottles, together with an arrangement for measuring sales results of the different beverage packages.

b. Participation in this test promotion to be solicited from all chain supermarket operators in the Los Angeles market who operate 19 or more supermarkets there, this being considered the minimum number of stores necessary to give adequate coverage for a sound test.

[fol. 459] And it is further

Resolved, That in the event enough chain store operators accept participation in the test promotion program as to cause the expense of this portion of the program to exceed the $15,000 allotted to it in the proposed

budget, GCMI will assume one-half of this overage subject to the California members assuming the other half.

6. Canadian Program—1958.

Canadian members of GCMI will continue to advertise in Chatelaine magazine in 1958, Mr. Cheney reported. The schedule calls for six insertions—in February, April, June, September, October and November.

7. Baby Food in California.

A report on the current baby food situation in California was made by Mr. Cheney, and packer ads from current California newspapers were displayed.

8. New Business.

Mr. Cheney presented a request from GBBA for GCMI support at labor trade fairs. It was agreed to table the request.

9. Next Meeting.

No date was set for the next meeting.

10. Adjournment.

There being no further business, Chairman Mengle declared the meeting adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 460] GOVERNMENT'S EXHIBIT 103

Minutes of Meeting

Market Research and Promotion Committee
GCMI Conference Room
New York, New York

April 10, 1958

Present:

G. A. Mengle, Chairman—Brockway Glass Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, J. C. Feagley—Armstrong Cork Company, J. W. Fisher—Ball Brothers Company, Inc., W. J. Green—Thatcher Glass Manufacturing Company, Inc., S. V. Tuttas—Crown Cork & Seal Company, Inc.

Absent:

E. D. Easterby—Laurens Glass Works, Inc., W. V. Fisher—Anchor Hocking Glass Corporation, J. M. Foster—Foster-Forbes Glass Company, J. S. Heuisler—Maryland Glass Corporation, P. O'C. White—White Cap Company, A. W. Wishart—Knox Glass, Inc.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI, W. M. Furlow—Knox Glass, Inc., M. A. Hellrung—Owens-Illinois Glass Company, J. Gordon King—Hazel-Atlas Glass Division, Continental Can Company, Inc., C. E. Wagner—GCMI.

1. Call to Order.

The meeting was called to order at 10:10 A. M. by Chairman Mengle. Mr. Cheney served as secretary. In the absence of a quorum, the chairman stated that any actions of this meeting would be subject to ratification at the next meeting.

2. Minutes of Previous Meeting.

Upon motion duly made, seconded and unanimously carried, the minutes of the previous meeting on December 4, 1957, were approved as issued by the secretary.

3. Approval of Ektachromes.

Ektachromes of the applesauce advertisement scheduled for the October issues of consumer magazines, and ektachromes of the jam-peanut butter advertisement scheduled for November issues, were submitted to the Committee for consideration. Following discussion, it was suggested that the applesauce ad be re-taken, sharpening the background focus. A jam and peanut butter ektachrome was approved.

[fol. 461] 4. Rate Increases.

The Committee was advised of the following increases in magazine rates:

Family Circle	25%—effective in July
Ladies' Home Journal	8%—effective in August
Supermarket News	9%—effective in July
Progressive Grocer	10%—effective in July

The above rate increases for the remainder of 1958 total $29,600.

Mr. Cheney explained that these rate increases could be covered by unexpended 1957 funds—as were previous rate increases amounting to $26,300.

Accordingly, upon motion made, seconded, and unanimously carried, it was voted to continue the advertising media schedule as approved for 1958 in view of the fact that increases could be handled from existent funds.

5. Report on GCMI-Giant Study.

Following distribution of numbered copies of "The GCMI-Giant Study" (on a one-to-a-company basis), Mr. Cheney outlined promotional plans for this extensive project. Included are: Presentations to retailer and packer groups, trade advertisements, a booklet for widespread distribution.

6. Glass Festival—1958.

Plans for extending the successful in-store promotion conducted in 1957 were presented for Committee consideration. It was agreed that larger stores and more of them would be the aim in 1958. Specific art for inclusion in the

promotional kit was discussed. Upon motion made, seconded, and unanimously carried, it was agreed to proceed as outlined.

7. Los Angeles Soft Drink Program—1958.

Mr. Cheney, just returned from West Coast meetings, reported on the 1958 soft drink campaign. The Committee requested him to verify a point of nomenclature and proceed accordingly.

7A. Baby Food Folder.

Upon motion made, seconded, and unanimously carried, Mr. Cheney was instructed to proceed on the production of a baby food folder or flyer similar to the ones done in the past three years. This is to be offered to all baby food companies for possible incorporation in their direct mail program.

[fol. 462] 8. Report on New No-Deposit Beer Bottle Designs.

Earl Wagner, GCMI development engineer, joined the meeting and subsequently reported on a joint meeting of the Technical Subcommittee on Container Design and Specifications and the Crown Finish Subcommittee of the Committee on Standards for Finishes held at GCMI headquarters on April 8 and 9. Discussion followed.

8A. Anniversary of Beer Return.

Upon motion made, seconded, and unanimously carried, Mr. Cheney was instructed to include the following line in GCMI advertisements scheduled for thirty-nine labor papers:

> "The glass container manufacturers salute the U. S. brewing industry on the 25th anniversary of the return of beer and ale to the American scene."

9. Security Analysts.

The Committee looked with favor upon meetings of security analysts outlined by Mr. Cheney. Present plans call for meetings in Boston and New York on successive days in mid-May. Freshly printed copies of "Glass Containers—

1957" will be presented at these meetings. It is possible that similar sessions in Philadelphia and Chicago will be arranged following industry meeting at White Sulphur Springs.

10. Motivation Research.

As previously suggested by a member of the Market Research and Promotion Committee, the Institute for Motivational Research, Inc.—of which Dr. Ernest Dichter is president—was approached on whether the Institute's techniques might yield a solution to the glass container industry's beer problem and might point to a possible course of action.

Subsequently, Albert Shepard, executive vice-president of the research organization, spent the afternoon at GCMI headquarters, and Mr. Cheney reported Mr. Shepard's remarks to the Committee. Following discussion both on the industry's beer problem and on motivational research, a motion was made, seconded, and unanimously carried to engage the Dichter organization to make a study of the beer industry for GCMI, said study to cost approximately $20,000.

11. New Business.

A. Upon motion made, seconded, and unanimously carried, it was agreed that results of the Sammis surveys should be made available to individual GCMI member companies for promotional use—subject to the specific approval of Mr. Cheney.

[fol. 463] B. Acting upon the suggestion of a Committee member, a motion was made, seconded, and unanimously carried to explore the possibility of presenting details of GCMI's advertising and promotional program to the membership of the National Preservers Association at their annual meeting in Chicago in mid-February of 1959. If an audience of a hundred could be guaranteed, and provided no precedent would be set, Mr. Cheney was instructed to proceed as outlined.

12. Next Meeting.

The date of the next meeting was set for 2 o'clock Tuesday afternoon, May 20, 1958, at The Greenbrier, White Sulphur Springs, West Virginia.

13. Adjournment.

There being no further business, Chairman Mengle declared the meeting adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 464] GOVERNMENT'S EXHIBIT 104

Minutes of Meeting
Market Research and Promotion Committee
White Sulphur Springs, West Virginia

May 20, 1958

Present:

G. A. Mengle, Chairman—Brockway Glass Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, E. D. Easterby—Laurens Glass Works, Inc., J. C. Feagley—Armstrong Cork Company, J. W. Fisher—Ball Brothers Company, Inc., J. M. Foster—Foster-Forbes Glass Company, W. J. Green—Thatcher Glass Manufacturing Company, Inc., S. V. Tuttas—Crown Cork & Seal Company, Inc., P. O'C. White—White Cap Company, A. W. Wishart—Knox Glass, Inc.

Absent:

W. V. Fisher—Anchor Hocking Glass Corporation, J. S. Heuisler—Maryland Glass Corporation.

Others Present:

E. F. Ball—Ball Brothers Company, Inc., Bush Barnum—GCMI, R. A. Blunt—Buck Glass Company, Inc., R. L. Cheney—GCMI, J. F. Connelly—Crown Cork & Seal Company, Inc., S. B. DeMerell—Anchor Hocking Glass Corporation, Fred E. Fuller—General Counsel, W. M. Furlow—Knox Glass, Inc., R. E. Graham—Owens-Illinois Glass Company, V. L. Hall—GCMI, P. I. Heuisler, Jr.—Maryland Glass Corporation, J. G. King—Hazel-Atlas Glass Division, Continental Can Company, Inc., F. H. Wright—GCMI.

1. Call to Order.

The meeting was called to order at 2:00 p. m. by Chairman Mengle. Mr. Cheney served as secretary.

2. Minutes of the Previous Meeting.

Upon motion duly made, seconded, and unanimously carried, the minutes of the previous meeting on April 10, 1958, were approved as issued by the secretary.

[fol. 465] 3. Approval of Proof.

Proof of the final three ads in the 1958 consumer series (September—Milk; October—Applesauce; and November—Jam and Peanut Butter) were submitted and approved by the Committee with the exception of a suggestion re the body copy of the milk advertisement. The point was referred to the trustees for a policy decision.

4. Report on GCMI-Giant Study.

Mr. Cheney reported on "The GCMI-Giant Study," and photostatic copies of a proposed GCMI booklet on the subject were distributed for Committee discussion. Following general discussion, Mr. Cheney's recommendation to refer this matter to the Task Committee was agreed upon.

Mr. Cheney requested that the photostatic copies be given to the appropriate personnel in each organization with the request that it be returned to Mr. Cheney with written comment.

It was also agreed that photostatic copies be sent to the Task Committee for study—with the view to getting their comment on suggested procedure. It was decided that the matter would not be presented to the membership at this meeting until these comments have been received from the Committee members.

5. Motivation Research on Beer Packaging.

Mr. Cheney explained that the Beer Bottle Subcommittee concurred with the suggestion of exploring first the area which we appear to know the least about, namely, the area of beer distribution—as opposed to brewing, retailing, or consumption. Following discussion, it was agreed to proceed with the proposed study.

6. Security Analysts.

Mr. Cheney reported briefly on current security analysts presentations.

7. Plans for 1959 Program.

Mr. Cheney stated that meetings with Kenyon & Eckhardt to develop the 1959 program would start June 30, with presentation to the Committee in September, following Advertising Advisory Committee and Task Committee sessions.

8. National Preservers Association Meeting.

Mr. Cheney stated briefly that, after exploration, he did not feel it would be wise to proceed as heretofore discussed. A motion was made, seconded and unanimously carried, to rescind the action made at the previous meeting on April 10, 1958.

[fol. 466] 9. New Business.

Mr. Cheney introduced the subject of the forthcoming U. S. Steel promotional program in behalf of canned soft drinks. Several member companies, he said, had been asked by bottlers for GCMI plans.

Because the 3:30 p. m. adjournment time had arrived, it was decided to hold a breakfast meeting at 8:00 a. m. on Thursday morning, May 22, to explore this subject further.

10. Adjournment.

There being no further business, Chairman Mengle declared the meeting adjourned at 3:30 p. m.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 467] GOVERNMENT'S EXHIBIT 105

Minutes of Meeting

Market Research and Promotion Committee
White Sulphur Springs, West Virginia

May 22, 1958

Present:

G. A. Mengle, Chairman—Brockway Glass Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, E. D. Easterby—Laurens Glass Works, Inc., J. C. Feagley—Armstrong Cork Company, J. W. Fisher—Ball Brothers Company, Inc., J. M. Foster—Foster-Forbes Glass Company, P. I. Heuisler, Jr.—Maryland Glass Corporation, J. G. King—Hazel-Atlas Glass Division, Continental Can Company, Inc., S. V. Tuttas—Crown Cork & Seal Company, Inc.

Absent:

W. V. Fisher—Anchor Hocking Glass Corporation, W. J. Green—Thatcher Glass Manufacturing Company, Inc., E. M. Terner—Metro Glass Company, Inc., A. W. Wishart—Knox Glass, Inc.

Others Present:

E. F. Ball—Ball Brothers Company, Inc., Bush Barnum—GCMI, R. A. Blunt—Buck Glass Company, Inc., R. L. Cheney—GCMI, S. B. DeMerell—Anchor Hocking Glass Corporation, W. M. Furlow—Knox Glass, Inc., R. E. Graham—Owens-Illinois Glass Company, S. L. Rairdon—Owens-Illinois Glass Company, Lawrence Wilkinson—Hazel-Atlas Glass Division, Continental Can Company, Inc.

1. Call to Order.

This breakfast meeting was called to order by Chairman Mengle at 8:20 a. m. Mr. Cheney served as secretary.

2. Canned Soft Drink Promotion.

The forthcoming advertising and promotion program of U. S. Steel as published in the public press was outlined

by Mr. Cheney who then reported on details of GCMI efforts in behalf of bottled soft drinks.

The subject was extensively discussed, and upon motion duly made, seconded, and unanimously carried, the following action taken:

(a) Mr. Cheney was instructed to inform the members of the many GCMI activities promoting glass-bottled soft drinks, for reference to interested bottlers.

[fol. 468] (b) The radio spot program in the Los Angeles area is to be stepped up during its June to September scheduled period, within the ability of the budget to accommodate this.

(c) The needs of the situation are to be reviewed as the summer progresses so that the Committee can determine the advisability of extending the program for an additional period.

3. Re-scheduling of "Ancient Art—Modern Magic."

Following a suggestion, it was agreed generally that the new ten-minute film should be re-shown at the concluding session on Friday prior to Mr. Hoadley's address.

4. Milk Ad.

A report was made on the board of trustees ruling to delete the word "leak-proof" from the milk ad and a policy of confining advertising copy to affirmative statements about the favorable characteristics of glass containers was reiterated.

5. Sammis Reports.

Reaction of the Committee was asked for on the sample Sammis research summary covering glass-packed tomato juice.

6. Adjournment.

There being no further business, the meeting was adjourned at 9:30 a. m.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 469] GOVERNMENT'S EXHIBIT 106

Minutes of Meeting

Market Research and Promotion Committee
GCMI Conference Room
New York, New York

September 25, 1958

Present:

J. W. Fisher, Chairman—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, E. D. Easterby—Laurens Glass Works, Inc., J. C. Feagley—Armstrong Cork Company, J. M. Foster—Foster-Forbes Glass Company, W. J. Green—Thatcher Glass Manufacturing Company, Inc., J. Gordon King—Hazel-Atlas Glass Division, Continental Can Company, Inc., G. A. Mengle—Brockway Glass Company, Inc., E. M. Terner—Metro Glass Company, Inc., S. V. Tuttas—Crown Cork & Seal Company, Inc., A. W. Wishart—Knox Glass, Inc.

Absent:

W. V. Fisher—Anchor Hocking Glass Corporation, P. I. Heuisler, Jr.—Maryland Glass Corporation.

Others Present:

Bush Barnum—GCMI, Leonard Carlton—Kenyon & Eckhardt, Inc., R. L. Cheney—GCMI, S. B. DeMerell—Anchor Hocking Glass Corporation, R. E. Graham—Owens-Illinois Glass Company, W. D. Harvey—Kenyon & Eckhardt, Inc., J. S. Heuisler—Maryland Glass Corporation, Andrew Hewitt—Kenyon & Eckhardt, Inc., W. B. Lewis—Kenyon & Eckhardt, Inc., R. B. Shirey—Kenyon & Eckhardt, Inc.

1. Call to Order.

The meeting was called to order by Chairman Fisher at 9:30 A. M. Mr. Cheney served as secretary.

2. Minutes of Previous Meeting.

Upon motion made, seconded and unanimously carried, the minutes of the previous meeting on May 22, 1958, were approved as issued by the secretary.

[fol. 470] 3. Review of Proposed 1959 Advertising and Promotion Program.

Following opening remarks by Mr. Cheney, representatives of Kenyon & Eckhardt (Messrs. Lewis, Hewitt, Shirey, Harvey and Carlton) joined the meeting and presented a 57-page recommendation for 1959. Layout and copy of twenty-two advertisements were presented for Committee consideration. Each layout was discussed in detail, as were all aspects of the proposed campaign.

4. Proposed Budget.

Following deparature of agency representatives, the program was further discussed, and a proposed budget presented, copy of which is attached. Upon motion duly made, seconded, and unanimously carried, with Dr. Wishart abstaining, it was:

> Resolved, That the Market Research and Promotion Committee approves the program submitted by Kenyon & Eckhardt (based upon twenty-two ads in Life Magazine) and previously approved by GCMI representatives and two subcommittees, with the understanding that individual ads would be discussed further at a later meeting.

Also, upon motion duly made, seconded and unanimously carried, it was:

> Resolved, That the Market Research and Promotion Committee adopts a total advertising and promotion budget of $1,378,650 as submitted, and submits said budget to the Board of Trustees with the recommendation that it be approved.

5. Review of Houston Situation.

Following presentation of the story by Mr. Cheney, the Committee, upon motion duly made, seconded and unanimously carried, voted to leave to the discretion of the General Counsel whether or not an appeal should be made to the office of the Attorney General of Texas, protesting recent discriminatory action against the sale of milk in glass bottles in Houston stores.

6. Task Committee Action on GCMI-Giant Study.

Upon motion made, seconded and unanimously carried the parent Committee approved the recommendation of the Task Committee to print the first half of the GCMI-Giant Study and distribute it to members.

7. Report of Beer Bottle Subcommittee Meeting.

Mr. Cheney reported on this meeting held at GCMI headquarters in New York on August 21st. Following discussion, it was agreed to recommend to the program committee that Dr. Albert Shepard, executive vice president of the Institute for Motivational Research, Inc., be invited to address the membership meeting at The Cloister, Sea Island, Georgia on November 11th.

[fol. 471] 8. New Business.

The outlawing of bottled soft drinks at the 1958 Indiana State Fair held at Indianapolis in August was brought to the attention of the Committee by Mr. Cheney. Possible remedial action was discussed.

Upon motion duly made, seconded and unanimously carried, it was agreed to proceed with the printing and distribution of the 16-page booklet entitled "Mason Jar Centennial: 1858-1958."

9. Next Meeting.

It was agreed that the next meeting of the Committee should be held at The Cloister, Sea Island, Georgia, on Monday, November 10th, at 1:30 P. M.

10. Adjournment.

There being no further business, Chairman Fisher declared the meeting adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

Attachment.

[fol. 472] GOVERNMENT'S EXHIBIT 107

Proposed Budget For 1959

Market Research and Promotion Division
Glass Container Manufacturers Institute, Inc.

September 25, 1958

[fol. 473] A

Advertising and Promotion as recommended by Kenyon & Eckhardt, Inc.

	1958 Budget	1959 Budget	Amount (over) or under 1958
Advertising			
National Magazines			
(Space)	$ 842,828	$ 909,409	($66,581)
Trade Papers			
(inc. Glass Packer)	57,485	56,133	1,352
Labor Publications	30,000	30,100	($100)
Production (all media)	120,000	151,900	(31,900)
Total Media	$1,050,313	$1,147,542	($97,229)
Promotion, Publicity & Merchandising			
Publicity, Consumer & Trade	$ 8,750	$ 10,630	($ 1,880)
Educational Publicity	9,315	.....	9,315
Merchandising the Advertising	47,300	33,575	13,725
Glass Festival	37,975	37,975	.....
Merchandising Research	19,525	.....	19,525
Total	$ 122,865	$ 82,180	$40,685
Contingency	$ 35,000	$ 20,278	$14,722
Total	$1,208,178	$1,250,000	($41,822)

[fol. 474] C

Advertising & Promotion Income

Dues Rate Year	16/100 of 1%	Increase
1955	$1,108,218	
1956	$1,172,728	+5.8%
1957	$1,278,073	+8.9%
1958	$1,353,541	+6.9%
1959 (Est.)	$1,372,749	+1.4%

[fol. 475] GOVERNMENT'S EXHIBIT 108

Minutes of Meeting

Market Research and Promotion Committee
and West Coast Subcommittee
Terrace Room
Arizona Biltmore Hotel
Phoenix, Arizona

November 12, 1936

Present:

F. B. Pollock, Chairman—Thatcher Glass Manufacturing Company, Inc., J. S. Algeo—Hazel-Atlas Glass Company, E. F. Ball—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, E. D. Easterby—Laurens Glass Works, Inc., J. C. Feagley—Armstrong Cork Company, J. M. Foster—Foster-Forbes Glass Company, T. S. Gallagher—Crown Cork & Seal Company, Inc., J. S. Heuisler—Maryland Glass Corporation, G. A. Mengle—Brockway Glass Company, Inc.

Absent:

W. V. Fisher—Anchor Hocking Glass Corporation, P. O'C. White—White Cap Company.

West Coast Present:

K. C. White, Chairman—Owens-Illinois Glass Company, R. H. Dallas—Maywood Glass Company, William Simkins—Latchford-Marble Glass Company.

West Coast Absent:

E. L. Casey—Hazel-Atlas Glass Company, J. W. Donaldson—Ball Brothers Company, Inc., J. B. Miller—Thatcher Glass Manufacturing Company, Inc., E. B. Spread—Crown Cork & Seal Company, Inc.

Others Present:

E. E. Balling—Latchford-Marble Glass Company, Bush Barnum—GCMI, E. S. Campbell—Northwestern Glass Company, R. L. Cheney—GCMI, S. B. DeMerell—Anchor

Hocking Glass Corporation, Fred E. Fuller—GCMI General Counsel, H. V. Fulton—Maywood Glass Company, J. H. Funkey—Carr-Lowrey Glass Company, J. A. Giddings—Brockway Glass Company, Inc., W. J. Green—Thatcher Glass Manufacturing Company, Inc., V. L. Hall—GCMI, John Lauritzen—GCMI West Coast Counsel, Ford Sammis—Ford Sammis & Company, Frank H. Wright—GCMI.

[fol. 476] 1. Call to Order.

The meeting was called to order at 1:30 P. M. by Chairman Pollock.

2. Minutes of Previous Meeting.

The minutes of the preceding meeting on September 26, 1956 were approved as distributed by the secretary.

3. Task Group Recommendations.

A. Mr. Cheney discussed the Task Committee recommendation that GCMI advertising be evaluated by one of the recognized authorities in this field. The Market Research and Promotion department and the agency recommended the Starch readership studies. These would cost approximately $2,000 in 1957. Upon motion duly made, seconded and unanimously carried, this recommendation was approved.

B. Mr. Cheney discussed use of the KAB insignia in the Virginia Beer Program, and the possibility of incorporating the seal in national ads was raised. Discussion followed. The matter was temporarily tabled, and the parent committee directed that any further discussion be with the Task Committee.

4. Los Angeles Soft Drink Bottle Program.

Mr. White, chairman of the West Coast Subcommittee, discussed the 1956 effort in Los Angeles, expressing the opinion that it had constituted an excellent holding campaign and that he felt it important to have a continuing program. There followed a discussion of other trouble points, notably Milwaukee. Chairman Pollock stated that West Coast companies had raised a $20,000 fund in 1956; that Kenyon & Eckhardt had handled the program and

members of the West Coast Subcommittee expressed the opinion that they had done an excellent job.

Mr. Sammis then presented results of his Los Angeles survey.

After discussion, in response to suggestions from the West Coast Subcommittee members, and Mr. Cheney's recommendation, upon motion duly made, seconded and unanimously carried, it was

> Resolved, That $25,000 be allocated for a continuing Los Angeles area promotion in 1957, subject to voluntary subscriptions from the California members sufficient to complete a $40,000 to $45,000 budget for this operation as finally determined by the Director of Market Research and Promotion.

5. Advertising.

Mr. Cheney then presented to the Committee slides—some in photographic form, others in layout form—of the 1957 consumer advertisements as follows:

[fol. 477] February—Beets

March—Pickles
April—Vaccines
May—Milk
June—First Soft Drink
July—First Soft Drink and Beer
August—Second Soft Drink
September—Baby Foods
October—Juices
November—Cosmetics

Discussion of the ads followed each presentation.

In addition, a layout of a detergent advertisement was shown the committee. It was agreed that this would not be included in the 1957 series.

6. Future Discussions.

It was suggested that baby foods and one-way soft drink bottles both needed further discussion. It was decided to request the Task Committee to study these subjects at an early meeting and report back to this committee.

7. Next Meeting.

The next meeting of the Market Research and Promotion Committee is to be held in conjunction with the January meeting of the Board of Trustees, exact date to be determined later.

8. Adjournment.

Because of a scheduled meeting of the Board of Trustees at four o'clock, the Market Research and Promotion meeting was adjourned at that hour.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 478] GOVERNMENT'S EXHIBIT 109

Minutes of Meeting

Market Research and Promotion Task Committee
GCMI Conference Room
New York, New York

January 15, 1957

Present:

R. H. Hetzel, Chairman—Armstrong Cork Company, S. F. Davis—Owens-Illinois, S. B. DeMerell—Anchor Hocking Glass Corporation, J. H. Funkey—Carr-Lowrey Glass Company, J. A. Giddings—Brockway Glass Company, Inc., P. I. Heuisler—Maryland Glass Corporation, P. S. Holmquest—Thatcher Glass Manufacturing Company, Inc., J. H. Majesky—Continental Can Company, Inc., Hazel-Atlas Glass Division.

Absent:

W. H. Ellis—The Lamb Glass Company, G. F. Rieman—Ball Brothers Company, Inc., R. H. Roper, Jr.—Laurens Glass Works, Inc.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI, K. M. Hay—Ball Brothers Company, Inc., F. H. Wright—GCMI.

1. Minutes of Previous Meeting.

Mr. Cheney outlined the minutes of the previous Task Committee meeting on October 24, 1956. Upon motion duly made, seconded and passed, they were approved.

2. Los Angeles 1957 Soft Drink Program.

Mr. Cheney read the resolution passed by the M R & P Committee on November 12, 1956, and reported on current activities. Highlights of recent surveys in the Los Angeles area by Ford Sammis were presented.

3. No-Deposit Bottle Promotion in National Advertising.

Mr. Cheney outlined the pros of incorporating one-way advertising in national ads as follows: 1) it would help Los Angeles, 2) the potential market is vast. Cons: 1) agency is opposed because of scant distribution—one-half of 1% nationally, 2) leading customers are not in one-ways, 3) resultant confusion of copy might result in a boost for cans, 4) the glass message would be diluted.

A tally vote was taken and agreement was general that no-deposit bottles should not be promoted in national advertisements. It was subsequently agreed that the subject should be kept alive; that, while we were not at a proper [fol. 479] point to advertise one-ways nationally yet, the situation should continue to be watched.

4. Review of the Baby Food Problem.

Mr. Cheney explained that the parent committee wanted recommendations and suggestions from the Task Committee on how GCMI might extend its efforts in behalf of glass-packed baby foods.

Following discussion a tally vote indicated that the Task Committee favored continuing past and present efforts without extension.

5. Review of the Magazine Ads.

The 1957 ads were then reviewed. In various stages of production, each ad was commented on in turn. Reception, in the main, was favorable.

6. KAB Insignia.

The committee unanimously voted against including the KAB insignia in national GCMI advertising.

7. Merchandising Advertising.

Mr. Cheney said there were two places, namely, member trade paper advertising and member field staffs, where the overall glass story might be more effectively told. Discussion followed.

8. Merchandising Research Program.

Mr. Cheney outlined the forthcoming merchandising research program in six stores—each of which does a 3½ million dollar volume—in the Giant Food chain in and around Washington, D. C.

9. Virginia Beer Bottle Program.

Mr. Cheney reviewed the Virginia beer bottle program.

10. Adjournment.

There being no further business, the meeting was adjourned at 2:00.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 480] GOVERNMENT'S EXHIBIT 110

Minutes of Meeting

Market Research and Promotion Task Committee
GCMI Conference Room
New York, New York

September 11, 1957

Present:

S. B. DeMerell—Anchor Hocking Glass Corporation, J. H. Funkey—Carr-Lowrey Glass Company, K. M. Hay—Ball Brothers Company, Inc., P. I. Heuisler, Jr.—Maryland Glass Corporation, P. S. Holmquest—Thatcher Glass Manufacturing Company, Inc., R. H. Roper, Jr.—Laurens Glass Works, Inc.

Absent:

S. F. Davis—Owens-Illinois Glass Company, W. H. Ellis—The Lamb Glass Company, J. A. Giddings—Brockway Glass Company, Inc., R. H. Hetzel, Chairman—Armstrong Cork Company, J. H. Majesky—Hazel-Atlas Glass Division, Continental Can Company, Inc.

Others Present:

Bush Barnum—GCMI, A. G. Beltz—Brockway Glass Company, Inc., R. L. Cheney—GCMI, John Duncan—Hazel-Atlas Glass Division, Continental Can Company, Inc., Kevin Solon—Owens-Illinois Glass Company.

1. Call to Order.

The meeting was called to order at 10:00 A. M. by Acting Chairman Holmquest who presided in Mr. Hetzel's absence. Mr. Cheney served as secretary.

2. Minutes of the Previous Meeting.

Upon motion made, seconded and unanimously carried, the minutes of the previous meeting were approved as issued by the secretary.

3. Opening Remarks.

In his opening remarks, Acting Chairman Holmquest defined the purpose of the Task Committee meetings, namely, to screen GCMI advertising and to make recommendations to the Parent Committee.

4. Review of Progress on 1958 Program.

Mr. Cheney reviewed the progress of the 1958 program—from initial meetings with the agency last June through the [fol. 481] Advertising Advisory Committee meeting on August 15, and the Parent Committee meeting on August 27. He then presented to the Committee a digest of the 58-page recommendation presented to GCMI by Kenyon & Eckhardt, Inc.

5. Consumer Ad Schedule.

A discussion of the proposed schedule for consumer ads followed.

6. Discussion of Consumer Ads.

Roughs of the proposed consumer ads—with accompanying copy—were next presented by Mr. Cheney for committee consideration. Detailed discussion of each ad followed.

7. Remainder of 1958 Program.

Mr. Cheney reviewed for the committee the proposed trade advertising for 1958, merchandising the advertising, merchandising research, and the Glass Festival.

8. Next Meeting.

No date was set for the next meeting of the committee.

9. Adjournment.

There being no further business, Acting Chairman Holmquest declared the meeting adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 482] GOVERNMENT'S EXHIBIT 111

Minutes of Meeting

Market Research and Promotion Task Committee
GCMI Conference Room
New York, New York

September 16, 1958

Present:

K. M. Hay, Chairman—Ball Brothers Company, Inc., W. H. Ellis—Lamb Glass Company, J. R. Harkness—Fairmount Glass Works, Inc., R. H. Hetzel—Armstrong Cork Company, P. S. Holmquest—Thatcher Glass Manufacturing Company, Inc., R. H. Roper, Jr.—Laurens Glass Works, Inc.

Absent:

A. G. Boltz—Brockway Glass Company, Inc., S. F. Davis—Owens-Illinois Glass Company, S. B. DeMerell—Anchor Hocking Glass Corporation, J. H. Funkey—Carr-Lowrey

Glass Company, J. W. Thayer—Hazel-Atlas Glass Division, Continental Can Company, Inc.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI, John Duncan—Hazel-Atlas Glass Division, Continental Can Company, Inc., G. R. Hollen—Brockway Glass Company, Inc., Kevin Solon—Owens-Illinois Glass Company.

1. Call to Order.

The meeting was called to order at 10:00 A. M. by Chairman Hay. Mr. Cheney served as secretary.

2. Previous Minutes.

Minutes of the previous meeting were read by the secretary. Upon motion duly made, seconded, and unanimously carried, they were approved as read.

3. Review of Proposed 1959 Advertising and Promotion Program.

The secretary presented for Committee consideration and comment an advertising and promotion plan for 1959, stating that the program bore the recommendation of GCMI's advertising agency—Kenyon & Eckhardt, Inc.—as well as GCMI's Market Research and Promotion department. [fol. 483] The 57-page recommendation covering media, creative, budgets, promotion and advertising copy—together with roughs of 22 advertisements incorporating changes suggested by the Advertising Advisory Committee at a meeting on August 27th—were presented to the Committee by Messrs. Cheney and Barnum, general discussion following.

Changes recommended by the Task Committee were subsequently incorporated prior to final presentation to the Market Research and Promotion Committee on September 25th.

4. Giant Study.

Mr. Cheney next outlined use of the "GCMI-Giant Study," and the Committee voted unanimously to proceed as recommended.

5. Next Meeting.

No date was set for the next meeting of the Task Committee.

6. Adjournment:

There being no further business, Chairman Hay adjourned the meeting about 5:00 P. M.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 484] GOVERNMENT'S EXHIBIT 112

Minutes of Meeting
Advertising Advisory Committee
GCMI Conference Room
New York 16, N. Y.
August 26, 1958

Present:

W. M. Furlow—Knox Glass, Inc., J. H. Gilluley—Anchor Hocking Glass Corporation, Bert Herron—Owens-Illinois Glass Company, F. T. Murray—Crown Cork & Seal Company, Inc., V. C. Schranz—Ball Brothers Company, Inc.

Absent:

Max Banzhaf—Armstrong Cork Company.

Others Present:

Bush Barnum—GCMI, Leonard Carlton—Kenyon & Eckhardt, Inc., R. L. Cheney—GCMI, W. D. Harvey—Kenyon & Eckhardt, Inc., R. B. Shirey—Kenyon & Eckhardt Inc., R. D. Wilcox—Armstrong Cork Company.

1. Call to Order.

The meeting was called to order at 10:00 A. M. by R. L. Cheney, GCMI's executive director and marketing manager, who presided.

2. Round Table Discussion.

In opening the meeting, Mr. Cheney stated that, as in previous years, the agency would present for Committee consideration and comment an advertising and promotion program recommended both by Kenyon & Eckhardt and GCMI's Market Research and Promotion department.

Messrs. Shirey, Harvey and Carlton of the Kenyon & Eckhardt staff then joined the meeting and presented a detailed recommendation together with layouts and copy.

Following the departure of agency representatives at about 12:30 P. M., discussion—both general and specific—about the new program began. Various changes suggested by the Committee will be incorporated prior to similar presentations to the Task Committee on Tuesday, September 16th, and to the Market Research and Promotion Committee on Thursday, September 25th.

[fol. 485] 3. Next Meeting.

No date was set for the next meeting of the Advertising Advisory Committee.

4. Adjournment.

There being no further business, the meeting was adjourned about 5:00 P. M.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 486] GOVERNMENT'S EXHIBIT 113

Minutes of Meeting

Beer Bottle Subcommittee
GCMI Conference Room
New York, New York

June 26, 1956

Present:

R. E. Delaplane, Chairman—Owens-Illinois Glass Company, W. S. Bazzett—Thatcher Glass Manufacturing Co., Inc., J. E. Bellinger—Ball Brothers Company, Inc., E. M. Lawrence—Anchor Hocking Glass Corporation, G. A.

Mengle—Brockway Glass Company, Inc., R. M. Ulmer—Armstrong Cork Company.

Absent:

M. J. Jones—Obear-Nester Glass Company.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI, J. A. Giddings—Brockway Glass Company, Inc., V. L. Hall—GCMI, M. A. Hellrung—Owens-Illinois Glass Company, P. S. Holmquest—Thatcher Glass Manufacturing Co., Inc., H. W. Kuni—GCMI, R. R. Shirey—Kenyon & Eckhardt, Inc.

1. Call to Order.

The meeting was called to order by the Chairman, Mr. R. E. Delaplane. Mr. Cheney acted as Secretary.

2. Minutes of Previous Meeting.

The minutes of the meeting were reviewed by the Secretary.

3. Virginia Restrictions.

Mr. Kuni reported on the recent removal of the fifteen-year-old restrictions on the use of no-deposit bottles for malt beverages by the Virginia Beverage Control Board. Commission members have indicated they will review the resulting situation after a trial period of six to twelve months.

4. Baltimore Brewers.

Mr. Cheney reported on conferences with brewers in neighboring states who plan an immediate large-scale advertising and promotion program in Virginia to re-introduce beer in no-deposit bottles at prices favorable to glass.

[fol. 487] 5. GCMI Program.

A discussion followed on the pros and cons of a GCMI advertising effort in Virginia at this time. It concluded with unanimous agreement that GCMI should undertake such a test program; that it should run six to eight months; that a target starting date of August 1, 1956, be established;

that total cost should not exceed $60,000; that the effort would consist of a newspaper program in Richmond, Norfolk and the Alexandria area; that copy and illustration are to stress flavor, cleanliness, social acceptability and convenience; that price would not be mentioned; that ads are to carry the KAB insignia at the bottom.

6. Syracuse Study.

Mr. Shirey made a preliminary report on the extensive survey which the agency is currently conducting in Syracuse, New York.

7. Next Meeting.

It was decided to hold the next meeting of the Committee at GCMI headquarters in New York on Thursday, July 26, 1956.

8. Adjournment.

There being no further business, the meeting adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 488] GOVERNMENT'S EXHIBIT 114

Minutes of Meeting

Beer Bottle Subcommittee
GCMI Conference Room
New York, New York

July 26, 1956

Present:

R. E. Delaplane, Chairman—Owens-Illinois Glass Company, W. S. Bazzett—Thatcher Glass Manufacturing Co., Inc., J. A. Giddings—Brockway Glass Company, Inc., M. J. Jones—Obear-Nester Glass Company, E. M. Lawrence—Anchor Hocking Glass Corporation.

Absent:

J. E. Bellinger—Ball Brothers Company, Inc., R. M. Ulmer—Armstrong Cork Company.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI, V. L. Hall—GCMI, Eric Marder—Kenyon & Eckhardt, Inc., R. B. Shirey—Kenyon & Eckhardt, Inc., C. H. Strickland—Brockway Glass Company, Inc.

1. Call to Order.

The meeting was called to order by the Chairman, Mr. R. E. Delaplane. Mr. Cheney acted as Secretary.

2. Minutes of Previous Meeting.

The minutes of the meeting of June 26, 1956, were approved as issued by the Secretary.

3. Virginia Beer Bottle Program.

The Subcommittee reviewed the advertising layouts and copy presented by Mr. Shirey of Kenyon & Eckhardt, subject to changes and suggestions offered by the Subcommittee. An opening date of August 9 was approved for the campaign, and the proposed schedule covering newspaper ads running through December, was approved,—budget for space and production to fall within the $60,000 previously authorized.

The litter problem in Virginia was discussed and the prominent display of the KAB insignia in the ads as shown in the Kenyon & Eckhardt layouts was approved.

Plans for soliciting brewer and retailer cooperation with the campaign were approved. Brewers and distributors are to be covered by direct mail with schedules and ad proofs which will be offered in quantity. Retailers will be contacted by the newspapers.

[fol. 489] Ford Sammis & Company had completed field work on a consumer survey in Virginia to determine knowledge of the One-Way bottle and attitudes toward it. The Subcommittee approved plans to follow this with a survey at the conclusion of the program to determine progress. It was also planned to obtain distribution and sales data from all possible sources.

4. Syracuse Study.

The representatives of Kenyon & Eckhardt then presented parts I, II and III of their Syracuse Beer Container Study, to wit:

I. Story Audits of Selected Brands of Beer
II. The Dealers Survey
III. The Brewer and Distributor Survey

Copies were furnished to Subcommittee members, and a discussion followed. As soon as the consumer survey is analyzed, a thorough marketing study will be made by Kenyon & Eckhardt and full recommendations will be submitted to the Subcommittee.

5. Adjournment.

There being no further business the meeting adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 490] GOVERNMENT'S EXHIBIT 115

Minutes of Meeting

Beer Bottle Subcommittee
GCMI Conference Room
New York, New York

March 26, 1957

Present:

R. E. Delaplane, Chairman—Owens-Illinois Glass Company, J. E. Bellinger—Ball Brothers Company, Inc., J. A. Giddings—Brockway Glass Company, Inc., Lyle Harder—Thatcher Glass Manufacturing Company, Inc., E. M. Lawrence—Anchor Hocking Glass Corporation.

Absent:

M. J. Jones—Obear-Nester Glass Company, R. M. Ulmer—Armstrong Cork Company.

Others Present:

Bush Barnum—GCMI, R. L. Cheney—GCMI, D. L. Keys—Kenyon & Eckhardt, Inc., Eric Marder—Kenyon & Eckhardt, Inc., R. B. Shirey—Kenyon & Eckhardt, Inc.

1. Call to Order.

The meeting was called to order by the Chairman, Mr. R. E. Delaplane. Mr. Cheney served as secretary.

2. Minutes of the Previous Meeting.

Upon motion made, seconded, and unanimously carried, the minutes of the July 26, 1956, meeting were approved.

3. Syracuse Beer Studies.

The meeting was turned over to R. B. Shirey of Kenyon & Eckhardt, Inc., GCMI account supervisor. He in turn introduced Eric Marder of the agency's research staff. Mr. Marder presented a summary of the beer studies conducted among 581 Syracuse consumers in the late summer of 1956. This constituted part four of the agency's comprehensive Syracuse Beer Container Study. It dealt with consumer acceptances of beer containers, consumer size preferences, consumer appeals, and consumer prejudices about beer containers.

Following Mr. Marder's presentation, Mr. Shirey and Douglas Keys, GCMI account executive, presented the agency's analysis and recommendation. In summary, Kenyon & Eckhardt does not recommend proceeding with proposed marketing tests in the Syracuse area, in the absence of a favorable economic relationship at the retail level, such as now exists in Maryland and Virginia. Following discussion, members of the Beer Bottle Subcommittee unanimously approved this viewpoint.

[fol. 491] 4. Virginia Beer Bottle Program.

Mr. Cheney reported to the Subcommittee in detail on the results of the program in behalf of one-ways conducted in three Virginia markets from August through December, 1956. Following discussion, a motion was made, seconded and unanimously carried that the agency submit recommendations for an advertising program in Virginia to cost approximately $40,000, major emphasis to be placed on the

important beer-consuming holidays—Decoration Day, Independence Day and Labor Day.

5. Vermont Legislative Situation.

Mr. Cheney reported on the current situation regarding the proposed legislative ban of one-way beer bottles in the state of Vermont.

6. New Business.

No new business was brought before the Subcommittee.

7. Next Meeting.

No date for the next meeting was established.

8. Adjournment.

There being no further business, Chairman Delaplane declared the meeting adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 492] GOVERNMENT'S EXHIBIT 116

Minutes of Meeting

Beer Bottle Subcommittee
GCMI Conference Room
New York, New York

August 21, 1958

Present:

E. M. Lawrence, Chairman—Anchor Hocking Glass Corporation, A. G. Beltz—Brockway Glass Company, Inc., H. C. Crago—Hazel-Atlas Glass Division, Continental Can Company, Inc., K. Kevin Hepp—Owens-Illinois Glass Company, P. S. Holmquest—Thatcher Glass Manufacturing Company, Inc., R. M. Ulmer—Armstrong Cork Company.

Absent:

M. J. Jones—Obear-Nester Glass Company, G. W. Meyer—Glenshaw Glass Company, Inc.

Others Present:

J. B. Carroll—GCMI, R. L. Cheney—GCMI, K. M. Hay—Ball Brothers Company, Inc., J. P. Moore—Metro Glass Company, Inc.

1. Call to Order.

The meeting was called to order by Chairman E. M. Lawrence.

2. Minutes of the Previous Meeting.

Upon motion made by Mr. Holmquest, seconded by Mr. Beltz and unanimously carried, the minutes of the March 26, 1957 meeting were approved.

3. Beer Pilot Study. Institute for Motivational Research, Inc.

Mr. Cheney presented a report on the findings of the Institute for Motivational Research, Inc., in its pilot study concerning beer distributors' views on beer packaging—one-way bottles and returnables as compared with cans. This packaging study was carried on through personal depth interviews with 60 beer distributors selected on a regional basis. It was the initial phase of a proposed five phase study which will include, in addition to distributors: brewers, drivers, retailers and consumers.

Copies of this report have been furnished to all members of this Subcommittee.

[fol. 493] B

Total Advertising & Promotion

	1958 Budget	1959 Budget	Amount (over) or under 1958
Advertising and Promotion (Kenyon & Eckhardt, Inc.)	$1,208,178	$1,250,000	($41,822)
Publicity, General	80,000	80,650	(650)
Milk Bottle Promotional Program	48,000	48,000	.....
Total	$1,336,178	$1,378,650	($42,472)

[fol. 494] 4. Further Studies Approved.

The Institute for Motivational Research recommended they continue with the remaining four phases of the study after which a final analysis will be prepared.

They also recommended that a special side study be made in the Pittsburgh and Toledo markets to enable them to evaluate certain new beer bottle innovations introduced there. In this particular study all levels of the trade will be studied simultaneously.

Following a general discussion concerning the advisability of entering into this special study, upon motion duly made, seconded and unanimously carried, it was

> Resolved, That the Institute for Motivational Research, Inc. be authorized to conduct special beer packaging studies in the Pittsburgh and Toledo beer markets at the cost of approximately $5,000, in addition to completing the original nationwide study.

(After the close of the meeting Mr. Cheney determined that the entire five phase study and the special study on Pittsburgh and Toledo beer markets can be completed and reported to the Beer Bottle Subcommittee at its next scheduled meeting, Wednesday, October 29.)

5. Review of Package Beer Statistics.

The Subcommittee received several reports on package beer data, including statistics for the first half of 1958, and a special study of trends in one-way bottles vs. cans.

6. New Business. Promotion Participation—Pittsburgh.

At the suggestion of one member, the Subcommittee considered the advisability of lending advertising support to the new beer bottle in the Pittsburgh area. While it was the consensus that there was not yet sufficient evidence that the Pittsburgh situation presented the proper opportunity for launching a beer bottle promotion, the Subcommittee unanimously adopted the following resolution:

> Resolved, That this Subcommittee feels that in the near future serious consideration should be given to a carefully planned and executed aggressive promo-

tional campaign in behalf of the no-deposit glass beer bottle.

[fol. 495] 7. Next Meeting.

The Subcommittee elected to meet Wednesday, October 29, at the GCMI headquarters in New York to receive the complete report on the motivational studies.

8. Adjournment.

There being no further business, Chairman Lawrence declared the meeting adjourned.

Respectfully submitted, R. L. Cheney, Secretary.

[fol. 496] GOVERNMENT'S EXHIBIT 117

Technical Committee on Glass Packed Products
Special Subcommittee on Nuclear Tests Semi-Annual Report of Activities For the Period May to September 1957.

To the Board of Trustees
of Glass Container Manufacturers Institute

Mid-1957 the Federal Civil Defense Administration released the official, and presumably the final, report on the "Effects of Nuclear Explosions on Canned Foods". The term "canned foods" as used throughout the report refers to foods packed in glass and tin containers. Earlier in the year interim reports were issued on fruits, vegetables and juices, and a separate report on commercially packaged beverages. These reports and their conclusions are of great significance to glass container and closure manufacturers, their packer and bottler customers, and the American public. Certainly the serviceability of glass as a protective package was clearly demonstrated.

The tests were conducted in cooperation with the Atomic Energy Commission at the Nevada Test Site during the forepart of 1955. Some 60 different types of foods representing those most commonly found in homes were selected for test purposes. Altogether about 25,000 individual sample packages were involved. Among the glass packed items

were a range of fruits, vegetables, meats, fish, and baby foods. Other glass packed items comprised drugs and beverages, the latter including soft drinks and beer. Briefly, the principal objectives of the test were to determine the effect of extreme heat, pressure changes and the various types of radioactivity that are generated by nuclear explosion on containers and the products in them.

The official report, which was sent by the Subcommittee to all members under date of August 16, 1957, contains a great deal of important information heretofore unavailable. The findings set forth in the Summary are most gratifying to our industry. Of particular interest are the two following conclusions quoted from the Summary Section:

> "Canned foods in unbroken tin or glass containers subjected to an atomic blast are suitable for immediate use when located in shelters or other structures effective in protecting personnel against lethal radiation or blast effects. Their induced radioactivity is not at a dangerous level, and any container failure is readily discernible. Canned foods that might be recoverable from critically exposed areas within the zone of complete destruction could be pressed into emergency service after three or four days."
>
> "Even in the case of an above ground shelter so badly shattered that no personnel could have survived crushing or the lethal doses of radiation, 67 per cent of the canned foods were recovered in usable condition."
>
> Note: Canned foods includes glass packed products.

Since this likely may be the final report of the Subcommittee appointed by the Trustees on May 14, 1954 to handle participation of GCMI in the Nuclear Test Program, it seems appropriate to include a short bibliography:

[fol. 497]

1. Semi-Annual Activities Reports to the GCMI Board of Trustees; Special Subcommittee on Nuclear Tests; May 1955, November 1955 and May 1956.
2. Federal Civil Defense Administration-Atomic Energy Commission Reports "Operation Teapot" February-May 1955:

(a) Program 32—"Exposure of Foods and Foodstuffs to Nuclear Explosions"—Report WT-1222.

(b) Project 32.2a—"The Effect of Nuclear Explosions on Commercially Packaged Beverages"—Report WT-1213.

(c) Project 32.2—"Effects of Nuclear Explosions on Canned Foods"—Report WT-1212. (Final Report)

Members of this Subcommittee are:

Alex Hart, Chairman—Anchor Hocking Glass Corporation
H. A. Barnby—Owens-Illinois Glass Company
J. M. Sharf—Armstrong Cork Company
P. O'C. White—White Cap Company
H. W. Kuni—GCMI

Messrs. Sharf and Kuni handled all arrangements in connection with the program and participated in the tests at Yucca Flats and Mercury, Nevada.

Respectfully submitted, Alex Hart, Chairman.

[fol. 498] GOVERNMENT'S EXHIBIT 118

Committee on Market Research and Promotion
Semi-Annual Report of Activities
For the Period November 1955 to May 1956

To the Board of Trustees of
Glass Container Manufacturers Institute

The personnel of the Committee is as follows:

F. B. Pollock, Chairman—Thatcher Glass Manufacturing Company, Inc., J. S. Algeo—Hazel-Atlas Glass Company, E. F. Ball—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, E. D. Easterby—Laurens Glass Works, Inc., J. C. Feagley—Armstrong Cork Company, W. V. Fisher—Anchor Hocking Glass Corporation,

T. S. Gallagher—Crown Cork & Seal Company, Inc., J. S. Heuisler—Maryland Glass Corporation, G. A. Mengle—Brockway Glass Company, Inc., P. O'C. White—White Cap Company.

R. L. Cheney is Secretary.

The Task Committee consists of:

R. H. Hetzel, Chairman—Armstrong Cork Company, J. S. Algeo—Hazel-Atlas Glass Company, S. F. Davis—Owens-Illinois Glass Company, S. B. DeMerell—Anchor Hocking Glass Corporation, W. H. Ellis—The Lamb Glass Company, J. H. Funkey—Carr-Lowrey Glass Company, J. A. Giddings—Brockway Glass Company, Inc., Kenneth M. Hay—Ball Brothers Company, Inc., P. I. Heuisler, Jr.—Maryland Glass Corporation, P. S. Holmquest—Thatcher Glass Manufacturing Company, Inc., R. H. Roper, Jr.—Laurens Glass Works, Inc.

R. L. Cheney is Secretary.

The roster of the West Coast Subcommittee is:

K. C. White, Chairman—Owens-Illinois Glass Company, E. L. Casey—Hazel-Atlas Glass Company, R. H. Dallas—Maywood Glass Company, J. W. Donaldson—Ball Brothers Company, Inc., J. B. Miller—Thatcher Glass Manufacturing Company, Inc., William Simkins—Latchford-Marble Glass Company, E. B. Spread—Crown Cork & Seal Company, Inc.

Frank H. Wright is Secretary.

Committee Meetings.

Since the last report, one meeting of the Committee has been held:

November 28, 1955, at The Fontainebleau, Miami Beach, Florida.

[fol. 499] Since the last report, one meeting of the Task Committee has been held:

March 21, 1956, at GCMI headquarters.

GCMI's Market Research and Promotion Program divides into four major parts:

I

Advertising and Promotion

II

Public Information

III

Member Information

IV

Market Research

Following are highlights of Market Research and Promotion Division activities in each of these four major areas for the six-month period ending in May, 1956:

I

Advertising and Promotion

Designed to increase consumer preference for glass containers, the industry's long-range advertising and promotion effort was extended during the past six months to include:

Magazines: From February through May, fifteen full-page, four-color advertisements featuring glass containers appeared in Family Circle, Good Housekeeping, Ladies' Home Journal, McCall's or Woman's Day. Subjects of the first four ads in the 1956 series were: February—Instant Coffee; March—Fruits for Salad; April—Worksavers; May—Milk. Six additional ads covering the period June through November have also been prepared and cleared. Total 1956 insertions: forty. Combined circulations of the five consumer magazines on the 1956 schedule total 20,676,000. Estimated average monthly readership: 31,870,000.

The basic media choice—women's magazines—still constitutes, in the opinion of your Committee, the most economical means of presenting the advantages of glass containers to maximum consumer audiences at the national level. Mo-

mentum gained in 1955 has been speeded during the current period, and it is believed that it will continue through the current year with appreciable results in increased consumer demand for glass-packed products throughout the nation.

Canadian Program: At the request of the Canadian members of GCMI, who have supplied the funds for it, the Canadian women's magazine Chatelaine has been added to the GCMI schedule. Six of the 1956 advertisements will appear from April through November in Chatelaine, circulation of which is 407,000.

Trade Publications: Recognizing the great importance of retail trade attitudes in the free flow of glass containers from manufacturer to consumer, your Committee has, from [fol. 500] the inception of the current program, made every effort to work out a series of strong advertisements for incorporation in trade papers read by members of the retail food industry. Problems are manifest, and need no elaboration here. Suffice it to say that the 1956 trade program got underway in April issues of seven food journals—combined circulation of which is 316,000—as follows: Chain Store Age, Cooperative Groups Magazine, Food Topics, Nargus Bulletin, Progressive Grocer, Supermarket Merchandising, Supermarket News, and Voluntary and Cooperative Groups Magazine. Most are in four-color. Additional ads are scheduled—on a staggered basis—from May through September, making a total of six trade ads in each publication, or a total of 42 ads, in the 1956 trade series.

Glass Packer: The leading trade paper in the glass packaging field, Glass Packer, has a circulation of some 6,000 among packaging consultants, users of glass containers, manufacturers associations, and allied industries. Your Committee felt it advisable to use this publication on a continuing basis as part of the GCMI trade program. Double-page advertisements appeared from January through May, and are scheduled monthly through the year-end.

Labor Papers: To reach a large and influential segment of the American consuming public it was decided to include nine labor publications in the 1956 schedule as follows: American Teacher, American Teacher Magazine, Boilermakers Journal, Locomotive Fireman, Maintenance Way Journal, Public Employee, Railway Carmens Journal, Union Postal Clerk, and Motorman Conductor. Combined

circulation: 1,135,000. Black and white ads appeared on a staggered basis in February, April and May issues, and are scheduled on a monthly basis thereafter through November. Starting in May, this will be supplemented by 32 regional labor papers with a combined circulation of 1,089,000.

Local Program: A special advertising effort promoting glass bottles for soft drinks in the Los Angeles area is detailed in the report of the West Coat Subcommittee.

Merchandising the Advertising: Every ad in the 1956 series is extensively merchandised. While space does not permit a detailed report, major projects include: 1) mailing of special merchandising material by each of the consumer magazines on the schedule, plus their regular monthly merchandising services; 2) mailing of personally-addressed, hand-typed letters—accompanied by a proof—to industry leaders in each field, i.e. coffee, fruit, household cleaners, milk; 3) Glass Container Sales letters sent each month to 3,500 executives supervising buying for 28,000 supermarkets —as well as to packers, distributors and associations in each end-use area; 4) mailing of a milk promotion packet to 8,500 milk dealers in conjunction with the May ad; 5) mailing of regular releases and glossy prints of ads to interested trade papers in each field.

Home Economics Activities: The story of glass containers is told to consumers by qualified members of the Agency publicity staff on a continuing basis in many ways. Included are: 1) a matted feature which goes to 1,500 weekly and small daily newspapers once a month; 2) releases and photographs to 400 food and women's page editors of major daily newspapers once a month. (Combined circulation of these papers totals some 150,000,000. Material is based upon the end-use product featured in the corresponding national magazine advertisement); 3) a monthly release to 500 women radio commentators; 4) scripts to 200 television commentators once a month; 5) national magazines, newspaper syndicates and the labor press are contacted regularly in an effort to obtain editorial space for glass containers. First quarter results of this activity are gratifying, and a report will shortly be submitted to the membership.

[fol. 501] Preparation of a slide film designed for domestic science classes in those 19,000 schools which have projectors for this type of visual education is in progress.

II

Public Information

Motion Picture: Major effort in the GCMI public information program throughout the past six months has been the preparation of a 25-minute, 16-mm, color film on glass containers. Title: "The Story Behind A Bottle." An extensive undertaking, this project has been in work since August of 1955. At this writing, it is anticipated that the initial showing to members will be made at the mid-May membership meeting at White Sulphur Springs. Distribution plans will be outlined at that time.

GCMI Glass Container Collection: With the aid of Helen McKearin Powers, a collection of authentic, old glass containers was assembled from the notable collection of Mrs. Powers' father, George S. McKearin. It is now on display in the reception room at GCMI headquarters. The collection has aroused considerable interest, and has many promotional applications. A printed folder describing the collection was mailed to members on March 29th, 1956.

"The History of Glass Containers": A second printing of "History" was made in February. A total of 16 GCMI member companies ordered 11,000 copies of the second edition. Corporate titles were imprinted on the cover and title page in each instance. Combining first and second prints, some 66,000 copies of this green-covered booklet have now been placed in member hands. GCMI has placed 17,000 copies with opinion makers.

"The Story of Glass Containers": This 16-page educational unit was originally offered in the September, 1955, issue of Grade Teacher Magazine. It was re-offered via a full-page advertisement in the February, 1956, issue of Grade Teacher. Copies distributed to date total nearly 400,000. In the past six months, distribution has been at the rate of 8,000 a week or 1,500 a day—Monday through Friday. The National Science Teachers Association—a division of National Education Association—mailed 10,000 copies to its membership for classroom use. Considerable editorial mention—reported to members on February 17, 1956—has accrued.

"The Glass Container Industry": This recap of the glass container industry, incorporating background statistics and

accompanied by charts, was originally prepared through 1953. It was updated for 1954. It is currently being reworked to include 1955. Copies will be sent to members upon completion. It will also be used, as in the past, over a twelve-month period as a ready means of supplying writers, editors and others interested with favorable, factual information about the glass container industry.

Releases: During the six-month period, various releases were distributed by GCMI to wire services, daily newspapers and trade papers. Among them: New Peaks for Glass Container Shipments Predicted at GCMI Meeting In Miami—November 29, 1955; A. J. Martin Joins GCMI As Labor Relations Director—December 16, 1955; Glass Container Shipments Reach All-Time Peak in 1955—January 25, 1956; Glass Container Industry Signs New Wage Agreements For 1956-57—February 27, 1956.

[fol. 502] Requests for Information: Members, editors, educators, students and members of the general public approached GCMI by telephone, letter and in person in increasing numbers during the past six months with requests for a wide variety of information. The national advertising coupled with the increasing distribution of literature and releases, has given more people a name and an address to call or write, and they are doing so. These inquiries have, in each instance, been handled by the Market Research and Promotion Division to the best of its ability.

Talks to Bottlers and Others: Leading off with a speech at the annual meeting of the American Bottlers of Carbonated Beverages in Miami on November 16, 1955, R. L. Cheney subsequently addressed three state bottling associations as follows: Missouri Bottlers Association at St. Louis on December 6, 1955; California-Nevada Manufacturers of Carbonated Beverages at San Francisco on February 14, 1956; the Arkansas Bottlers Association at Little Rock, Arkansas, on February 20, 1956.

On February 23, 1956, Mr. Cheney spoke to the New York Canners & Freezers Association at Buffalo. On April 18, 1956, Mr. Cheney participated in the Fifth Annual Package Design Seminar conducted by New York University.

III

Member Information

In addition to advance mailings of most of the foregoing, the following material has been supplied to GCMI members on a continuing basis:

Advertising and Promotion Bulletins: During the course of the six-month period, 40 mailings were sent to some 250 executives of member companies reporting details of the Advertising and Promotion Program. While it is not possible to recap full details in the course of this brief report, members were advised regularly on all developments in the M R & P program as they occurred.

Container Capsules: A digest of current news developments culled from some 131 trade papers and daily newspapers went forth to GCMI members twice a month throughout the six-month period.

Reprints: Complete reprints of significant editorial comment were mailed to members at the rate of about three a week during the past six months.

IV

Marketing Research

Market Survey: The results of the 1955 nationwide consumer attitude survey, which were reported to the semi-annual membership meeting on December 1, 1955, have been further analyzed to develop information for our advertising agency on magazine readership and notation of the GCMI advertising messages. The summary report has been put in printed form, available to members on a libarary loan basis.

Further breakdowns revealing special opportunities and problems of the glass container industry, together with regional trends, have been made and will be reported to the membership at the annual meeting in May. These will later be issued in printed form to members.

[fol. 503] A special report on consumer attitudes in the West, together with data covering sales of baby foods and soft drinks in the Los Angeles area derived from continuing store audits there, were given at the annual meetings of the West Coast Subcommittees in March.

Plans are being prepared by the Market Research and Promotion Division, the research department of Kenyon & Eckhardt, and Ford Sammis for the 1956 consumer attitude survey to be conducted in August and reported at the November semi-annual meeting.

Special Studies: A field check has been made of the progress of market tests on new metal containers for soluble coffee, and an investigation made of potential markets for glass containers for liquid detergents, including heavy duty detergents.

Bibliographies and reprints of technical articles bringing out the relative merits of glass containers and other packaging are being assembled.

Retail Tests: A pilot study will have been completed on April 18th, in a large supermarket in the New York City area covering turnover, handling costs, sales and profits per square foot, breakage and damage losses, and related information on products packed in glass compared with those in other containers. The purpose was to establish a series of benchmarks for practical merchandising and sales ideas designed to increase the sale of products packaged in glass. Possibilities uncovered by this study will be tested in retail outlets in various parts of the country.

Negotiations are underway with a consulting organization in the supermarket operation field to develop the means for conducting these broader tests.

Beer Bottle Studies: The beer bottle studies being made by Kenyon & Eckhardt, Inc. will shortly be completed. (See report of Beer Bottle Subcommittee)

Product Research: Discussions are being held with two leading product research and design organizations to determine if their techniques can help in developing ways and means for expanding the sales of such items as One-Way beer bottles.

West Coast Subcommittee Activities.

Since submission of the November, 1955, report, Subcommittee meetings have been held December 15, 1955; February 2, 1956; February 3, 1956; February 14, 1956; and March 13, 1956.

The Subcommittee formulated a questionnaire designed to accurately evaluate the impact of the three-month local

promotion carried on in the Los Angeles market during the months of July, August and September, 1955, directed towards soft drinks in glass bottles. This questionnaire was sent to all bottlers in the Los Angeles area, and the replies correlated and tabulated in the West Coast GCMI office and distributed to the Subcommittee for study and action.

The decision was reached that a continuing local radio and TV spot program in that market during 1956 was required to realize full value from the 1955 effort and to keep the favorable trend of soft drink packaging in glass bottles against any aggressive activity on behalf of various can manufacturers and soft drink manufacturers towards packaging soft drinks in metal containers.

[fol. 504] As funds to carry out this program were not available from the national Market Research and Promotion budget, and the problem was felt to be of extreme importance, not only to the glass container industry on the West Coast, but nationally, the Subcommittee was unanimous in resolving that the companies operating plants within the State of California would assess themselves to finance a 1956 program.

At the time of Mr. R. L. Cheney's address to the California-Nevada Manufacturers of Carbonated Beverages, February 14, 1956, the Subcommittee had the pleasure of discussing the 1956 advertising program and various problems particular to the West Coast, presenting numerous facts and figures to Mr. Cheney.

A request directed to the Subcommittee by the CNMCB to contribute one half of the cost of a continuing advertising program for returnable bottles in the West Coast trade journals, was not given favorable consideration, as the Subcommittee was of the opinion that the basic problem was one of glass versus tin, and that effort directed at consumer level would accomplish the most favorable results.

Continued increases in glass-packed baby foods on the Coast were noted in 1955, and the Subcommittee is continuing its careful watch and study of this important and growing market.

With the advent of spring, the Subcommittee and Task Force for Public Education have stepped up activity directed to improve roadside litter conditions on the West Coast. At all times close liaison and cooperation is main-

tained with the California State Chamber of Commerce, and the West Coast Manager of GCMI, under the direction of the Subcommittee and Task Force, keeps fully advised of all matters concerning this problem, reporting them immediately to the Subcommittee.

Respectfully submitted, Franklin B. Pollock, Chairman.

[fol. 505] GOVERNMENT'S EXHIBIT 119

Committee on Market Research and Promotion

Semi-Annual Report of Activities
For the Period May 1956 to November 1956

To the Board of Trustees
of
Glass Container Manufacturers Institute

The personnel of the Committee is as follows:

F. B. Pollock, Chairman—Thatcher Glass Manufacturing Company, Inc., J. A. Algeo—Hazel-Atlas Glass Company, E. F. Ball—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, E. D. Easterby—Laurens Glass Works, Inc., J. C. Feagley—Armstrong Cork Company, W. V. Fisher—Anchor Hocking Glass Corporation, J. M. Foster—Foster-Forbes Glass Company, T. S. Gallagher—Crown Cork & Seal Company, Inc., J. S. Heuisler—Maryland Glass Corporation, G. A. Mengle—Brockway Glass Company, Inc., P. O'C. White—White Cap Company. R. L. Cheney is Secretary.

The Task Committee consists of:

R. H. Hetzel, Chairman—Armstrong Cork Company, S. F. Davis—Owens-Illinois Glass Company, S. B. DeMerell—Anchor Hocking Glass Corporation, W. H. Ellis—The Lamb Glass Company, J. H. Funkey—Carr-Lowrey Glass Company, J. A. Giddings—Brockway Glass Company, Inc., P. I. Heuisler, Jr.—Maryland Glass Corporation, P. S. Holmquest—Thatcher Glass Manufacturing Company, Inc., J. H. Maiesky—Hazel-Atlas Glass Company, G. F. Rieman

—Ball Brothers Company, Inc., R. H. Roper, Jr.—Laurens Glass Works, Inc.

R. L. Cheney is Secretary.

The roster of the West Coast Subcommittee is:

K. C. White, Chairman—Owens-Illinois Glass Company, E. L. Casey—Hazel-Atlas Glass Company, R. H. Dallas—Maywood Glass Company, J. W. Donaldson—Ball Brothers Company, Inc., J. B. Miller—Thatcher Glass Manufacturing Company, Inc., William Simkins—Latchford-Marble Glass Company, E. B. Spread—Crown Cork & Seal Company, Inc.

Frank H. Wright is Secretary.

Committee Meetings.

Since the last report, two meetings of the Committee have been held:

[fol. 506] May 20, 1956, at The Greenbrier, White Sulphur Springs, West Virginia.

September 26, 1956, at GCMI headquarters.

Since the last report, one meeting of the Task Committee has been held:

October 4, 1956, at GCMI headquarters.

One meeting of the Advertising Advisory Group has been held:

September 18, 1956, at GCMI headquarters.

GCMI's Market Research and Promotion Program divides into four major parts:

I

Advertising and Promotion

II

Public Information

III

Member Information

IV

Market Research

Following are highlights of Market Research and Promotion Division activities in each of these four major areas for the six-month period ending in November, 1956:

I

Advertising and Promotion

Designed to increase consumer preference for glass containers, the industry's long-range advertising and promotion effort was extended during the past six months to include:

Magazines: From May through November, twenty-five full-page, four-color advertisements featuring glass containers appeared in Family Circle, Good Housekeeping, Ladies' Home Journal, McCall's or Woman's Day. Subjects of the final six ads in the 1956 series were: June—Soft Drinks; July—Beer; August—Soft Drinks; September—Baby Food; October—Juices; and November—Cosmetics. Total 1956 insertions: forty. Combined circulation of the five consumer magazines on the 1956 schedule totals 20,676,000. Estimated average monthly readership: 31,870,000. The basic media choice—women's magazines—still constitutes, in the opinion of your Committee, the most economical means of presenting the advantages of glass containers to maximum consumer audiences at the national level. While any effort to change consumer attitudes on a national scale is necessarily long-range, it is the belief of your Committee that tangible progress has been made since the inception of the GCMI Program in May of 1955, and that further gains in the sale of glass-packed products will be scored in the months and years ahead.

[fol. 507] Canadian Program: At the request of the Canadian members of GCMI, who supplied the necessary funds, the Canadian women's magazine Chatelaine was added to the GCMI schedule. Six of the 1956 advertisements appeared from April through November in Chatelaine, circulation of which is 407,000.

Trade Publications: Recognizing the great importance of retail trade attitudes in the free flow of glass containers from manufacturer to consumer, your Committee has, from the inception of the current program, made every effort to

work out a series of strong advertisements for incorporation in trade papers read by members of the retail food industry. The 1956 trade program got underway in April issues of seven food journals—combined circulation of which is 316,000—as follows: Chain Store Age, Cooperative Groups Magazine, Food Topics, Nargus Bulletin, Progressive Grocer, Supermarket Merchandising, Supermarket News, and Voluntary and Cooperative Groups Magazine. Most ads are in four-color. Six ads appeared in each publication, from April through September, 1956. Total insertions: 42.

Glass Packer: The leading trade paper in the glass packaging field, Glass Packer, has a circulation of some 6,000 among packaging consultants, users of glass containers, manufacturers associations, and allied industries. Your Committee felt it advisable to use this publication on a continuing basis as part of the GCMI trade program. Double-page advertisements are scheduled monthly throughout 1956.

Labor Papers: Nine national labor publications are included in the 1956 schedule as follows: American Teacher, American Teacher Magazine, Boilermakers Journal, Locomotive Fireman, Maintenance Way Journal, Public Employee, Railway Carmens Journal, Union Postal Clerk, and Motorman Conductor. Combined circulation: 1,135,000. Black and white ads appeared on a staggered basis from February through November, 1956. Total insertions: 47. Starting in May, this schedule was supplemented by 32 regional labor papers with a combined circulation of 1,089,000. Total regional insertions: 105.

Local Programs: Special advertising effort promoting glass bottles for soft drinks in the Los Angeles area and glass bottles for beer in the State of Virginia are detailed in the report of the West Coast Subcommittee and the Beer Bottle Subcommittee, respectively.

Merchandising the Advertising: Every ad in the 1956 series is extensively merchandised. While space does not permit a detailed report, major projects include: 1) mailing of special merchandising material by consumer magazines on the schedule; 2) mailing of personally-addressed, hand-typed letters—accompanied by a proof—to leading packers; 3) Glass Container Sale$letters sent each month to 3,500

executives supervising buying for 28,000 supermarkets—as well as to packers, distributors and associations in each end-use area; 4) mailing of regular releases and glossy prints of ads to interested trade papers in each field.

Home Economics Activities: The story of glass containers is told to consumers by qualified members of the Agency publicity staff on a continuing basis in many ways. Included are: 1) a matted feature which goes to 1,500 weekly and small daily newspapers once a month; 2) releases and photographs to 400 food and women's page editors of major daily newspapers; 3) releases to women radio commentators; 4) scripts to television commentators once a month; 5) national magazines, newspaper syndicates and the labor press are contacted regularly in an effort to obtain editorial space for glass containers.

[fol. 508] Preparation of a slide film designed for domestic science classes in those 19,000 schools which have projectors for this type of visual education is nearing completion.

II

Public Information

"The Story Behind A Bottle": A working print of this 24-minute motion picture was shown members at The Greenbrier on May 22, 1956. Twenty-eight member companies subsequently ordered a total of thirty-one 16-mm prints—which were delivered on or before September 20. Previews for press, etc., were held on September 13 and 14, and on October 11. Promotional material was prepared and distributed. Reaction has been consistently favorable. The film was telecast over an American Broadcasting Company coast-to-coast network on September 27, shown over the network's New York flagship station—WABC—on October 14. WRCA, key station of the National Broadcasting Company, showed the film on November 4. Numerous other screenings have been scheduled, including one at the ABCB convention in Cleveland on November 15. Plans for extensive national distribution in the months ahead are currently in work.

"The Story of Glass Containers": Demand from teachers for this 16-page educational unit continues to exceed optimistic estimates. In the four-week period September 4

through 28, 1956, a total of 218,000 copies were requested. Over 700,000 copies of the booklet have been distributed since the booklet was first introduced in September of 1955. Unsolicited comment from teachers has been highly gratifying.

"The History of Glass Containers": Member companies continue to order copies of this 24-page booklet with their corporate name imprinted on cover and title page. A third printing was done in September. Over 75,000 copies have been placed in member hands to date. Some 20,000 additional copies have been distributed from GCMI headquarters.

"The Glass Container Industry": This recap of the glass container industry, incorporating background statistics and accompanied by charts, has been updated annually since 1953. The version covering data for 1955 was distributed to members in early June and it is used at GCMI headquarters on a continuing basis to provide those interested with factual information about the industry.

"The Evolution of the Glass Container Industry": Daniel J. James, professor of marketing, University of Arkansas, College of Business Administration, brought to our attention an independently-prepared treatise on the subject of glass containers. Professor James agreed to the incorporation of his material by GCMI in a 24-page booklet—subsequently made available to members and others.

Releases: During the six-month period, various releases were distributed by GCMI, to wire services, daily newspapers and trade papers. Among them: GCMI Semi-Annual Meeting Scheduled at White Sulphur Springs May 21-23—April 16, 1956; Instant Products Contribute to New Record Glass Shipments—June 6, 1956; New Peaks for Glass Container Shipments in 1960 Predicted at GCMI Meeting, May 22, 1956; William J. Green Named GCMI Trustee—September 19, 1956; Glass-Packed Food & Candy Dominate National Show—September 19, 1956; August Glass Container Shipments at All-Time Peak—September 24, 1956.

[fol. 509] Requests for Information: Members, editors, educators, students and members of the general public approach GCMI by telephone, letter and in person in increasing numbers during the past six months with requests

for a wide variety of information. These inquiries have, in each instance, been handled by the Market Research and Promotion Division to the best of its ability.

III

Member Information

In addition to advance mailings of most of the foregoing, the following material has been supplied to GCMI members on a continuing basis:

Advertising and Promotion Bulletins: During the course of the six-month period, 32 mailings were sent to some 200 executives of member companies reporting details of the Advertising and Promotion Program. While it is not possible to recap full details in the course of this brief report, members were advised regularly on all developments in the M R & P Program as they occurred.

Container Capsules: A digest of current news developments culled from some 131 trade papers and daily newspapers went forth to GCMI members twice a month throughout the six-month period.

Reprints: Complete reprints of significant editorial comment were mailed to members at the rate of about one a week during the past six months.

IV

Marketing Research

Market Survey: Field work for the third annual nationwide consumer attitude survey by Ford Sammis and Company was completed late in August. This year 4,000 women, 2,000 men and 1,000 retailers were interviewed in scientifically selected samples designed to give a true picture of overall attitudes toward glass containers and glass-packed products.

The results will be covered in a report by Mr. Sammis at the Semi-Annual meeting in Phoenix, and will later be available to members in printed form on a loan basis. Comparisons with 1954 and 1955 reports will reveal trends and that a number of new areas have been explored which should prove helpful to members and the Institute in planning future marketing activities.

Special Studies: To measure results of local programs, to obtain knowledge for the overall effort, and to gain needed information regarding special marketing problems, the following studies have been or are being made (by Ford Sammis and Company unless otherwise noted):

(a) Beer bottle studies by Kenyon & Eckhardt (See Beer Bottle Subcommittee Report.)
(b) Before-and-after consumer attitude surveys on beer packaging in Virginia.
(c) Before-and-after consumer survey on soft drinks in the Los Angeles area.
(d) Continuing store audits in the Los Angeles area covering soft drinks and baby foods.
[fol. 510] (e) Consumer and dealer survey on milk packaging in the South Bend, Indiana, market, together with an analysis of published cost studies covering a dairy conversion to 100% paper operation there.
(f) A study of potential markets for aseptically packed products in glass containers.
(g) A special study of the market problems of the glass milk bottle.

Retail Studies: The report of the pilot study made in a large supermarket in the New York City area has been completed, and arrangements are pending with a group of stores in another area to test some of the findings on a broader scale before the end of the year. It is hoped to develop facts which can be used to further break down retailer resistance to glass-packed products.

West Coast Subcommittee Activities.

Since previously reporting, the West Coast Subcommittee have held meetings at the Sheraton-Palace Hotel, San Francisco, on March 13; the Sheraton-Town House, Los Angeles, on April 27; the Fairmont Hotel, San Francisco, on July 27; and the Sheraton-Town House, Los Angeles, on September 26, 1956.

The majority of the Subcommittee's work has been directed toward the 13-week radio spot program promoting

soft drinks in glass bottles in the Los Angeles market. This radio spot program, commencing June 25 and running through September 23, had in excess of 1,250 spots and achieved a high degree of saturation. Financing of the program was accomplished by the West Coast manufacturers assessing themselves $20,000.00 in order to continue the program originally started in conjunction with the California-Nevada Manufacturers of Carbonated Beverages in 1954 and continued in 1955 by the Market Research and Promotion Department as one of the local promotions in the industry advertising and promotion program. Copy prepared by the Kenyon & Eckhardt, Inc. advertising agency contained mention of the one-way beverage bottle which was scheduled to be used in 25% of the broadcasts. During the last month of the program this percentage of one-way messages was substantially increased. The program was merchandised by mailings from the West Coast GCMI office to all members of the Southern California Bottlers Association and approximately 1,900 Class A markets in Los Angeles County. Point-of-sale material was provided to retail outlets who took advantage of its offer.

At the suggestion of the Subcommittee, the California manufacturers again purchased space for the GBBA's use in the Union Products and Services Show which enjoyed an attendance of over 150,000 visitors. Ten thousand copies of "The Story of Glass Containers" were distributed by the GBBA at this event.

Subcommittee interest in milk bottle sales and merchandising to creameries prompted suggestions which were forwarded to the Parent Committee for the modernization and redesign of the glass milk bottle [redacted]nd.

Action by the Subcommittee and Task Force for Public Information was taken relative to a communication sent to all beach concessionaires by the Director of Health and Sanitation of the City of Hermosa Beach, California, requesting that the concessionaires sell only canned soft drinks. The Subcommittee is pleased to report success in the handling of this matter.

[fol. 511] The Subcommittee is continuing to watch carefully baby food sales in glass which, on the Coast, are

continuing to capture an increasing percentage of that market.

Respectfully submitted, Franklin B. Pollock, Chairman.

[fol. 512] GOVERNMENT'S EXHIBIT 120

Committee on Market Research and Promotion

Semi-Annual Report of Activities
For the Period November 1956 to May 1957

To the Board of Trustees of
Glass Container Manufacturers Institute

The personnel of the Committee is as follows:

F. B. Pollock, Chairman—Thatcher Glass Manufacturing Company, Inc., E. F. Ball—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, E. D. Easterby—Laurens Glass Works, Inc., J. C. Feagley—Armstrong Cork Company, W. V. Fisher—Anchor Hocking Glass Corporation, J. M. Foster—Foster-Forbes Glass Company, T. S. Gallagher—Crown Cork & Seal Company, Inc., J. S. Heuisler—Maryland Glass Corporation, G. A. Mengle—Brockway Glass Company, Inc., P. O'C. White—White Cap Company.

R. L. Cheney is Secretary.

The Task Committee consists of:

R. H. Hetzel, Chairman—Armstrong Cork Company, S. F. Davis—Owens-Illinois Glass Company, S. B. DeMerell—Anchor Hocking Glass Corporation, W. H. Ellis—The Lamb Glass Company, J. H. Funkey—Carr-Lowrey Glass Company, J. A. Giddings—Brockway Glass Company, Inc., P. I. Heuisler, Jr.—Maryland Glass Corporation, P. S. Holmquest—Thatcher Glass Manufacturing Company, Inc., J. H. Majesky—Hazel-Atlas Glass Division, Continental Can Company, Inc., G. F. Rieman—Ball Brothers Company, Inc., R. H. Roper, Jr.—Laurens Glass Works, Inc.

R. L. Cheney is Secretary.

The roster of the West Coast Subcommittee is:

K. C. White, Chairman—Owens-Illinois Glass Company, E. L. Casey—Hazel-Atlas Glass Division, Continental Can Company, Inc., R. H. Dallas—Maywood Glass Company, J. W. Donaldson—Ball Brothers Company, Inc., J. B. Miller—Thatcher Glass Manufacturing Company, Inc., William Simkins—Latchford Glass Company, E. B. Spread—Crown Cork & Seal Company, Inc.

Frank H. Wright is Secretary.

[fol. 513] Committee Meetings.

Since the last report, two meetings of the Committee have been held:

November 12, 1956, at the Arizona Biltmore Hotel, Phoenix, Arizona.

January 16, 1957, at GCMI headquarters.

Since the last report, one meeting of the Task Committee has been held:

January 15, 1957, at GCMI headquarters.

GCMI's Market Research and Promotion Program divides into four major parts:

I

Advertising and Promotion

II

Public Information

III

Member Information

IV

Market Research

Following are highlights of Market Research and Promotion Division activities in each of these four major areas for the six-month period ending in May, 1957:

I

Advertising and Promotion

Magazines: From November through May, twenty-two full-page, four-color advertisements featuring glass containers appeared in Family Circle, Good Housekeeping, Ladies' Home Journal, McCall's and Woman's Day. Subjects of the first four ads in the 1957 series were: February-Beets; March-Pickles; April-Drugs; May-Milk. Combined circulation of the five consumer magazines on the 1957 schedule totals 20,199,000. Estimated average monthly readership: 32,004,000. The basic media choice—women's magazines—still constitutes, in the opinion of your Committee, the most economical means of presenting the advantages of glass containers to national audiences. While any effort to change consumer attitudes on a national scale is necessarily long-range, it is the belief of your Committee that tangible progress has been made since the inception of the GCMI program in May of 1955, and that Americans are becoming more glass container conscious with the passing of each month.

Canadian Program: The consumer campaign was continued into 1957 in Chatelaine. Canadian members again supplied the funds for this program. Four insertions appeared in Chatelaine—circulation of which is 407,000—between November and May.

Trade Publications: Recognizing the importance of retail trade attitudes in the free flow of glass containers from manufacturer to consumer, your Committee has, from the [fol. 514] inception of the current program, made every effort to work out a series of strong advertisements for incorporation in trade papers read by members of the retail food industry. The 1956-57 schedule includes the following seven food journals: Chain Store Age, Food Topics, Nargus Bulletin, Progressive Grocer, Supermarket Merchandising, Supermarket News, and Voluntary and Cooperative Groups Magazine. Combined circulation: 316,000. Most ads are in

four-color. Insertions from November through May totaled 21.

Glass Packer: The leading trade paper in the glass packaging field, Glass Packer, has a circulation of some 6,000 among packaging consultants, users of glass containers, manufacturers' associations, and allied industries. Your Committee felt it advisable to use this publication on a continuing basis as part of the GCMI trade program. Double-page advertisements are accordingly scheduled on a twelve-times-a-year basis.

Labor Papers: Ten national labor publications are included in the 1956-57 schedule as follows: American Teacher, American Teacher Magazine, Boilermakers Journal, Locomotive Fireman, Maintenance Way Journal, Public Employee, Railway Carmens Journal, Union Postal Clerk, Locomotive Engineers' Journal, and Railroad Telegrapher. Combined circulation: 1,083,000. Black and white ads appeared on a staggered basis from November of 1956 through May of 1957. Total insertions: 17. This schedule was supplemented by 42 regional labor papers—with a combined circulation of 1,276,000—on a staggered basis.

Local Programs: Special advertising efforts promoting glass bottles for soft drinks in the Los Angeles area and glass bottles for beer in the State of Virginia are detailed in the report of the West Coast Subcommittee and the Beer Bottle Subcommittee, respectively.

Merchandising the Advertising: Every ad is extensively merchandised. While space does not permit a detailed report, major projects include: 1) mailings of special merchandising material by consumer magazines on the schedule; 2) mailings by GCMI of personally-addressed, hand-typed letters—accompanied by a proof—to leading packers; 3) Glass Container Sales letters sent each month to 3,500 executives supervising buying for 28,000 supermarkets—as well as to packers, distributors and associations in each end-use area; 4) mailing of regular releases and glossy prints of ads to interested trade papers in each field.

Slide Film: Early in January, a 12-minute, 35mm color filmstrip entitled "Glass Containers In Today's Living" was sent to home economics teachers in 3,000 leading high

schools throughout the country. These filmstrips—with accompanying commentary describing the use of glass containers in the home—became part of the film library of the schools to which they were sent and will be used as a teaching aid year after year.

In-Store Promotion: Plans are under way for a special in-store promotion adaptable for voluntary or cooperative supermarket groups. If successful on a test basis, this in-store promotion will be extended in 1958 and thereafter as budgets permit.

II

Public Information

"The Story Behind A Bottle": From November through the end of March, 1957, this 24-minute, color film was televised 177 times on stations in 42 states to a total audience [fol. 515] conservatively estimated at 8,564,000. Had this free television time been purchased, it would have cost over $30,000. Second, the film was shown during the same period to 698 groups in 48 states. Included were: Business organizations, colleges and universities, church groups, women's clubs, PTA's, Rotary and Kiwanis Clubs, schools, public libraries, etc. Third, thirty GCMI member companies own one or more prints of the film. These members report that their prints are also being shown regularly both on TV stations and to local groups. Fourth, ten prints are kept in steady circulation from GCMI headquarters. The number of people who see the film each month thus totals 1,725,000. This breaks down to almost half a million people per week, and to an audience of 86,250 people every business day of every week.

"Glass Containers—1956": According to present schedules, a booklet incorporating information pieces heretofore issued separately will be ready early in May. Included in the new 48-page booklet will be an up-dated version of the article previously called "The Glass Container Industry," up-dated charts, "Glass Container Shipments, 1928-1956," "Sources of Information on Glass—Glassmaking and Glass Containers," a list of GCMI staff members, and so on. This basic industry round-up will be distributed to GCMI member companies, to members of the working press, to opinion

makers, to correspondents and to others interested during the next twelve months.

Photos: During the past six months GCMI has been building a photographic library. Now in a workable file are 80 glass container production photographs and 35 pictures of finished glass containers. Some have already been placed with news and trade paper editors. Others have been used in booklets. Plans are to extend this basic collection in the months ahead.

"The Story of Glass Containers": Requests from teachers for copies of this 16-page educational booklet continue to arrive at GCMI headquarters in every mail. Over 800,000 copies of the booklet have been distributed during the 1955-56 and the 1956-57 school terms.

"The History of Glass Containers": Member companies continue to order copies of this 24-page booklet with their corporate titles imprinted on cover and title page. Over 85,000 copies have been requested by members to date. Some 25,000 copies have been distributed to opinion makers, correspondents and others by GCMI.

Releases: During the six-month period, various releases were distributed by GCMI, to wire services, daily newspapers and trade papers. Among them: GCMI Semi-Annual Meeting Scheduled in Phoenix November 12 through 15—October 12, 1956; Spices and Herbs In Glass Contribute to Growth Market—October 16, 1956; GCMI Exhibiting Old Jars and Bottles—October 24, 1956; New Peaks for Glass Container Shipments Predicted at GCMI Meeting in Phoenix—November 9, 1956; Million-Dollar-Plus Ad and Promotion Campaign Mapped for Glass Containers—November 14, 1956; 250 Year Old Beer Bottles—December 3, 1956; Instant Tea In Glass Jars Contributes to New Market—January 7, 1957; GCMI Packaging Research Lab Moved to Lansing, Michigan—January 18, 1957; Glass Container Shipments Reach All-Time Peak in 1956—January 24, 1957; Outdoor Cooking Trend Helps Expand Glass Container Market—February 1, 1957; Non-Fat Dry Milk Solids in Glass Contribute to New Growth Market—March 1, 1957; and GCMI Semi-Annual Meeting Scheduled at White Sulphur Springs May 21-23—March 29, 1957.

Requests for Information: Members, editors, educators,

students and members of the general public approached GCMI by telephone, letter and in person in increasing [fol. 516] numbers during the past six months with requests for a wide variety of information. These inquiries have, in each instance, been handled by the Market Research and Promotion Division.

III

Member Information

In addition to advance mailings of most of the foregoing, the following material has been supplied to GCMI members on a continuing basis:

Advertising and Promotion Bulletins: During the course of the six-month period, 43 mailings were sent to some 230 executives of member companies reporting details of the Advertising and Promotion Program. While it is not possible to recap full details in the course of this brief report, members were advised regularly on all developments in the M R & P Program as they occurred.

Container Capsules: A digest of current news developments culled from some 131 trade papers and daily newspapers went forth to GCMI members twice a month throughout the six-month period.

Reprints: Complete reprints of significant editorial comment were mailed to members at the rate of about seven a month during the past six months.

IV

Marketing Research

Syracuse Beer Container Survey: Designed to develop information on which to base possible promotion of beer in bottles, this four-part study was conducted in the Syracuse market in 1956 and 1957. Parts I, II and III comprised, respectively, 1) analyses of sales in a sample of stores, 2) dealer opinions and 3) brewer and distributor opinions. Part IV dealt with consumer opinions, consisting of 581 consumer interviews (290 men and 291 women). Results of Parts I, II and III were presented to the Beer Bottle Subcommittee on July 26, 1956, results of the consumer studies on March 26, 1957.

Merchandising Research: Four large supermarkets of

the Giant Food Shopping Chain are cooperating in a merchandising research project designed to ascertain how the proper use of glass-packaged foods can best build the grocer's over-all volume. The participating stores each do an annual business of about four million dollars. They are located within the District of Columbia and in neighboring Maryland and Virginia suburbs.

After extensive preparation and planning, the entire packaged fruits and vegetables departments in the four stores were completely reorganized on April 1, 1957, in accordance with the research requirements. This special shelf organization, with periodic changes, will continue in the stores until the end of June.

Two basic merchandising areas are being examined: first, the type of shelf display which best makes use of glass-packaged products as a stimulus to store sales; and secondly, the ratio of glass to can packaged merchandise which may be expected to give the retailer maximum movement of both.

[fol. 517] National Consumer and Dealer Survey: Ford Sammis and Company have further analyzed data from this basic study completed last August. A preliminary report on this study was made by Mr. Sammis at Phoenix in November. A complete report will be made at the forthcoming meeting at White Sulphur Springs.

Beer in Virginia: Following completion of GCMI's bottled beer advertising campaign in Virginia markets, Ford Sammis and Company completed studies in this area with further consumer surveys and distribution studies.

Los Angeles Studies: Audits of the sale of soft drinks and baby foods in stores in the Los Angeles area were continued during the past six months by Ford Sammis and Company.

Consumer Survey: Plans are being developed for the fourth annual consumer survey. Field work will commence in August, indicating that at least a preliminary report can be made at the Fall meeting at Virginia Beach. Due to the early date of this meeting, however, it will not be possible to make a complete report at that time.

Packaging Industry Studies: A detailed statistical study of the over-all packaging industry is nearing completion. This study will up-date the industry analysis presented to

the membership in December of 1953. A report of this study will be made at the forthcoming White Sulphur Springs meeting.

Milk Bottle Study: A special study of the market problems of the glass milk bottle has been completed and presented to the Subcommittee on Milk Bottles and, in summary form, to the Market Research and Promotion Committee. Further studies are indicated in this area and will be carried forward.

GCMI Market Research Files: These files are continuously up-dated by a day-to-day reading of newspapers, trade and business papers, surveys and reports. The result is a packaging library of increasing value to members, editors, customers and the general public.

West Coast Subcommittee Activities.

Since the last Semi-Annual Report, the West Coast Subcommittee has held meetings in San Francisco on January 9; Los Angeles, January 17; Los Angeles, February 1; Pebble Beach, March 8, 1957.

On November 12, 1956, members of the West Coast Subcommittee discussed the excellent holding effect of the 1956 Los Angeles market program beamed at bottled soft drinks with the Market Research and Promotion Committee, recommending that the program be continued in 1957. Acting upon the recommendations of the West Coast Subcommittee and Mr. Cheney, $25,000 of GCMI funds was appropriated to supplement funds to be raised by the West Coast manufacturers.

It is planned to increase radio spot coverage, devoting approximately $35,000 of the budget towards a saturation radio spot program of over 4,200 thirty-second spots on 10 radio stations during a 13-week program commencing June 24, 1957.

Concentration of these spots will be at peak traffic hours, both morning and evening, and over week-ends.

Point-of-sale material designed for use in conjunction with the material developed by individual bottlers is in preparation. This is to be merchandised to the bottlers by [fol. 518] the merchandising and sales staffs of the manufacturers and the West Coast office of GCMI, and to grocers

through merchandising teams of the radio stations, Kenyon & Eckhardt, and manufacturers' sales staffs.

Under the direction of the Subcommittee, the West Coast Manager delivered a brief talk and showed the GCMI film "The Story Behind A Bottle" to the Pickle Packers Association at their West Coast meeting held in Santa Barbara, March 22, and participated in the University of California Extension Division course in "Modern Packaging" March 25, 1957, delivering a short lecture and presenting the film.

The Subcommittee has closely watched the California Grocers Association time study of the handling of the returnable containers and the West Coast Manager has been in close liaison with the Executive Vice President of the California Grocers Association concerning this Survey.

Subcommittee members have been keeping Mr. Cheney advised concerning marketing activity of a number of glass-packed products on the West Coast.

Respectfully submitted, Franklin B. Pollock, Chairman.

[fol. 519] GOVERNMENT'S EXHIBIT 121

Committee on Market Research and Promotion
Semi-Annual Report of Activities

For the Period May 1957 to September 1957

To the Board of Trustees of
Glass Container Manufacturers Institute

The M R & P Committee consists of:

F. B. Pollock, Chairman—Thatcher Glass Manufacturing Company, Inc., E. F. Ball—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, E. D. Easterby—Laurens Glass Works, Inc., J. C. Feagley—Armstrong Cork Company, W. V. Fisher—Anchor Hocking Glass Corporation, J. M. Foster—Foster-Forbes Glass Company, J. S. Heuisler—Maryland Glass Corporation, G. A. Mengle—Brockway Glass Company, Inc., S. V. Tuttas—Crown Cork & Seal Company, Inc., P. O'C. White—White Cap Company, A. W. Wishart—Knox Glass, Inc.

R. L. Cheney is Secretary.

The Task Committee:

R. H. Hetzel, Chairman—Armstrong Cork Company, S. F. Davis—Owens-Illinois Glass Company, S. B. DeMerell—Anchor Hocking Glass Corporation, W. H. Ellis—The Lamb Glass Company, J. H. Funkey—Carr-Lowrey Glass Company, J. A. Giddings—Brockway Glass Company, Inc., K. M. Hay—Ball Brothers Company, Inc., P. I. Heuisler, Jr.—Maryland Glass Corporation, P. S. Holmquest—Thatcher Glass Manufacturing Company, Inc., J. H. Majesky—Hazel-Atlas Glass Division, Continental Can Company, Inc., R. H. Roper, Jr.—Laurens Glass Works, Inc.

R. L. Cheney is Secretary.

The West Coast Subcommittee:

K. C. White, Chairman—Owens-Illinois Glass Company, E. S. Campbell—Northwestern Glass Company, E. L. Casey—Hazel-Atlas Glass Division, Continental Can Company, Inc., R. H. Dallas—Maywood Glass Company, J. W. Donaldson—Ball Brothers Company, Inc., F. W. McDonald—Glass Containers Corporation, J. B. Miller—Thatcher Glass Manufacturing Company, Inc., William Simkins—Latchford Glass Company, Russell Gowans—Crown Cork & Seal Company, Inc.

Frank H. Wright is Secretary.

[fol. 520] Committee Meetings.

The Market Research and Promotion Committee met:

At The Greenbrier, White Sulphur Springs, West Virginia, on May 20, 1957.

At GCMI headquarters on August 27, 1957.

The Task Committee met:

At GCMI headquarters on September 11, 1957.

The Market Research and Promotion Program divides into four major parts:

I

Advertising and Promotion

II

Public Information

III

Member Information

IV

Market Research

Following are developments in each of these four major areas since the meeting at White Sulphur Springs in May of 1957:

I

Advertising and Promotion

Magazines: Work was completed on the full-page, four-color advertisements scheduled to appear during 1957 in the five consumer magazines in which GCMI advertises as follows: Family Circle, Good Housekeeping, Ladies' Home Journal, McCall's and Woman's Day. With the appearance of the cosmetic ad in November issues, a total of 36 insertions will have appeared in 1957 issues of the foregoing magazines. Subjects of the ten advertisements in the 1957 series were as follows: February—Beets; March—Pickles; April—Drugs; May—Milk; June—Soft Drinks; July—Beer; August—Soft Drinks; September—Baby Foods; October—Fruit Juices; and November—Cosmetics. Combined circulation of the five consumer magazines on the 1957 schedule total 20,199,000. Average monthly readership of these magazines is estimated at over 32,000,000. In the three years of the current GCMI advertising program, an impressive total of over 672,000,000 advertising messages have been delivered by magazines alone.

Canadian Program: Canadian members continued to supply the funds with which ads appearing in U. S. magazines were re-used on a delayed basis in the Canadian magazine Chatelaine, circulation of which is over 400,000. With a re-

run of the Pickle ad in the November issue, a total of seven full-page, four-color insertions will have appeared in Chatelaine in 1957.

[fol. 521] Trade Publications: Believing strongly in the value of telling the story of glass containers to members of the retail food industry, the Committee continued the GCMI advertising program in the following seven food journals: Chain Store Age, Food Topics, Nargus Bulletin, Progressive Grocer, Supermarket Merchandising, Supermarket News, and Voluntary and Cooperative Groups Magazine. Combined circulation of these seven magazines totals 316,000. Total insertions in 1957: 42.

Glass Packer: Because Glass Packer has a circulation of some 6,000 among packaging consultants, users of glass containers, manufacturers' associations and allied industries, the Committee deems it advisable to advertise in this publication on a continuing basis. Double-page advertisements are accordingly scheduled on a twelve-times-a-year basis.

Labor Papers: Ten national labor publications were also included on the 1957 schedule as follows: American Teacher, American Teacher Magazine, Boilermakers Journal, Locomotive Fireman, Maintenance Way Journal, Public Employee, Railway Carmens Journal, Union Postal Clerk, Locomotive Engineers' Journal and Railroad Telegrapher. Combined circulation totals 1,083,000. Black and white versions of the consumer ads appeared on a staggered basis thoughout 1957. Total insertions for the year were 47. This schedule was supplemented by 114 insertions in 42 regional labor papers with a combined circulation of 1,276,000.

Local Programs: Details of the special effort promoting glass bottles for soft drinks in the Los Angeles area and the special effort promoting one-way bottles for beer in the State of Virginia are included in the reports of the West Coast Subcommittee and the Beer Bottle Subcommittee, respectively, which follow.

Merchandising the Advertising: Every ad is extensively merchandised. While space does not permit a detailed report, major projects include: 1) mailings of special merchandising material by consumer magazines on the schedule; 2) mailings by GCMI of personally-addressed,

hand-typed letters—accompanied by a proof—to leading packers; 3) Glass Container Sale$letters sent each month to 3,500 executives supervising buying for 28,000 supermarkets—as well as to packers, distributors and associations in each end-use area; 4) mailing of regular releases and glossy prints of ads to interested trade papers in each field.

Store-Wide Glass Festival: Promotional kits, in which blow-ups of consumer ads were incorporated, were offered on a test basis in the Spring of 1957 to limited groups of retailers for in-store use. Some 3,500 kits were requested and are, in most cases, being used during September and October. Plans for 1958 will be based upon the full reports of this test effort.

II

Public Information

During the past three years, several promotional tools have been developed and they are being used on a continuing basis to project the attributes of glass containers to large segments of the public. Following is a brief report of how this material is being applied on a day-by-day basis to increase consumer awareness of glass containers:

"The Story Behind A Bottle": The last semi-annual report included distribution figures through the end of March, 1957. From April 1st, 1957, through the end of July, GCMI's 24-minute motion picture was televised 122 times over stations in 43 states to a total viewing audience conservatively estimated at over 7,250,000. Through the end of July, the film has been televised 299 times to an estimated [fol. 522] audience of nearly 16,000,000. Had this free time been purchased, it would have cost more than $50,000.

During the four-month period ending in July, the film was also shown to 875 groups in 48 states. Non-TV showings through the end of July total 1,573. Groups to which the film was shown include associations of soft drink bottlers, associations of food retailers, men's and women's clubs, church groups, educational groups, business organizations and associations. In addition, GCMI member companies own and show prints, and a dozen prints are kept in constant circulation from GCMI headquarters.

"Glass Containers—1956": This new 48-page informa-

tional booklet was completed just prior to the White Sulphur meeting. Copies were subsequently distributed to some 3,000 opinion makers. Included were: members of the working press; security analysts; leading packers; and public, government, bank and other libraries. In addition, GCMI member companies requested over 3,000 copies for their own use.

"The Story of Glass Containers": Over 800,000 copies of this 16-page teaching unit have been requested to date. Requests arrive in every mail from teachers who have used it before, from teachers trying it for the first time, from companies, individuals, and others.

"The History of Glass Containers": This 24-page booklet continues popular among GCMI members who order copies with the corporate title of their respective company imprinted on cover and title page. Additional copies are also frequently requested by students, writers and others interested.

"Feature": This editorial feature service in magazine form is distributed to publications throughout the country. The issue dated June, 1957, offered editors a GCMI article entitled "Bottles by the Billion" and a series of seven accompanying photographs. Over seventy-five requests for the text and photographs have been received so far from editors of newspapers, Sunday supplements, magazines and house organs.

Releases: During the five-month period, from April through August, the following releases were sent out by GCMI to wire services, daily newspapers and trade papers: Glass Blowers Contract Increases Wages and Benefits 28¢ Per Hour—April 25, 1957; E. F. Ball Named President of Glass Container Institute—May 22, 1957; GCMI Elects New Trustees—May 29, 1957; and GMCI Semi-Annual Meeting Scheduled at Virginia Beach September 30-October 3—August 9, 1957.

Requests for Information: GCMI Market Research and Promotion Division continues to handle an increasing number of requests for information received from members, editors, educators, students, businessmen and members of the general public.

Plans for 1958: Considerable time was expended during the summer months in analyzing ways and means of extend-

ing the public information program in the months ahead. Projects under consideration or in formative stages include a 12½-minute, 35-mm version of "The Story Behind A Bottle" for distribution in motion picture theatres throughout the country, an extension of the recently established photographic library, a Mason Jar Centennial, a woman's club program, and so on.

III

Member Information

Advertising and Promotion Bulletins: Some 240 executives of member companies were kept informed of all phases of the M R & P Program through 33 mailings during [fol. 523] the five-month period ending in September.

Container Capsules: Current news items taken from more than 130 trade publications and dailies were distributed to members in digest form twice a month during the five-month period.

Reprints: Editorial comments of importance to the industry were mailed to members at the rate of about seven per month.

IV

Marketing Research

Merchandising Research: The merchandising research project in the four large supermarkets of the Giant Food Shopping Chain in the Washington, D. C., area has been completed. Preliminary reports will be presented at the forthcoming meeting at Virginia Beach.

Plans will also be presented there for utilizing results of this research to food retailers through booklets, trade paper advertising and other means.

National Consumer and Wholesaler Survey: Ford Sammis & Company completed field work for the fourth annual GCMI consumer survey in August and a report will be made to the membership at the Virginia Beach meeting. This year's survey covered 4,000 women, 2,000 men, 1,000 children and 100 wholesaler and chain store headquarters.

Beer In Virginia: Following GCMI's advertising campaign promoting one-way bottles for beer in the State of Virginia, Ford Sammis & Company have conducted con-

sumer surveys and distribution studies to determine progress made in that market.

Los Angeles Studies: The store audits covering the sale of soft drinks and baby foods in the Los Angeles area have been continued during the summer by Ford Sammis & Company and a final consumer survey will be conducted to determine the results of the 1957 soft drink bottle campaign in that area.

Milk Bottle Study: The first of a proposed series of interviews with leading operators in the dairy field has been held by the Marketing Manager and this study, designed to clarify the problems in this area, will be continued through the Fall.

GCMI Market Research Files: The continuous combing of all types of publications for information covering all phases of the packaging industry has kept the GCMI market research library up to date and it is being effectively utilized in the advertising and promotion as well as information services of the Institute.

West Coast Subcommittee Activities.

Meetings of the West Coast Subcommittee covered by this report were held in Los Angeles on April 24; Balboa, June 6-7, 1957; San Francisco, July 31-1957; and September 17, 1957.

The major portion of the Subcommittee's activity since last reporting has been concentrated on the 1957 program promoting soft drinks in glass bottles in the Los Angeles market.

Colorful point-of-purchase material was developed by the agency consisting of soft sheets and bottle hangers with separate copy for one-ways and returnable bottles. Mr. E. [fol. 524] P. Schindler, well known to the Los Angeles food and beverage trade, and previously on GCMI payroll during the one-way beer bottle promotion from 1947 to 1950, was retained to merchandise the point-of-purchase material in the retail outlets of greater Los Angeles. The material developed this year was supplemented with reprints of both national soft drink ads, a limited quantity of shelf talkers and snipes left over from the 1955 promotion, and a supply of the pamphlet developed by Mr. Cheney's

department covering the bottled soft drink profit picture for the retailer.

The merchandising efforts of Mr. Schindler have been coordinated with merchandising activity by the 10 radio stations carrying GCMI spot advertisements. Many pluses have been gained through special "packages" the stations provide their clients, including in-store spots into 35 markets eight times a day for two weeks by one station, and a "Southland Salute" honoring the glass container manufacturers who make the bottles for the soft drink industry by another. The other stations have all featured special soft drink displays in chain markets who are their clients, over staggered dates throughout the duration of the radio spot campaign.

The radio spots commencing June 24 and continuing through September 22 were brought to the attention of the grocers in the Los Angeles market through full page ads which were placed in the Southern California Grocers Journal and the Commercial Bulletin in the June 28 issues. Mr. Schindler commenced his merchandising of the program on June 15, thereby getting groundwork laid prior to the kick-off of the spot campaign.

Reports gathered from the retail trade, route salesmen, and principals of the soft drink industry indicate the program has been successful and has created the effect desired. Further, analysis of the Sammis store audits and the continuing home audits conducted by the Los Angeles Times' lead the Subcommittee to believe that we have been effective up to a point. Further exploration by all of the Subcommittee members is being made, and recommendations concerning a 1958 program will be finalized for submittal to the parent committee and Director of Marketing when the Subcommittee meets on September 17, 1957.

The Subcommittee is keeping Mr. Cheney supplied with information as to the acceptance by consumer and retailer of the 11 oz. returnable stubby beer bottle recently introduced by a California brewer.

Subcommittee members are forwarding retail store ads featuring baby foods to Mr. Cheney and are carefully watching baby food trends in metal containers and glass on the West Coast.

Respectfully submitted, Franklin B. Pollock, Chairman.

[fol. 525] GOVERNMENT'S EXHIBIT 122

Committee on Market Research and Promotion

Semi-Annual Report of Activities
For the Period October 1957 to May 1958

To the Board of Trustees of
Glass Container Manufacturers Institute

The Market Research and Promotion Committee consists of:

G. A. Mengle, Chairman—Brockway Glass Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, E. D. Easterby—Laurens Glass Works, Inc., J. C. Feagley—Armstrong Cork Company, J. W. Fisher—Ball Brothers Company, Inc., W. V. Fisher—Anchor Hocking Glass Corporation, J. M. Foster—Foster-Forbes Glass Company, W. J. Green—Thatcher Glass Manufacturing Company, Inc., J. S. Heuisler—Maryland Glass Corporation, S. V. Tuttas—Crown Cork & Seal Company, Inc., P. O'C. White—White Cap Company, A. W. Wishart—Knox Glass, Inc.

R. L. Cheney is Secretary.

The Task Committee:

R. H. Hetzel, Chairman—Armstrong Cork Company, A. G. Beltz—Brockway Glass Company, Inc., S. F. Davis—Owens-Illinois Glass Company, S. B. DeMerell—Anchor Hocking Glass Corporation, W. H. Ellis—The Lamb Glass Company, J. H. Funkey—Carr-Lowrey Glass Company, K. M. Hay—Ball Brothers Company, Inc., P. I. Heuisler, Jr.—Maryland Glass Corporation, P. S. Holmquest—Thatcher Glass Manufacturing Company, Inc., J. H. Majesky—Hazel-Atlas Glass Division, Continental Can Company, Inc., R. H. Roper, Jr.—Laurens Glass Works, Inc.

R. L. Cheney is Secretary.

The West Coast Subcommittee:

K. C. White, Chairman—Owens-Illinois Glass Company, E. S. Campbell—Northwestern Glass Company, E. L. Casey—Hazel-Atlas Glass Division, Continental Can Company, Inc., R. H. Dallas—Maywood Glass Company, J. W. Donald-

son—Ball Brothers Company, Inc., Russell Gowans—Crown Cork & Seal Company, Inc., F. W. McDonald—Glass Containers Corporation, J. B. Miller—Thatcher Glass Manufacturing Company, Inc., William Simkins—Latchford Glass Company.

Frank H. Wright is Secretary.

[fol. 526] Committee Meetings.

The Market Research and Promotion Committee met:

At The Cavalier, Virginia Beach, Virginia, on September 30, 1957
At GCMI headquarters on December 4, 1957
At GCMI headquarters on April 10, 1958

Since the last report, there have been no meetings of the Task Committee.

. . . . . .

The Market Research and Promotion Program divides into four major parts:

I

Advertising and Promotion

II

Public Information

III

Member Information

IV

Market Research

Following are developments in each of these four major areas since the Virginia Beach meeting in September of 1957:

I

Advertising and Promotion

Magazines: Work was completed on eleven full-page, four-color advertisements scheduled to appear during 1958 in the five consumer magazines on the GCMI schedule as

follows: Family Circle, Good Housekeeping, Ladies' Home Journal, McCall's and Woman's Day. Subjects of the eleven advertisements in the 1958 series are: February-Drugs; March-Coffee; April-Household Chemicals; May-Beer and Soft Drinks; June-Soft Drinks; July-Baby Food and Spices; August-Baby Food; September-Milk; October-Applesauce; and November-Jam and Peanut Butter (one ad). Combined circulation of the five consumer magazines on the 1958 schedule totals 23,300,000. Average monthly readership of these magazines is estimated at over 57,000,000. By the end of 1958 it is estimated that over 942,000,000 GCMI advertising messages will have been delivered by magazines alone since the inception of the current promotional program in 1955.

Gratifying was the fact that the American Institute of Graphic Arts announced last February that a GCMI advertisement (Fruits for Salad) had been selected as one of the "Fifty Advertisements of the Year" by the A.I.G.A.

[fol. 527] Canadian Program: Canadian members continued to supply funds with which ads appearing in U. S. magazines are re-used on a delayed basis in the Canadian magazine Chatelaine—circulation of which is over 400,000. Six full-page, four-color advertisements are scheduled during 1958.

Trade Publications: Believing in the value of telling the story of glass containers to members of the retail food industry, the Committee continued the GCMI advertising program in the following seven food journals in 1958: Chain Store Age, Food Topics, Nargus Bulletin, Progressive Grocer, Super Market Merchandising, Supermarket News, and Voluntary and Cooperative Groups Magazine. Combined circulation of these seven magazines totals nearly 350,000. Total insertions in 1958: 42.

GCMI's 1957 trade advertising program—consisting of eight advertisements—was awarded first place in the category of Public Relations Advertising in a competition conducted by the Associated Business Publications, it was announced in mid-April.

Glass Packer: Because Glass Packer has a circulation of some 6,000 among packaging consultants, users of glass containers, manufacturers' associations and allied industries, the Committee deems it advisable to advertise in this

publication on a continuing basis. Double-page advertisements are accordingly scheduled on a twelve-times a year basis.

Labor Papers: Ten national labor publications are also included on 1958 schedules. They are: American Teacher, American Teacher Magazine, Boilermakers Journal, Locomotive Fireman, Maintenance Way Journal, Public Employee, Railway Carmen's Journal, Union Postal Clerk, Locomotive Engineers' Journal and Railroad Telegrapher. Combined circulation totals approximately 1,150,000. Black and white versions of the consumer ads are scheduled on a staggered basis throughout 1958. Total insertions for the year: 37. This schedule is supplemented by 156 insertions in 55 regional labor papers with a combined circulation of 1,519,000.

Merchandising the Advertising: Every ad is extensively merchandised. While space does not permit a detailed report, major projects include: 1) mailings of special merchandising material by consumer magazines on the schedule; 2) mailings by GCMI of personally addressed, hand-typed letters—accompanied by a proof—to leading packers; 3) Glass Container Sales letters sent each month to 5,200 executives supervising buying for 28,000 supermarkets—as well as to packers, distributors and associations in each end-use area; 4) mailings of regular releases and glossy prints of ads to interested trade papers in each field.

Local Programs: Details of the special effort promoting glass bottles for soft drinks in the Los Angeles area are included in the report of the West Coast Subcommittee which appears later in this report.

Store-Wide Glass Festival: Promotional kits, in which blow-ups of consumer ads were incorporated, were offered on a test basis in the spring of 1957 to limited groups of retailers for in-store use. Some 3,500 kits were requested and used during the latter part of 1957. Plans for 1958 call for an extension of this successful in-store promotion.

[fol. 528] II

Public Information

Following is a brief report on how various GCMI promotional tools are being used on a day-to-day basis to increase consumer awareness of glass containers:

"The Story Behind A Bottle": The last semi-annual report included distribution of this color film through the end of July, 1957. Through March 31, 1958, GCMI's 24-minute motion picture was televised 420 times over stations in 43 states to a total viewing audience conservatively estimated at over 20,000,000. Had this free time been purchased, it would have cost more than $80,000.

Non-TV showings through the end of March totaled 3,716. Groups to which the film was shown include associations of soft drink bottlers, associations of food retailers, men's and women's clubs, church groups, educational groups, business organizations and associations. In addition, GCMI member companies own and show prints, and a dozen prints are kept in constant circulation from GCMI headquarters.

"Ancient Art—Modern Magic": Beginning early in May, 1958, screenings of 35-mm prints of this ten-minute version of "The Story Behind A Bottle" will begin in first-run motion picture theatres in key cities throughout the nation. By the end of 1958, it is anticipated that some 1,500 such bookings will have been completed, and the new film will have been viewed by movie audiences totaling 2,500,000.

"Glass Containers—1957": This new, enlarged 60-page informational manual—incorporating 1957 statistics—was completed early in May. Copies were subsequently distributed to some 5,000 opinion makers. Included were: members of the working press; security analysts; leading packers; deans of business schools; package designers; and public, government, bank and other libraries.

"The Story of Glass Containers": Over 900,000 copies of this 16-page teaching unit have been requested to date. Each mail brings requests from teachers, libraries, companies and individuals.

"The History of Glass Containers": This 24-page booklet continues popular among GCMI member companies. Copies are also requested by students, writers and others.

Releases: During the eight-month period, from September through April, the following releases were sent out by GCMI to wire services, daily newspapers and trade papers: GCMI President Reports Gains in Glass Container Shipments at Virginia Industry Meeting—September 27, 1957; Glass Milk Bottles Insure Full Measure—October 14, 1957; Glenn A. Mengle Named Committee Chairman—October 21, 1957; Bush Barnum Named Advertising and Public Information Director of Glass Institute—November 8, 1957; Glass Container Shipments Reach New Peak in 1957—January 24, 1958; GCMI Semi-Annual Meeting Scheduled at White Sulphur Springs May 20-23—April 21, 1958.

Photos: In recent months photographic files were increased by some 25 new end-use photographs. Some were used in "Glass Containers—1957." Others are being released. Still others are being held for specific future use.

[fol. 529] Requests for Information: The Market Research and Promotion Division continues to handle an increasing number of requests for information received from members, editors, educators, students, businessmen and members of the general public.

III

Member Information

Advertising and Promotion Bulletins: Some 240 executives of member companies were kept informed of all phases of the M R & P program by 40 mailings during the eight-month period ending April 25, 1958.

Container Capsules: Current news items taken from more than 145 trade publications and dailies were distributed to members in digest form twice a month during the eight-month period.

Reprints: Editorial comments of importance to the industry were mailed to members at the rate of about six per month.

IV

Marketing Research

Starting with the original study in 1953 of the Market Problems of the Glass Container Industry, each step in the development of GCMI's advertising, promotion and public information program has been based upon thorough, sound marketing research. The past seven months have seen continued progress in this area.

Member's Use of GCMI Research: At its April 10, 1958 meeting, the Committee established the policy that the facts contained in the various GCMI surveys (such as the Sammis surveys) shall be made available to individual members for promotional use—subject to the specific approval of Mr. Cheney.

Consumer Preferences and Motivations on Containers, 1954-1957: This report, which was presented at the membership meeting at Virginia Beach on October 1, is available to members in printed form on the usual library-loan basis. It covers the nationwide consumer attitude studies conducted over the past four years, including the 1957 survey which involved more than 7,000 interviews.

GCMI Giant Study: This merchandising research project, conducted in supermarkets of the Giant Food Store chain in the Washington, D. C. area, has been completed. Plans to exploit the findings on the broadest possible basis are complete, and it is hoped that its impact upon the food retailing industry will result in increased sale of glass-packed products.

Advertising Rating Studies: Both the leading organizations in the field of analyzing the effectiveness of advertising have been retained to measure GCMI consumer ads. They are: 1) Gallup & Robinson, Inc. and 2) Daniel Starch & Company. Over a two-year period, registration of GCMI ads by Gallup & Robinson scored 13.7 compared with 12.1 for the average of all packaging advertisements, and 10.0 for all advertising. The same firm rated GCMI ads second in order of rank among 26 different association advertising programs. These reports and those of Daniel Starch organization are being studied monthly with a view to continually improving the impact and effectiveness of GCMI advertising.

[fol. 530] GCMI Market Research Files: A full-time librarian continues to comb all types of publications for information covering the many phases of the packaging industry, so that up-to-date files are always available for the use of the marketing division and representatives of member companies.

West Coast Subcommittee Activities

Five meetings of the Subcommittee have been held since the October, 1957 report:

October 31-November 1, 1957
November 26, 1957
January 15, 1958
February 19, 1958
March 27, 1958

As reported in the October, 1957 semi-annual report, after studying bottler and retailer reactions to the 1957 Soft Drink Program carried on in the Los Angeles market, and after analyzing the Sammis store audits and other material, the Subcommittee instructed the West Coast manager to recommend a program involving approximately $50,000 for a 1958 soft drink promotion in the Los Angeles market during the summer months. Recognizing the importance of a continuing program, the parent Committee approved the West Coast Subcommittee's recommendation.

The most effective promotion was considered to be a two phase program consisting of a test merchandising promotion in Los Angeles and Orange Counties with the cooperation of qualifying grocery chains, and a radio advertising program consisting of 13 weeks of 10-second spots on selected radio stations.

The six grocery chains participating in this test program represent 215 retail outlets and enjoy an estimated 25.6% of the grocery volume in those counties. The program involves cooperative advertising and display techniques designed to increase sales of glass-bottled soft drinks. A means of measuring results is included.

Through the joint efforts of the Marketing Department, West Coast Subcommittee, advertising agency, and the advertising and merchandising managers of the participating chains, colorful, durable, point-of-purchase material has

been developed consisting of 9½ x 10" plastic stack markers for both returnable and one-way bottled soft drinks and shelf-edge markers identifying no-deposit, no-return bottles, "The Bottle You Don't Take Back." This material will be supplied to the grocers at no cost.

An experienced merchandiser has been retained to assist GCMI to help the local store managers build their displays and organize their soft drink sections. He will go on the GCMI payroll June 15, 1958, and terminate September 15, 1958.

The second phase of the program—radio advertising—consists of 10-second spots for both returnable bottles and for no-deposit bottles over selected radio stations broadcasting in Los Angeles at a saturation level (approximately 100 per week) for a 13-week period beginning June 15. These spots will be delivered live by various radio personalities which should result in greater listenership and possible added extemporaneous remarks plugging glass bottles, resulting in additional time.

[fol. 531] Under the direction of the Subcommittee, the West Coast manager is responsible for the coordination of this program with the merchandising and advertising managers of the participating firms, the advertising agency, and the GCMI merchandiser.

The Subcommittee has kept abreast of developments in the baby food industry on the West Coast.

Respectfully submitted, Glenn A. Mengle, Chairman.

[fol. 532] GOVERNMENT'S EXHIBIT 123

Committee on Market Research and Promotion

Semi-Annual Report of Activities For the Period May 1958 to November 1958

To the Board of Trustees of Glass Container Manufacturers Institute

The Market Research and Promotion Committee consists of:

J. W. Fisher, Chairman—Ball Brothers Company, Inc., C. G. Bensinger—Owens-Illinois Glass Company, E. D. Easterby—Laurens Glass Works, Inc., J. C. Feagley—Armstrong Cork Company, W. V. Fisher—Anchor Hocking Glass Corporation, J. M. Foster—Foster-Forbes Glass Company, W. J. Green—Thatcher Glass Manufacturing Company, Inc., P. I. Heuisler, Jr.—Maryland Glass Corporation, J. Gordon King—Hazel-Atlas Glass Division, Continental Can Company, Inc., G. A. Mengle—Brockway Glass Company, Inc., E. M. Terner—Metro Glass Company, Inc., S. V. Tuttas—Crown Cork & Seal Company, Inc., A. W. Wishart—Knox Glass, Inc.

R. L. Cheney is Secretary.

The Task Committee:

K. M. Hay, Chairman—Ball Brothers Company, Inc., A. G. Beltz—Brockway Glass Company, Inc., S. F. Davis—Owens-Illinois Glass Company, W. H. Ellis—The Lamb Glass Company, J. H. Funkey—Carr-Lowrey Glass Company, J. H. Harkness—Fairmount Glass Works, Inc., R. H. Hetzel—Armstrong Cork Company, P. S. Holmquest—Thatcher Glass Manufacturing Company, Inc., J. P. Moore—Metro Glass Company, Inc., J. J. Renard—Anchor Hocking Glass Corporation, R. H. Roper, Jr.—Laurens Glass Works, Inc., C. L. Rossman—Knox Glass, Inc., J. W. Thayer—Hazel-Atlas Glass Division, Continental Can Company, Inc.

R. L. Cheney is Secretary.

The West Coast Subcommittee:

M. J. Olds, Chairman—Hazel-Atlas Glass Division, Continental Can Company, Inc., E. S. Campbell—Northwestern Glass Company, R. H. Dallas—Maywood Glass Company, J. W. Donaldson—Ball Brothers Company, Inc., Russell Gowans—Crown Cork & Seal Company, Inc., F. W. McDonaid—Glass Containers Corporation, J. B. Miller—Thatcher Glass Manufacturing Company, Inc., William Simkins—Latchford Glass Company, K. C. White—Owens-Illinois Glass Company.

Frank H. Wright is Secretary.

[fol. 533] Committee Meetings.

The Market Research and Promotion Committee met:

At The Greenbrier, White Sulphur Springs, West Virginia, on May 20, 1958.

At The Greenbrier, White Sulphur Springs, West Virginia, on May 22, 1958

At GCMI headquarters on September 25, 1958

The Task Committee met:

At GCMI headquarters on September 16, 1958

* * * * * * *

The Market Research and Promotion Program divides into four major parts:

I

Advertising and Promotion

II

Public Information

III

Member Information

IV

Market Research

Following are developments in each of these four major areas since the meeting at White Sulphur Springs in May of 1958:

I

Advertising and Promotion

Magazines: Work was completed on eleven full-page, four-color advertisements scheduled to appear during 1958 in the five consumer magazines in which GCMI advertises as follows: Family Circle, Good Housekeeping, Ladies' Home Journal, McCall's and Woman's Day. With the appearance of the jam and peanut butter ad in November issues, a total of 40 insertions will have appeared in 1958 issues of the foregoing magazines. Subjects of the eleven advertisements in the 1958 series are as follows: February-Drugs; March-Instant Coffee; April-Chemicals; May-Soft Drinks #1 and Beer; June-Soft Drink #2; July-Baby Foods and Spices; August-Baby Foods; September-Milk; October-Applesauce; and November-Jam and Peanut Butter (one ad). Combined circulation of the five consumer magazines on the 1958 schedule totals 23,860,000. Average monthly readership of these magazines is estimated at over 33,800,000. In the three years of the current GMCI advertising program, an impressive total of over 942 million advertising messages have been delivered by magazines alone.

[fol. 534] Canadian Program: Canadian members continued to supply the funds with which ads appearing in U. S. magazines were re-used on a delayed basis in the Canadian magazine Chatelaine, circulation of which is over 406,000. A total of six full-page, four-color insertions will have appeared in Chatelaine in 1958.

Trade Publications: Believing strongly in the value of telling the story of glass containers to members of the retail food industry, the Committee continued the GCMI advertising program in the following seven food journals: Chain Store Age, Food Topics, Nargus Bulletin, Progressive Grocer, Supermarket Merchandising, Supermarket News, and Voluntary and Cooperative Groups Magazine. Combined circulation of these seven magazines totals 344,200. Total insertions in 1958: 44.

Glass Packer: Because Glass Packer magazine has a

circulation of some 6,200 among packaging consultants, users of glass containers, manufacturers' associations and allied industries, the Committee deems it advisable to advertise in this publication on a continuing basis. Double-page advertisements are accordingly scheduled on a twelve-times-a-year basis.

Labor Papers: Ten national labor publications were also included on the 1958 schedule as follows: American Teacher, American Teacher Magazine, Boilermakers Journal, Locomotive Fireman, Maintenance Way Journal, Public Employee, Railway Carmens Journal, Union Postal Clerk, Locomotive Engineers' Journal and Railroad Telegrapher. Combined circulation totals 1,143,000. Black and white versions of the consumer ads appeared on a staggered basis throughout 1958. Total insertions for the year were 37. This schedule was supplemented by 156 insertions in 57 regional labor papers with a combined circulation of more than 1,150,000.

Local Program: Details of the special effort promoting glass bottles for soft drinks in the Los Angeles area are included in the report of the West Coast Subcommittee.

Merchandising the Advertising: Every ad is extensively merchandised. While space does not permit a detailed report, major projects include: 1) mailings of special merchandising material by consumer magazines on the schedule; 2) mailings by GCMI of personally addressed, hand-typed letters—accompanied by a proof—to leading packers; 3) Glass Container Sales letters sent each month to 3,500 executives supervising buying for 28,000 supermarkets—as well as to packers, distributors and associations in each end-use area; 4) mailing of regular releases and glossy prints of ads to interested trade papers in each field.

Store-Wide Glass Festival: GCMI's developing contact with food retailers made it possible, in 1957, to conduct a successful test of a store-wide promotion. Some 3,000 stores cooperated with good results. The scope of this promotion plan has been expanded in 1958,—the promotion kits, in which blow-ups of consumer ads are incorporated, being enlarged to meet the requirements of stores doing an annual volume of $2,000,000. The goal is to place 5,000 kits this

year, and requests,—including those from important units of leading national chains—have been gratifying.

II

Public Information

In an effort to keep glass containers continually before the public, GCMI distributes the following:

[fol. 535] "Ancient Art—Modern Magic": The 35mm ten-minute version of "The Story Behind A Bottle" had its premiere in May, 1958. Through September 15, the film played at 552 motion picture theatres throughout the country. Of these theatres, the 416 already reporting show that it has played to audiences totaling 1,585,000. By the end of 1958, it is anticipated that the film will have played at more than 1,500 theatres before several million people.

"The Story Behind A Bottle": The continuing interest in the 16mm 24-minute film is illustrated by the fact that it has been televised 515 times to an estimated audience of 22,564,000 from its introduction in the Fall of 1956 through September 30, 1958. The estimated value of this time is nearly $100,000.

In addition, 4,790 groups including bottlers and food retailers associations, business organizations, service organizations, women's clubs, schools and colleges have shown the film to approximately 500,000 viewers.

"Glass Containers In Today's Living": The single-frame film strip has been distributed to 8,000 schools for use in their Home Economics classes.

"Glass Containers—1957": This 60-page informational manual—the second in an annual series—was distributed to more than 5,000 opinion makers including: Press, security analysts, leading packers, deans of business schools, package designers, and public, government, bank and special libraries. In addition, hundreds of requests for copies have been received since the booklet was issued last May.

Talks to Security Analysts: A number of factors made it seem very timely to tell the GCMI story once more to security analysts in May and June of this year. Consequently, carefully planned presentations were made to

groups of security analysts in the following cities at the time indicated:

New York—May 13
Chicago—May 15
Philadelphia—June 10
Boston—June 12
San Francisco—June 24
Los Angeles—June 26

A kit of background material was furnished to each analyst (whether or not he was able to attend a meeting) and considerable evidence has already accumulated in the form of published statements on their part, that these important opinion leaders now entertain a more accurate view of the glass container business and no longer think of it as a declining industry.

"The Story of Glass Containers": Almost a million copies of the teaching unit have been distributed to date to teachers, libraries, business organizations and individuals. Recent items mentioning the booklet in "A Wonderful World for Children" and "Good Housekeeping" magazine brought thousands of requests.

"The History of Glass Containers": This 24-page booklet continues to be a useful item. Plans are under way to issue a new edition early in the coming year.

"Mason Jar Centennial": In observance of the one hundredth anniversary of the Mason Jar on November 30, 1958, a booklet telling the history of the jar is being sent, with releases and photographs, to trade papers, leading dailies and food editors. In addition, copies of the booklet are going to editorial writers, women's programs on radio and television, and public libraries.

[fol. 536] Releases: In the five-month period from May through September, the following releases were sent out by GCMI to wire services, leading dailies and trade publications: Glenn Mengle Named President of Glass Container Institute; Advertising As Teaching Material; GCMI Packaging Conference Held on Michigan State University Campus; GCMI Semi-Annual Meeting Scheduled at Sea Island, Georgia, November 11-14; Modern Industry Celebrates

Mason Jar Centennial; John W. Fisher Named Committee Chairman.

Requests for Information: An increased and continuing service in the volume and scope of requests for information received from members, editorial staffs, educators, students, businessmen, researchers and the general public is handled by the Market Research and Promotion Division.

III

Member Information

Advertising and Promotion Bulletins: Some 238 executives of member companies were kept informed of all phases of the Market Research and Promotion program through 23 mailings during the five-month period ending in September.

Container Capsules: Current news items taken from more than 145 trade publications and dailies were distributed to members in digest form twice a month during the five-month period.

Reprints: Editorial comments of importance to the industry were mailed to members at the rate of about seven per month.

IV

Marketing Research

The past six months have seen continuing activity in the field of marketing research for the purpose of guiding our promotional activities and keeping the membership informed of changes in the industry marketing problems.

Members' Use of GCMI Research: The Committee wishes to remind members that copies of all marketing research studies made by GCMI are available on a library-loan basis to members and that members are free to use research data from any of these surveys for promotional use —subject to the specific approval of Mr. Cheney.

Consumer and Retailer Attitude Surveys: For the fifth consecutive year Ford Sammis & Company have completed a nationwide consumer and retailer attitude survey covering a scientifically selected sample of 4,000 women, 2,000 men and 1,000 retail grocers. Mr. Sammis will present these

findings at the semi-annual meeting at Sea Island, Georgia, on November 11th and printed copies will thereafter be available to members on a library-loan basis.

GCMI-Giant Study: A report of the study of the stimulation given to food merchandising by glass packaging, conducted in supermarkets of the Giant Food Store chain in Washington, D. C. will shortly be available in printed form for sales promotion use by the members.

Motivational Research Studies of Beer Bottle Marketing: A study will have been completed by October 30th by the Institute of Motivational Research covering the industry's beer bottle marketing problems. A report of this will be given at the meeting at Sea Island.

[fol. 537] Special Studies: Audits covering the movement of bottled and canned soft drinks in the Los Angeles market, together with a consumer attitude survey in that market, have been conducted this year since this market offers our only opportunity of assessing competitive strength of soft drink packaging.

A special detailed study of consumer attitudes towards baby food packaging has also been completed.

Value of the Packaging Industry: In order to keep the measure of glass container industry progress within the packaging industry, the second annual analysis of the Value of the Packaging Industry has just been completed for GCMI by Ford Sammis & Company.

Continuing Information Research: GCMI's full-time market research librarian and her assistants continue to search all pertient publications and literature in all areas of interest to the glass container industry, particularly in that of end uses of glass containers and competitive packaging. These files are open to members at all times in the GCMI library.

West Coast Subcommittee Activities

During the period covered by this report, the Subcommittee has held three meetings: May 7, 1958, June 24-25, 1958 and September 26, 1958. An additional meeting is scheduled for October 30, 1958.

The great majority of the time and efforts of the Subcommittee members was directed towards the test program for soft drinks in glass bottles conducted in Los Angeles

and Orange counties. This program, commencing June 15, 1958 and continuing for thirteen weeks, was a three phase program consisting of (1) 10-second radio spots at saturate level (approximately 100 per week), given Class A time preference on five major radio stations in Los Angeles, (2) in-store cooperation by the participating chains during the months of July and August, consisting of shelf displays with a minimum of ten facings each of soft drinks in returnable bottles and non-returnable bottles, special floor, end island, or dump displays of at least twenty-five cases of soft drinks packed in both types of bottles, and the use of plastic stack markers and shelf strips supplied by GCMI (this material was described in the May 1958 Semi-Annual Report).

The outlets of the chains participating in the test were periodically checked by a GCMI merchandising detail man who averaged coverage of approximately 15 outlets per day throughout the duration of the program. Each chain also carried four 75-line ads in its full-page Thursday advertisements using a mat supplied by GCMI (silhouette of a boy drinking from a bottle and "Finest Soft Drinks in Sparkling Glass Bottles") featuring at least one brand of soft drinks in returnable and one-way bottles, and (3) the third phase, consisting of auditing, through headquarters, the movement of soft drinks in one-way bottles, returnable bottles, and cans for a period of six months which would provide two months' control periods before and after the in-store merchandising and promotion period. These audits are being conducted by Ford Sammis & Company and are not complete at this time due to a lag in the receipt of invoices by chain headquarters.

This test program was well received by the grocers and bottlers, and was considered a necessity by the glass container manufacturers on the West Coast due to active and aggressive campaigns conducted to promote soft drinks in metal containers by two major can companies and the United States Steel Company. It is estimated with information provided by a reliable source, that 5.9% of total [fol. 538] sales of soft drinks in the metropolitan Los Angeles area are in cans, and 2.3% in the Bay Area. Both of these percentages are considerably higher than national sales percentages.

Attention has been directed by the Subcommittee to promoting the 1958 "Your Glass Festival" kit, and at this time, the Red and White Stores (a cooperative of independents) have ordered 85 kits for 75 stores throughout California. A chain of 7 large supermarkets in Los Angeles has ordered 21 kits, and the San Diego division of one of the largest grocery chains in the country, has ordered 40 kits. Special promotional effort is being given the Northwest.

Container trends on the West Coast are being carefully and constantly watched by the Subcommittee members with particular attention being given baby foods and beer, in addition to soft drinks.

Respectfully submitted, John W. Fisher, Chairman.

[fol. 539] GOVERNMENT'S EXHIBIT 124

Committee on Market Research and Promotion
Subcommittee on Beer Bottles

Semi-Annual Report of Activities
For the Period May 1955 to November 1955

To the Board of Trustees of
Glass Container Manufacturers Institute

No meeting of this Subcommittee has been held since the last report and in the opinion of the Committee there has been no change in the marketing pattern of beer in the Detroit market that would justify the contemplated GCMI effort in behalf of the One-Way bottle there.

Kenyon & Eckhardt, Inc. have been studying our marketing problems in the beer field, however, and have recommended the selection of a test market, which will be as nearly typical as possible, as to: (a) per capita consumption of beer, (b) distribution of returnable bottles, One-Ways and cans, (c) retail beer price relationships, and (d) local versus national brands.

The Subcommittee has approved this plan by mail and telephone contact, and has selected a test market.

The research, marketing and merchandising departments of Kenyon & Eckhardt have started a thorough study of

this market at the brewery, distributor, retailer and consumer level, and before the year-end will come back to this Subcommittee with a recommended test advertising, promotion and merchandising campaign for that city.

If approved by the Subcommittee, the campaign will be undertaken with the hope of establishing a successful pattern for the promotion of beer in glass bottles that can be extended to other markets.

The Beer Bottle Subcommittee is composed of the following members:

R. E. Delaplane, Chairman—Owens-Illinois Glass Company, W. S. Bazzett—Thatcher Glass Manufacturing Company, Inc., J. E. Bellinger—Ball Brothers Company, Inc., M. J. Jones—Obear-Nester Glass Company, E. M. Lawrence—Anchor Hocking Glass Corporation, G. A. Mengle—Brockway Glass Company, Inc., R. M. Ulmer—Armstrong Cork Company.

R. L. Cheney is Secretary.

Respectfully submitted, R. E. Delaplane, Chairman.

[fol. 540] GOVERNMENT'S EXHIBIT 125

Committee on Market Research and Promotion
Subcommittee on Beer Bottles

Semi-Annual Report of Activities For the Period
October 1957 to May 1958

To the Board of Trustees of Glass Container
Manufacturers Institute

This Subcommittee has not met since the last semi-annual report was issued.

Virginia Program

During this period, however, a report from Ford Sammis and Company has been received by the Subcommittee members covering the "Distribution and Sales of One-Way Beer Bottles in Virginia—June, 1956 to October, 1957." This report showed, among other data, that by the end of our

1957 advertising program covering One-Way beer bottles in the state of Virginia, distribution and sale of beer in One-Ways was growing in all types of outlets in the market areas covered by the promotion, while it had dropped elsewhere in the state.

One-Way beer in the promotion markets is now carried by 77% of the supermarkets, 50% of small groceries and 29% of "On-Off" taverns. Sales of beer in One-Way bottles has reached a level of 11.3% of total packaged beer sales in these markets;—considerably above the national average. In addition, more brands are entering the state in One-Way bottles. No litter problems have been reported and it is felt that the introduction of this package in this state has been successfully accomplished.

Motivation Research Studies.

Preliminary discussions have been held by the marketing department of GCMI with a leading firm of motivation research consultants in regard to the glass container industry's over-all problems in the beer packaging field. The Subcommittee will soon review the possibility of utilizing the services of such a firm in this area.

The Beer Bottle Subcommittee is composed of the following members:

R. E. Delaplane, Chairman—Owens-Illinois Glass Company, J. E. Bellinger—Ball Brothers Company, Inc., A. G. Beltz—Brockway Glass Company, Inc., H. C. Crago—Hazel-Atlas Glass Division, Continental Can Company, Inc., L. F. Harder—Thatcher Glass Manufacturing Company, Inc., M. J. Jones—Obear-Nester Glass Corporation, E. M. Lawrence—Anchor Hocking Glass Corporation, R. M. Ulmer—Armstrong Cork Company.

R. L. Cheney is Secretary.

Respectfully submitted, R. E. Delaplane, Chairman.

[fol. 541] Committee on Market Research
and Promotion
Subcommittee for Public Education

Semi-Annual Report of Activities
For the Period October 1957 to May 1958

To the Board of Trustees of
Glass Container Manufacturers Institute

Louisiana

Early this year GCMI learned of a law enacted in Louisiana that prohibits the sale or purchase of gasoline or mineral spirits in glass containers. The law is identified as Louisiana Act No. 550 of 1956. Investigation disclosed that the intent of the law was to stop the sale of highly volatile petroleum products by service stations, general stores and the like from bulk containers into customer furnished glass containers as a fire prevention measure. The wording of the law is such that it is subject to an investigation which would go far beyond these limits and indeed might be held to apply to such common household items as liquid waxes, polishes, insecticides, paint thinners and solvents that use petroleum distillates as a base. As a matter of fact enforcement agents in Louisiana in several instances had held up glass packs of such products as paint thinners and solvents.

The Subcommittee for Public Education concluded that in the interest of glass container and closure members and their packer customers an effort should be made to have the purpose of Act No. 550 clarified. Accordingly, local counsel was employed by our General Counsel and Mr. H. W. Kuni made several trips to Louisiana to acquaint the appropriate state officials with the unnecessary and unintentional hardships placed upon the glass container industry. Following a series of conferences the District Attorney for the Parish of Baton Rouge and the Attorney General for the State of Louisiana in an exchange of correspondence have expressed in crystal clear terms the opinion that Louisiana Act No. 550 of 1956 "does not and could not apply to the many packaged household products that have for years been in common use and sold in this state and

throughout the United States in small glass containers generally of quart size and smaller, such as polishes and waxes, paints and paint thinners, scratch removers and furniture touch-ups, insecticides and like commercial products".

The Louisiana legislature will convene in a regular session presently and consideration is now being given to the advisability of requesting that the law be amended to specifically reflect its true intent. Regardless of whether or not amendment is requested the above mentioned opinions should eliminate any further question as to the propriety of commercial glass packs that use mineral spirits as a base.

Maryland

Although 1958 is an "off-year" the Maryland legislature was convened by Governor McKeldin for the purpose of enacting additional revenue raising legislation. Among the revenue bills was a proposal to tax every bottle of distilled spirits and alcoholic beverages, except beer, sold in Maryland. The tax would have been on a sliding scale basis depending upon capacity with a maximum of ten cents per bottle. At one point during consideration of the measure the tax would have applied to beer as well. Proponents [fol. 542] estimated that the yield would be about $15,000,000 annually, a substantial step toward the approximately $30,000,000 state deficit. For the purpose of identification the bill was designated as Maryland House of Delegates No. 109.

After careful consideration the Maryland legislature decided to raise the necessary additional revenue by increasing the state-wide sales tax and income taxes.

New York

A bill was introduced in New York State that would prohibit the sale of beer, soft drinks, or any other beverage in non-returnable bottles when consumed off-premise. Its sponsor felt that such legislation would materially reduce highway litter.

As would be expected virtually every bottle group in the state expressed opposition to the measure. In addition, the public education programs recommended by Keep America

Beautiful, Inc. and found to be effective in enlisting public cooperation in litter reduction campaigns were made known to the sponsor. The bill was defeated in the Committee of Judiciary to which it had been referred.

Keep America Beautiful, Inc.

This will bring you up to date on developments since our last report in September.

The annual meeting held in November re-elected Donald J. Hardenbrook, vice president of Union Bag-Camp Paper Corporation, president for another term. I was re-elected chairman of the board. Vice presidents elected were: Cecil F. Dawson of the Dixie Cup Company; Edgar J. Forio, vice president of the Coca-Cola Company and Peter J. Wojtul, vice president of Continental Can Company, Inc. Harry Kuni was re-elected treasurer.

Mr. William J. Hufstader, vice president of General Motors, was elected a director, as was William C. Stolk, president of American Can Company. Mr. Stolk relinquished his post as chairman of trustees.

Since the annual meeting we have had the good fortune of having former President Herbert Hoover express a willingness to serve as a trustee. He was duly elected in April by the Executive Committee.

During the year 1957 Keep America Beautiful, Inc. experienced further encouraging growth in both the number of members contributing to it and in the aggregate amount of contributions.

An annual conference of state and community leaders, together with representatives of KAB's National Advisory Council, was also held in November at the time of the annual meeting. It was expanded to a two-day meeting in order to accommodate the wide interests and needs of the growing number of volunteers carrying on the work in their respective communities and states. Attendance was up over 1956 and many of those who were present stated that the conference was both stimulating and inspirational. [fol. 543] Information continues to come in on the constantly expanding activity to be found in every state. More and more communities are requesting help in organizing local action groups, and in order to capitalize on this tremendous potential KAB will shortly publish a "How-to-do-

it" manual. It will feature the so-called national program formula and dramatize how maximum use, at little or no cost, can be made of the materials presently available from KAB.

The Boy Scouts of America have been so impressed by the special kit that was developed for Cub Scouts that they designated April as Keep America Beautiful month. About 1,800,000 youngsters and their families are involved.

A handbook for elementary school teachers is being written and we are hopeful that it can be ready for distribution before the year is out. The National Education Association has already endorsed the project.

Special news releases are being prepared for nation-wide distribution just prior to each of the major summer holiday periods. Study is also being given to an animated cartoon film and we are happy to be able to report that the Disney studios are interested in working with us on it. New and revised radio and TV material has been prepared and was widely distributed in January and February. The usual favorable comments on the professional quality of these aids have been received in large numbers by the staff.

I have not given you the complete story of what is going on but this brief statement provides you with enough benchmarks to indicate the substantial character and effectiveness of the Keep America Beautiful program.

I wish to thank the subcommittee and all members of GCMI who have assisted in the work of Keep America Beautiful, Inc. and who have participated in state and local anti-litter educational campaigns. The progress that has been made in many parts of the country is heartening and should encourage all of us to continue our efforts in this public interest activity.

Members of the Subcommittee for Public Education appointed by the Trustees to serve until May 1958 are as follows:

S. L. Rairdon, Chairman—Owens-Illinois Glass Company, S. B. DeMerell—Anchor Hocking Glass Corporation, K. C. Frazier—Olin Mathieson Chemical Corporation, F. B. Hess—Brockway Glass Company, Inc., R. H. Hetzel—Armstrong Cork Company, M. J. Jones—Obear-Nester Glass Company,

D. R. Parfitt—Thatcher Glass Manufacturing Company, Inc., H. W. Kuni—GCMI Secretary.

Respectfully submitted, Smith L. Rairdon, Chairman.

[fol. 544] GOVERNMENT'S EXHIBIT 126

Committee on Market Research and Promotion
Subcommittee on Beer Bottles

Semi-Annual Report of Activities For the Period
May 1958 to November 1958

To the Board of Trustees of Glass Container
Manufacturers Institute

The Subcommittee on Beer Bottles has held one meeting since the October 1957 to May 1958 report was issued. This meeting was held in the GCMI Conference Room August 21, 1958 for consideration of the initial report from the Institute for Motivational Research, Inc. concerning the packaging and merchandising in bottles—both returnables and non-returnables—as compared with cans. This was only the first phase of a proposed five phase study so no attempt was made to draw any conclusions at this time.

The Institute for Motivational Research expects to complete its studies during October so this Subcommittee has scheduled another meeting October 28, 1958 to receive the complete report.

At its August 21st meeting the Subcommittee also authorized the Institute for Motivational Research to conduct a special side study in the Pittsburgh and Toledo areas to evaluate the acceptability and results of a new style beer bottle introduced representing a departure from the conventional types. The report on this supplementary study also will be considered at the meeting scheduled in late October.

The Beer Bottle Subcommittee is composed of the following members:

E. M. Lawrence, Chairman—Anchor Hocking Glass Corporation, J. E. Bellinger—Ball Brothers Company, Inc.,

A. G. Beltz—Brockway Glass Company, Inc., H. C. Crago—Hazel-Atlas Glass Division, Continental Can Company, Inc., J. T. Helsel—Knox Glass, Inc., K. Kevin Hepp—Owens-Illinois Glass Company, P. S. Holmquest—Thatcher Glass Manufacturing Company, Inc., M. J. Jones—Obear-Nester Glass Company, G. W. Meyer—Glenshaw Glass Company, Inc., J. P. Moore—Metro Glass Company, Inc., R. M. Ulmer—Armstrong Cork Company.

R. L. Cheney is Secretary.

Respectfully submitted, E. M. Lawrence, Chairman.

[fol. 545] GOVERNMENT'S EXHIBIT 127

Committee on Market Research and Promotion
Subcommittee on Milk Bottle Promotion

Semi-Annual Report of Activities For the Period
May 1957 to September 1957

The personnel of the committee is as follows:

W. W. Springfield, Chairman—Thatcher Glass Manufacturing Company, Inc., E. S. Campbell—Northwestern Glass Company, G. F. Collins, Jr.—Liberty Glass Company, F. B. Foster, Jr.—Diamond Glass Company, H. L. Kaness—Knox Glass, Inc., R. M. Lamb, Jr.—Lamb Glass Company, G. W. Meyer—Glenshaw Glass Company, H. M. Oates—Universal Glass Products Company, W. A. Seger—Buck Glass Company, R. B. Wilhelm—Owens-Illinois Glass Company.

J. B. Carroll is secretary to the committee.

The Parent Committee and the Task Committee have not met since the last report in May. However, the Parent Committee will meet in New York on September 18, at which time they will take up the subject of the 1957-1958 advertising program.

GCMI National Milk Bottle Advertisement—May 1957

The full-page, four-color consumer advertisement, which appeared in the May issue of leading ladies' magazines with

a readership of thirty-one million, was received with considerable interest. A special merchandising kit was forwarded to more than 8,500 dairies throughout the country. Many letters of praise were received from leading authorities in the dairy field, government officials, and interested consumers. The Ladies' Home Journal, one of the magazines in which the advertisement appeared, prepared and distributed to 9,000 dairies and jobbers, and dairy association executives, a special mailer featuring the May advertisement.

The Glass Milk Bottle

Since the last semi-annual report in May, two issues of The Glass Milk Bottle were prepared and distributed to the industry. The June 1957 issue featured a center double-spread with sales ideas and promotional items for route deliverymen to further increase their sales of milk in glass bottles. This was again prepared in the popular bulletin board style for use by dairies. Other articles included information on New York State approval of gallon bottles and the May National Milk Bottle Advertisement.

The August-September issue featured the tremendous growth of large-size milk bottles with special on-the-spot survey reports covering Chicago, Cleveland, and Detroit. In addition, it contained articles describing the current Washington, D. C., and Massachusetts milk markets.

New Consumer Leaflets

The three new leaflets developed by Mr. Speaks promoted milk in quarts, half-gallons, and gallons. This series, made available to dairies at a nominal, non-profit charge, went on sale in July. To date 150,000 copies of the three pamphlets have been purchased by dairies. They are primarily used as envelope stuffers and milk box messages.

[fol. 546] Special School Milk Program Brochure

A special brochure promoting glass bottled milk for consumption by school children was distributed to 11,000 school officials. This brochure opened with a letter to school officials from Mr. R. L. Cheney, and featured a resume of available vending machines for glass milk bottles.

In addition, it pinpointed the important phases of serving milk to school children in glass, and special highlights of the Federal School Milk Program.

An individual insert instructing milk dealers in methods of increasing milk sales to schools was prepared and mailed with the school milk brochure to approximately 9,000 dairymen.

Other Matters of Committee Interest

In late May, the Navy Department put into effect its new regulations governing milk purchasing procedure to be followed by naval base officers. This regulation is practically identical with the Army regulation which went into effect last year. Negotiations are continuing with the Air Force for acceptance by that service of a similar purchasing procedure.

The Institute continues to fill dairy requests for leaflets, ad proofs, radio and TV copy, historical information, and other material on the subject of the glass milk bottle.

Respectfully submitted, W. W. Springfield, Chairman.

[fol. 547] Committee on Market Research and Promotion
Subcommittee on Beer Bottles

Semi-Annual Report of Activities For the Period
May 1957 to September 1957

To the Board of Trustees of
Glass Container Manufacturers Institute

There have been no meetings of this Subcommittee since the last report, but the Committee has directed, reviewed, and approved by mail the newspaper advertising program promoting One-Way beer bottles in the state of Virginia.

Virginia Program

As announced in our last report, an intensive newspaper advertising program promoting One-Way bottles in the Richmond, Norfolk and Alexandria areas of Virginia has been conducted during the height of the beer season. The first ads appeared before the Memorial Day week-end and the advertising ran through the Labor Day week-end. Reports from the field indicate increasing interest in that area

and Ford Sammis & Company will again survey consumer purchases and attitudes towards the One-Way bottle together with distribution of this package in retail outlets.

While the Subcommittee has directed the secretary to watch and report any new developments in the beer packaging field, such as the introduction of the returnable stubby bottle by a large California brewer, there have been no new developments since our last report.

The Beer Bottle Subcommittee is composed of the following members:

R. E. Delaplane, Chairman—Owens-Illinois Glass Company, J. E. Bellinger—Ball Brothers Company, Inc., H. C. Crago—Hazel-Atlas Glass Division, Continental Can Company, Inc., J. A. Giddings—Brockway Glass Company, Inc., L. F. Harder—Thatcher Glass Manufacturing Company, Inc., M. J. Jones—Obear-Nester Glass Corporation, E. M. Lawrence—Anchor Hocking Glass Corporation, R. M. Ulmer—Armstrong Cork Company.

R. L. Cheney is Secretary.

Respectfully submitted, R. E. Delaplane, Chairman.

[fol. 548] GOVERNMENT'S EXHIBIT 128

Traffic Committee

Semi-Annual Report of Activities
For the Period November 1954 to May 1955

To the Board of Trustees of
Glass Container Manufacturers Institute

Committee Membership

Present membership of the Standing Committee and the West Coast Subcommittee is:

Standing Committee

Name	Company Represented
J. L. Sprowls, Chairman	Hazel-Atlas Glass Company
E. E. Allison	Anchor Hocking Glass Corporation
J. B. Belton	Brockway Glass Company, Inc.
O. A. DeCrocé	Armstrong Cork Company
W. F. McCreight	Thatcher Glass Manufacturing Co., Inc.
U. E. McFarland	Owens-Illinois Glass Company
R. H. Newton	Fairmount Glass Works, Inc.
J. W. Swoger	Knox Glass Associates, Inc.
M. B. Thomas	Ball Brothers Company, Inc.
E. Del. Wood	Chattanooga Glass Company

A. F. Huni is Secretary to the Committee.

West Coast Subcommittee

H. A. Lincoln, Chairman	Glass Containers, Inc.
Ralph Blackmore	Northwestern Glass Company
Frank Gorsuch	Hazel-Atlas Glass Company
Edward Lane	Crown Cork and Seal Company, Inc.
A. F. Schumacher	Owens-Illinois Glass Company

F. H. Wright is Secretary to the Subcommittee.

Standing Committee Meetings and Conferences

Your Committee has had five (5) meetings:

November 19, 1954
December 2, 1954
December 9, 1954
February 18, 1955
March 29, 1955

several joint meetings; conferences with and hearings before rail and truck common carriers during the period covered by this Report.

[fol. 549] Standing Committee Activities

Canadian Rail Freight Classification Ratings, Less Than Carload, Commodities In Glass Containers Vs. Same Commodities in Metal Cans

Since June 26, 1953 we have endeavored to have established within Canada, the same ratings on commodities shipped in glass containers as generally apply on the same commodities shipped in metal cans. As a rule the ratings on articles in glass have been one (1) class higher (costlier) than the contemporaneous ratings on the same articles in metal cans.

This was remedied, in part, effective March 1, 1955 when the ratings on some commodities in glass were reduced to the metal can basis. We are, however, continuing our efforts for like treatment for all other ratings.

Carriers' Proposed Transfer of Present Docket No. 15879 Carload Exception Ratings (Other Than Those Applicable on Water-Borne Traffic) To Their Rating Equivalent Under The Docket No. 28300 Scale—Official Territory

A detailed description of this situation was given in our last Report.

Excluding the rates on Cullet and Glass Containers, previously and satisfactorily adjusted under C.C.M.L. formulas and those on a few other commodities (including Soda Ash) either already handled or still under consideration, the carriers have worked out a conversion method which, generally, will maintain the present charges.

The covering tariff should be released early this April

and carry an effective date of or about June 1, 1955. Such publication should greatly simplify the determination of the transportation charges.

Railroads' Proposed Transfer of Present Carload Exception or Commodity Column Ratings on Cullet, Glass Containers and Feldspar To Their Average Rating Equivalent Under The Docket No. 28300 (Uniform Basis) Scale (Within Southern Territory and Between That Territory On the One Hand and All Other United States Territory North Thereof—Lying Generally East of the Mississippi River—On the Other)

Actually, this is another phase of the preceding subject. The chief difference here is in the present basis of rates and the territorial application thereof.

Except on Cullet the carriers' proposed basis would not be satisfactory, not only because of resultant increased charges but also due to the disruption of the present competitive relationships between points of production and the common markets.

Your Committee was in attendance at and presented its views before a Public Hearing held in Chicago March 30, 1955 by a Joint Committee of Northern and Southern Railroads.

Present indications are that definite action, by the carriers, will not be taken until 60 to 90 days hence. Meanwhile we shall continue our efforts toward the retention, as closely as possible, of the present charges, taking into consideration certain unavoidable variances in the basic factors of the scales of rates involved.

[fol. 550] Rail Class Rates—Mountain Pacific Territory (I.C.C. Docket No. 30416) and Transcontinental Territory (I.C.C. Docket No. 30660).

These proceedings, referred to in our last two Reports, continue under the I.C.C.'s consideration.

Carload Rates, Beverages, Flavored or Phosphated, In Glass and Metal Cans—Southern States and Between That Territory On The One Hand and All Other United States Territory (East of The Rocky Mountains) On The Other

As indicated in our previous Report, the Southern Railroads, over our objections, established October 2, 1954 within the Southern States, a lower level (Canned Goods Basis) of rates on these commodities in metal cans.

Subsequently, those carriers sought to extend that basis of rates (on these canned beverages) for application between Southern Territory on the one hand and all other United States Territory (East of the Rocky Mountains) on the other.

We vigorously renewed our objections through the usual channels and orally, December 14, 1954, at a Public Hearing before the proponent Carriers Association in Atlanta, Georgia. As a result of our action the proposed "between" application was withdrawn by the carriers and effective May 2, 1955 the Canned Goods basis will be likewise applicable, within Southern Territory, on these beverages in bottles. The total affect is the restoration of the rate parity, shipments in bottles versus those in cans, heretofore long in effect, within and between the territories involved.

Truckload Rates—Beverages, Flavored or Phosphated (Nonalcoholic), Bottled and Canned—Southern Territory

About a year and a half ago the Southern Motor Carriers' Rate Conference established a reduced basis of rates on these commodities in cans from Miami, Florida, to all destinations in Southern Territory. (Prior thereto the same basis of rates applied whether packed in cans or glass.) Effective July 2, 1954 these carriers extended this reduced basis, on shipments in cans, for application from Lake Alfred, Florida. We saw no necessity for these reductions but as there were no bottling plants at these origins we could find no valid grounds for objections.

However, effective August 6, 1954, these same carriers spread this reduced basis (on canned shipments) for application from all Florida origins. With 162 bottling plants then in Florida this action was highly discriminatory.

While we were progressing action for the removal of this discrimination this reduced level for canned beverages was extended, effective September 24, 1954, for application from Chattanooga, Tennessee, and Columbus, Georgia.

On October 5, 1954 we appeared before the Carriers' Conference in Atlanta, Georgia, in support of a proposal for the inclusion of bottled beverages under this preferred basis of rates. The proposal was approved with the addition of Atlanta, Georgia, and points grouped therewith as origins for both bottled and canned beverages and the reduced level from the origins involved:

> Atlanta, Georgia, and points rated therewith Columbus, Georgia Chattanooga, Tennessee Florida (all [fol. 551] origins) became effective December 10, 1954.

Motor Common Carrier Rates—Fruit Juice Crystals Or Powders, Citrus, In Metal Cans and Glass Containers, Less Than Truckload and Truckload—Plant City, Florida, To All United States Destinations East Of The Rocky Mountains

December 17, 1954 the Southern Motor Carrier Rate Conference announced consideration of reductions of:

Percent	Quantity
23½	Less Than Truckloads
12½	Truckloads

in the present rates on shipments made in metal cans.

We immediately protested pointing out that the present rates were the same for shipments in glass containers and metal cans. Furthermore, that the container supply of the Plant City processor was being actively solicited by the glass container and can manufacturers; that it naturally followed that any departure from the existing equality of rates for shipments made in one container without like treatment for shipments made in the other (container) creates a discriminatory situation. Moreover, any commodity exclusive of certain kinds of explosives, inflammatory articles, etc., which is or may be packaged in metal cans, is better or at least equally adaptable for packaging in glass containers.

The carriers handled this revision in four (4) sections.

That covering rates to Southern States Territory was disapproved January 19, 1955. The two (2) sections involving rates to territory West of the Mississippi River were disapproved in early March, 1955. The last section, covering rates to Northern Territory, East of the Mississippi River, was disapproved at the carriers' meeting of March 31, 1955.

This equitably disposes of the entire subject.

Middle Atlantic Conference Motor Common Carriers' Rates and Charges

Early last Fall these carriers were faced with a strike unless the demands of their drivers and helpers for an increase of 25¢ per hour, plus fringe benefits, were met. Initially this only involved service within the New York Metropolitan Area (comprising New York and New Jersey Territory within a radius of about 90 miles of New York City) and between it and the balance of the Middle Atlantic States Territory. Gradually these, or comparable demands, spread to other parts of the general territory.

Mediation efforts proved to be futile. Finally, after accedence to these demands by some of the larger carriers, all other carriers capitulated.

The position was advanced that resultant increased operating costs could not be absorbed by the carriers. To meet them the carriers originally estimated that they would require increased charges ranging from 5% to 27.35% (dependent on the area of haulage).

On November 10, 1954 the public was notified of these proposed increases. Your Traffic Committee promptly arranged a conference with all glass container truckers (over 80 in number) for G.C.M.I. members in an endeavor to [fol. 552] negotiate the varying bases of increase.

Following attendance at the Public Hearings on the proposed increases, and our negotiatory meetings with the carriers, the carriers revised downward the measure of increase required. This was considerably lower than originally proposed although higher than the bases we sponsored in our negotiations with the carriers.

Because of the variance in increases, effective dates thereof and the territories affected thereby, there follows an outline thereof:

Middle Atlantic Conference Tariffs	Territory Covered	Percentage Increase Proposed by Carriers Originally	Finally	Effective Date	G.C.M.I. Suggested
No. 8-M	N.Y. Short Haul (200 Miles Maximum) Points in New York and New Jersey	25	*10	1/10/55	10 Maximum 3¢
No. 9-K	Philadelphia Short Haul Area—Points in Delaware, New Jersey & Penn.	15.5	$15 Maximum 4¢ Truckloads	2/ 7/55	10 " "
No. 35	Between Areas covered by Tariff No. 8-M on the one hand and Tariff No. 9-K on the other	27.35	$15 Maximum 4¢ Truckloads	2/ 7/55	10 " "
Class Rates (Except Special Class Rates on Glass Containers, Truckloads—Applicable to & including 560 miles) in all other Tariffs	All other Middle Atlantic Territory	5 to 27.35	3 to 15 @	4/18/55	None on Special Class Rates on Glass Containers, Truckloads

* To expire 1/9/56 unless sooner cancelled, changed or extended.
$ " " 2/7/56 " " " " " "
@ Will not apply on Special Class Rates, Glass Containers, Truckloads. This nonapplication saved members between $23,000 and $25,000 per annum.

Other increases not included in those just described are:

1. 5% surcharge—effective March 7, 1955 and scheduled to expire September 6, 1955 unless sooner cancelled, changed or extended. This applies on all rates and charges applicable between a limited part of the eastern section of [fol. 553] Delaware, New Jersey, New York and Pennsylvania on the one hand and the eastern half of New York State (generally on and east of a line running from Binghamton to Utica) on the other.

2. An increase of 5% maximum 2¢ in the commodity rates on Glass Containers, truckloads, South Jersey origins to destinations in Middle Atlantic States and southern Connecticut; an increase in the Special Commodity Rates, on Glass Containers, truckloads, from the same origins to Connecticut (other than those afore-referenced), Massachusetts and Rhode Island to the same level as the Special Class Rates, on the same commodities, within Middle Atlantic States and the establishment of certain accessorial charges.

This was a negotiated adjustment resulting in a total estimated annual increase of $134,000 or 39% ($86,000) less than that sought by the carriers.

Central States Motor Common Carrier Rates and Charges

To meet a wage increase aggregating 28 cents an hour, staggered over a three year period beginning February 1, 1955 and also to recover, in part, expected reductions in revenue as a result of the Interstate Commerce Commission's decision in the "Small Shipments" Cases (I.&S. Docket No. M-4462, etc.) the carriers involved proposed, early this year, general increases ranging from 30% on shipments weighing less than 5,000 pounds to 10% on shipments weighing 5,000 pounds and more.

Your Committee was virtually in daily contact with the situation in an effort to arrange a negotiatory conference. On March 7, 1955 such a conference was arranged and the following day the Committee's views were again presented at a Public Hearing before the carriers.

Immediately following that Hearing the carriers recon-

sidered their proposed increases, amended and approved them on the following basis:

Increase—Per 100 lbs.
10 Cents—on Less Than Truckloads—less than 2,000 pounds
5 Cents—on Less Than Truckloads—2,000 to 5,000 pounds
2 Cents—on Less Than Truckloads—over 5,000 pounds
1 Cent—on Truckloads

The I.C.C.'s authority is being sought for publication as an Emergency Increase. This will afford the carriers sufficient time accurately to determine a permanent basis of increase.

On Glass Containers, truckloads, the carriers' original basis would have increased our members' annual transportation costs by over $300,000. The approved basis will limit the increase to about $40,000 which is within $1,200 of the amount which would have resulted from the basis upon which your Committee's negotiations were founded.

The situation is being watched closely so as to enable resumption of negotiations so soon as the carriers have [fol. 554] determined the exact measure of a permanent general increase.

West Coast Subcommittee Activities

Two meetings of the West Coast Subcommittee have been held on November 30, 1954 and March 24, 1955 and a meeting is scheduled in the G.C.M.I. West Coast Office, April 4th.

Problems covered since the last report were Public Utilities Commission Case No. 5432, Petition No. 22, which seeks to include the communities of El Monte, Downey and Whittier in the Los Angeles Basin Territory; PUC Case No. 5478, Certification of California Radial Highway Common Carriers and Highway Contract Carriers; and PUC Case No. 5441, proposing the establishment of the San Francisco Bay Drayage Area to include the entire area bounded by San Francisco, Richmond and San Jose.

Under the direction of the Subcommittee, the West Coast Office has issued bulletins keeping the West Coast Industry informed on matters of interest concerning Traffic.

Respectfully submitted, J. L. Sprowls, Chairman.

[fol. 555] GOVERNMENT'S EXHIBIT 129

Committee on Government-Industry Relations

Semi-Annual Report of Activities For the Period May to November 1956

To the Board of Trustees of Glass Container Manufacturers Institute

The activities of the Committee on Government-Industry Relations during the past six months are summarized as follows:

Trade Agreements and Tariffs

Mid-year the various nations, including the United States, participating in the Geneva Conference concluded the Geneva Trade Agreement. Its effect on existing duties applicable to glass containers imported into our country may be considered relatively moderately, however, reductions were put into effect, commencing June 30, 1956, with respect to two classifications of ware provided for in the Tariff Act of 1930 as follows:

Par. 217: Unfilled bottles, jars, ..., n.e.s., holding less than 1/4 pint; present rate of 25¢ per gross is to be successively reduced during the succeeding three years to 21¢ per gross, as of June 30, 1956.

Par. 218(e): Unfilled bottles and jars ..... used as containers of perfume, talcum powder, toilet water, or other toilet preparations, produced otherwise than automatic machine; present rate of 45% ad valorem to be successively reduced during the succeeding three years to 38% ad valorem, as of June 30, 1956.

For background of the committee's activities in this area please see semi-annual reports during the past several years.

Food Additives Legislation

Recent publicity given to the report issued by International Symposium Against Cancer, held in Rome during August 1956, undoubtedly will stimulate attempts on the part of certain agencies in the U. S. government to have adopted during the forthcoming session of Congress so-called food additives legislation. Various bills introduced during the past several years, if passed, could have had far-reaching effects upon all segments of the container industry. Your committee will undertake to keep abreast of developments and inform you.

Census Reports on Glass Containers and Closures

Contacts have been continued with the Bureau of the Census toward improving the accuracy and coverage of the monthly reports issued under the Facts for Industry series dealing with glass containers (M77C) and closures for glass containers (M75C).

[fol. 556] Foreign Bottle Design Applications

The committee has continued to keep all glass container members informed of bottle design applications filed in foreign countries that conflict with designs that have been in general use in the United States. During the past six months such foreign applications have been for glass container designs traditionally used in this country for packaging perfumes, toiletries and beverages.

Washington Office

GCMI continues to maintain a Washington office on a nominal cost basis at 1625 K Street, N.W. Mr. Harry Kuni, secretary to the committee, spends such time in Washington as is necessary in behalf of the industry.

The Econometric Institute, Inc.

This committee arranges for certain services from The Econometric Institute, Inc., among which are oral reports at the two industry meetings on the business outlook and

two comprehensive written reports at quarterly intervals between times. Also, the services include attendance by GCMI staff members at the Econometric Institute's Annual Seminar at which are discussed basic economic factors including trends in the various segments of business, labor and government.

Other Activities

Other services provided the industry under the auspices of the Committee on Government-Industry Relations include:

(a) Contacts with government agencies, such as the Departments of Commerce and Agriculture and their agencies, such as the Business and Defense Services Administration, and Food and Drug Administration, on matters of interest to the industry and its customers.

(b) The dissemination of various data of interest compiled by the U. S. government, as for example exports of glass containers to various foreign countries and imports into our country.

(c) The circulation of information prepared by the National Canners Association on the volume of fruits and vegetables packed, especially those items such as baby foods, catsup and chili sauce, where glass is extremely used.

(d) The circulation of special reports prepared by the Department of Commerce for various industries such as Fruit Spread, and Salad Dressing, Mayonnaise and Related products.

[fol. 557] Members of the Committee on Government-Industry Relations appointed *to* by the Trustees to serve until May 1957 are as follows:

Parent Committee

G. F. Rieman, Chairman—Ball Brothers Company, Inc., J. S. Algeo—Hazel-Atlas Glass Company. C. G. Bensinger—Owens-Illinois Glass Company, S. B. DeMerell—Anchor Hocking Glass Corporation, F. B. Hess—Brockway Glass Company, Inc., H. F. Merritt—Solvay Process Division, Allied Chemical & Dye Corporation, H. W. Kuni—GCMI Secretary.

West Coast Subcommittee

Since previously reporting, the West Coast Subcommittee has met on April 27, July 27 and September 26, 1956.

Continued interest in the unemployment insurance developments in California has been displayed by the subcommittee. Subsequent to their study of the work accomplished by the Inter-Association Unemployment Insurance Committee and, in view of anticipated developments during the forthcoming year, it was the recommendation of the subcommittee that the West Coast manufacturers should again give financial support to this committee for the fiscal year 1956-57.

The subcommittee has maintained a close watch on air pollution developments and have reported that in the face of an industrial problem which is assuming greater and greater proportions, the glass industry in California, with one or two exceptions, has not been subject to the critical attention of the Air Pollution Control Board. The Technical Subcommittee on Air Pollution, which reports to this subcommittee, has not met since last reporting.

Attention has been given to Proposition #3, the so-called "Food in Bars" California Constitution Amendment which could, if passed, seriously affect the glass container industry within the state.

Liaison and contact with the California Conference of Industrial Association, California Manufacturers Association, California Public Utilities Commission, Inter-Association Unemployment Insurance Committee, and Central Coast Industrial Committee has been continued by the West Coast Manager under the direction of the subcommittee.

Members of the West Coast Subcommittee appointed to serve until May 1957 are as follows:

R. W. McKee, Chairman—Maywood Glass Company; E. E. Balling—Latchford-Marble Glass Company; E. S. Campbell—Northwestern Glass Company; E. L. Casey—Hazel-Atlas Glass Company; J. W. Donaldson—Ball Brothers Company, Inc.; R. J. Miedel—United Can & Glass Company; J. B. Miller—Thatcher Glass Manufacturing

Company, Inc.; H. S. Wade—Owens-Illinois Glass Company; F. H. Wright—GCMI Secretary.

Respectfully submitted, G. F. Rieman, Chairman.

[fol. 558] GOVERNMENT'S EXHIBIT 130

Committee on Market Research and Promotion
Subcommittee on Beer Bottles

Semi-Annual Report of Activities For the Period
May 1956 to November 1956

To the Board of Trustees of Glass Container
Manufacturers Institute

The Subcommittee has held two meetings since the last report, one on June 26, 1956, and the other on July 26, 1956.

Virginia Program.

The sale of malt beverages in no-deposit bottles was permitted in the State of Virginia starting July 1, 1956, for the first time in fifteen years.

After a quick but thorough study of the situation, the Subcommittee accordingly voted to advertise One-Way bottles within the State for a period of six months. Several brewers were planning to energetically merchandise One-Way bottles in Virginia on an economically-sound basis, and the elements necessary for a successful promotion appeared present. The first ads appeared on August 8. The campaign covers the Richmond, Norfolk and Alexandria markets, making use of large newspaper space with dramatic but believable photographic illustrations, clearly identifying the bottle, and accompanied by short, direct copy stressing flavor, cleanliness, social acceptability and convenience.

To measure progress and learn as much as possible from this effort for use elsewhere, Ford Sammis and Company made a survey of the State of Virginia before the campaign was launched, and will repeat it at the end of the year. These studies cover retailer and consumer

attitudes, as well as statistics on the distribution and sale of beer in the no-deposit bottles.

Great care is being exercised to handle the public relations aspects of the introduction of this package to avoid reactions which might encourage reinstatement of the ban on its sale in Virginia.

Syracuse Study.

Kenyon & Eckhardt, Inc. submitted parts I, II, and III of their Beer Container Survey covering the Syracuse market on July 26, 1956. The final report, including Part IV (consumer attitudes) and their complete analysis and recommended plans for meeting our beer bottle marketing problems will shortly be reviewed by the Subcommittee.

It is expected that these recommended plans will include a test campaign in the Syracuse area which could be undertaken early in 1957 to determine whether efforts on a broader basis would be worthwhile. Progress reports on the Virginia campaign and the Syracuse studies will be made to the industry from time to time.

[fol. 559] The Beer Bottle Subcommittee is composed of the following members:

R. E. Delaplane, Chairman—Owens-Illinois Glass Company, W. S. Bazzett—Thatcher Glass Manufacturing Company, Inc., J. E. Bellinger—Ball Brothers Company, Inc., J. A. Giddings—Brockway Glass Company, Inc., M. J. Jones—Obear-Nester Glass Company, E. M. Lawrence—Anchor Hocking Glass Corporation, R. M. Ulmer—Armstrong Cork Company.

R. L. Cheney is Secretary.

Respectfully submitted, R. E. Delaplane, Chairman.

[fol. 560] GOVERNMENT'S EXHIBIT 131

Committee on Container Design and Specifications

Semi-Annual Report of Activities For the Period November 1955 to May 1956

To the Board of Trustees of Glass Container Manufacturers Institute

During the period covered by the report the committee held one meeting, February 16. The following is a brief summary of matters concluded since the previous report and additional subjects of interest to the industry now being considered by the committee.

Manufacturing Tolerances for Glass Containers

Undoubtedly one of the most important accomplishments of the D & S Committee during the period covered by this report was the approval of GCMI Drawing No. C-102, showing recommended tolerances for capacity, weight and body specifications.

In pursuing this study to a satisfactory conclusion the Technical Subcommittee held numerous meetings and the individual members made contributions in the form of independent studies to provide the basic information from which the drawing was prepared.

In the committee's early discussions of the previous Drawing C-100 it became apparent that the tolerances for weight and body dimensions, formerly related to capacity ranges, would be most realistically stated if they were shown as functions of their own specifications. Also it was recognized that it would be advisable to introduce additional intermediate tolerance values in order to provide less abrupt steps in the tolerance schedules. Both of these principles were incorporated in the revised drawing.

In continuing its study of tolerances the committee is giving special consideration to beer bottles, carbonated beverage bottles and pressed ware to determine whether it would be practical to include these lines among those for which the tolerances on C-102 are recommended.

Export Shape One-Way Beer Bottle

In our previous report we referred to the committee's discussion of drawings which would show specifications for 10 oz. and 4/5 quart capacity beer bottles in this line. In view of the Alcohol and Tobacco Tax Division's conclusion that the establishment of standards of fill for malt beverages was not warranted at this time, the committee was following closely the extent of the demand for the new bottle sizes to determine whether GCMI drawings for them would be justified.

During a recent meeting it was found that the two capacity sizes in question were still more or less used only by the one brewerey for which the designs were developed and there was very little general demand. Accordingly the subject was dropped from the committee's agenda.

In our previous report we announced that several brewers were using a quart capacity Export Shape Beer Bottle having 3/8 fl. oz. less headspace than the one identified as Item 165-75 on GCMI Drawing No. C-16506. The committee completed its study and found that the larger bottle was rapidly being replaced by the smaller one and the [fol. 561] GCMI drawing should be changed. Accordingly prints of revised GCMI Drawing No. C-16508 were issued to the industry incorporating the new specifications.

Glass Containers for Pharmaceuticals

In a previous report we referred to joint meetings which representatives of our industry held with representatives of the American Drug Manufacturers Association to study specifications of glass containers used by the drug industry. In view of the progress reported recently by the Technical Subcommittee in its study of manufacturing tolerances the drug representatives were requested to postpone any finalization of conclusions from their work until the conclusion of the GCMI tolerance study in order that the drug people would have available to them the latest findings in the industry.

Following a delay of several months the drug representatives advised that they had decided to proceed with the completion of their study and discontinue the activity of their Glass Committee. The drug representatives found

that in conversations with individual glass manufacturers the specifications originally considered by the drug group were acceptable to the manufacturers.

There appears to be nothing further for our committee to do unless some further request for assistance is received from the drug manufacturers.

Stacking of Filled and Capped Glass Containers

The latest progress report under this subject concerns the development of recommended specifications for stacking glass containers on metal caps having flowed-in compound liners. A technical advisory group from the closure industry is assisting the Technical Subcommittee by providing technical data with special emphasis on recommended dimension limits consistent with good manufacturing procedures. Additional data needed to continue the study is in process of being obtained.

Stubby Beer Bottle

Recently the West Coast Subcommittee reported that in some instances the identification ring on the 11 ounce capacity Stubby Beer Bottle was being mistaken as an indication of the fill point. Since the approximate fill point of this bottle is 1/32" below the bottom of the ring there are many complaints that the bottles are underfilled. In order to assist the brewers in meeting this complaint and eliminating the confusion one of the West Coast manufacturers produced samples of a bottle having the identifying ring 1/16" lower. Samples of this bottle have been approved by the brewers in the Northwest and at its recent meeting the West Coast Subcommittee recommended that the GCMI drawing be revised to incorporate the change. This matter has been referred to the membership of the Parent Committee and the Technical Subcommittee.

West Coast Subcommittee

Since last reporting, the West Coast Subcommittee had held meetings December 15, 1955, February 3, 1956 and March 9, 1956.

Study has continued concerning containers incorporating shaker fitments of plastic (polyethylene and other),

metal and foil sample containers were forwarded to the [fol. 562] Parent Committee for their study. Due to the multiplicity of problems arising from the various combinations of materials used in manufacturing fitments and closures for any specific glass container, the subcommittee placed the problem before the Parent Committee for their amplification and recommendation. (This matter has been referred to the Committee on Standards for Finishes.)

Dissatisfaction expressed by brewers operating plants in the Northwest concerning the location of the shoulder bead on the 69 Series, Stubby Beer Bottle, was taken under study by the subcommittee. The brewers claimed that the approximation of the bead to fill point resulted in erroneous rejections by brewers' customers for underfill in various instances.

As a result, a redesign lowering the bead 1/16" was submitted to the brewers, which was favorably accepted. The design was forwarded to the Parent Committee for their study and consideration with the recommendation that the suggested specifications be incorporated in GCMI Item 69-35, and that a revision be issued and approved.

Committee Personnel

The personnel of the Committee on Container Design and Specifications has not changed since our report to you last November and is as follows:

P. S. Holmquest, Chairman—Thatcher Glass Manufacturing Co., Inc., J. S. Algeo—Hazel-Atlas Glass Company, W. S. Coffman—Foster-Forbes Glass Company, J. A. Giddings—Brockway Glass Company, Inc., M. A. Hellrung, —Owens-Illinois Glass Company, E. A. Hinkins—Tygart Valley Glass Company, E. M. Lawrence—Anchor Hocking Glass Corporation, G. F. Rieman—Ball Brothers Company, Inc., R. M. Ulmer—Armstrong Cork Company.

V. L. Hall is Secretary of the Committee.

In our report last November we stated that word had been received that Mr. Arthur Glenn was no longer associated with Brockway Glass Company and had accepted an appointment as an instructor in Mechanical Engineering at Pennsylvania State University. Accordingly, Mr. Glenn asked to be relieved of his responsibility as a mem-

ber. of the Technical Subcommittee. At its meeting on November 28, 1955 the Board of Trustees appointed Mr. James H. Wilson of Brockway Glass Company to succeed Mr. Glenn.

The Technical Subcommittee is now constituted as follows:

G. M. Stuntz, Chairman—Anchor Hocking Glass Corporation, W. F. Alderson—Owens-Illinois Glass Company, F. H. Delwo—Ball Brothers Company, Inc., C. W. Evans—Tygart Valley Glass Company, Foster Mitchell—Armstrong Cork Company, Bud Powers—Thatcher Glass Manufacturing Co., Inc., Walter Siegel—Hazel-Atlas Glass Company, J. H. Wilson—Brockway Glass Company, Inc., Harold Youkers—Knox Glass, Inc.

C. E. Wagner is Secretary of the Technical Subcommittee.

[fol. 563] The personnel of the West Coast Subcommittee has remained unchanged during the period covered by this report and is as follows:

R. H. Dallas, Chairman—Maywood Glass Company; E. S. Campbell—Northwestern Glass Company, E. L. Casey—Hazel-Atlas Glass Company, J. W. Donaldson—Ball Brothers Company, Inc., E. L. Fraser—Owens-Illinois Glass Company, W. J. Latchford—Latchford-Marble Glass Company.

Frank H. Wright is Secretary of the West Coast Subcommittee.

Conclusion

It has been extremely gratifying to me, as Chairman of this committee, to note the cooperative and progressive attitude evidenced by the individuals of this group in their contributions to the committee's work. This collaborative effort made possible the establishment of suggested new manufacturing tolerances for glass containers, representing the major accomplishment of this committee during this period. Extensive research and study was involved in this project and the committee is particularly indebted to the Technical Subcommittee for their contributions to this important project.

The glass industry is a major segment of the dynamic packaging industry. Developments and improvements in competitive packaging media make it mandatory that we, as an industry, search diligently for design and specifications for glass containers that will assure our continued growth. It will be the constant aim of this committee to develop container specifications compatible with high level production efficiency that will enable us to compete in an intensively competitive market.

Speaking for the committee, I want to express appreciation for the constructive assistance given by Messrs. Hall and Wagner. Their assistance in coordinating the various elements involved in the committee's work made possible the expeditious handling of our meetings.

Respectfully submitted, P. S. Holmquest, Chairman

[fol. 564] GOVERNMENT'S EXHIBIT 138

Fifth Annual Consumer Survey on Containers
Prepared For The Confidential Use Of
Can Manufacturers Institute

By Benton & Bowles, Inc.
December, 1947

[fol. 565] Fifth Annual Consumer Survey on Containers

Purpose

This survey was undertaken to obtain current information on consumer attitudes toward various types of containers and to compare current attitudes with those of previous years. This is the fifth annual study conducted on this subject, and the information developed herein has been designed to be mainly comparable to information derived in previous studies.

The principal subjects covered by the current survey include:

1. General preference between cans and glass and reasons for preference.
2. Preferences for different types of containers for specific products, and willingness to pay more for preferred container.
3. Type of container believed to insure highest quality at time of purchase.
4. Type of container believed to keep food most sanitary after opening.
5. Proportion of respondents who leave unused portion of food in cans after opening.
6. Opinions regarding safety of leaving unused portion of food in cans.
7. Preferences for "fresh" vegetables and fruits vs. those packed in cans, glass, frozen packs, etc.
8. Opinions regarding the vitamin content of "fresh" food vs. food packed in various containers.
9. Type of container believed to give the greatest amount of usable food for the money during summer vs. winter.
10. Consumer buying habits of food packed in cans or glass vs. frozen food.

[fol. 566] Procedure

Questionnaires were mailed to 3,500 members of the Benton & Bowles' Home Research Staff selected to represent a reasonably accurate cross-section of all U. S. families with respect to territories, community size and income groups.

In the current study, an effort was made to determine

what effect a "reminder" question concerning the storing of opened cans of evaporated or condensed milk (products believed to be frequently left in cans) would have on opinions regarding the safety of leaving unused portions of food (such as fruits, vegetables, juices and meats) in cans. Accordingly, one-half of the respondents were asked preliminary questions on their usage of canned evaporated or condensed milk and on whether or not they leave unused portions of milk in the can.

So that a true trend picture could be maintained, the remaining questionnaires were worded on this point as in last year's study.

Each version of the questionnaire was sent to half of the families, each half representing similar cross-sections of the country. A copy of the two questionnaires is included at the end of this report.

The questionnaires were mailed on October 10, 1947 and the survey closed on November 10, 1947 when replies had been received from 2,277 families, or 65% of the mailing.

Composition Of The Sample will be found in Table 1.

Summary of Results

The results of this survey indicate that in many respects, the current attitude toward cans has not changed materially from the attitude evidenced last year, but continues to be somewhat more favorable than the attitudes evidenced in the three preceding studies (1943, 1944 and 1945).

The following paragraphs summarize the principal "highlights" revealed by the current study:

1. Consumer preference is evenly divided between cans and glass, with 37% of the respondents preferring each. The current attitude toward cans is about on the level evidenced last year (1946), but is more favorable than the attitudes revealed in the 1943, 1944, and 1945 studies.
2. Compared with last year, there has been little change in the preferential margin for cans for the majority of specific products on which the respondents were queried. However, preferences for cans are currently at a significantly higher level for shortening, coffee and beer than in any of the

previous years surveyed. For baby foods, the current preference for cans is lower, continuing the decline indicated last year.

[fol. 567] 3. As in previous studies, the majority of the respondents believe that glass is the type of container in which they are most sure of getting the quality they want when they purchase foods. The relative position of cans on this point is now about on the level of 1943, and better than in 1944, 1945 or 1946.

4. Glass is thought by the large majority of the respondents (84%) to be the type of container which keeps food most sanitary. While this proportion has not changed materially over the past several years, the proportion who don't know which type of container keeps food most sanitary has increased to 13% from 7% in 1943.

5. Currently, about one-eighth of the respondents (12%) claim that they leave the unused portions of foods in cans. This proportion shows little change from the 1946 (13%) or 1945 (10%) levels.

6. While only one-eighth of the respondents (12%) state that they actually leave the unused portions of foods in cans, nearly one-quarter (23%) believe it is safe to do so. The proportion who believe it is safe is currently about on the level indicated in 1945, and slightly below the proportion indicated last year (28%).

7. One-quarter of the respondents (25%) currently claim that they prefer to use so-called "fresh" vegetables, while 10% state that they generally prefer to use vegetables packed in cans, glass, frozen, etc. The proportions who prefer to use either "fresh" vegetables or packaged vegetables are smaller than in 1946, while the proportion who prefer to use both is correspondingly higher.

Usage preferences for fruits are very similar to preferences for vegetables.

8. More than half (57%) of the respondents believe that "fresh" food contains the most vitamins. Votes for frozen food (6%), food in cans (3%) and food in glass were all of comparatively minor

importance, while one-third of the respondents did not know.

9. Four-fifths of the respondents (80%) believe that "fresh" food gives the most food for the money in the summer months. In the winter months, food in cans is believed to give the most for the money by the greatest proportion of respondents (48%), followed by frozen foods (14%), foods in glass (13%) and "fresh" foods (6%).

[fol. 568] 10. Currently, about four-fifths of the respondents (79%) buy more food in cans or glass than frozen foods; 17% buy equal amounts; and only 4% buy more frozen foods than packed in cans or glass. These proportions are about the same as were evidenced in the 1946 survey.

Detailed Results

1. General Preference For Containers

The results of the present survey indicate that currently consumer preference is evenly divided between cans and glass, with 37% preferring each of these types of containers and the remaining 26% having no preference. Upper income and urban women are more favorably inclined toward cans, while lower income and farm women are more favorably inclined toward glass.

The current attitude of consumers toward cans shows little change from the attitude evidenced last year, but indicates a definite gain over the attitudes revealed in the three preceding studies (1943, 1944 and 1945).

	1943	1944	1945	1946	1947
Prefer cans	29%	23%	31%	37%	37%
Prefer glass	34	41	44	38	37
Have no preference	37	36	25	25	26
Ratio of glass over cans	1.09	1.44	1.29	1.02	1.00

The principal single reason for preferring cans was their indestructibility. About half the women who indicated a preference for cans (52%) gave "don't break" as their reason for preference. However, the convenience reasons (including ease of storing, of disposal, of handling, of opening, etc.) were given, in total, by a higher proportion of the

respondents (56%). Health factors, including such statements as sealed better, keeps food better, keeps food fresher, not exposed to light, etc., were listed, in total, by more than one-fifth of the housewives (22%).

The principal reasons for preferring glass are visibility of the contents (54%), various health factors such as contents need not be removed, sanitary, etc. (41%) and the fact that glass containers may be re-used (17%).

When asked what they like about cans and glass, the respondents gave reasons closely parallelling their reasons for preference.

[fol. 569] Qualities disliked about cans include chiefly a feeling that cans are unsafe (necessary to remove the contents after opening, 16%; other safety reasons, 10%); the fact that the contents are not visible (14%); and the inconvenience of using cans (13%).

The principal qualities disliked about glass containers are the fact that they can be broken (51%) and their inconvenience (difficult to dispose of, to store, to open, to handle, to remove contents, etc.) (18%).

2. Preference For Specific Products In Cans Vs. Glass

Of the 21 products listed on the questionnaire, consumers currently show a significant preference for cans over glass containers for the following 15 products:

	Prefer Cans	Prefer Glass
Motor oil	94%	6%
Paints	91	9
Baking powder	84	16
Talcum powder	83	17
Liquid soups	75	25
Fish	73	27
Meat	70	30
Shortening	68	32
Waxes and polishes	64	36
Bicarbonate of soda	63	37
Insecticides	63	37
Tomato juice	63	37
Fruit juices	62	38
Coffee	57	43
Vegetables	56	44

Compared with last year there has been little change in the preferential margin for cans for any of the above products with the exception of shortening and coffee. For these

two products, cans are at significantly higher level than in any of the previous years surveyed.

For the following three products, preferences are very nearly evenly divided between cans and glass:

Fruits, Beer, Disinfectants

While preference for fruits and disinfectants in cans is at about the same level as last year, preference for beer in cans is at a substantially higher level than in any of the previous four years.

[fol. 570] For the remaining three products shown below, the preferences are significantly in favor of glass over cans.

	Prefer Cans	Prefer Glass
Aspirin	31%	69%
Salad oil	34	66
Baby foods	36	64

The showing for cans is about the same as in 1946 for aspirin and salad oil. For baby foods, however, cans have lost ground, continuing the decline indicated last year.

3. Container Believed To Insure Best Quality At Time of Purchase

As in previous studies, the majority of the respondents believe that glass is the type of container in which they are most sure of getting the quality they want when they purchase foods. Currently, there is little difference in this attitude by community size or by income groups.

A comparison of the replies to this question received in all five of these surveys reveals that the relative position of cans on this point is now about on the level of 1943, and better than in 1944, 1945 or 1946.

	1943	1944	1945	1946	1947
Prefer cans	10%	6%	10%	15%	15%
Prefer glass	37	49	47	45	42
Have no preference	53	45	43	40	43
Ratio of glass over cans	1.75	2.48	2.15	1.88	1.74

The principal reasons for favoring cans in this respect are that dependable brands are put up in cans (28%), that they are sealed better (16%), that a greater variety of foods is put up in cans (11%) and that contents stay fresh

(10%). The visibility of the contents was by far the chief reason for favoring glass containers, with 85% of those who prefer glass naming this as their reason for preference.

4. Container Believed To Keep Food Most Sanitary

The large majority of the respondents (84%) currently believe that glass is the type of container which keeps food most sanitary after the container has been opened. While this proportion has not changed materially over the past several years, there has been a small but fairly steady increase in the proportion who don't know which type of container keeps food most sanitary.

[fol. 571]

Keeps food most sanitary	1943	1944	1945	1946	1947
Glass	91%	91%	87%	86%	84%
Cans	2	2	2	3	3
Paper carton	1	*	*	*	*
Don't know	6	7	11	11	13

* less than 1%

Glass is believed to keep food most sanitary principally because the container can be tightly resealed (29%), unused portions of food can be stored in the container (19%), glass is more sanitary (11%), there is no danger of poisoning (11%), and there is no chemical reaction or rust (11%).

5. Proportion Who Leave Unused Portion Of Food In Cans

In total, about one-eighth of the respondents (12%) currently claim that they leave the unused portions of foods in cans. This proportion shows little change, in total, from the proportions evidenced in the 1946 (13%) or 1945 (10%) surveys.

	1945	1946	1947
Leave unused portion in cans	10%	13%	12%
Do not leave unused portion in cans	90	87	88

The proportion of women who leave food in cans currently ranges from 16% in the highest income group to 8% among women in the lowest income group, but shows relatively little variation by community size or by age of housewife.

The women who do not leave food in cans do not do so principally because they fear food poisoning (30%) feel that leaving food in cans is not safe (15%), prefer to store food in dishes or glass (12%), or fear spoilage (12%).

[fol. 572] 6. Safety of Leaving Unused Portion Of Food in Cans

In total, nearly one-quarter of the respondents (23%) currently believe it is safe to leave the unused portions of food in cans. This proportion is about on the level of 1945, and slightly below the proportion evidenced last year.

	1945	1946	1947
Believe it is safe to keep food in cans	23%	28%	23%
Believe it is not safe to keep food in cans	56	50	54
Don't know	21	22	23

The proportions who believe it is safe to leave the unused portions of food in cans are higher among upper income and urban housewives than among lower income women and farm women. Age apparently has little influence on their opinions in this respect.

Women who believe it is safe to leave food in cans state principally that cans are chemically treated (23%), they have heard or read that it is safe (15%), and that authorities say it's safe (9%). On the other hand, women who believe it is unsafe are chiefly afraid of poisoning (33%), of spoilage (11%) and of contamination or chemical reaction (10%).

In the current study, an effort was made to determine what effect a "reminder" question concerning the storing of opened cans of evaporated or condensed milk (products believed to be frequently left in cans) would have on opinions regarding the safety of leaving unused portions of food (such as fruits, vegetables, juices and meats) in cans. Accordingly, one-half of the respondents were asked preliminary questions on their usage of canned evaporated or condensed milk and on whether or not they leave unused portions of milk in the can.

Of these respondents, 44% use canned milk and leave unused portions in the can, 19% use canned milk but do not leave unused portions in the can, and 37% do not use canned milk.

Among the group, in total, who were asked the "re-

minder" question, only a very slightly higher proportion (26%) considered it safe to keep unused portion of food in cans than among the group who were not asked about canned milk (23%). While a relatively high proportion (34%) of the women who leave unused portions of milk in cans believe it safe to keep unused portions of food in cans, a relatively small proportion (13%) of women who do not leave unused milk in can believe it safe to leave unused portions of food in cans.

[fol. 573] 7. Preference For "Fresh" Vs. Packaged Vegetables And Fruits

One-quarter of the respondents (25%) currently claim that they prefer to use so-called "fresh" vegetables, while 10% state that they generally prefer to use vegetables packed in cans, glass, frozen, etc. Nearly two-thirds of the total respondents (65%) prefer to use both types. There is relatively little variation in preference by community size or by income level.

The proportions who prefer to use either so-called "fresh" vegetables or packaged vegetables are smaller than in 1946, while the proportion who prefer to use both is correspondingly higher.

Prefer to use:	1945	1946	1947
So-called "fresh" vegetables	31%	28%	25%
Vegetables packed in cans, glass, etc.	9	15	10
Both "fresh" and packed in cans, glass, etc.	60	57	65

Women's usage preference with regard to fruits are very similar to those for vegetables, and also show a drop-off since 1946* in the proportion who prefer to use either so-called "fresh" fruits or packaged fruits, with a corresponding increase in the proportion who prefer to use both.

Prefer to use:	1946	1947
So-called "fresh" fruits	25%	23%
Fruits packed in cans, glass, etc.	14	11
Both "fresh" and packed in cans, glass, etc.	61	66

"Convenience" (saves work and time, easy to obtain, etc.) "better flavor" and "no waste" are the principal reasons

* Fruits were not included in the 1945 survey.

for preferring packaged vegetables and fruits, while the chief reasons for preferring to use the "fresh" products are because they have better flavor and are more nourishing. Among those who prefer to use both the "fresh" and the packaged products, the principal reasons given were a preference for "fresh" vegetables and fruits when available, the convenience of using both, and the fact that using both "fresh" and packaged fruits and vegetables provides variety in the diet.

[fol. 574] From a list of 16 vegetables and 14 fruits, a significant preference is indicated for the following products in can or glass pack as opposed to the frozen or "fresh" form:

Vegetables	Fruits
Tomato juice	Fruit cocktail
Baked beans	Grapefruit juice
Sauerkraut	Pineapple
Pumpkin	Apricots
Mixed vegetables	Cranberry sauce
Mushrooms	Cherries
	Grapefruit segments
	Pears
	Plums

Products preferred in the "fresh" form to the can, glass, or frozen pack are:

Vegetables	Fruits
Carrots	Raspberries
Sweet potatoes	
Tomatoes	
Green beans	
Spinach	
Asparagus	

For these remaining products, there is no strong preference between the can or glass pack and the "fresh" form:

Vegetables	Fruits
Beets	Applesauce
Corn	Peaches
Peas	Prunes
Lima beans	Figs

None of the listed products are preferred in the frozen pack by as many as 25% of the respondents. Those preferred in the frozen pack by 10% or more women are:

Vegetables	Fruits
Peas	
Lima beans	Raspberries
Mixed vegetables	
Spinach	
Asparagus	
Green beans	

[fol. 575] 8. Opinions On Vitamin Content Of "Fresh" Food Vs. Food Packed In Various Containers

When asked to state their opinion on the type of food which contains the most vitamins, 57% of the respondents voted for "fresh" food, while one-third (33%) did not know. Votes for frozen food (6%), food in cans (3%) and food in glass (1%) were all of comparatively minor importance. "Fresh" food was thought to contain the most vitamins by a somewhat higher proportion of rural women and of lower-income women than of housewives in other market divisions.

9. Opinions On Type Of Food Which Gives Most Usable Food For The Money—Summer Vs. Winter

There was a considerable division of opinion on the type of food which gives the most food for the money in the summer months as compared with the winter months. Four-fifths of the respondents (80%) believe that "fresh" food gives the most food for the money in the summer months. In the winter months, food in cans is believed to give the most for the money by the greatest proportion of respondents (48%), followed by frozen foods (14%), foods in glass (13%) and "fresh" foods (6%).

Opinions On Type of Food Which Gives Most For The Money	In The Summer Months	In The Winter Months
Foods in cans	4%	48%
Foods in glass	1	13
Frozen foods	3	14
"Fresh" foods	80	6
Don't know	12	19

10. Buying Habits Of Food Packed In Cans Or Glass vs. Frozen Food

Currently, about four-fifths of the respondents (79%) buy more food in cans or glass than frozen foods; 17% buy equal amounts; and only 4% buy more frozen foods than food packed in cans or glass. These proportions are about the same as were evidenced in the 1946 survey.

The use of frozen foods is somewhat less among farm women and women in the lowest income group.

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[fol. 688] GOVERNMENT'S EXHIBIT 145

Minutes of a Special Meeting of the Administrative Committee for the Research Division of Can Manufacturers Institute, Inc., held in the office of the Institute, 60 East 42nd Street, in the City of New York, at 10:30 A.M. on Monday, November 17th, 1941.

Present: D. M. Heekin, Chairman, L. F. Gieg, H. K. Taylor, C. H. Black, E. B. Webster, H. F. White, L. H. Clark (ex-officio).

Mr. D. W. Figgis of the American Can Company; Mr. C. C. Conway and Mr. F. J. O'Brien of the Continental Can Company; Dr. Miller McClintock, Director of Research and Mr. Karl Brown of the Research Division; Mr. C. E. Sifton, Secretary of the Institute; and Mr. Edward McGarvey, Counsel, were also present.

Mr. D. M. Heekin, Chairman of the Committee, called the meeting to order and acted as Chairman. Mr. C. E. Sifton, Secretary of the Institute, acted as Secretary.

In view of the unavoidable absence of several members from the Board of Governors meeting on Monday, November 10th, Dr. Miller McClintock repeated in shorter form his comprehensive preliminary report on the work of the Research Division covering the past nine months, outlined his conclusions and made specific recommendations for the future program of the Research Division.

After discussion, it was the consensus of the members present that the Institute would make a very definite contribution by supervising the execution of the broad promotional plan submitted by Dr. McClintock, and that the steel companies only be asked to make monetary contributions for the execution of the program.

After further discussion and upon motion duly made and seconded it was unanimously

> Resolved that the Administrative Committee for the Research Division approves Dr. McClintock's recommendations in principle for a five year promotional program, the first year of which includes the following activities:
>
> 1. Lay the foundation for action by a continuation of the industry's organization—the Research Division.

2. Develop immediately a broad program of public relations.
3. Provide for maturing and testing the major parts of the Master Plan.
4. Provide for a powerful series of industry advertisements in national magazines.

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[fol. 689] GOVERNMENT'S EXHIBIT 147

Digest of Recommendations Presents to the Administrative Committee of the Research Division of the Can Manufacturers Institute on November 17, 1941 by Dr. Miller McClintock, Director of the Division

After the review of the materials collected and analysed in the nine months' survey of the potentialities of the can market, the Director presented the following conclusions and proposals:

1. The can industry can profitably engage in a nationwide, continuing promotional plan as evidenced by the possibilities of the industry itself and by parallel successful types of operations carried on by other industrial groups.
2. It was further concluded that there is a very substantial hazard to the industry in not having such a promotional activity due to the development and aggressive promotion of competitive types of containers.
3. It was recommended that the plan should be of such a form as to cover all current fields of can manufacturing and the development of such new fields as are logically and economically within the range of service of metal containers, and that the plan should be a direct selling and merchandising program of nationwide extent instrumented primarily through:
   a) National consumer magazines and the trade press
   b) Related radio selling activities

c) Cooperative utilization of newspapers
d) Outdoor advertising.

In addition, publications, pamphlets and similar literature should be developed and distributed. A broad program of public relations and publicity in scientific, professional and consumer magazines and the newspaper press should be undertaken, together with a broad program for the utilization of motion pictures.

4. The plan should be instrumented by the Can Manufacturers Institute, through appropriate organization.

[fol. 690] GOVERNMENT'S EXHIBIT 148

5. This recommendation is predicated upon the fact that among other things the Can Manufacturers Institute has a much more direct and intimate understanding of the problems of merchandising metal containers than does any other organization.
6. Dr. McClintock recommended that the full plan should be conceived in terms of a budget of approximately $3,000,000 per year; this being in line, considering the breadth and complexity of the problem, with promotional expenditures of comparable, successful types of trade promotions.
7. It was recommended that the funds necessary to instrument the program should be derived from monies raised in proportion to base boxes of tin, terne or black plate; this measurement being the most practical and equitable means of determining contributions.
8. Dr. McClintock recommended that the plan should be put into operation immediately but not in its entirety, due to the defense economy and related questions of shortages as well as governmental policy to decrease consumer demands in many fields so adequately served by the can industry. However, he did recommend that essential parts of the program, suited to current conditions and designed to

lay the foundation for subsequent expanded action, be undertaken immediately in the following steps:

a) Lay the foundation for action by a continuation of the industry's organization—the Research Division.
b) Develop immediately a broad program of public relations.
c) Provide for maturing and testing the major parts of the Master Plan.
d) Provide for a powerful series of industry advertisements in national magazines.

The above is a true and accurate digest of the conclusions and recommendations which in principle were approved by the Administrative Committee of the Research Division at a meeting held on November 17, 1941.

Signed: Miller McClintock.

November 25, 1941

[fol. 691] GOVERNMENT'S EXHIBIT 156

Minutes of a Special Meeting of the Administrative Committee for the Research Division of Can Manufacturers Institute, Inc., held in the office of the Institute, 60 East 42nd Street, in the City of New York at 9:30 A.M. on Monday, May 11, 1942.

Present: D. M. Heekin, Chairman, C. H. Black, Vice Chairman, J. F. Hartlieb, L. F. Gieg, G. A. Milton, H. K. Taylor, H. F. White, L. H. Clark (ex-officio)

Mr. C. E. Sifton, Secretary and Treasurer of the Institute, was also present.

Mr. D. M. Heekin, Chairman of the Committee, called the meeting to order and acted as Chairman. Mr. C. E. Sifton, Secretary of the Institute, acted ex-officio as Secretary.

Mr. White spoke of the technical research project for the study of canned food values (especially vitamins) which the Can Manufacturers Institute Inc. and makers of packers cans in collaboration with the National Canners Association had considered last year and then dropped. The project is now being reconsidered. The estimated cost of

the research would be $36,000 a year; $18,000 to be contributed by the National Canners Association and the remaining $18,000 to be contributed jointly by the Research Division and the members of the Institute making packers cans. Inasmuch as the project would deal primarily with foods packed in Packers Cans, it was suggested that in fairness to makers of general line cans the contribution by the Research Division be determined as follows:

Take the total tonnage (1,685,804) of steel plate used in making Packers Cans during 1941 and divide it by the total tonnage (2,860,088) of steel plate consumed in both General Line and Packers Cans; this figures 58.9%. Then the contribution by the Research Division would be 58.9% of $18,000 or $10,602. The difference between $18,000 and $10,602, viz. $7,398, would then be prorated between the members of the Institute making Packers Cans on the same basis proposed last year in figuring similar contributions, viz. amount of dues paid to the Institute.

After discussion, and on motion duly made and seconded, it was unanimously

> Resolved that the Administrative Committee for the Research Division approves the proposed joint research plan of the N. C. A., the Can Manufacturers Institute, Inc. and the members of the Institute making packers—with reference to canned food values; and further

. . . . . .

[fol. 692] GOVERNMENT'S EXHIBIT 158

Minutes of a Special Meeting of the Administrative Committee for the Research Division of Can Manufacturers Institute, Inc., held in the office of the Institute, 60 East 42nd Street, in the City of New York, at 10:00 A.M. on Monday, June 1, 1942.

Present:

D. M. Heekin, Chairman, C. H. Black, Vice Chairman, J. F. Hartlieb, L. F. Gieg, G. A. Milton, H. K. Taylor, H. F. White, E. B. Webster.

Mr. C. E. Sifton, Secretary and Treasurer of the Institute; Mrs. Jean Hollander, Assistant to the Executive Vice President of the Institute; and Dr. Miller McClintock, Director of Research, were also present.

Mr. D. M. Heekin, Chairman of the Committee, called the meeting to order and acted as Chairman. Mr. C. E. Sifton, Secretary of the Institute, acted ex-officio as Secretary.

Dr. Miller McClintock, Director of the Research Division, submitted two financial reports, viz.

1. A Statement of expenditures for May, 1942 against the current budget, and
2. An itemized list of carry-over expenditures deductible from the 1941-1942 budgets.

Copies of the reports are attached to these minutes.

Dr. McClintock next discussed the Research Division's forthcoming "Annual Report". This report will summarize the results of the survey made during the period February 1, 1941 to April 30, 1942. He recommended that the report be turned over to Mr. White for his approval, and that Mr. White authorize its publication and determine the extent to which it should be distributed.

After a general discussion Dr. McClintock's recommendations were approved.

The Committee then went to Room 2304 in the Lincoln Building where Dr. McClintock had made arrangements for a preview of the visual presentation of the annual report. At this stage of the meeting the Committee was joined by the following members of the Research Division staff:

Miss Mary Pentland
Dr. E. L. Yordan
Mr. Adrian Williams
Miss Regina Hands.

Dr. McClintock next gave his report which was illustrated by charts projected on a screen.

• • • • • • •

[fol. 693] GOVERNMENT'S EXHIBIT 160

Can Manufacturers Institute, Inc.
Research Division

Financial Statement
Operations May 1, 1942—April 30, 1943

	Yearly Budget	May disbursements
Management	$12,000.00	$1,000.00
Staff Salaries	17,500.00	1,458.33
Staff Travel	1,800.00	20.58
Rent & Electricity	3,880.00	312.50
Equipment	270.00	.....
Stationery & Office Supplies	600.00	20.89
Telephone, Telegraph & Postage	1,000.00	81.80
Publications & Subscriptions	750.00	7.34
Misc. Office Expenses	800.00	.....
Printing of Reports, etc.	1,800.00	.....
Taxes	800.00	18.58
Graphic Supplies & Expenses	800.00	7.58
Printing and other materials for press releases, and distributiou costs	10,000.00	.....
Photographs and illustrative materials for press releases	5,000.00	400.00*
Totals	$57,000.00	$3,327.60

* In accordance with my memorandum of May 14, 1942, to Mr. Clifford E. Sifton.

[fol. 694] GOVERNMENT'S EXHIBIT 166

Minutes of a Special Meeting of the Administrative Committee for the Research Division of Can Manufacturers Institute, Inc., held in the office of the Institute, 60 East 42nd Street, in the City of New York, on Monday, December 14, 1942 at 1:50 P.M.

Present: D. M. Heekin, Chairman, C. H. Black, Vice Chairman, J. F. Hartlieb, L. F. Gieg, G. A. Milton, H. F. White, L. H. Clark (ex-officio).

Mr. C. E. Sifton, Secretary & Treasurer of the Institute, was also present.

Mr. D. M. Heekin, Chairman of the Committee, called the meeting to order and acted as Chairman. Mr. C. E. Sifton, Secretary of the Institute, acted ex-officio as Secretary.

Mr. Heekin read the attached report of the Research Division's Technical Committee composed of Mr. J. J. Vertrees and Mr. H. A. Goodwin.

In the discussion which followed, Mr. White asked the question, "Is there unanimity among the members of this committee that there is a consumer advertising job to be done?" The Chairman then polled each member present and it was unanimously agreed that there is a definite need for a comprehensive consumer advertising program for tin (steel) cans covering a period of about five years and that steps to put such a program into effect should be taken at once.

It was also generally agreed that the expense of the program (estimated roughly from 1 to 2 million dollars a year) should be carried by the steel people because the program would be in the interests of plate manufacturers rather than can makers. Attention was called to the fact that can companies are in a position to make containers of materials other than tin or black plate, while the profitable (for the steel people) field of manufacturing tin and black plate is in jeopardy as a result of substitutions which may be developed during war time.

After further discussion it was agreed that Mr. White should arrange for Mr. Tower and the heads of the various steel companies to meet as a group with representatives from the can industry to discuss

(1) The immediate need for a comprehensive consumer advertising program to

(a) Protect the use of steel containers while we are at war, and to

(b) Promote their use after restrictions on steel have been lifted.

(2) The ways and means of putting such a program in to effect.

[fol. 695] Mr. White reported that after the Administrative Committee meeting on November 9th at which Dr. McClintock's resignation was accepted, Dr. McClintock had on his own volition offered to remain as Director of Research until the end of 1942. After consulting with a majority of the Administrative Committee members, Mr. White told Dr. McClintock that the Committee would be very glad to have him continue as Director until the first of

the coming year. After discussion and on motion duly made and seconded, it was unanimously

> Resolved, that Mr. White's action in extending Dr. McClintock's tenure of office as Director of Research to the end of the year 1942 be and hereby is in all respects ratified, approved and confirmed.

Meeting adjourned at 3:00 P.M.

Secretary.

This summer . . . all summer long . . .
U. S. STEEL HELPS YOU SELL

Soft Drinks in Cans!

Beginning June 4, United States Steel launches a continuous nationwide program to help you increase your distribution and your sales of canned soft drinks.

This program will educate the *consumer* to a greater acceptance and preference for soft drinks in cans. It will demonstrate to the *supermarket industry* the advantages and new opportunities in merchandising soft drinks in cans. Impact at the national level, at the local level, and in the trade will give you the advertising and promotional help you need to make *canned* soft drinks really take hold.

IN NEWSPAPERS
ALL SUMMER LONG . . . ads will convince consumers to try "the new way to buy soft drinks—in cans." Large-space ads, like the one shown here, will drive home the advantages of cans, in 34 markets, during your peak selling season from June 26 through mid-August.

ON MORNING TV
EVERY WEEK . . . beginning June 4, throughout the year, commercials will demonstrate the advantages of canned soft drinks twice a week to an audience of 2,200,000. The show is CBS MORNING NEWS, carried over 65 key stations, coast to coast.

ON EVENING TV
REACHING 25,000,000 VIEWERS
Sheila Jackson and Jack Brand, on the U.S. STEEL HOUR, will "sell" canned soft drinks over 135 stations during July. So, even if the newspaper ads do not reach your market, your customers will know

THIS AD SELLS in 48 newspapers in 34 big markets, coast to coast. It runs June 26 . . . July 3, 17, 31 . . . and August 14 in:

Akron, Ohio—Beacon Journal
Albany, Georgia—Herald
Asheville, N. C.—Citizen Times
Atlanta, Georgia—Constitution Journal
Augusta, Georgia—Chronicle, Herald
Baltimore, Maryland—Sun
Birmingham, Alabama—News, Post-Herald
Boston, Massachusetts—Herald, Traveler
Charlotte, N. C.—Observer
Chattanooga, Tennessee—News, Free-Press, Times
Knoxville, Tennessee—News-Sentinel
Los Angeles, California—Times
Louisville, Kentucky—Courier-Journal, Times
Macon, Georgia—News-Telegraph
Milwaukee, Wisconsin—Journal
Nashville, Tennessee—Banner-Tennessean
New Orleans, Louisiana—Times-Picayune-States
Oakland, California—Tribune
Philadelphia, Pennsylvania—Bulletin
Pittsburgh, Pennsylvania—Press

2258

In your store . . .
LESS TROUBLE...LESS LABOR
WITH Soft Drinks in Cans!

- ★ **NO BREAKAGE** *with durable cans!*
- ★ **EASY HANDLING** *with lightweight cans!*
- ★ **EASY STACKING** *with flat-topped cans!*
- ★ **GOOD DISPLAY** *with labeled cans!*
- ★ **NO RETURNS** *with disposable cans!*

How to Cash in
ADVERTISE canned soft drinks
DISPLAY canned soft drinks
TIME your canned soft drink promotions to take full advantage of U. S. Steel's advertising.

Beginning June 4, United States Steel launches a *continuous*, nationwide program to help you increase your sales of canned soft drinks. A powerful, sales-building advertising program will drive home to consumers the lightweight, space-saving, no-return, quick-chilling, no-breakage features of soft drinks in cans . . . will create a public acceptance and *preference for canned* soft drinks. It is a great opportunity for you to increase total soft drink sales by building *canned* soft drink sales. Here's the program:

IN NEWSPAPERS
ALL SUMMER LONG . . . consumers will get the urge to "try the new way to buy soft drinks—*in cans.*" Large-space ads, like the one shown here, will drive home the advantages of cans, in 37 markets, during your peak selling season from June 19 through mid-August.

ON MORNING TV
EVERY WEEK . . . for forty consecutive weeks beginning June 4, commercials will demonstrate the advantages of canned soft drinks twice a week to an audience of 2,200,000. The show is CBS MORNING NEWS, carried over 65 key stations, coast to coast.

ON EVENING TV
REACHING 25,000,000 VIEWERS
Sheila Jackson and Jack Brand, on the U.S. STEEL HOUR, will "sell" canned soft drinks over 135 stations during July and August. So, even if the newspaper ads do not reach your market, your customers will know about and want to try "the new way to buy soft drinks—*in cans.*"

USS is a registered trademark

USS United States Steel
Pittsburgh 30, Pennsylvania

THE NEW WAY TO BUY...THE NEW WAY TO SELL SOFT DRINKS—IN CANS!

Advertisement prepared by Batten, Barton, Durstine & Osborn, Inc., Pgh. to appear in
SUPER MARKET NEWS—JUNE 30, 1958
FOOD TOPICS—JUNE 23, 1958
★ P. O. Pgh. 8-1843-A
Final Proof

Soft Drinks in Cans!

Beginning June 4, United States Steel launches a continuous nationwide program to help you increase your distribution and your sales of *canned* soft drinks.

This program will educate the *consumer* to a greater acceptance and preference for soft drinks in cans. It will demonstrate to the *supermarket industry* the advantages and new opportunities in merchandising soft drinks in cans. Impact at the national level, at the local level, and in the trade will give you the advertising and promotional help you need to make *canned* soft drinks really take hold.

IN NEWSPAPERS ALL SUMMER LONG

. . . ads will convince consumers to try "the new way to buy soft drinks—in cans." Large-space ads, like the one shown here, will drive home the advantages of cans, in 34 markets, during your peak selling season from June 26 through mid-August.

ON MORNING TV EVERY WEEK

. . . beginning June 4, throughout the year, commercials will demonstrate the advantages of canned soft drinks twice a week to an audience of 2,200,000. The show is CBS MORNING NEWS, carried over 65 key stations, coast to coast.

ON EVENING TV REACHING 25,000,000 VIEWERS

Sheila Jackson and Jack Brand, on the U.S. STEEL HOUR, will "sell" canned soft drinks over 135 stations during July. So, even if the newspaper ads do not reach your market, your customers will know about and want to try "the new way to buy soft drinks—in cans."

United States Steel · Pittsburgh 30, Pa.

USS is a registered trademark

THIS AD SELLS in 48 newspapers in 34 big markets, coast to coast. It runs June 26 . . . July 3, 17, 31 . . . and August 14 in:

Akron, Ohio—Beacon Journal
Albany, Georgia—Herald
Asheville, N. C.—Citizen Times
Atlanta, Georgia—Constitution Journal
Augusta, Georgia—Chronicle, Herald
Baltimore, Maryland—Sun
Birmingham, Alabama—News, Post-Herald
Boston, Massachusetts—Herald, Traveler
Charlotte, N. C.—Observer
Chattanooga, Tennessee—News, Free Press, Times
Chicago, Illinois—News
Cleveland, Ohio—Press
Columbus, Georgia—Ledger, Enquirer
Columbus, Ohio—Dispatch
Dallas, Texas—Times Herald
Detroit, Michigan—News
Houston, Texas—Chronicle
Knoxville, Tennessee—News-Sentinel
Los Angeles, California—Times
Louisville, Kentucky—Courier-Journal, Times
Macon, Georgia—News, Telegraph
Milwaukee, Wisconsin—Journal
Nashville, Tennessee—Banner, Tennessean
New Orleans, Louisiana—Times-Picayune, States
Oakland, California—Tribune
Philadelphia, Pennsylvania—Bulletin
Pittsburgh, Pennsylvania—Press
St. Paul, Minnesota—Dispatch, Pioneer Press
San Francisco, California—Call Bulletin
Seattle, Washington—Times
Shreveport, Louisiana—Journal, Times
Tampa, Florida—Tribune
Westchester Group, New York
Youngstown, Ohio—Vindicator

ADVERTISE CANNED SOFT DRINKS
ALERT YOUR SALESPEOPLE

USS United States Steel

THE NEW WAY TO BUY...THE NEW WAY TO SELL SOFT DRINKS—IN CANS!

Advertisement prepared by Batten, Barton, Durstine & Osborn, Inc., Pgh. to appear in:
BOTTLING INDUSTRY—JUNE 17, JULY 1, 1958
NATIONAL BOTTLERS' GAZETTE—JUNE 1958
AMERICAN SOFT DRINK JOURNAL—JUNE 1958
★ P. O. Pgh. 8-1614

2255

"It's best in cans"-

SAY SOFT DRINK FANS

Get canned soft drinks
at your favorite store-
-they're convenient,
they're modern,
they're worth much more!

'Cause cans don't break
and cans are light...

Cans chill quick-
seal flavor in tight!

Cans store best-
you can even stack...

...and you NEVER.

2256

2256

Get canned soft drinks
at your favorite store-
-they're convenient,
they're modern,
they're worth much more!

'Cause cans don't break
and cans are light...

Cans chill quick-
seal flavor in tight!

Cans store best-
you can even stack...

...and you NEVER
have to take 'em back!

Now Available at Your Grocers

Steel
Lightens your work
Brightens your leisure
Widens your world

USS United States Steel

TO BUILD NEW SALES FOR YOU U. S. STEEL PROMOTES

Soft Drinks in Cans!

In your store . . .

LESS TROUBLE . . . LESS LABOR

WITH Soft Drinks in Cans!

- ★ **NO RETURNS** *with disposable cans!*
- ★ **EASY HANDLING** *with lightweight cans!*
- ★ **EASY STACKING** *with flat-topped cans!*
- ★ **GOOD DISPLAY** *with labeled cans!*
- ★ **NO BREAKAGE** *with durable cans!*

Beginning June 4, United States Steel launches a *continuous*, nationwide program to help you increase your sales of canned soft drinks. A powerful, sales-building advertising program will drive home to consumers the lightweight, space-saving, no-return, quick-chilling, no-breakage features of soft drinks in cans . . : will create a public acceptance and *preference for canned* soft drinks. It is a great opportunity for you to increase total soft drink sales by building *canned* soft drink sales. Here's the program:

IN NEWSPAPERS ALL SUMMER LONG . . . consumers will get the urge to "try the new way to buy soft drinks—*in cans*." Large-space ads, like the one shown here, will drive home the advantages of cans, in 34 markets, during your peak selling season from June 26 through mid-August.

ON MORNING TV EVERY WEEK . . . for forty consecutive weeks beginning June 4, commercials will demonstrate the advantages of canned soft drinks twice a week to an audience of 2,200,000. The show is CBS MORNING NEWS, carried over 65 key stations, coast to coast.

ON EVENING TV REACHING 25,000,000 VIEWERS . . . Sheila Jackson and Jack Brand, on the U.S. STEEL HOUR, will "sell" canned soft drinks over 135 stations during July and August. So, even if the newspaper ads do not reach your market, your customers will know about and want to try "the new way to buy soft drinks—*in cans*."

U. S. STEEL PROMOTES

Soft Drinks in Cans!

In your store . . .

LESS TROUBLE . . . LESS LABOR

WITH Soft Drinks in Cans!

- ★ **NO RETURNS** *with disposable cans!*
- ★ **EASY HANDLING** *with lightweight cans!*
- ★ **EASY STACKING** *with flat-topped cans!*
- ★ **GOOD DISPLAY** *with labeled cans!*
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How to Cash in

ADVERTISE canned soft drinks
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TIME your canned soft drink promotions to take full advantage of U. S. Steel's advertising.

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ON MORNING TV . . .
EVERY WEEK . . . for forty consecutive weeks beginning June 4, commercials will demonstrate the advantages of canned soft drinks twice a week to an audience of 2,200,000. The show is CBS MORNING NEWS, carried over 65 key stations, coast to coast.

ON EVENING TV
REACHING 25,000,000 VIEWERS . . . Sheila Jackson and Jack Brand, on the U.S. STEEL HOUR, will "sell" canned soft drinks over 135 stations during July and August. So, even if the newspaper ads do not reach your market, your customers will know about and want to try "the new way to buy soft drinks—*in cans.*"

United States Steel · Pittsburgh 30, Pa.
USS is a registered trademark

USS **United States Steel**

THE NEW WAY TO BUY...THE NEW WAY TO SELL SOFT DRINKS—IN CANS!

22572

Advertisement prepared by Batten, Barton, Durstine & Osborn, Inc., Pgh. to appear in
SUPER MARKET MERCHANDISING—JUNE 1958
SUPERMARKET NEWS—JUNE 30, 1958
FOOD TOPICS—JUNE 23, 1958
* P. O. Pgh. 8-1843

2258

TO BUILD NEW SALES FOR YOU U.S. STEEL PROMOTES

Soft Drinks in Cans!

In your store . . . .

LESS TROUBLE...LESS LABOR

WITH Soft Drinks in Cans!

- ★ **NO BREAKAGE** *with durable cans!*
- ★ **EASY HANDLING** *with lightweight cans!*
- ★ **EASY STACKING** *with flat-topped cans!*
- ★ **GOOD DISPLAY** *with labeled cans!*
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ON EVENING TV REACHING 25,000,000 VIEWERS

Sheila Jackson and Jack Brand, on the U.S. STEEL HOUR, will "sell" canned soft drinks over 135 stations during July and August. So, even if the newspaper ads do not reach your market, your customers will know about and want to try "the new way to buy soft drinks—*in cans.*"

[fol. 700] GOVERNMENT'S EXHIBIT 174

INCREASED CONSUMER IMPACT has been added to United States Steel's Soft Drinks in Cans program for the summer months. On alternate Wednesdays, beginning July 9 at 11 AM-EDT, U. S. Steel will sponsor 15 minutes of the televised Arthur Godfrey Show over a minimum of 60 stations of the CBS Television Network. The schedule will also include one commercial every other Friday on the Godfrey Show beginning July 4. Some of these commercials will use that personal Godfrey salesmanship and others will be films. Godfrey replaces the CBS morning News in the soft drink program, and CBS advises that the morning news will resume in October.

Arthur Godfrey for years has been known as the nation's number one salesman. Millions of Americans, people from all strata of life, immediately identify themselves with him and with the products he advertises. The warmth, the vitality and the humor that have made Godfrey the greatest entertainer salesman in television will provide a perfect medium to tell Americans everywhere of the advantages of soft drinks in cans.

In addition to the Godfrey Show, U. S. Steel's Soft Drinks in Cans program includes commercials on the U. S. Steel Hour on July 2 and July 30, and an intensive newspaper advertising schedule in 50 papers covering 34 markets where canned soft drinks have maximum super market distribution. The advertisement which will appear is reproduced here.

This newspaper ad will remind consumers, as will Arthur Godfrey, of the many advantages of Soft Drinks in Cans

- Lightweight, easy to handle
- Space saving
- No deposits to pay, no empties to return
- Chill quickly
- No breakage

USS United States Steel

For more information write
Robert C. Myers, Director
Market Development Division
United States Steel Corporation
525 William Penn Place
Pittsburgh 30, Pa.

[fol. 701]

Stations of the CBS Network Carrying the Arthur Godfrey Show

City	Station
Basic Required	
New York	WCBS-TV
Albany	WCDA-TV
Atlanta	WAGA-TV
Baltimore	WMAR-TV
Birmingham	WBRC-TV
Boston	WNAC-TV
Buffalo	WGR-TV
Charleston, W. Va.	WCHS-TV
Charlotte	WBTV
Chicago	WBBM-TV
Cincinnati	WKRC-TV
Cleveland	WJW-TV
Columbus	WBNS-TV
Dallas	KRLD-TV
Dayton	WHIO-TV
Denver	KLZ-TV
Des Moines	KRNT-TV
Detroit	WJBK-TV
Evansville	WFIE-TV
Fort Worth-Houston	KGUL-TV
Greensboro	WFMY-TV
Hartford	WHCT
Hutchinson-Wichita	KTVH
Indianapolis	WISH-TV
Jacksonville	WMBR-TV
Kalamazoo	WKZO-TV
Kansas City	KCMO-TV
Los Angeles	KNXT
Louisville	WHAS-TV
Memphis	WMC-TV

City	Station
Miami	WTVJ
Minneapolis	WCCO-TV
Nashville	WLAC-TV
New Orleans	WWL-TV
Norfolk	WTAR-TV
Oklahoma City	KWTV
Omaha	WOW-TV
Philadelphia	WCAU-TV
Pittsburgh	KDKA-TV
Portland, Ore.	KOIN-TV
Providence	WPRO-TV
Richmond	WTVR-TV
Rochester	WHAM-TV WVET-TV
Rock Island	WHBF-TV
Sacramento	KBET-TV
Salt Lake City	KSL-TV
San Antonio	WOAI-TV
San Diego	KFMB-TV
San Francisco	KPIX
Shreveport	KSLA-TV
St. Louis	KMOX-TV
Syracuse	WHEN-TV
Tacoma-Seattle	KTNT-TV
Tampa	WTVT
Toledo	WSPD-TV
Tulsa	KOTV
Washington	WTOP-TV
Durham	WTVD
Lansing	WJIM

City	Station	City	Station
Supplementary Interconnected			
Albuquerque	KGGM-TV	Champaign	WCIA
Atlanta	WSB-TV	Charleston, S. C.	WCSC
Amarillo	KFDA-TV	Chattanooga	WDEF
Anderson	WAIM-TV	Cheyenne	KFBC
Augusta, Ga.	WRDW-TV	Chico	KHSL
Austin, Texas	KTBC-TV	Colorado Springs	KKTV
Bakersfield	KBAK-TV	Columbia, S. C.	WIS
Bangor	WABI-TV	Columbus, Ga.	WRBL
Baton Rouge	WAFB-TV	Corpus Christi	KZTV
Beaumont	KFDM-TV	Duluth-Superior	KDAL
Binghamton	WNBF-TV	El Paso	KROD
Biloxi	WLOX-TV	Erie	WICU
Burlington	WCAX-TV	Eureka	KIEM
Cadillac	WWTV	Florence, S. C.	WBTW
Cape Girardeau	KFVS-TV	Fort Smith	KFSA
Carthage	KSWS-TV	Fort Wayne	WKJG
Watertown	WCNY-TV	Green Bay	WBAY
Cedar Rapids	WMT-TV	Greenville, N. C.	WNCT

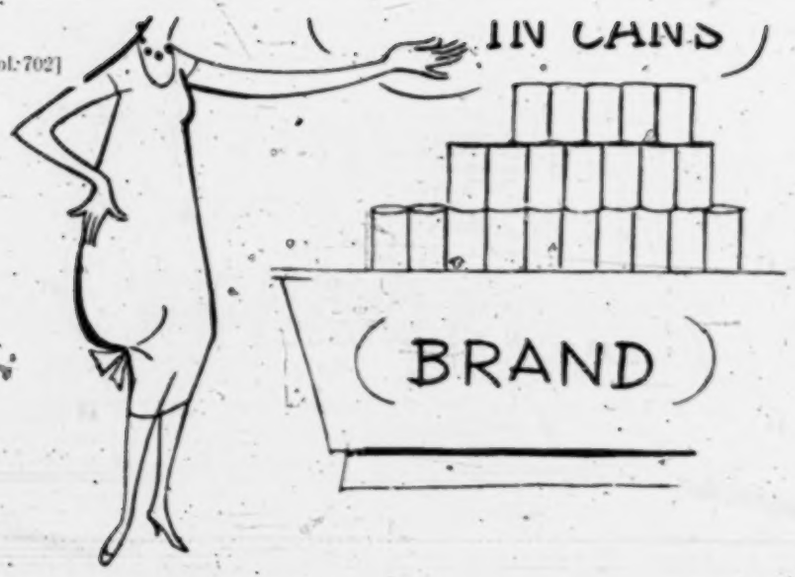
*This network lineup is subject to change without
Consult your local listing for time and station.

United States Steel

Now! USS United States Steel

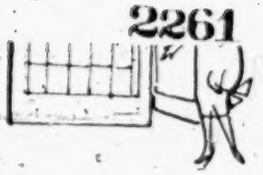
Sponsors Arthur Godfrey

To help you sell soft drinks in cans!



GOVERNMENT'S EXHIBIT 175

...and you NEVER have to take 'em back!



Now Available at Your Grocers

The above "ready-to-run" ad can be offered to bottlers or distributors, who may want to list retail outlets or its elements may be cut out for use to suit any of your advertisers. Every Bottler, Canner and franchiser of soft drinks is being told of the promotion opportunities in this program through American Can Company's *MiraCan Merchandiser*.

OUTINGS
Beach Parties
CAMPING

WORTH MORE
CHILLS QUICKLY
NO DEPOSIT
CONVENIENT
NO RETURN

SEE BACK PAGE *for Examples of How Well These Spots Work in Food Store Advertising...*

Why the Emphasis is Growing on SOFT DRINKS IN CANS

1. MORE CONVENIENT FOR CONSUMERS because there are no deposits and no returns; they are easier to carry and chill quickly. See Food Page story on back.

2. EASIER FOR STORES TO HANDLE because they stack easily, may be displayed more advantageously and in less space, and eliminate costly handling of returns. See Business Page story on back page.

What U.S. Steel is Doing About It

1. PLACING ADVERTISING IN NEWSPAPERS IN 33 MARKETS this year. Paving the way for other markets with umbrella coverage on U. S. Steel's network TV programs.

2. FURNISHING NEWSPAPERS EVERYWHERE with this service to "tool them up" for helping Food Retailers and Bottlers advertise Soft Drinks in Cans.

Ready to Pep Up Food Store Soft Drink Sales

Approximately 100,000 Food Retailers are being alerted through Continental Can Company's *Merchandiser Digest* to the fact that newspapers will have the ad building tools in this FREE SERVICE available FOR USE IN THEIR ADVERTISING

Pointing the Way to Possible NEW LINAGE

"It's best in cans" SAY SOFT DRINK FANS

Get canned soft drinks
at your favorite store
-they're convenient,
they're modern
they're worth much more

Cause cans don't break
and cans are light

Cans chill quick-
seal flavor in tight!

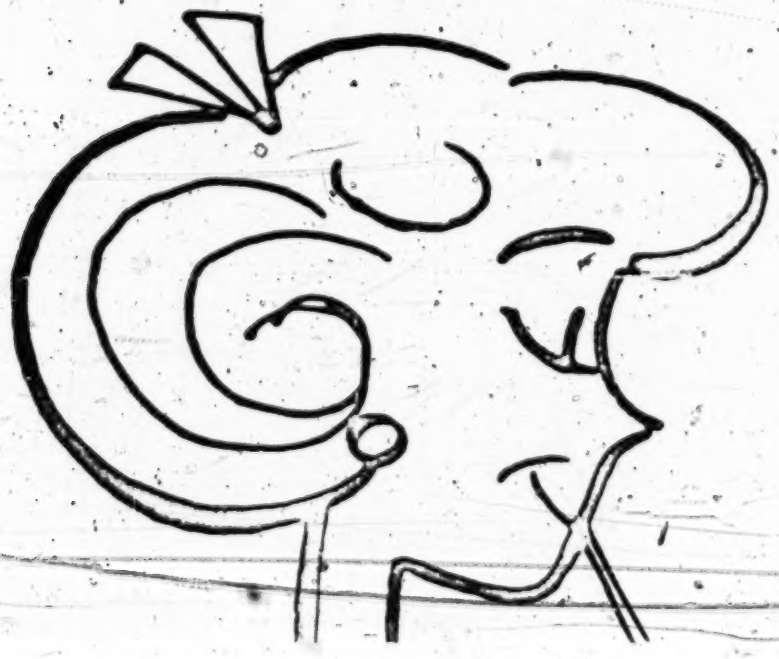
Cans store best-

[fol. 704]

U.S. STEEL'S 1958

SOFT DRINKS IN CANS

NEWSPAPER AD MAT SERVICE



Produced and made available to you FREE (you need only to request the mats illustrated) so that you may be equipped to furnish your

SUPERMARKETS
SUPERETTES
GROCERS'
BOTTLERS

with ideas and illustrations for advertising SOFT DRINKS IN CANS . . .

YOU MAY NOT NOW... BUT YOU WILL, SOON

Although there may be no extensive distribution of soft drinks in cans in your area now, this product is growing in popularity, by leaps and bounds. Retail store and consumer demand is radiating from 33 markets. This service will be useful to you some time soon, if not right now.

So Keep This On TAP!

SUPERMARKETS
SUPERETTES
GROCERS'
BOTTLERS

with ideas and illustrations for advertising SOFT DRINKS IN CANS . . .

This service may also help you to gain some extra linage by selling local sponsorship and tie-ins for the four-column ad inside, to food stores and bottlers who want to identify themselves as the source for the new convenient way to buy soft drinks.

SEE THE INSIDE AND BACK PAGES for the story of (1) **"SOFT DRINKS IN CANS,"** (2) what it means to mass merchandising and to consumers . . . (3) for the ad making tools now ready for you to offer advertisers in demonstrating that you are in step with their merchandising problems, and (4) for suggestions on how to utilize these ad building tools in layouts.

FILL OUT AND MAIL coupon on back page to make sure you have the FREE ad making tools on hand when you need them.

Be Sure to See

New STEELMARK Year 'Round Service . . .

New 1958 OPERATION SNOWFLAKE Service

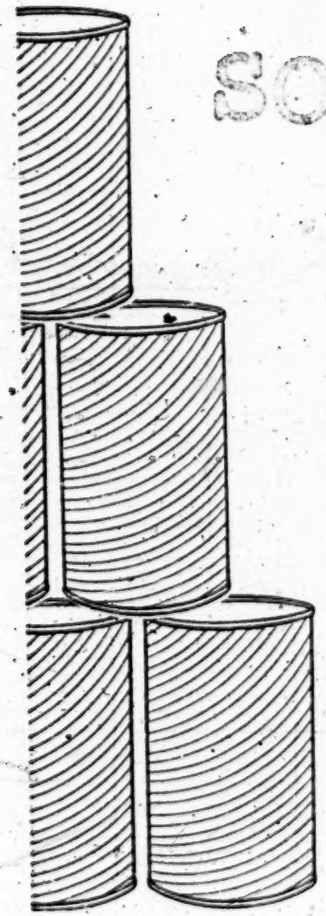
Steel

WHITE CHRISTMAS

2263

[fol. 705] GOVERNMENT'S EXHIBIT 176

U.S. Steel will promote soft drinks— in cans for HOME USE



In all its advertising to consumers, U. S. Steel will be building new in-home use of soft drinks in cans. It will demonstrate dramatically these five advantages of soft drinks in cans:

- Lightweight, easy to handle
- Space saving
- No deposits to pay, no empties to return
- Chill quickly
- No breakage

Refreshments for picnics, ball games, beach parties, barbecues and other outdoor events are also big reasons for people to buy soft drinks in cans. So U. S. Steel will emphasize these uses, too, during its summer-time advertising program.

FOR THE FIRST TIME, the advantages of soft drinks in cans will be brought home dramatically to American consumers. This ad will appear throughout the summer in 50 newspapers in 35 markets. It will be backed up with extensive network television commercials. It will stimulate consumers to look for soft drinks in cans. Complete advertising schedule is shown inside this brochure.

For more information, write:
Mr. Robert C. Myers, Director
Market Development Department
United States Steel Corporation
Pittsburgh 30, Pennsylvania

Steel — Lightens your work / Brightens your leisure / Widens your world

USS United States Steel

TRADEMARK

Printed in U.S.A.

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ans

USE

Steel will be building new
demonstrate dramatically

easy to

o pay,
s to return

ch parties, barbecues and
r people to buy soft drinks
ese uses, too, during its

FOR THE FIRST TIME, the advantages of soft drinks in cans will be brought home dramatically to American consumers. This ad will appear throughout the summer in 50 newspapers in 35 markets. It will be backed up with extensive network television commercials. It will stimulate consumers to look for soft drinks in cans. Complete advertising schedule is shown inside this brochure.

"It's best in cans"
SAY SOFT DRINK FANS

Get canned soft drinks at your favorite store - they're convenient, they're modern, they're worth much more!

Cause cans don't break and cans are light.

Cans chill quick - seal flavor in tight!

Cans store best - you can even stack...

...and you NEVER have to take 'em back!

Now Available at Your Grocers

United States Steel

For more information, write:
Mr. Robert C. Myers, Director
Market Development Department
United States Steel Corporation
Pittsburgh 30, Pennsylvania

Steel — Lightens your work
Brightens your leisure
Widens your world

United States Steel

TRADEMARK

Printed in U.S.A.

Now, to build new sales
for you

U.S. STEEL promotes

in cans!

Starting June 4, nationally and locally, in newspapers and on television, U. S. Steel is selling the consumer. Selling morning, afternoon and night. Selling week after week after week. Selling the advantages of soft drinks *in* cans. Showing the convenience of disposable, lightweight cans. This continuous advertising will create a stronger acceptance and preference for soft drinks in cans. It will help you to increase your total sales of soft drinks.

[Vol. 706]

IN THE MORNING

television

sells for you

Every Wednesday, for 40 consecutive weeks, U. S. Steel commercials will demonstrate the advantages of canned soft drinks to a television audience of 1,200,000 consumers in 50 key markets. The show is CBS Morning News, a popular early morning* newscast featuring Richard Hottelet and Grant Holcomb.

Coming in the morning when the housewife plans her shopping needs, these memorable commercials will encourage shoppers to look for canned soft drinks in the stores. Make it easy for them. Advertise, promote, display your canned soft drinks.

*See list below for exact time in each city

IN THE MORNING — CBS NEWS — Every Wednesday, for 40 weeks

IN THE AFTERNOON

newspapers

sell for you

A thirteen-week, 50-line newspaper campaign starts June 19 and continues throughout the summer, from June 19 through mid-August. Consumers in 30 markets will be urged to "try the new way to buy soft drinks—in cans." These ads will present the consumer on soft drinks in cans. Caution: Schedule your combined advertising to begin

NEWSPAPER SERVICE Daily newspapers will receive a complete set of ad-building ideas and mats that will enable you, easily, to make up your own canned soft drink ads. Be sure to get in touch with your newspaper to see how this service can help you.

IN THE AFTERNOON — June 26–July 1, 11, 18–August 13

IN THE EVENING

television

sells for you

On July 2 and again on July 30, Sheila Jackson and Jack Brand, U. S. Steel's commercial-getting team, will take the canned soft drink story into 25,500,000 living rooms, coast to coast, on the *United States Steel Hour*. They will demonstrate the advantages of canned soft drinks and urge viewers to try this new way to buy soft drinks—in cans. Canned soft drinks will also be featured on other *U. S. Steel Hour* commercials during July and August.

United States Steel

*See list below for exact time in each city

U.S. STEEL HOUR — July 2, July 30 on 135 Network Stations

 Government's Exhibit #177

[fol. 707] GOVERNMENT'S EXHIBIT 177

USS United States Steel

If you have been handling canned soft drinks, you know that they provide an easy and convenient way to increase total soft drink volume. Because, for the most part, canned soft drink sales are extra sales.

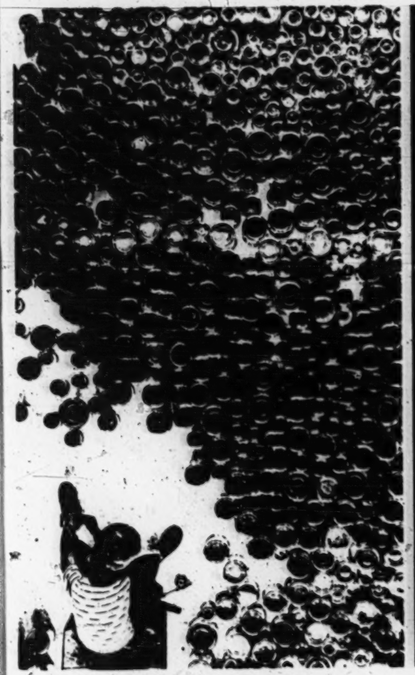
And now, United States Steel Corporation is helping you to gain this extra volume. Beginning June 4, a continuous consumer advertising program in newspapers and on television demonstrates the important advantages of soft drinks in cans and will create a stronger acceptance and preference for soft drinks in cans. In trade advertising, bottlers are being urged to coordinate their sales promotion and advertising with United States Steel's national effort.

You can capitalize on the consumer's new awareness of soft drinks in cans: Feature canned soft drinks in your store. Feature them in your advertising. Time your promotional activity to take full advantage of U.S. Steel's program. You will find a complete timetable and description of this program in the enclosed folder.

Remember, soft drinks in cans not only help you to sell more but also save you trouble and labor. They eliminate the nuisance of handling returns; they are lightweight and easy to handle; they are easy to stack and display; and they won't break because cans are 99% steel.

Today's USS steels

lighten your work . . . ✦ brighten your leisure . . . ✦ widen your world . . .



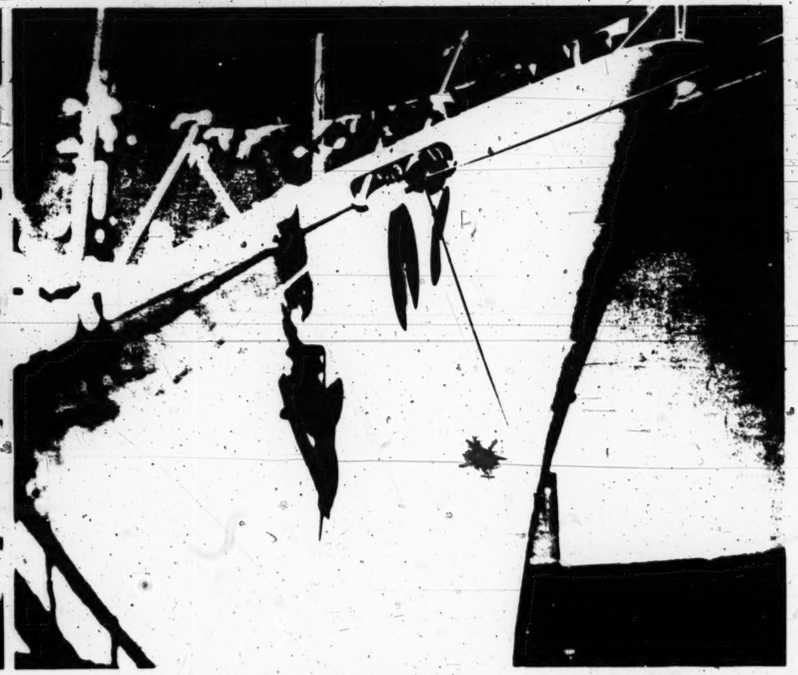
What does a growing boy need? *Food*—good, hearty, plenty of it. Like the amazing variety of flavorful foods packed in convenient steel cans. Sea foods, meats cooked to perfection, fruits and vegetables picked at their peak, countless delicacies . . . the start of a banquet with the flip of a lid.

Steel makes music. Whether at the concert, the dance or at home, your enjoyment of piano music depends on strings of the finest steel . . . wires so strong and resilient, so accurate in diameter and smooth in finish that they can bring the continued pleasure of perfect tones.

Steel for a floating palace. When your sleek, modern luxury liner glides out of her berth, you're off to make a host of new friends . . . see the wonders of other lands! In almost every critical part—from hull plates to turbine blades—the new high-speed liners depend on the unique *combination* of strength and lightness found only in today's steels.

k . . . ✦ brighten your leisure . . . ✦ widen your world . . .

Steel makes music. Whether at the concert, the dance or at home, your enjoyment of piano music depends on strings of the finest steel . . . wires so strong and resilient, so accurate in diameter and smooth in finish that they can bring the continued pleasure of perfect tones.



Steel for a floating palace. When your sleek, modern luxury liner glides out of her berth, you're off to make a host of new friends . . . see the wonders of other lands! In almost every critical part—from hull plates to turbine blades—the new high-speed liners depend on the unique *combination* of strength and lightness found only in today's steels.

USS United States Steel

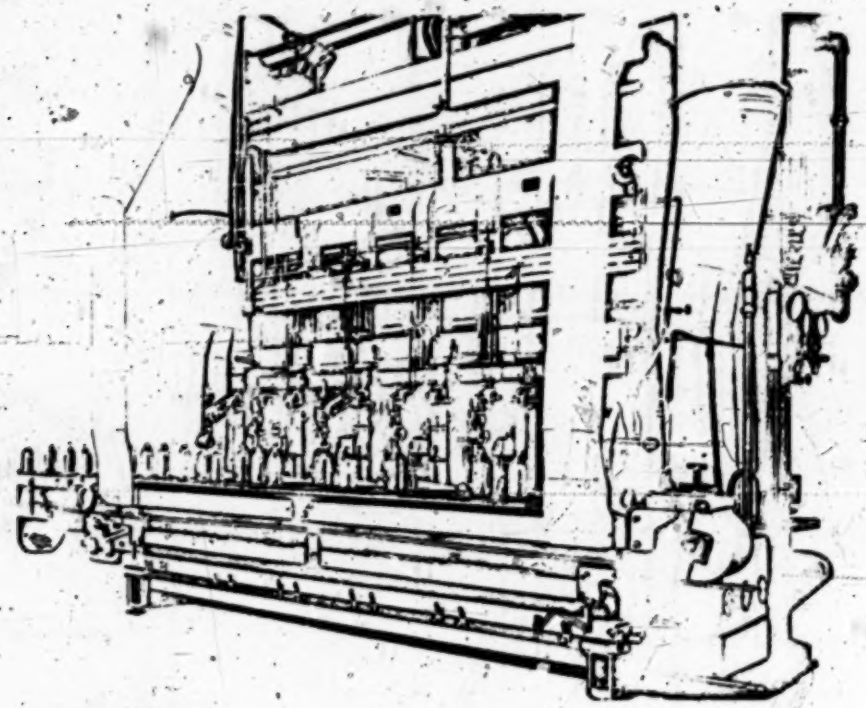
Steel Lightens your work. Brightens your leisure. Widens your world.

This mark tells you a product is made of steel. Look for it when you buy.

[fol. 710] GOVERNMENT'S EXHIBIT 185

2269
[fol. 711]

6-SECTION I.S. MACHINE



SIX-SECTION I.S. MACHINE
and 117 CONVEYOR

BASIC EQUIPMENT consists of the I.S. Machine and conveyor without any accessories or auxiliary attachments.

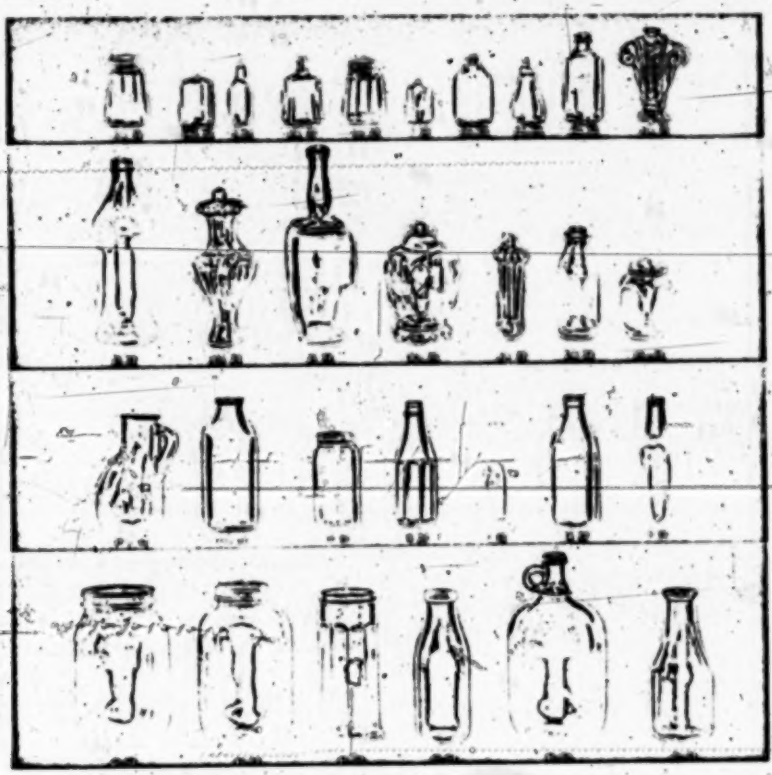
AUXILIARY EQUIPMENT and ACCESSORIES comprise those parts required for meeting specifications of the ware to be made. These include delivery equipment, mold-holding equipment, conveyor extensions, compressed-air regulators, sprockets and chain, and similar items.

ATTACHMENTS are those devices which can be applied to any I.S. Machine to change the type of operation, such as the "62" Process for making wide-mouth ware, fire-polishing equipment, and double-gob equipment.

[fol. 712]

2270

TYPICAL WARE MADE ON THE I.S. MACHINE



With the I.S. Process the same machine is used for either large or small ware, for narrow-neck or wide-mouth ware, and even for small pressed ware. Adjustments for different ware sizes and types can be made quickly, with a minimum of down time. Only a change in mold and delivery equipment is required. Because it is adaptable to such a wide range of ware, the I.S. Machine permits scheduling for more efficient operation of melting furnaces and other interrelated equipment. Full use of this versatility enables a plant to broaden the scope of its sales and enter vigorously into competition for many different types of ware.

WIDE RANGE OF WARE

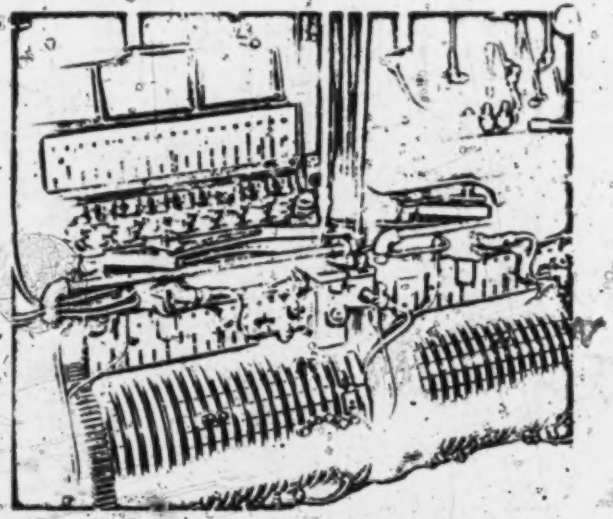
[fol. 713] 2271

HARTFORD - EMPIRE I.S. MACHINES

The I.S. Process is based on the use of identical Individual Sections. Each section consists of one blank mold and one blow mold. The sections are assembled to form machines of increasing production capacities.

Five-section and six-section machines are most common. For high rates of production, eight-, ten- and twelve-section machines are used. Single-section machines are available for hand feeding. Two-section machines also may be obtained and later increased in size.

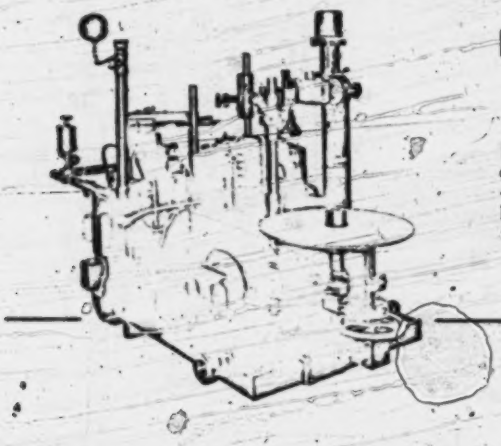
This variety of combinations and ready flexibility makes the I.S. Process highly efficient for any type of ware and any size of order. Any section may be adjusted while other sections continue to operate. The I.S. Machine is pneumatically operated. The timing drums and conveyor are driven from the feeder mechanism.



CLOSE-UP SHOWING I.S. TIMING DRUMS

INTERNAL COOLING

By means of the Internal-Cooling Blowhead, which is standard equipment, it is possible to obtain up to 10 per cent increase in the rate of production. Internal cooling is accomplished by circulating air through the formed article while it is still in the blow mold. It is applicable to bottle finishes greater than 7/16 inch (11 mm.) inside diameter.



HAND-FED SINGLE-SECTION I.S. MACHINE

For production of small orders in a wide variety of shapes and sizes—or for use with special glasses—the single-section machine is economical. One hand-gatherer can feed the machine. Shearing, transfer, and take-out are automatic.

WEIGHTS AND CUBAGE OF AVERAGE I.S. MACHINE AND CONVEYOR WHEN CRATED FOR EXPORT

	6-SECTION I.S.	
NET	34,700 lbs.	15,746 Kg.
GROSS	44,300 lbs.	20,094 Kg.
CUBAGE	1,475 cu.ft.	41.77 Cu.M.

[fol. 714]

2272

ADVANTAGES OF THE I.S. MACHINE

1. FLEXIBILITY

The I.S. Machine is highly efficient for any size of order, large or small, and for the manufacture of large or small ware, narrow-neck, wide-mouth, and even some small pressed ware. Mixed orders of different shapes may be produced on any number of sections of one I.S. Machine, provided all sections require the same weight and shape of gob and the same forming speed.

2. HIGHEST QUALITY

Independent control of every glass-forming action in each individual mold—a distinctive feature of the I.S. Machine—aids materially in assuring highest quality of either common or difficult ware. Distribution is controllable to an exceptional degree, a dominating factor where "light weighting" is desirable.

3. INCREASED PRODUCTION

Because the I.S. Machine produces more ware per mold per minute than any other forming machine, fewer molds are required for filling any given order in a given time. Through continuing research and improvement, the rate of productivity is constantly being increased.

Standardization of mold design and of dimensions of parts assures getting jobs into production quickly.

Note: For best quality and maximum efficiency, it is essential to use a Hartford-Empire Feeder.

4. ACCESSIBILITY OF SECTIONS

Most adjustments are made without stopping the machine. Independent control of each section permits individual mold changing, adjustment, and repair.

5. SAFETY

The straight-line, stationary I.S. Machine, assures the safest conditions possible for operating personnel.

6. STAMINA

Precision standards of manufacture and rugged construction of the Hartford-Empire I.S. Machine guarantee long life. One example is the heavy linkage used and the ruggedness of the mold-handling parts. As a result, some machines are still in use after 30 years of service.

7. CONTINUAL IMPROVEMENT

It is the policy of the Hartford-Empire Company to improve continually the design of its machinery. The principle of the I.S. Machine permits modernization in accordance with new advances in design.

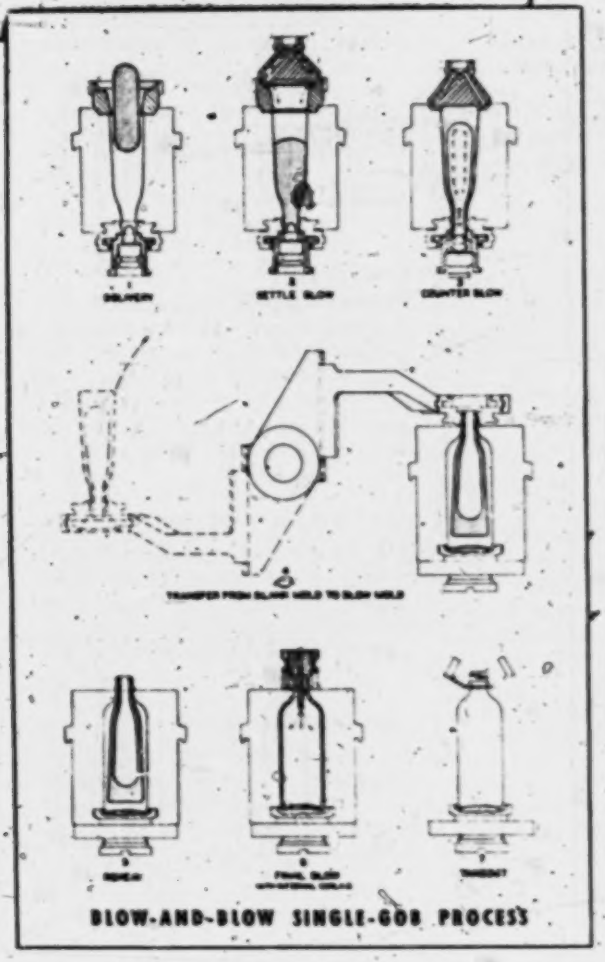
8. NON-JAMMING ACTION

It is virtually impossible to jam the Hartford-Empire I.S. Machine, because of its pneumatic operation. Any obstruction in the machine merely stalls action without causing serious damage.

5-SECTION I.S.			4-SECTION I.S.			3-SECTION I.S.			SINGLE-SECTION I.S.		
NET	31,600 lbs.	14,334 Kg.	NET	24,100 lbs.	10,932 Kg.	NET	16,500 lbs.	7,484 Kg.	NET	6,000 lbs.	2,722 Kg.
GROSS	38,100 lbs.	17,282 Kg.	GROSS	29,200 lbs.	13,243 Kg.	GROSS	22,000 lbs.	9,979 Kg.	GROSS	8,000 lbs.	3,629 Kg.
CUBAGE	1,240 cu.ft.	35.11 Cu.M.	CUBAGE	940 cu.ft.	26.62 Cu.M.	CUBAGE	720 cu.ft.	20.39 Cu.M.	CUBAGE	275 cu.ft.	7.79 Cu.M.

[fol. 715]

FUNCTIONAL OPERATION of the HARTFORD-EMPIRE I.S. MACHINE



THE MOLD CHARGE is fed to the blank (parison) mold of each section by the delivery system. The parison is formed upside down and is then transferred to the blow mold by means of the neck-ring mechanism, which immediately returns to the blank mold. Finished ware is blown in the blow mold while the next parison is formed. To aid in high-speed production, a unique take-out and conveying system is provided. To satisfy all plant layout requirements, the conveyor may project either to the right or to the left, and may deliver either directly to a stacker, which is recommended, or to a secondary conveyor. A feeder motor drives the I.S. control drum, from which all functions are pneumatically operated. Correct timing between the feeder and I.S. Machine is accomplished by means of an infinitely adjustable differential drive.

HARTFORD-EMPIRE "62" PROCESS

Readily applied to the I.S. Machine, the Hartford-Empire "62" Process, which is a press-and-blow operation, improves conventional forming processes of light-weight, wide-mouth ware by forming the complete parison immediately upon glass delivery in the blank mold. This process produces improved-quality ware, ideally controlled glass distribution, and very substantial speed increases over I.S. blow-and-blow methods. The mechanism includes a long-stroke pressing-plunger unit.

Blank molds and plungers are designed to formulas based on experience with the process. Certain pressed articles can also be made with the "62" mechanism.

[fol. 716] TYPICAL WARE

WARE SPECIFICATION LIMITS

BLOW-AND-BLOW SINGLE-GOB PROCESS

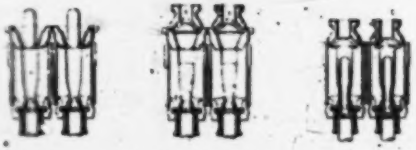
Max. Height Under Finish	13.75" (349.36 mm.)
Max. Body Diameter	7.00" (177.8 mm.)
Max. Finish Size	89 mm.

Please refer to diagram on opposite page for blank forming cycle.

BLOW-AND-BLOW DOUBLE-GOB PROCESS

Max. Height Under Finish	10.625" (269.87 mm.)
Max. Body Diameter	3" (76.2 mm.)
Max. Finish Diameter	53 mm.

BLANK-FORMING CYCLE

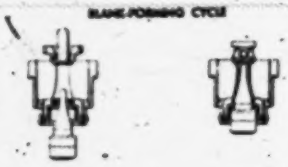


DELIVERY SETTLE BLOW COUNTER BLOW

PRESS-AND-BLOW SINGLE-GOB PROCESS

Max. Height Under Finish	11.00" (279.4 mm.)
Max. Body Diameter	7.00" (177.8 mm.)
Max. Finish Size	120 mm.

BLANK-FORMING CYCLE

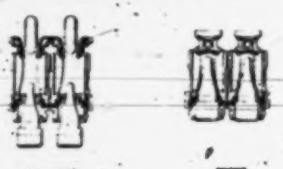


DELIVERY PRESS

PRESS-AND-BLOW DOUBLE-GOB PROCESS

Max. Height Under Finish	5.00" (127 mm.)
Max. Body Diameter	3.00" (76.2 mm.)
Max. Finish Size	48 mm.

BLANK-FORMING CYCLE

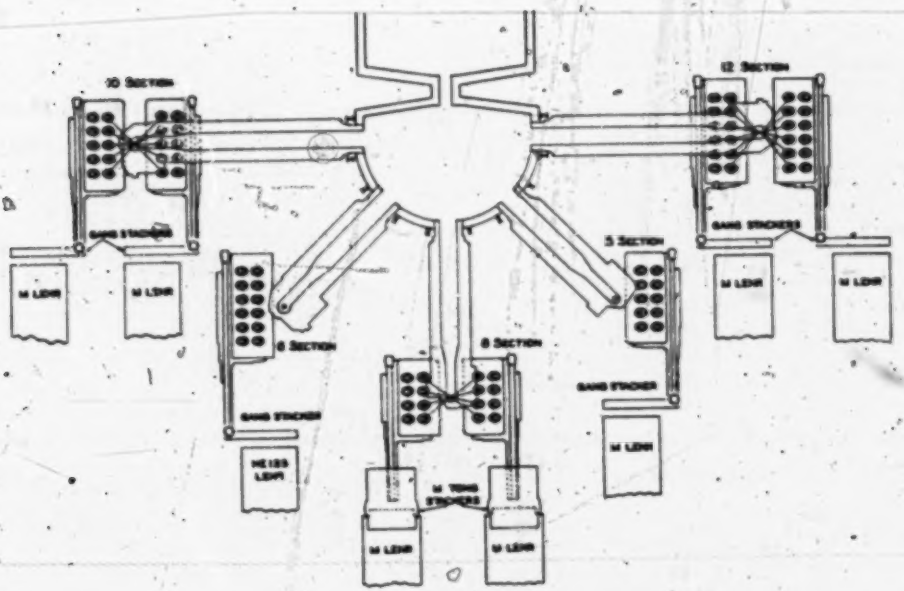


DELIVERY PRESS

[fol. 717] 2275

VARIOUS I.S. MACHINE COMBINATIONS

COMPOSITE DIAGRAM



The Individual-Section Glass-Forming Process particularly lends itself to future advancement of practices and efficiency in the glass factory. Hartford-Empire's engineers are always available to help work out individual applications for all Hartford-Empire glassmaking equipment. In the above diagram, the various combinations possible with the I.S. Process are shown. Here, at a glance, is revealed the unequaled ability of the I.S. Process to meet varying production requirements with minimum investment.

2276

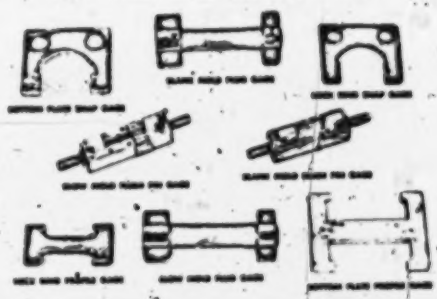
[fol. 718]

MOLDS FOR THE I.S. MACHINE

Mold-design specifications, incorporated in data books, are available to all users of the I.S. Machine and all makers of I.S. molds. These specifications, based on the best experience in the container industry, have been accumulated to meet the steadily advancing techniques in this process.

Mold-equipment gages and mold test fixtures are available at additional cost. The gages assure correct interlocking fits and interchangeability of the mold parts themselves. The test fixtures serve as a final check of mold interlocking and machine registration so as to prevent possible operating difficulties.

I.S. MACHINE MOLD EQUIPMENT GAGES



MOLD ENGINEERING

The H-E Mold Engineering Service Group designs and prepares complete manufacturing drawings of mold equipment at a moderate cost for all Hartford-Empire forming machines. Improvements in forming practices, glass composition, and machine or auxiliary equipment are a few of the many factors taken into consideration in preparing mold drawings. Standard or special designs can be completed within a few days after receipt of specifications. If a customer desires, the mold equipment itself can be furnished through Hartford-Empire, in which case it will be inspected prior to shipment.

PRECISION SPARE PARTS

Standard replacement parts are available for periodic repairs. These precision-built parts are manufactured from production drawings and are interchangeable on any machine in the field. A list of recommended replacement parts is supplied by Hartford-Empire. A moderate inventory of these components is recommended. Their immediate availability is assurance against any prolonged break in the continuity of operation when overhaul is required.

[fol. 719] 2277

AUXILIARY EQUIPMENT

To meet the specialized production requirements of glassware manufacturers, the Hartford-Empire Company has developed a number of auxiliary devices to be applied to the I.S. Machine. Available at moderate cost, these devices extend the scope of the I.S. Machine far beyond its original design. Future improvements in design may result in even greater potential. Hartford-Empire engineers are available at all times for consultation on the practical application of such auxiliary equipment.

DOUBLE-GOB EQUIPMENT

With double-gob equipment, two bottles are formed simultaneously in a double-cavity mold or in individual dual molds. Double-gob production is recommended for large orders which are to run a full week or more. The equipment consists of double-gob mechanisms, delivery equipment, and mold and take-out equipment. Parts such as shears, for adapting the feeder to double-gob operation, must also be applied.

DOUBLE-GOB "62" EQUIPMENT

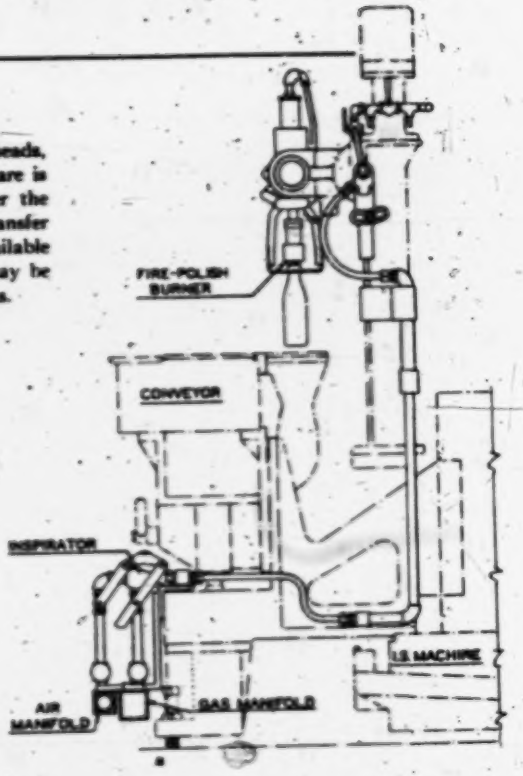
For quantity production of light-weight wide-mouth ware, the Hartford "62" Process is combined with standard double-gob equipment. The mechanism includes a double pressing plunger unit with individually controlled plunger pressure. It is recommended when one job will run for two weeks or longer, or when several jobs will exceed one month in combined time.

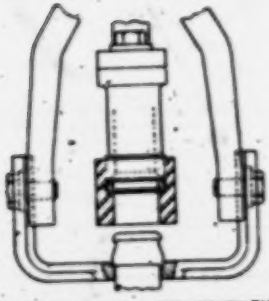
ADVANTAGES OF DOUBLE-GOB PROCESS

1. About 60 to 70 per cent greater productivity is possible from a given amount of floor space and forming-machine equipment.
2. Feeder and labor fuel cost per bottle is lower.
3. Double-gob operating efficiency is practically the same as single-gob for a single bottle, when the double-gob equipment is operating within its range.
4. Mold-equipment cost per bottle is lower.
5. The initial investment for a four-, five-, or six-section I.S. Machine, equipped for double-gob, is lower than an eight-, ten-, or twelve-section I.S. Machine operating single gob.

FIRE-POLISHING EQUIPMENT

This auxiliary device features take-out burner heads, which fire-polish the tops of ware while the ware is being removed from the blow mold and after the ware has been placed on the dead plate for transfer to the conveyor. Fire-polishing equipment, available for both single- and double-gob operations, may be used with natural, manufactured, or bottled gas.





ENLARGED VIEW OF FIRE-POLISH BURNER

DEAD-PLATE CONVEYORS

Single Dead-Plate Conveyor

The single dead-plate conveyor incorporates one cooling plate on which the ware is placed after removal from the mold, before it is transferred to the conveyor belt.

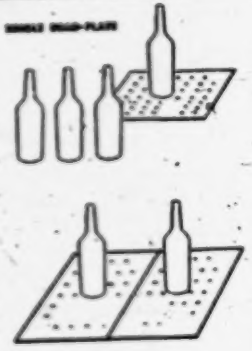
Double Dead-Plate Conveyor

The double dead-plate conveyor provides two dead plates for each machine section and a separate wind control for each dead plate. Approximately 20% additional cooling air is available.

Each container is placed upon the first dead plate by the take-out mechanism, and is then transferred to the second plate by a cam-actuated pusher having a straight-line motion. The container is then transferred to the conveyor belt by a similar pusher, which is operated by a second cam.

The double dead-plate conveyor can be arranged for single-gob or double-gob operation, or may be operated as a single dead-plate conveyor for single-gob or double-gob operation.

All units can be arranged for either right- or left-hand delivery as specified.



[fol. 721]

2279

COMPRESSED-AIR REQUIREMENTS FOR I.S. MACHINES

6-SECTION I.S.	BLOW AND BLOW		"NI" PROCESS	
	Single Gob	Double Gob	Single Gob	Double Gob
OPERATING AIR	415 C.F.M. (11.74 Cu.M./Min.)	415 C.F.M. (11.74 Cu.M./Min.)	510 C.F.M. (14.43 Cu.M./Min.)	450 C.F.M. (12.74 Cu.M./Min.)
INTERNAL COOLING	120 C.F.M. (3.40 Cu.M./Min.)	Not Available	120 C.F.M. (3.40 Cu.M./Min.)	Not Available
SETTLE BLOW	60 C.F.M. (1.70 Cu.M./Min.)	60 C.F.M. (1.70 Cu.M./Min.)	Not Req'd	Not Req'd
PLUNGER COOLING	Not Req'd	Not Req'd	210 C.F.M. (5.94 Cu.M./Min.)	300 C.F.M. (8.49 Cu.M./Min.)
TOTALS	595 C.F.M. (16.84 Cu.M./Min.)	475 C.F.M. (13.50 Cu.M./Min.)	840 C.F.M. (23.80 Cu.M./Min.)	750 C.F.M. (21.30 Cu.M./Min.)

Note: If internal cooling is used, the operating-air requirements may be decreased by approximately 25 C.F.M. (0.71 cubic meters per minute).

(a) For other I.S. Machines, the air requirements are proportional to the number of sections.

(b) All air requirements are maximum free air at 70°F (21°C) and 14.7 lbs. per sq. in. (1.0335 Kg. per sq. cm.)

(c) Operating air regulated to 30 lbs. per sq. in. ± ½ lbs. (2.109 Kg. per sq. cm. ± .0176 Kg.)

(d) All other air is at factory pressure, usually about 40-50 lbs. per sq. in. (2.81-3.52 Kg. per sq. cm.)

(e) The compressed air used with the I.S. Machine should be clean and dry as obtained through the use of a well-designed aftercooler.

COOLING AIR

Mold-cooling air may be introduced to the I.S. Machine from overhead, as shown on Page 2, or from basement supply ducts. Approximately 2240 cubic feet of cooling air are required per section at 15 inches (0.0380 Kg. per sq. cm.) water pressure. This is sufficient for all weights and types of ware within the capacity of the machine, for glass of average container quality, and with average operating technique.

Where double dead-plate conveyors are used, the cooling air requirements are increased by approximately 20 per cent. In the following tabulation are given the air requirements for the various types of I.S. Machines.

NUMBER OF I.S. SECTIONS	Cubic Feet per min. @ 15" water (28 mm., mercury) pressure and Cubic Meters per min. @ 0.0380 Kg. per sq. cm.			
	TYPE 117 SINGLE DEAD-PLATE CONVEYOR		TYPE 117 DOUBLE DEAD-PLATE CONVEYOR	
	Cubic Feet	Cubic Meters	Cubic Feet	Cubic Meters
1	2,240	63.43	2,688	76.12
2	4,480	126.86	5,376	152.23
4	8,960	253.72	10,752	304.46
5	11,200	317.15	13,440	380.58
6	13,500	382.28	16,000	453.07
8	17,920	507.44	21,504	608.93
10	22,400	634.30	26,880	761.16
12	27,000	764.56	32,000	906.14

[fol. 722]

I.S. MACHINE PRODUCTION RATES

In this table are shown normal production rates of I.S. Machines served by Hartford-Empire Feeders. Unless otherwise indicated, these figures are based on the best average performance obtained at a given weight.

Attainable speeds are affected by:

1. Weight-Capacity Ratio
2. Shape of Container
3. Glass Composition
4. Operating Practice

Packed ware per 24 hours is the true measure of machine performance.

The practical limit for hand gathering for the Single-Section I.S. Machine is 10 to 12 per minute.

	GRAMS WEIGHT	OUNCES WEIGHT	MOLD CHANGES PER MINUTE	GROSS PACKED PER 24 HRS.	PIECES PACKED PER 24 HRS.
5-SECTION MACHINE NN Blow and Blow	Less than 28	Less than 1	76.3	712	102,528
	28	1	73.1	679	97,776
	142	5	54.2	505	72,720
	283	10	46.1	443	63,648
	425	15	36.7	334	48,096
	567	20	35.0	330	47,520
	709	25	30.0	275	39,600
	850	30	23.2	225	32,400
	1134	40	20.8	185	26,640
	1417	50	16.6	131	18,864
6-SECTION MACHINE NN Blow and Blow	Less than 28	Less than 1	91.6	854	122,976
	28	1	87.7	815	117,360
	142	5	65.0	606	87,264
	283	10	55.3	530	76,320
	425	15	44.0	401	57,744
	567	20	42.0	396	57,024
	709	25	34.0	330	47,520
	850	30	30.2	270	38,880
	1134	40	24.7	222	31,968
	1417	50	19.9	157	22,608
5-SECTION MACHINE DOUBLE GOB NN Blow and Blow	Less than 28	Less than 1	130.5	1197	172,368
	28	1	125.9	1154	166,176
	142	5	98.0	807	116,208
	283	10	70.4	670	96,480
	425	15	56.9	542	78,048
6-SECTION MACHINE DOUBLE GOB NN Blow and Blow	Less than 28	Less than 1	136.6	1436	206,784
	28	1	151.1	1385	199,440
	142	5	117.6	968	139,392
	283	10	84.5	804	115,776
	425	15	68.3	650	93,600
5-SECTION MACHINE "62" PROCESS WM Press and Blow	28	1	75.1	722	103,968
	142	5	62.2	567	81,648
	283	10	49.7	457	65,808
	425	15	40.5	356	51,264
	567	20	33.7	296	42,624
	709	25	28.4	256	36,864
	850	30	27.5	254	33,696
	1134	40	21.7	176	25,632
6-SECTION MACHINE "62" PROCESS WM Press and Blow	28	1	90.1	866	124,704
	142	5	74.6	680	97,920
	283	10	59.6	548	78,912
	425	15	48.6	427	61,488
	567	20	40.4	355	51,120
	709	25	34.1	307	44,208
	850	30	33.0	281	40,464
	1134	40	26.0	214	30,816
5-SECTION MACHINE "62" PROCESS Double Gob—WM Press and Blow	85	3	133.8	1234	177,696
	142	5	109.7	999	143,856
	198	7	88.0	771	111,024
6-SECTION MACHINE "62" PROCESS Double Gob—WM Press and Blow	85	3	163.0	1481	213,264
	142	5	131.6	1199	172,656
	198	7	105.6	925	133,200

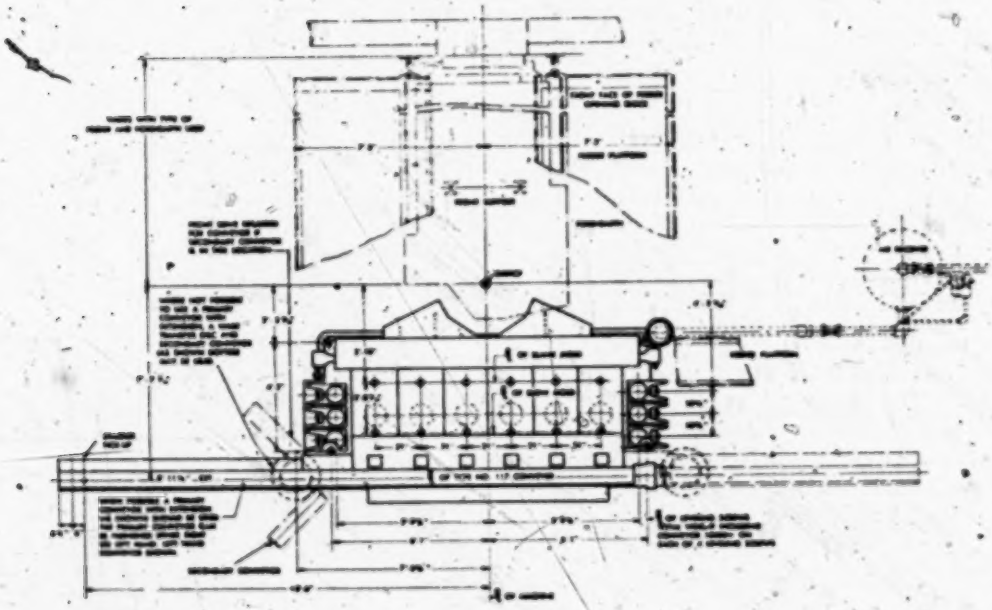
The above tabulation is based on actual experience with 5-Section I.S. Machines.

In general, productivity is proportional to the number of sections. Thus, production speeds for other I.S. Machines can be estimated from the above data.

[fol. 723]

2281.

6-SECTION I.S. MACHINE

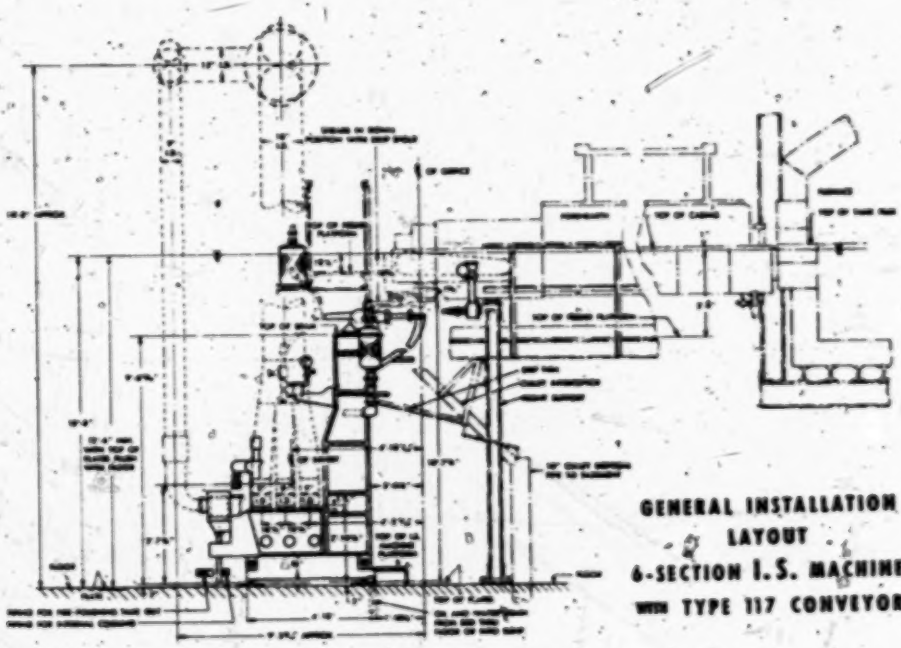


PLAN

[fol. 724]

2282

INSTALLATION CLEARANCE



GENERAL INSTALLATION
LAYOUT
6-SECTION I.S. MACHINE
WITH TYPE 117 CONVEYOR

END ELEVATION

FOR SPECIFIC INFORMATION REGARDING I.S. MACHINE INSTALLATIONS IN YOUR OWN PLANT, KINDLY CONSULT HARTFORD-EMPIRE COMPANY.

[fol. 725] GOVERNMENT'S EXHIBIT 235a

1/18/54

SFD
REG
MAH

Narrow Mouth Prices

Bob Graham has some charts which show prices of cans vs. glass on specific items past ten years. Charts indicate that the differential has widened (instead of narrowing) and I would like to see the figures (also plotted) on baby food, 303 jars, 300 jars, soluble coffee, or any W/M figures you have. This could also be interesting on a N/N major item such as syrups, etc.—if you have 'em.

These figures will be important in making our decision on prices. The 1.9% price increase announced on cans covered cost increases for 1953. The Can Companies have recently taken on a $.15 per hour labor increase, and they will undoubtedly be confronted with making a decision soon on increases they expect to make to be effective April 1, 1954. Even if they should decide to add another 3 or 4%, this might be the time that we want to stay a bit under them to restore the differential—or at least level it out.

How soon can we get these figures and charts on a couple of items, preferably baby food and soluble coffee—and a N/N item?

CGB

[fol. 726] GOVERNMENT'S EXHIBIT 235b

3/15/54

Glass Container Price Increases

JPL
SFD
SLR
MAH

Baby food and soluble coffee prices will be increased 2% on 4/1/54. This matches the 1.9% can price increase 1/1/54. MAH covered coast.

CGB

JBW
I advised SLR on this

EB

[fol. 727] GOVERNMENT'S EXHIBIT 235c

August 13, 1954

Sales Policy Meeting

July 29 and 30, 1954

Catawba Cliffs Beach Club

Present:

G. S. Babcock, H. A. Barnby, M. G. Beishline, C. G. Bensinger, E. F. Bertrand, F. T. Cantrill—Richmond, J. W. Colbert—New York, F. N. Davis—Dallas, S. F. Davis, R. E. Delaplane, R. L. Fetters—Nashville, M. A. Hellrung, C. G. Houghton—St. Louis, E. M. Jones—Cincinnati, E. C. Jones—Chicago, Frank Jones, Jr.—Atlanta, H. C. Knepper—Cincinnati, R. M. Koehrman, N. J. Laird, C. R. Megowen, S. L. Rairdon, W. M. Robertson, C. I. Rodgers—New York, J. A. Rudy, J. A. Runnels—Atlanta, E. F. Schafer, O. D. Snavely, F. J. Solon, K. J. Solon, K. S. Upham, R. C. White—San Francisco.

Opening Remarks

Mr. S. F. Davis welcomed the group and commented on some of the problems present in today's business. He also stated that many of the problems of the newer salesmen should be handled at the branch or regional level, rather than be referred to Toledo.

Container Division Program

Mr. C. G. Bensinger commented briefly on profits by line and profits by branch pointing out that the latter figure is definitely beneficial to branch operation. He also stated that this year production is geared to manufacture 40,000,000 gross, and that by a level operation throughout the year, thus keeping trained personnel, this figure could be increased to 42,000,000 gross. Idling and curtailing operations means laying off valuable people and incurring high rehiring costs. He stated that we should reduce costs to meet future wage increases, thus not having to increase prices. Mr. Bensinger commented that if each salesman would make one more call per day, the increased sales would result in cost reductions. He felt that the bottle salesmen should know more about closures, and thus be in a position to sell the complete package.

Earnings, Objectives, & Competitive Situation

Through the first six months of this year, Mr. M. A. Hellrung stated that we are substantially below earlier indications of a good profit performance. From the latest estimate, it appears that 1954 will not equal '53 performance before tax although elimination of the excess profit tax will improve the after-tax picture. He also pointed out that while we picked up seven-tenths percentage points in industry position for the first half, it was on a less favorable mix of ware. We sold 1.6% less tons than a year ago and 2.8% [fol. 728] less tons than the first six-months forecast, due on a large part to December price-buying of Beverage and Dairy ware. Manufacturing volume for the first six months of '54 was up 1.5%. This enabled us to maintain a more stable employment pattern. However, the resulting inventory increases meant heavy expenditures in outside warehouses. The expense of outside warehousing will be reduced upon completion of new plant warehouses in 1955. He stated the only way to achieve any kind of a satisfactory profit picture this year must come about through an emergency cost reduction program. At this point Mr. Hellrung presented charts and discussed in detail the subjects of profit objectives and performance against these objectives, gross sold vs. forecast sales and earnings, industry position by lines, sales vs. quotas, and budget efficiency. Mr. Hellrung also commented the current competitive situation.

Production & Manufacturing Program

After discussing our 1954 production, Mr. M. G. Beishline stated that next year capacity will be 44,000,000 gross; in 1956, it will be 46,500,000; and in 1957, 47,500,000. This increase of 5,500,000 million over our present 42,000,000 production capacity would be accomplished by machine conversions, continued increased double gobbing, the new Bridgeton "H" furnace, conversion of Bridgeton's "A" furnace to Flow, and continued production increases. Mr. Beishline stated that this year we began with a 3,500,000 gross inventory and that next year we will begin with about a 4,000,000 gross inventory. In order to accommodate this year's inventory, we are spending $3,000,000 for warehousing in 44 buildings off our plant premises. After taxes, this

is a penalty against earnings of $1,500,000. Management has approved three new warehouses during the past seven months totaling 750,000 square feet, at an average cost of about $1,000,000 each. These warehouses will not increase our storage capacity but will reduce the costliness of outside storage. Mr. Beishline also stated that the G-50 Machine is back in operation at Huntington after being idle for nine weeks. The ARF Machine on Alton's "M" furnace is now scheduled for operation in September. He also commented on such things as unit load shipments, colorant forehearths, and glued manufacturers' joints.

Closure & Plastics Program

In discussing this topic, Mr. G. S. Babcock reviewed the new organizational setup in the Closure and Plastics Division. He stated that Glassboro will laminate and wax line materials for San Jose and St. Charles plants. He also stressed the importance of selling plastic jars to replace opal glass. Mr. Babcock also emphasized the importance of bottle salesmen selling closures, thus providing one source of responsibility for a complete packaging service.

[fol. 729] Surface Treatment, Inventories, & Carton Development

Mr. K. J. Solon discussed the expanding interest in surface treatment. He further pointed out that we have started to run tests on various items employing four different coatings—the GE silicone, Dow Corning silicone, polyethylene wax, and 15-101. When these tests have been completed, evaluation of the effectiveness of the different kinds of coatings will be presented. In discussing our inventories and warehousing programs, Mr. Solon pointed out that with the permanent increase in the size of inventories, the risk of aging also increases. Therefore, we must be sure that the expensive warehousing facilities are used economically. Recent carton developments featuring the tear-strip principle for opening cartons has been adopted by about 45 accounts. More recently, work has been done on inner-flap printing which controls the adhesion to the unprinted surfaces.

Personnel Requirements

Mr. E. F. Schafer discussed the interviewing methods used by the Company, and further pointed out the changes that have occurred in the type of men available. He mentioned specifically what he terms "job hopping"—they quit jobs fast, often without notice for better opportunities or more money. He also discussed the difficulties that arise when both the husband and wife are employed, as well as the Military Service aspect. Mr. Schafer also discussed the method of hiring used by the Maytag Company. That company sends a questionnaire to twelve references, asking them to rate the man on eight or ten factors.

S. L. Rairdon

Mr. Rairdon spoke on the topic "Selling to Sellers," pointing out many of the facets of the business job of selling advertising. The use of newspapers, radio, and television as a selling tool were discussed. Mr. Rairdon stated that it is interesting to note that there is currently little emphasis on the importance of economy as a purchasing factor of the consumer; instead, the trend is toward convenience, attractive appearance, contributions to health, and connotations of prosperity. There have been dramatic changes, not only in packaging and distribution, but in customer buying habits as well. Convenience was from the beginning the driving force which moved merchandise from bulk to packages, and today the drive towards convenient packaging is greater than ever. Mr. Rairdon reminded those present that we have the resources for technical research, product design and manufacture, plus the all important know-how in advertising, merchandising, and selling techniques—all geared to an ever-changing pattern.

Western Region

In commenting on this region, Mr. E. F. Bertrand stated that the outlook in Peoria, Detroit, and St. Paul was good. Milwaukee is showing some improvement, while the Toledo area remains critical. Chicago business is strong but not too optimistic for the second half. The competitive situation is still strong in the region. Mr. Bertrand stated that the PIA program has brought substantial business into the area dur-

ing 1954, quality and service have improved, and the dollar billings should be up for the last half of this year.

[fol. 730] Southwestern Region

Mr. F. N. Davis stated that the market outlook was generally good in the face of strong competitive activity. He pointed out that the M&M situation is not satisfactory. Due to the increase in freight rates, many food and vegetable packers are moving into the region. Mr. Davis discussed the need for alterations on the split-sales credit plan.

Eastern Region

Mr. C. L. Rodgers stated that in the last half of this year we should do as well or better than we did in the same period of last year. In the case of New York Branch despite very poor shipments to the liquor industry, they are 7.7% ahead of six months of last year. For the first six months of this year, Philadelphia is 2.1% ahead of the same period of 1953; and with the heavy food shipments that they normally expect in the fall, it is the hope that they can exceed the last six months of 1953. Baltimore and Boston should finish the year in relatively good shape. Although due to high percentage of beverage and milk bottle business, they may have more difficulty than some of the other branches. Mr. Rodgers commented that he continues to get complaints from the branches on the matter of service out of the plants and the length of time always required to get answers from our people. He also stated that most of the Eastern branches are going to be helped materially by the increased operations at Bridgeton.

Midwestern Region

Mr. C. G. Houghton stated that the sales for this region are expected to exceed last year. Through the first six months of '54, they are substantially ahead of the same period of the prior year. He did state that the Indiana tomato pack is one of the smallest they have had in years in that area. Mr. Houghton also brought up the question of changes in the salesmen contest prizes, suggesting better prizes for both the Salesmen of the year Contest as well as the President's Club.

Southern Region

Mr. J. A. Runnels remarked that with the exception of the Memphis trade area where cotton plays such an important part, the market outlook is very good. In the Kentucky area, there has been a reduction of better than 25,000 people at the atomic energy plant in Paducah. It is felt, however, that the outlook in other sections of the Southern Region will more than offset these reductions, and he is confident that the Southern Region will finish the year with sales greater than the prior year. In speaking on quality, he stated that while our quality continues to be good, competitors' quality has shown a marked improvement, reducing to a very large extent the difference in quality which has been a major sales tool.

Central Region

Mr. E. M. Jones stated that they are doing their best to offset the transfer of the Schenley business to New York and in that connection reported some interesting new business developments involving decorated tumblers for Scull at Dayton, changing the Mentholatum Company, Buffalo, from traditional Opal to Emerald Green, as well as some Kroger business. Mr. Jones also commented on the [redacted]ex Window Cleaner bottle recently designed by Dwight [redacted]st for the Drackett Company, which enabled them to hold down their costs. That move was not only appreciated by the customer, but also was very instrumental in our holding the business. In closing, he commented that service and quality is good.

[fol. 731] Pacific Coast Outlook

Mr. K. C. White stated that the Coast problems and situations were parallel to those of the East, mentioning specifically the canned beverage situation. He stated that their catsup, baby food, and food and vegetable business looks good. Wine is currently off, but improving.

Chicago Branch

Mr. E. C. Jones presented a divided sales credit policy. His proposal was that while each account must be judged on its own merits, the percentage that goes to each depends on how much control that branch has over the purchasing

done by the account involved. In order to qualify for split credit, annual billings into any shipping destination must reach $25,000. After fulfilling these requirements, the individual account would fall into a particular category which carried definite percentage splits within limits of 25% to 75%.

Richmond Branch

Mr. F. T. Cantrill commented briefly on some of the local branch situations. He also stated that he was of the opinion that great value was derived from holding regional sales meetings in our factories. These trips through the plants disclose new developments and are very helpful to the salesmen.

Nashville Branch

A Merchandising Canned Beverage Campaign was recently conducted in the Memphis area, and Mr. R. L. Fetters stated that many complaints were tabulated. Some retail outlets were still holding some of this stock. Complaints were rusted shoulders, off-flavor, etc.

Atlanta Branch

Frank Jones stated that through six months of this year, Atlanta is running approximately 6% ahead of the same period last year. He further added that they are in a growing market area and should be greatly benefited by the Atlanta plant.

Cincinnati Branch

Mr. H. C. Knepper pointed out that quite often customer personnel changes as well as ours, and often times this is an opportunity for our salesmen to build a position with a customer that he was unable to do so with before. He also felt that major account contacts by top Toledo personnel were extremely beneficial.

Packaging Research

Discussing the Packaging Research program, Mr. H. A. Barnby covered some of the problems of the beverage can. He also pointed out that competition is learning customers' needs and working them into selling needs, such as customer, plant layouts, experimental packs, etc. He also dis-

cussed the fact that new plastic containers allow for forming and filling at one point of operation.

Mr. C. R. Megowen

Mr. Megowen reviewed the operations of all of our divisions, specifically discussing sales and earnings, as well as the perspectives of the business. He also commented on the potential that lies ahead of American industry. Since ours is a service organization, Mr. Megowen enumerated many new facilities which will aid us in giving our customers [fol. 732] better service. In view of the increase in freight rates, he pointed out the importance of weight reduction in containers.

December Branch Managers' Meeting

Mr. E. F. Schafer stated that tentative dates were December 6th and 7th. Considerable discussion followed regarding the merits of holding one large meeting as contrasted to the regional groups meeting with the various industries.

Beverage Industry Plans

Mr. R. E. Delaplane stated that for the first six months of this year, Beverage Division sales were off 14.5%; Coca-Cola, off 32.4%; and Liquor, 1.2%; Brewery was ahead 17.2% for a net decrease in the Beverage Industry of 4.5%. Increased billings on Brewery ware were due to two factors: (1) PIA stocks; (2) heavier purchases of returnable bottles by several large breweries. The fact that the Beverage Industry position at the end of six months is only 2/10 of 1% below last year's figure for the same period indicates that we are not alone in our difficulties. Mr. Delaplane stated that press releases indicate that the liquor business has been off quite generally during the first six months of this year. Mr. Delaplane reported that our sales to Beverage and Coca-Cola accounts are down because of heavy purchases in the fourth quarter of last year, poor weather, the trend toward paper cup dispensers, and heavy inventory by competitors. In discussing the sales outlook for carbonated beverages including Cokes, the outlook is mixed. Bottlers this year are faced with can competition; and since it is felt that can sales are being made at the expense of bottled goods, the orthodox users may not attain

last year's sales levels. This can competition plus our huge shipments in the fourth quarter of '53 combined to force the feeling that our 1954 business cannot possibly match or exceed last year. Mr. Delaplane also stated that the annual Beverage and Brewery Sales Meeting will be held in Toledo on September 23rd and 24th.

Drug Industry Plans

Mr. W. M. Robertson reviewed sales figures for each of the divisions. Mr. Robertson pointed out that they have stressed additional volume with their top accounts; and in the case of the top fifteen T&C accounts, they have enjoyed an increase totaling approximately $500,000 with twelve of the first fifteen. He stated that in the Prescription Division, the Flint Rx. Square has created new interest and it has set a new pattern in the prescription ware field. He also mentioned that they are studying and analyzing a change in packaging the Rx. ware line. Mr. Robertson stated that one of the most interesting developments within the P&P Division was the introduction of the Shelf-Pack line. There are nineteen sizes available. He also remarked about the change from Opal to Emerald Green glass with Musterole and [fol. 733] Mentholatum. In the H&C Division, Mr. Robertson explained in detail the redesigning of the Windex bottle for the Drackett Company. Lighter weight work is also being done for Boyle-Midway. In closing, Mr. Robertson explained the new organizational setup of the Drug and Chemical Division.

Food Industry Plans

Mr. K. S. Upham stated that for the first six months of this year, the Food Industry sales were approximately $6,000,000 ahead of the same period last year. This points toward an 80 to 85 million dollar year for the Food Industry. Mr. Upham displayed containers they are working on presently which have a re-use, as home freezer jars. In addition they also make a very satisfactory refrigerator storage jar and are completely satisfactory for home canning. This type jar is particularly suitable for such products as salad dressing and mayonnaise, mustard, peanut butter, cake frostings, etc. Mr. Upham pointed out that work must be done with

Dairy jobber salesmen so as to improve our position in the fluid milk business.

Closure & Plastics Plans

Mr. J. A. Rudy pointed out that sales for the first six months are up approximately 11% compared to a year ago. This is due largely to increased sales of Vapak caps. Mr. Rudy displayed samples of metalized molded closures and commented in the increased billing value that can thus be obtained. He stated that the plastics business is a fast growing industry and solicited the salesmen to contact Toledo with their problems. Mr. Rudy also commented on the possibility of plastic containers as substitute for Opal ware. In this regard, he pointed out that plastic containers lend themselves to the cosmetic trade since they can be made very decorative. In closing, Mr. Rudy stated that there are developments on both closures and plastics which are going to present sales opportunities.

Closing Remarks

In summary, Mr. Davis commented on the growth of the Glass Container Division in the last year and half and stressed the amount of money spent for research and the important part that it plays as a sales tool. He emphasized the importance of the lighter weighting program and stated that salesmen should be trained to consult regional or branch managers with their problem before referring them to Toledo. Mr. Davis also stressed that branch action must be taken to relieve our present inventory and cancellation situations.

R. M. Koehrman

RMK:bb

[fol. 734] GOVERNMENT'S EXHIBIT 235d

Sales Policy Committee Meeting

Tuesday—Wednesday, February 23 and 24, 1954

Duraglas Center Theater

Members Present: H. A. Barnby, E. F. Bertrand—Chicago, S. F. Davis—Chairman, R. E. Delaplane, M. A. Hellrung, C. G. Houghton—St. Louis, E. M. Jones—Cincinnati, W. M. Robertson, C. L. Rodgers—New York, J. A. Rudy, J. A. Runnels—Atlanta, K. J. Solon.

Members Absent: C. G. Bensinger, F. N. Davis—Dallas, E. F. Schafer, F. J. Solon, K. S. Upham, K. C. White—San Francisco.

Also Present: W. P. Adams—Philadelphia, G. S. Babcock, M. G. Beishline, H. J. Carr, J. W. Colbert—New York, R. A. Cosh, J. Duncan, Jr., R. E. Graham, H. C. Gstalder—Detroit, K. A. Hamel, George Harsh—New Orleans, Bert Herron, E. C. Jones—Chicago, R. M. Koehrman, J. P. Levis, J. M. McGarry, W. D. Plummer, S. L. Rairdon, J. W. Thayer—New York.

Opening Remarks

After welcoming the group, Mr. S. F. Davis announced that the purpose of the meeting was to discuss the present price and cost situation and its relationship to corporate earnings. Mr. Davis also pointed out that the younger salesmen refer too many of their problems to Toledo when actually they can be answered by the Branch or Regional Manager.

Earnings and Prices

Mr. M. A. Hellrung presented and reviewed charts on sales and profits, profit by line, branch expense, and cost increases. He pointed out that in 1953, the per cent profit after tax dropped and that in view of cost increases in raw materials, labor, fuel, and power, increased revenue was necessary. Mr. Hellrung also presented a new price increase card which will be furnished to the Sales Department. This card, based on percent of increase over the 1935-1939 average, compares the O-I selling price with such indices as consumer prices, freight rates, soda ash, wholesale commodity prices, and O-I wage rates.

Manufacturing Program

The manufacturing program was reviewed by Mr. R. A. Cosh. He discussed such things as our use of colorant feeders, electric boosters, increased mold costs, a more sensitive gauging head, and warehouse facilities. He particularly pointed out increases in power costs and the necessity for auxiliary fuel installations to offset gas curtailments present in the winter months.

Production Program

In discussing the production program, Mr. M. G. Beishline pointed out that due to the P.I.A. program, additional rented warehouse space has increased our costs in that respect. This has prompted plans for additional warehouse space on our own properties. At this point, Mr. Davis called attention to the fact that due to the relatively limited shipping facilities, it is impossible to move great amounts of ware from outside warehouses during a short period of time, [fol. 735] such as we might encounter prior to a price increase. Mr. Beishline stated that in 1953, approximately 36 per cent of our production was from Flow operations. Of this, almost half was double gob. He estimated that in 1954, Flow production would be approximately 40 per cent of the total and by 1960, about 50 per cent of our production would be Flow.

Closure & Plastics Division Expansion Plan

Mr. G. S. Babcock called attention to the Closure and Plastics Meeting in Philadelphia, March 1 and 2, as a means of building product knowledge on the line. He mentioned improved liners and new equipment at Glassboro for making our own liners, new assembly units, and new injection machines. Clorox's decision to use an aluminum cap rather than a molded closure has opened up considerable Lauterbach time.

Trade Relations

Mr. J. Duncan, Jr. discussed Trade Relations.

Institutional Advertising Plans

Mr. S. L. Rairdon pointed out the definite need for an institutional advertising plan to further the new corporate identity program. In this regard, Bert Herron presented

six display formats covering Color-Break ampules, dry milk powder, Libbey tumblers, instant coffee, glass block, and plastic items used in conjunction with glass containers.

Packaging Research

Mr. H. A. Barnby commented on improvements in the speed of filling line operations and the synchronization of the capper and filler into one unit. He mentioned the future possibility of Freon 114—pressure less than twenty-five pounds—as a possibility for glass spray packages. Present supplies of this gas, however, are limited; and therefore, its adoption is not practical at this time. Mr. Barnby also pointed out that the customer should not consider the cost of the glass based simply upon delivery to his dock, but what it may represent in greater efficiency in the packing operation.

Beverage Industry Plans

Mr. R. E. Delaplane commented on the Beverage Industry plans for 1954. He presented a table indicating a 1954 sales forecast of $82,800,000, or 7.1 per cent over 1953 actual. This represented a grossage increase of 1,139,000 gross. Regarding Liquor and Wine, Mr. Delaplane stated that they will aim specifically at an increased position with Schenley, Seagrams, and Hiram Walker justified by giving them the utmost in the way of service, quality, and the closest possible attention at all times. The Liquor Division will also continue to develop new and eye-catching decanters for the holiday trade, since they are good profit items. They will maintain contacts with major wineries, pushing for their adoption of Champagne Green, which of course takes them out of the competitive market.

In commenting on the Brewery Division, Mr. Delaplane pointed out that the 1953 volume was off about one million dollars from the prior year due to our inability to serve them during the summer months. This was brought about in part, due to the transition from GB-8 to GB-7, which prevented making considerable inventory. The Brewery Division is entering the year of 1954 with a better position inventory-wise and are hopeful that they can regain some of the position lost in 1953. Mr. Delaplane stated that during this year, they plan on having more contacts with the

major beverage parent companies such as Coca-Cola, Pepsi Cola, Canada Dry, etc. They have been participating actively in more important state bottlers' meetings and will continue to do so. The most active sort of solicitation seems indicated if they are to keep abreast of the activities on cans [fol. 736] versus bottles for beverage. At this point, Mr. Delaplane presented considerable detail on advantages and disadvantages of beverage in cans as well as discussing bottlers operating can lines.

Drug Industry Plans

Mr. W. M. Robertson commented on the Drug and Chemical Industry plans for 1954. In the case of Prescription Division, he mentioned a study is going to be made of the packaging on each Rx. Line. White molded caps with the new plastic coated liner have been added to the Emerald Green Rx. Squares, Emerald Green and Dropper Service. The new Rx. Flint Square Line with white molded closures has already been announced. Mr. Robertson commented on the Prescription Ware selling tools, such as, the 3-D movie, the slide film on inventory control, the giant oval, miniature show groups, and other presentations.

Mr. Robertson stated that in 1953, Toiletry and Cosmetic Division sales were approximately $100,000 greater than in 1952. They definitely expected another substantial increase in 1954 by concentration on major companies. The Toiletry and Cosmetic Division does not have any plans to bring out a new stock line. After analyzing the type of business that they would like to have in the Toiletry and Cosmetic field, it was found that from 80 to 85 per cent of that volume would be on private molds; therefore, they feel that they have ample stock of toiletry and cosmetic items.

In commenting on the Pharmaceutical and Proprietary Division, Mr. Robertson described and demonstrated the new Self Pack Line consisting of twenty sizes and the new pourout finish. He explained that there is a definite trend from Amber to Flint in the Pharmaceutical Industry, this being brought about by colored tablets and capsules. He also commented that with the acceptance of a polio serum, a great potential is found in that field.

The Household and Chemical Division expects their '54 sales to run at least 10 per cent ahead of 1953. They cur-

rently are market-testing detergents packed in tin versus glass. Mr. Robertson stated that the greatest II & C potential for new glass business lies in the chemical field. Heavy bulk chemical houses are developing new products, and the majority of these items are of such a nature that they need glass as their package. All in all, the Drug and Chemical Industry is looking forward to a good 1954.

Food Industry Plans

Mr. R. E. Graham commented for the Food Industry. He stated that Owens-Illinois shipments of Duraglas containers to food customers increased 14½ per cent in 1953 over the prior year. While the shipment to the total Food Industry increased 3,300,000 gross, Owens-Illinois shipments to the Food Industry increased 1,650,000 gross, or exactly half of the total industry increase. Mr. Graham predicted a 10 per cent increase for the Food Industry during the year of '54. This increase will result in sales of over $80,000,000.

Paper continues to make serious inroads in the Dairy Division. It is hoped that additional volume in dry milk solids as well as gallon and half-gallon business will allow the Dairy Division to maintain the same total volume in 1954. The Tumbler and Coffee Divisions predict a 20 per cent increase—'54 over '53. This is expected even in light of tremendous increases in 1953 in the sales of containers for preserves, jellies, processed cheese, and soluble coffee. The Prepared Foods Division expects to maintain the 1953 [fol. 737] grossage in the current year. Certain losses of volume will be offset by increases in pickle, mustard and sauce glass. In the Processed Foods Division, Mr. Graham expects an increase of about $3,000,000. This is expected to come from catsup, baby foods; table syrups, and eatable oils.

Closure & Plastics Plans

In discussing the Closure and Plastics plans for 1954, Mr. J. A. Rudy stated that we have the advantages of Owens-Illinois plusses in the manufacture and service of closure and plastic items. Mr. Rudy stated that they expect a substantial further increase in caps for baby food due to Vapak. He commented on torque control units to eliminate breakage and assure good sealing as well as experiments on thread contour, giving improved torque control. Mr. Rudy stressed

the importance of using plastics in conjunction with glass for such items as pourouts, sifters, applicators, etc.

Western Region

Mr. E. F. Bertrand commented that the market outlook in 1954 for the Western Region was favorable. With the exception of some isolated problems, quality in the Western Region is generally good. Mr. Bertrand felt that our present M&M stocks are not adequate, and in many cases, we fail to meet customers' needs for that particular reason. There are even instances where we lose volume on items we can deliver simply because we are not able to supply certain other M&M items customer needs. At this point, other sales representatives agreed with Mr. Bertrand. Mr. Beishline stated that they would study the M&M situation. A survey will also be conducted whereby branches will report to Toledo on a biweekly basis any M&M outages they encounter, as well as the volume lost because of the shortages.

Eastern Region

Mr. C. L. Rodgers stated that some of the Eastern Branches are not measuring up to 1953 sales, but feels that by the end of the first quarter, they will equal '53. New York and Albany are running ahead of the prior year, and Philadelphia, the second largest Eastern Branch, is only slightly behind the same period last year. The Eastern Branch group is relatively optimistic about the current year. Mr. J. W. Colbert also commented that M&M outages are a definite problem.

Midwestern Region

Mr. C. G. Houghton commented on the Midwestern Region. He indicated that the general outlook in the Omaha territory appears to be good with every indication that sales through 1954 should show an increase over 1953. Sales in Kansas City Branch will show approximately a seven per cent gain through the first 60 days of this year. The Indianapolis market outlook is generally good, although it may vary in activity by lines. The Louisville Branch predicts that their business volume in '54 should closely approximate last year. There is some indication that spirit blended whiskey will continue to lose position to the straights. If

this becomes a fact, we can look for a slight shrinkage in Seagram volume, but this could be picked up through Brown-Forman, Stitzel-Weller, Glenmore, etc. Mr. Houghton stated that the St. Louis Branch predicts shipments for the first six months of 1954 to be approximately 20 per cent ahead of last year, this increase largely brought about by Falstaff and Pet Milk. Mr. Houghton also commented on a broker situation in the Midwestern Brewery business.

Southern Region

In commenting on the Southern Region outlook, Mr. J. A. Runnels stated that the Food Industry Division outlook appears to be very bright; Drug and Chemical should hold its own, possibly even show an increase. In the Beverage Industry, demand for One-Way Beers seems to be holding at a good level, however, Beverage orders are soft at the present. None of the Southern Branches have reported any [fol. 738] major complaints as to quality. Service is improving and they have not turned down any business. With the exception of Beverage ware, the inventory along the trade seems to be on the low side, particularly so with food packers. Mr. Runnels stated that our building of P.I.A. inventories will be of great relief; nevertheless, he wanted to comment on the importance of building larger M&M stocks.

Central Region

Mr. E. M. Jones advised that the Central Region's sales for January are 22.7 in the black. With increases from such accounts as Heinz, Schenley, and M & R Dietetic, the Central Region should continue to run considerably ahead of 1953. Mr. Jones mentioned that competition is very active and has encountered increasing instances of competition granting special trucking and handling allowances, free palletization, etc.

Sales Operating Problems

Mr. K. J. Solon commented on abuses of our 1 per cent cash discount. These abuses are: taking unearned discounts, discounts on the gross amount (including freight), competitive practices, and special term's requests. In an effort to rectify this situation, effective March 1, all invoices will show the exact amount of the discount allowable. The Credit

Department will advise Branch and Sales Managers of improper discount practices. Branches will then take up the matter with the customer. Mr. Solon also discussed the control of cancellations and setbacks.

New York Branch

Mr. J. W. Thayer commented that New York's sales in the month of January were over a half million dollars in excess of 1953. He felt that a price increase may result in some loss of volume to the Glass Container Industry in certain glass-tin competitive lines.

Chicago Branch

Mr. E. C. Jones brought up the question of reshipper cases. He stated that our price lists specify 175-pound Mullen test will be supplied where the weight of the package and filled bottles does not exceed 40 pounds. Where weight exceeds 40 pounds but does not exceed 60 pounds, 200-pound test will be used. Mr. Jones pointed out that in many cases we are furnishing 200-pound test when it is not necessary under Rule 41, and furthermore, not in accordance with our policy. He felt that use of the 175-pound test where ever possible would result in an increase in revenue. This has even gone to the point where one of Chicago's larger accounts has asked us to quote lower prices based on supplying 175-pound test outers.

Detroit Branch

Mr. H. C. Gstalder stated that unemployment in the state of Michigan has caused a softening in Beverage, Beer, and Dairy activities. He advised that acceptance sampling has greatly improved our quality on shipments to Gerbers. Mr. Gstalder felt that Paragraph 10 of our contract form should be reviewed since two of his large-volume accounts refused to sign due to provisions of that paragraph. Mr. Davis said the entire contract is being studied along these lines by Babbs and Solon.

New Orleans Branch

Mr. George Harsh advised that competition is stepped up in the New Orleans Branch and mentioned some price and terms concessions granted by competition.

Mr. J. P. Levis

Mr. J. P. Levis reviewed the earnings and financial statistics of the Corporation for the last three years. He pointed out that in view of decreased earnings and increased expenditures, additional revenue was needed.

R. M. Koehrman

RMK/lh

[fol. 739] GOVERNMENT'S EXHIBIT 304

Articles of Incorporation and Code of Regulations
Glass Container Manufacturers Institute, Inc.
June 5, 1945

Section 10, amended as of December 5, 1945
Section 60, amended as of March 25, 1949
Section 10, amended as of March 23, 1950

[fol. 740] Articles of Incorporation of
Glass Container Manufacturers Institute, Inc.

Witnesseth that we, the undersigned, all of whom are citizens of the United States, desiring to become a corporation not for profit under the General Corporation Act of Ohio, do hereby certify:

Article First

The name of this corporation is Glass Container Manufacturers Institute, Inc.

Article Second

The place in this state where the principal office of this corporation is to be located is the City of Toledo, Lucas County, Ohio.

Article Third

The purpose for which this corporation is formed is to be and conduct a business league not organized for profit, and as a part thereof, in the interests of the glass and allied industries, packers, bottlers, governmental agencies and the general public: to promote the progress of the glass and related arts and sciences; to improve and expand the manufacture and use of glass containers and closures; to foster and facilitate packing and bottling in glass; to improve and increase the efficiency of machinery, equipment and appliances for the manufacture, handling and use of glass containers and closures and techniques in connection therewith; to improve materials and supplies and the use thereof in the manufacture and distribution of glass containers and closures; to expand domestic and foreign [fol. 741] markets; to originate, gather and disseminate technical, statistical and general data and information on tariff, traffic, credit, labor and other matters of interest to those engaged in the glass container industry and related industries; to develop standards for glass containers, closures, quality controls, testing and accounting procedures; to promote the interests of the glass, closure, and allied industries in every lawful manner through research, experimental work, education of the public and glass users, market research and promotion, the reduction of costs, and services to glass container and closure manufacturers,

packers, bottlers and other users; and generally to do all things reasonably incidental to said purpose, necessary, convenient or expedient for the best interests of the glass, closure and allied industries and the general public, to the same extent as an individual might or could do, either within or without the State of Ohio, and in any capacity; but this corporation shall never engage in any activity prohibited by valid law or regulation of either Federal or State authority.

Article Fourth

The names and post office addresses of the Trustees of this corporation, not less than three, who are to serve until the first annual meeting or other meeting called to elect Trustees, are:

Name	Address
Lewis F. Gayner	Salem, New Jersey
George F. Lang	102 St. Albans Way, Baltimore, Maryland.
Francis H. May	524 Spencer Avenue, Marion, Indiana.
John H. Rau	North Central Avenue, Indianapolis, Indiana.
Robert L. Warren	Brockway, Pennsylvania
Roy R. Underwood	Knox, Pennsylvania.
Fred E. Fuller	807 Ohio Building, Toledo, Ohio.

[fol. 742] Article Fifth

The names and post office addresses of the members of this corporation upon organization are:

Anchor Hocking Glass Corporation	Lancaster, Ohio.
Brockway Glass Company	Brockway, Pennsylvania.
Buck Glass Company	Fort Avenue & Lawrence Street, Baltimore 30, Maryland.
Carr-Lowrey Glass Company	Baltimore 3, Maryland.
Chattanooga Glass Company	Chattanooga 10, Tennessee.

Name	Address
Diamond Glass Company	First Avenue, Royersford, Pennsylvania.
Dominion Glass Company, Ltd.	1111 Beaver Hall Hill, Montreal, P. Q. Canada.
Fairmount Glass Works, Inc.	1501 So. Keystone Avenue, Indianapolis 7, Indiana.
Florida Glass Manufacturing Company	P. O. Box 2118, Jacksonville 3, Florida.
Foster-Forbes Glass Company	P. O. Box 711, Marion, Indiana
Gayner Glass Works	Salem, New Jersey.
Knox Glass Associates, Inc.	Knox, Pennsylvania.
Lamb Glass Company	Mt. Vernon, Ohio.
Latchford-Marble Glass Company	P. O. Box 4707, Florence Branch, Los Angeles 1, California.
Laurens Glass Company	Laurens, South Carolina.
Liberty Glass Company	Sapulpa, Oklahoma.

[fol. 743]

Maryland Glass Corporation	2147-53 Wicomico Street, Baltimore 30, Maryland.
Maywood Glass Company	5615 S. Riverside Dr. Sta. K, Los Angeles 22, California
Northwestern Glass Company	5801 East Marginal Way, Seattle 4, Washington.
Obear-Nester Glass Company	East St. Louis, Illinois.
Pierce Glass Company	Port Allegany, Pennsylvania.
Swindell Brothers, Inc.	Bayard and Russell Streets, Baltimore 30, Maryland.
Tygart Valley Glass Company	Washington, Pennsylvania.
Universal Glass Products Co.	Parkersburg, West Virginia.
T. C. Wheaton Company	Millville, New Jersey.

Article Sixth

The qualifications for membership in this corporation are as follows:

1: Any corporation, partnership, association or individual engaged in the manufacture or sale of glass containers or closures therefor other than jobbers, or machinery, appliances, equipment, supplies or materials used in connection therewith, which may lawfully do so, may become a member of this corporation upon making written application to do so, except that:

(a) The persons named in Article Fourth, and all persons who may hereafter be elected Trustees of this corporation shall be Trustee members of this Corporation during their terms of office as Trustees, without further action on their part; and

[fol. 744] (b) The corporations named in Article Fifth shall be regular members of this corporation without further action on their part until thirty days after the adoption of a code of regulations by the members, at which time any such corporation which has failed to make said written application shall cease to be a member.

2. The written application for regular membership in this corporation shall, when accepted by this corporation, constitute an agreement on the part of the applicant to be bound by the corporation's code of regulations during the term of membership and such application shall otherwise be in such form as the code of regulations may prescribe.

3. Except as provided in paragraph 1(b), all regular memberships in this corporation shall terminate on December 31, 1947, and thereafter at the end of each third calendar year after 1947, but any such membership may be renewed by similar written application in such form as shall at the time be prescribed by the code of regulations, made not less than ninety days prior to the expiration of such membership; and all Trustee memberships shall expire with the expiration of the terms of office of the respective Trustees.

4. Each regular membership shall continue for the period from the date of acceptance of the application there-

for until December 31, 1947, or from the date of acceptance of the application until the expiration of the current three year period in or with respect to which application for membership is made, but the corporation may in its code of regulations provide for suspension and expulsion from membership.

5. No regular member shall have or be entitled, directly or indirectly, to more than one vote on any matter considered by the members, and accordingly no Trustee member shall, as such Trustee member, be entitled to vote or be [fol. 745] counted in determining the number of members necessary to constitute a quorum, or a quorum at any meeting of members.

Article Seventh

No part of the net earnings of this corporation shall ever inure to the benefit of any private shareholder, member, or individual. No part of the assets of this corporation shall ever be distributed to any member by reason of such membership, either during the period of its operation, or upon its liquidation.

Article Eighth

No compensation for services shall ever be paid to any Trustee, as such, or as a member of this corporation's Executive Committee, nor shall any allowance for expenses be made to any Trustee, as such, or as a member of this corporation's Executive Committee.

Article Ninth

All rights of a member in this corporation and its property, shall cease upon the termination of membership.

Article Tenth

These Articles of Incorporation may be amended from time to time as now or hereafter provided by law.

In Witness Whereof, the undersigned have hereunto set their hands on March 1st, 1945, March 5th, 1945 and March 13, 1945.

Lewis F. Gayner, George F. Lang, Francis H. May, John H. Rau, R. R. Underwood, Robert L. Warren, Fred E. Fuller.

[fol. 746] State of New York,
County of New York, ss.:

Personally appeared before me, the undersigned, a Notary Public in and for said county, Lewis F. Gayner, George F. Lang, Francis H. May, Robert L. Warren and Fred E. Fuller, who each subscribed and acknowledged the signing of the foregoing Articles of Incorporation to be his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal on the day and year aforesaid.

Ida B. Gilson, Notary Public.

Ida B. Gilson, Notary Public, New York County, Court's No. 516, Register's No. 702-G-6, Commission Expires March 30, 1946.

(Seal.)

[fol. 747] No. 20282

State of New York,
County of New York, ss.:

I, Archibald R. Watson, County Clerk and Clerk of the Supreme Court, New York County, the same being a Court of Record having by law a seal, do hereby certify, That Ida B. Gilson whose name is subscribed to the annexed deposition, certificate of acknowledgment or proof, was at the time of taking the same a Notary Public in and for said County, duly commissioned and sworn and qualified to act as such and authorized by the laws of the State of New York to protest notes, to take and certify depositions, to administer oaths and affirmations and certify the acknowledgment or proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this State, And further, that I am well acquainted with the handwriting of such Notary Public, or have compared the signature of such officer with his autograph signature filed in my office, and believe that the signature to the said annexed instrument is genuine.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 1 day of March, 1945.

Fee paid 25¢

ARCHIBALD R. WATSON, County Clerk and Clerk of the Supreme Court, New York County.

(Seal.)

[fol. 748] STATE OF PENNSYLVANIA,
County of Venango, ss.:

Personally appeared before me, the undersigned, a Notary Public in and for said County, Roy R. Underwood, who subscribed and acknowledged the signing of the foregoing Articles of Incorporation to be his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal on the 5th day of March, 1945.

Fred W. Richardson, Notary Public. My Commission Expires April 30, 1947.

(Seal.)

STATE OF PENNSYLVANIA,
County of Venango, ss.:

I, Richard I. Fry, Clerk of the Orphan's Court in and for said county, the same being a Court of Record, having a seal, do certify that Fred W. Richardson whose name is subscribed to the annexed affidavit, certificate or proof of acknowledgement, was at the time of taking said affidavit or proof of acknowledgment a Notary Public in and for said county, dwelling therein, and duly authorized and empowered by law to take the same, and to take the acknowledgment of deeds to be recorded in said State; that I am acquainted with the handwriting of the said , and verily believe that the signature to the said affidavit, a certificate or proof of acknowledgment is genuine. I further certify that said affidavit, certificate or proof of acknowledgment is executed according to the laws of this commonwealth.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at Franklin, this Fifth day of March 5, A. D. 1945.

Richard I. Fry, Clerk of Orphans' Court.

(Seal.)

[fol. 749] STATE OF INDIANA,
County of Marion, ss.:

Personally appeared before me, the undersigned, a Notary Public in and for said county, John H. Rau, who subscribed and acknowledged the signing of the foregoing Articles of Incorporation to be his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal on the 13th day of March, 1945.

Robert A. Williams, Notary Public. Com. Expires Jan. 23, 1949.

(Seal.)

STATE OF INDIANA, MARION COUNTY, SCT:

I, the undersigned, Clerk of the County of Marion, in the State of Indiana, and also Clerk of the Circuit Court within and for said County and State, the same being a Court of Record, and having a seal, do hereby certify that Robert A. Williams, whose name is subscribed in the annexed instrument, was at the time of executing such acknowledgment—oath to wit: March 13, 1945, an acting Notary Public within and for the County aforesaid, duly commissioned and qualified, and authorized by the laws of the State of Indiana, to take and certify the same, as well as to take and certify all affidavits, and the acknowledgment and proof of deeds or conveyances, and all other instruments of writing.

And further, that I am well acquainted with the handwriting of said Robert A. Williams and verily believe that the signature to said Certificate or Proof of Acknowledgment or Jurat is genuine, and that said instrument is executed and acknowledged according to the laws of the State of Indiana.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court and County at Indianapolis, Indiana, this 13 day of March, A. D. 1945.

A. Jack Tilson, Clerk.

(Seal.)

[fol. 750] Code of Regulations of
Glass Container Manufacturers Institute, Inc.

Name

1. The name of this corporation is Glass Container Manufacturers Institute, Inc.

Offices and Books of Record

2. The principal office of the corporation in Ohio shall be in the City of Toledo, and the agent of this corporation in Ohio upon whom process, tax notices or demands against the corporation may be served is Fred E. Fuller, Toledo, Ohio.

3. The corporation may have another or other office or offices, within or without the State of Ohio, at such place or places as the Trustees may designate from time to time.

4. The books of record of the corporation, except as otherwise required by law, may be kept at such office of the corporation as the Trustees may designate from time to time.

5. The books, accounts and records of the corporation shall be open to inspection by the members at such times and subject to such regulations as the Trustees may, from time to time, determine, but in no event shall the confidential records or reports of any member of any non-member be open to the inspection of or be disclosed to any other member, or any other corporation, association, partnership or individual.

Application for Regular Membership

6. Applications for regular membership shall be in the following form, to-wit:

[fol. 751] Glass Container Manufacturers Institute, Inc.

Application for Membership

The undersigned hereby makes application for membership in the Glass Container Manufacturers Institute, Inc.

In consideration of the acceptance of this application for membership, the applications of others for membership, the benefits and advantages to be obtained from the Institute, and the agreements and undertakings entered into by and on behalf of the Institute, the undersigned agrees—

That pursuant to Article VI of the Articles of Incorporation of the Institute the term of the membership of the undersigned herein shall be from ..... to .....;

To abide by the Code of Regulations as the same now is, and with all lawful amendments thereto hereafter made;

To pay, during the continuance of the above period all assessments duly and properly levied against the undersigned by the Trustee of the Institute, pursuant to Sections 10, 11 and 12 of the Code of Regulations, provided, however, that the undersigned reserves the right to resign from the Institute in the event the assessments so levied shall exceed the rate of one-tenth of one per cent of aggregate net sales per annum and provided notice of such resignation is given the Institute within thirty (30) days from the date such assessments are levied.

Dated at —— this — day of ——, 19—

By —— ——.

Accepted, Glass Container Manufacturers Institute, Inc.
By —— ——.

[fol. 752] Membership Book and Certificate

7. The corporation shall keep a membership book containing the name and address of each regular and Trustee member, and the date of admission to membership. Upon the termination, or renewal, of any membership, such fact shall be recorded in the membership book, together with

the date on which the membership ceased or was renewed.

8. Regular membership may be evidenced by non-transferable membership certificates in such form as the Trustees may determine from time to time.

Suspension and Expulsion of Members

9. Any member may be suspended or expelled from the corporation by the Trustees for failure to pay any assessment or for any wilful breach of the code of regulations. Before any member is suspended or expelled such member shall be notified, in writing, by mail, at such member's last known address, of the charges and of the time and place of the meeting of the Trustees at which such charges shall be considered, at least ten (10) days before such meeting. Such member shall have the right to appear in person and by counsel at said meeting. Such charges may be sustained and such member suspended or expelled by the affirmative vote of not less than two-thirds of the full number of the Trustees. A member shall not be a member in good standing from the date of mailing such notice until the dismissal of such charges, or such member's expulsion, or the termination of such member's suspension, as the case may be.

Assessments

10. In order to provide for the support and maintenance of the corporation each regular member shall, subject to the provisions of Section 12 hereof, on or before the last days of January, April, July and October in each year, pay [fol. 753] to the corporation amounts which shall not exceed the following amounts, to-wit:

(a) Each January payment, one-eighth† of one per cent of its aggregate net sales of glass containers and closures for the second preceding calendar year, if a manufacturer of glass containers or closures; and one-eighth† of one per cent of its aggregate net sales to manufacturers of glass containers or closures and users of glass containers for the second preceding calendar year, if not a manufacturer of glass containers or closures; and

(b) Each April, July and October payment, one-eighth† of one per cent of its aggregate net sales of

† As amended March 23, 1950.

glass containers and closures for the next preceding calendar year, if a manufacturer of glass containers or closures; and one-eighth† of one per cent of its aggregate net sales to manufacturers of glass containers or closures and users of glass containers for the next preceding calendar year, if not a manufacturer of glass containers or closures;

but no regular member shall pay less than $200.00 per year, and within said maximum and minimum limits the Trustees shall determine the percentage assessment based upon aggregate net sales as aforesaid to be paid in each year on or before December first of the preceding year, and the Treasurer shall notify each member in writing thereof on or before December thirty-first of said preceding year. *There shall be no discrimination among regular members or classes of regular members in the rate or percentage of the yearly payments, except that special arrangements may be made with companies not incorporated in the United States.

11. Aggregate net sales as used in this code or regulations shall be determined as follows:

[fol. 754] Glass Container Net Sales

The aggregate dollar amount of empty, new, machine-made bottles, jars and tumblers (including packages and any fitments sold in connection therewith) for the commercial packing or domestic packing of any product, less amounts paid by the glass container manufacturer for freight, returns and allowances. No deduction shall be made for cash or jobber discounts, brokerage, sales or commission expenses.

Where one glass container manufacturer produces for and/or sells to another glass container manufacturer, he shall exclude such sales from his aggregate net sales; and the manufacturer making the transaction with the ultimate customer, bottler or packer shall include the amount of such sales in his aggregate net sales.

† As amended March 23, 1950.

* As amended December 5, 1945.

Closure Net Sales

The aggregate dollar amount of metal and molded closures, whether continuous thread, lug or lug style, single or double shell, one-piece or two-piece types, friction or machine applied (including band caps) for the commercial packing or domestic packing of any product, less amounts paid by the manufacturer for freight, returns and allowances. No deduction shall be made for cash or jobber discounts, brokerage, sales or commission expenses.

Where one closure manufacturer produces for and/or sells to another closure manufacturer, he shall exclude such sales from his aggregate net sales; and the manufacturer making the transaction with the ultimate customer, bottler or packer shall include the amount of such sales in his aggregate net sales.

Machinery, Equipment, Appliances, Raw Material Supplies and Affiliated Industries Net Sales

The aggregate dollar amount of sales made to glass container and closure manufacturers, less amounts paid [fol. 755] for freight, returns and allowances. No deduction shall be made for cash or jobber discounts, brokerage, sales or commission expenses.

12. Special assessments may be made from time to time, on the same basis, and in such percentages as may be determined by the Trustees, and approved by a majority of the regular members then in good standing.

13. The Trustees may accept voluntary contributions from corporations and others not members of the Institute, and/or make arrangements for fees to be paid the Institute for information and services by regular members and by corporations and others not members of the Institute to the extent that it is lawful to do so; and the Trustees shall take any such contributions and/or arrangements into account in fixing or adjusting the current percentage assessments provided for in Section 10 of this code of regulations in order that the corporation's receipts as an entirety shall substantially equal its disbursements in carrying on its activities.

Members Meetings

14. Each meeting of members shall be held at such place within or without the State of Ohio as the Trustees may determine.

15. The annual meeting of members shall be held on the second Thursday in May of each year at 10:00 A. M., or if such day be a holiday, then on the next Thursday at the same hour.

16. Special meetings of members may be called by the President or by resolution adopted by the Trustees, and shall be called upon written demand of five Trustees or ten regular members in good standing, and shall be held at the time and place fixed by the President or the Trustees therefor.

17. Notice of each meeting of members shall be given each member in writing, setting forth the time, place and [fol. 756] purpose or purposes thereof, by post-paid mail or by pre-paid telegram, addressed to such member at the address of such member shown on the records of the corporation, mailed or telegraphed at least ten days before the date for fixed for such meeting.

18. Any member may waive any notice of any meeting of members, in writing, either before or after the meeting.

19. A majority of the regular members in good standing of the corporation, present in person or by proxy, shall be necessary to constitute a quorum, but a lesser number may adjourn from time to time, without further notice, until a quorum is secured.

20. A complete list of members entitled to vote at any meeting of members shall be prepared in alphabetical order by the Secretary, and shall be open to the examination of each member during the whole time of election at any meeting of members at which an election is held.

21. Any regular member in good standing may vote at any meeting of members either in person, or by proxy duly authorized in writing and signed by such member, or by telegram or wireless message appearing to have been transmitted by such member.

22. Each regular member in good standing shall be entitled to one vote on each matter considered at any meeting of members, but there shall be no cumulative voting at any election.

23. A corporation, partnership or association member shall be present in person at any meeting of members when any officer of such corporation or association, or partner of such partnership is present. The President, Vice-President, Secretary and Treasurer in the order named, of any corporation or association which is a member of the institute, present at any meeting of members, shall constitute the presence of such corporation or association at such meeting, and his vote at such meeting shall constitute the [fol. 757] vote of such corporation or association which is a member of the Institute, unless such member has authorized some other person to represent it by proxy filed with the secretary of the meeting prior to the vote taken at said meeting.

24. Unless changed by a majority vote of the quorum present, the order of proceedings at each meeting of members shall be:

(1) Reading of minutes of preceding meeting.
(2) Reading of reports and statements.
(3) Unfinished matters.
(4) Election of Trustees.
(5) New matters.

Trustees

25. The corporate powers, property and affairs of the corporation, subject to the limitations contained in the Ohio General Code, the Articles of Incorporation and the Code of Regulations, shall be exercised, conducted and controlled by a board of eleven trustees, each of whom shall upon election as Trustee and during the term of his office as Trustee, become and be a Trustee member of the corporation; one of whom shall be a citizen of the State of Ohio; and not less than eight of whom shall be officers or employees of manufacturers of glass containers who are regular members of this corporation.

26. The terms of office of the Trustees named in the articles of incorporation shall expire at the first meeting of the corporation called to elect Trustees.

27. At the first meeting of the corporation called to elect Trustees, three Trustees shall be elected for a term expiring at the 1946 annual meeting of the corporation, four Trustees shall be elected for a term expiring at the

1947 annual meeting of the corporation, and four Trustees shall be elected for a term expiring at the 1948 annual meeting of the corporation, and until their respective successors shall be elected and qualified as Trustees.

[fol. 758] Thereafter at each annual meeting, Trustees shall be elected for a term of three years, and until their successors shall be elected and qualified, to fill the vacancies caused by the expiration of the terms of the Trustees whose terms then expire. In case of vacancy caused by any reason other than expiration of his term of office, such vacancy shall be filled by the Trustees by election for the unexpired term, and until a successor is elected and qualified.

Trustees Meetings

28. Each meeting of the Trustees shall be held at such place within or without the State of Ohio as the Trustees may determine.

29. The Trustees shall meet after each annual election of Trustees at such time and place as shall be fixed at the annual meeting of members, for the purpose of organization, election of officers and the transaction of any other matters, and if a majority of the Trustees are present at such meeting no notice need be given the Trustees.

30. The Trustees may by resolution fix and change the time and place of regular meetings of the Trustees, and any action may be taken at any such regular meeting without prior notice thereof to the Trustees.

31. Special meetings of the Trustees may be called by the President and on the written request of five Trustees shall be called by the President.

32. Notice of each regular and special meeting of the Trustees, other than the annual meeting, shall be given each Trustee in writing, setting forth the time and place and if a special meeting, the purpose or purposes thereof, by postpaid mail or prepaid telegram, addressed to each Trustee at the address of such Trustee shown on the records of the corporation, mailed or telegraphed at least three days before the date fixed for such meeting.

33. Any Trustee may waive any notice of any meeting of Trustees, in writing, either before or after the meeting.

[fol. 759] 34. A majority of the Trustees shall be necessary to constitute a quorum, but a lesser number may ad-

journ from time to time, without further notice, until a quorum is secured.

35. Unless changed by a majority vote of the quorum present, the order of proceedings at each meeting of Trustees shall be:

(1) Reading of minutes of preceding meeting.
(2) Reports of officers.
(3) Reports of committees.
(4) Unfinished matters.
(5) Miscellaneous matters.
(6) New matters.
(7) Elections.

Standing Committees

36. The Trustees shall each year, at their annual meeting, appoint nine standing committees of the Institute, each to consist of such number of persons skilled in the activities of such committee as may be selected by the Trustees, and each to have as its chairman such person as may be selected by the Trustees. *A majority of the members of each standing committee and sub-committee thereof shall be officers or employees of regular members of the Institute. The Chairman of each committee shall be a full time employee of the Institute or of a regular member of the Institute.

37. The standing committees of the Institute and their respective duties shall be as follows:

Committee on Market Research and Promotion

The Committee on Market Research and Promotion shall devote its efforts to the advancement of the competitive interests of the glass container and closure industries, and in connection therewith shall among other things:

[fol. 760] (a) Study the actual and potential uses of glass containers and closures, the comparative costs of packaging and distribution in glass and other materials, new product needs and possibilities, and the relative merits of the use of competitive packaging materials;

(b) Advance the competitive interests of the glass container industry in relation to other industries producing

* As amended at Annual Membership Meeting, May 18, 1954.

containers from other materials by maintaining a central organization for cooperation with Federal, state and local agencies, by investigating and opposing discriminatory laws and regulations and by encouraging uniform laws and regulations;

(c) Promote glass container markets through an integrated public relations program, the maintenance of a general center of information about the industry and its products, cooperation with trade organizations in the food and beverage and other industries, assisting in new product development and research with respect thereto, and cultivation of export markets;

(d) Obtain publicity for the industry through advertising and the furnishing of information with reference to the industry and its products, the providing of industrial exhibits, the publication of industry organs, and in all other proper manners;

(e) Provide educational work and facilities for keeping glass, closure and allied manufacturers and packers and bottlers abreast of current improvements and the needs for further improvements in the industry, and for retailers as to the most effective means of displaying, merchandising and handling glass packed products; and to promote educational work of interest to the industry in the schools and colleges;

(f) Assist packers and bottlers in the reduction of handling costs and other problems in the use of glass containers; and

[fol. 761] (g) Maintain an historical record of the industry and its accomplishments.

Traffic Committee

The Traffic Committee shall obtain to the fullest extent possible for the entire industry safe, convenient, expeditious, efficient and otherwise adequate transportation service at rates and under rules and regulations that are reasonably free from prejudice, preference and discrimination, and in connection therewith shall among other things:

(a) Deal with industry-wide problems concerning carriers and transportation; the obtaining of parity shipping rates for products in glass and competing containers; and the obtaining of lowest possible freight rates;

(b) Conduct conferences with carrier regional rate and rule authorities, officers of individual carriers and carriers associations for the presentation of industry-wide views of the industry's needs in reaching the widest possible markets and obtaining raw materials at rates which make such markets possible;

(c) Carry on negotiations with railways, express agencies, motor carriers, the Interstate Commerce Commission and others looking towards the publication of acceptable carton specifications and other satisfactory and economical requirements for the packaging for transportation of glass containers and glass packed products;

(d) Seek relief on behalf of the industry as a whole where necessary in formal proceedings before the Interstate Commerce Commission and state public utilities commissions; and

(e) Provide for cooperation and interchange of information between the industry and the several governmental authorities dealing with traffic and transportation problems.

[fol. 762] Committee on Government-Industry Relations

The Committee on Government-Industry Relations shall coordinate the resources of the industry for service to the government and the public during the period of the war and thereafter and provide liaison between the Institute and Federal, state and local governmental authorities, and in connection therewith shall among other things:

(a) Obtain information with reference to governmental activities relating to the industry;

(b) Operate and maintain an office for the Institute in the City of Washington, D. C.;

(c) As directed by the Trustees, represent the Institute, with the assistance of its officers, in relations with governmental authorities, and furnish governmental authorities with an official means of contact with the industry as a whole, provided that no member of the Institute or person acting on behalf of such member shall be restrained in any way from presenting views, furnishing data, or taking any position before any governmental agency; and

(d) Conduct surveys with reference to matters of interest of the industry and governmental authorities in the field of industry-governmental relations.

Committee on Labor Relations

The Committee on Labor Relations shall assist the industry through research and fact finding and by all other proper means in improving the relationship of employers and employees, and in connection therewith shall among other things:

(a) Provide a clearing house for manufacturers of glass containers and closures having problems involving labor, arrange conferences to discuss the employment and labor relations problems of the industry, and furnish information and advice to members of the industry with reference to labor problems;

(b) Develop procedures in handling labor matters;

[fol. 763] (c) Prepare for and take part in annual collective bargaining conferences with the Glass Bottle Blowers Association, the American Flint Glass Workers Union and other labor organizations;

(d) Collect and collate agreements between the Glass Bottle Blowers Association, the American Flint Glass Workers Union and other labor organizations and the several members of the industry, and inform the members of the industry with reference thereto, and as to job classifications rates of pay, hours of work, and conditions of labor provided therein, and also with reference to matters pertaining to employment and labor relations, directives, decisions and statements of policy of governmental agencies and boards which have the administration of Federal laws concerning collective bargaining, wage and salary stabilization, labor disputes, and the like;

(e) Provide a means for the settlement of disputes as to the interpretation of union contracts with the industry; and

(f) Secure the assistance, when deemed desirable, of labor relations counsel.

Committee on Testing Procedures

The Committee on Testing Procedures shall conduct and provide for experimental activities in connection with the diagnosis and elimination of manufacturing imperfections, the reduction of breakage, the reduction of weight of glass containers, the maintenance of glassware quality and the

definition of glassware characteristics, and other technical problems of the industry, and in connection therewith, shall among other things:

(a) Develop and review testing procedures and equipment and cooperate with others in the development of standards therefor;

(b) Prepare and revise from time to time a manual prescribing standard tests for glass containers;

[fol. 764] (c) Survey, from time to time, the causes of glass breakage;

(d) Furnish technical and scientific assistance to legislative and other governmental bodies;

(e) Conduct courses of instruction for technical men in the glass container and closure industries; and

(f) Provide technical data and other assistance in connection with litigation involving breakage and claimed defects in glass containers and assist packers and bottlers in formulating proper methods and procedures for inspection and testing of new and used glass containers.

Technical Committee on Glass Packed Products

The Technical Committee on Glass Packed Products shall:

(a) Conduct and provide for experimental activities having to do with the relative merits of packing and bottling in glass and other types of containers, the effects of such packing and bottling on food, beverages, and other products packed or bottled in glass, and the improvement and better preservation of such products; and

(b) Provide for the testing of the results of its activities by the proper governmental authorities and others.

Committee on Standards for Finishes

The Committee on Standards for Finishes shall develop standards for glass container finishes, so that there may be as many manufacturers as possible competing for the sale of glass containers, and in connection therewith, shall among other things:

(a) Engage in experimental efforts to improve manufacturing efficiency and better sealing practices;

(b) Develop, and, from time to time modify standard sizes of and specifications for finishes of glass containers [fol. 765] with a review to manufacturing economies, including the revision of specifications so as to permit maximum interchangeability of neck rings;

(c) Develop modifications in finish standards for new types of forming machines;

(d) Develop standard glass finish specifications for any new methods of sealing which may be invented from time to time;

(e) Make blue prints available setting forth technical data pertaining to finishes and their manufacture, and new and revised specifications for finishes; and

(f) Cooperate with the Bureau of Standards in connection with the foregoing.

Committee on Container Design and Specifications.

The Committee on Container Design and Specifications shall endeavor to simplify container supply for the packer and bottler by establishing groups of standard glass container designs and specifications on which a packer or bottler may rely in size and style of container, the laying out of filling lines and procedures in the packing of his products, and which, if accepted throughout the industry, will assure the user of glass containers standard designs irrespective of the source of supply so that there may be as many manufacturers as possible competing for the sale of glass containers, and in connection therewith shall, among other things:

(a) Make available specifications for groups of standard containers which, if the packer or bottler so desires, may be used in place of private mold designs in order to reduce container costs through the reduction of the amount of glass used in containers, the reduction of the number of standard capacities of containers by the elimination of odd capacities, the reduction of mold costs, other economies in manufacture and economies in storage and transportation; [fol. 766] and also to bring about economy of use on filling lines and to increase the packer and bottler's sources of supply;

(b) Develop standard specifications for containers which can be efficiently made on all types of forming machines,

review and modify such specifications, and make available blue prints covering the same;

(c) Cooperate with similar committees of users of glass containers for the purpose of establishing standard specifications for containers for each packing and bottling industry;

(d) Work with the Bureau of Standards and state and municipal agencies in establishing container specifications and sizes consistent with municipal, state and Federal laws;

(e) Consult with packers, bottlers and manufacturers of packing and bottling machinery in connection with the design and functioning of glass handling machinery; and compile brochures from time to time, such as a machinery manual for the use of packers, bottlers and manufacturers of packing and bottling machinery, in order to facilitate the more efficient use of equipment regardless of the source of containers; and

(f) Give constant study to existing standards and consideration to the possibility of additional and future standards in connection with the frequent changes in use and progress in processing as well as technological changes in manufacture.

Committee on Package Design and Specifications

The Committee on Package Design and Specifications shall have as its principal function and purpose the consideration of all matters having to do with the safe, economical and efficient handling of glass containers and glass packed and bottled products as affected by the packaging thereof, and in connection therewith shall, among other things:

[fol. 767] (a) Develop methods of economizing in the use of paper and other packaging materials;

(b) Develop standard designs and specifications for cartons and other packages;

(c) Promote and participate in laboratory investigations of the strength of packaging materials;

(d) Compile brochures on carton specifications and packaging;

(e) Cooperate with the Traffic Committee in problems of interest to both committees; and

(f) Cooperate with the Bureau of Standards in connection with the foregoing.

38. Each standing committee shall, within the limits of the amounts appropriated to it therefor by the Trustees, perform its several duties hereinbefore set forth and engage in no activities not relevant to its functions set forth in this code of regulations without the express authorization of the Trustees, and make regular reports of all actions taken by it to the Trustees at least semi-annually. The Trustees shall make available to members of the Institute at least semi-annually all results of committee activities and the compilations of data prepared by the General Manager in pursuance of Section 60 hereof. The Trustees shall make the same information available to such non-member glass container and closure manufacturers and suppliers as shall make payments or contributions to the Institute upon the same basis as the payments made by members under under Sections 10, 11 and 12 hereof. Upon application of one who reasonably in good faith intends to enter into the glass container or closure manufacturing business, the Trustees shall furnish him such compilation showing the then state of the glass container and closure manufacturing industries as he may request and as the Institute may have available, and if requested, shall furnish to such applicant such additional information as would be available to all members of the Institute, all at reasonable prices, representing the cost of [fol. 768] compiling the information requested and furnished, plus, if desired by the Institute, a reasonable profit. In the event of application to the Trustees for information by one not within the classes hereinbefore in this section mentioned, the Trustees may furnish such information or such part thereof, if any, as they see fit, upon such terms and conditions as they may deem proper.

39. No standing committee, or any officer or employee of the Institute, or the Trustees, in their respective capacities as such, shall ever, directly or indirectly, take any action, or engage in any activity the effect of which shall be unlawfully to prevent or retard competition through the entry of new units into the various fields of manufacture of glass containers or unlawfully to discourage the expansion of the industry, or otherwise to violate the anti-trust laws of

the United States, but the Trustees may from time to time make reasonable charges for information with respect to the results of the activities of the Institute as provided in Sections 13 and 38 hereof.

40. Neither the Institute nor its Trustees, committees, members, officers or employees shall ever attempt, directly or indirectly, to enforce compliance with any advice or recommendation of the Institute or of its Trustees, committees, members, officers or employees, or interfere or attempt to interfere in any way with the conduct of the business of any member or of any other corporation, association, partnership or individual; and no member or any other corporation, association, partnership or individual shall ever be under any obligation whatsoever to take advantage of or make any use whatever of the results of the activities of the Institute or any of its Trustees, committees, officers or employees.

41. The General Manager or Secretary of the Institute or a full time paid employee of the Institute shall attend each meeting of each standing committee and make a full and complete record of the proceedings of each such meeting, and report the same to the Trustees.

[fol. 769] 42. Each meeting of each standing committee shall be held at such place within or without the State of Ohio as the members thereof may determine.

43. Each standing committee shall meet after each annual election thereof at such time and place as shall be fixed at the annual meeting of Trustees, for the purpose of organization and the transaction of any other matters.

44. The members of each standing committee may by resolution fix and change the time and place of regular meetings of such committee, and any action may be taken at any such regular meeting without prior notice thereof to the members.

45. Special meetings of each standing committee may be called by the chairman and on the written request of three members thereof shall be called by the chairman.

46. Notice of each meeting of each standing committee shall be given each member in writing, setting forth the time and place thereof, by post-paid mail or prepaid telegram, addressed to each member at the address of such member shown on the records of the corporation, mailed or

telegraphed at least three days before the date fixed for such meeting.

47. Any member of a standing committee may waive any notice of any meeting of his committee, in writing, either before or after the meeting.

48. A majority of the members of each standing commitee or sub-committee thereof (but only if a majority of any such majority are officers or employees of regular members of the Institute) shall constitute a quorum, but a lesser number may adjourn from time to time, without further notice, until a quorum is secured.

49. The members of each standing committee shall fix their own order of procedure, and such other rules not inconsistent with the other provisions of this Code of Regu- [fol. 770] lations for the conduct of their duties, including the appointment of sub-committees, as they shall deem advisable.

50. Any member of any standing committee may be removed by the Trustees at any time, with or without cause.

51. Any vacancy in any standing committee shall be filled by the Trustees.

52. The Trustees may provide such reimbursement for expenses to members of any committee or sub-committee thereof as they may, from time to time, determine.

Special Committees

53. The Trustees may appoint, or authorize the President to appoint, special committees, all of the members of each of which shall be officers or employees of regular members of the Institute. Such special committees may perform such lawful activities outside the scope of the activities of the standing committees as the Trustees shall direct and define. In the conduct of their activities special committees shall be subject to the provisions of Sections 42 to 47 and 49 to 52 hereof. A majority of any such committee shall constitute a quorum.

Officers and Employees

54. The officers of the corporation shall be a President, First Vice President and Second Vice President, who shall be elected annually from the Trustees to serve as such without compensation, until the next annual meeting of the

Trustees and until their successors are elected and qualified; and a General Manager, Secretary and Treasurer, who may be elected or appointed by the Trustees for such terms and upon such conditions and shall receive such compensation as the Trustees deem advisable.

55. Any two or more offices, except those of President and Vice President, or Vice Presidents, may be held by the same person.

[fol. 771] 56. The Trustees may create such other offices as they deem advisable from time to time and fill the same by election or appointment for such terms and upon such conditions as they deem advisable.

57. Any officer may be removed from office at any time by the Trustees by majority vote with or without cause.

President

58. The President shall be the chief executive officer of the corporation. He shall preside at all meetings of the members and of the Trustees; have general supervision and management, subject to the Trustees, of the affairs of the corporation; and shall perform, generally, all the duties usually performed by Presidents of like corporations, and such further and other duties as may, from time to time, be required of him by the members, or the Trustees.

Vice-Presidents

59. The First Vice-President shall perform all the duties of the President, in case of the absence or disability of the latter. If both the President and First Vice-President are absent, or unable to perform their duties, the Second Vice-President shall serve, and, in his absence or inability to perform his duties, the members or Trustees, as the case may be, may appoint a President pro tem.

General Manager

60. The General Manager shall, subject to the control and direction of the members, the Trustees and the President, have active charge of the general activities of the corporation, including its publicity, promotion, educational research and development work, and shall generally perform such duties as may be required of him by the members,

the Trustees and the President. He shall obtain from the regular members of the Institute and others any and all data, other than data as to prices and methods or speeds [fol. 772] of operation, which they shall be willing to and may lawfully furnish; shall compile and distribute compilations of such data (other than material usage), in such manner and to such persons as shall be directed from time to time by the Trustees; provided that no data with reference to capacity, production, shipments, stocks or sales covering any portion of the preceding* twenty days period shall at any time be distributed or directly or indirectly disclosed to manufacturers of glass containers or closures; and further provided that the General Manager shall keep confidential and separate data furnished by each corporation, association, partnership and individual, with reference to capacity, production, shipments, stock, net sales and material usage, to the end that such separate data shall never be disclosed to any other corporation, association, partnership or individual other than to a full time paid employee of the Institute whose duties require the use of such data, and who has undertaken to keep such data confidential as above provided with reference to the General Manager. No Trustee or member of the Institute other than counsel for the Institute shall ever be entitled to all or any part of such confidential data.

61. The General Manager shall give to the corporation a bond, in such amount and in such form and with such sureties as the Trustees may determine, for the faithful performance of the duties of his office. The amount of such bond may, from time to time, be changed by the Trustees.

Secretary

62. The Secretary shall keep the minutes of all the meetings of the members and the Trustees, and shall make a proper record of the same, which shall be attested by him. He shall give the notices required by the code of regulations, unless the Trustees shall otherwise direct, and shall perform such other duties as may be required of him by the members, the Trustees and the President. He shall be the

* As amended March 25, 1949.

custodian of the seal of the corporation and shall affix the [fol. 773] same to any instrument requiring the same, and shall attest it by his signature.

Treasurer

63. The Treasurer shall receive and have in charge all moneys and securities belonging to the corporation and shall deposit the same in the name and to the credit of the corporation in such banks or other depositories as may be designated by the Trustees. He shall disburse the funds of the corporation pursuant to the orders of the Trustees and the President. He shall keep an accurate account of the moneys, securities and other valuables received and disbursed by him and shall, at the annual meeting, and oftener when required either by the Trustees or the President, present a detailed statement of his receipt and disbursements and of all his transactions, together with a statement of the assets and liabilities of the corporation, and shall generally perform such other and further duties as may be required of him by the members, the Trustees or the President.

64. He shall give to the corporation a bond, in such amount and in such form and with such sureties as the Trustees may determine, for the faithful performance of the duties of his office. The amount of such bond may, from time to time, be changed by the Trustees.

General Counsel

65. The Trustees shall employ a reputable attorney or firm of attorneys as General Counsel. The officers shall keep the General Counsel fully informed as to all activities and proposed activities of the Institute, its Trustees, committees and officers, and the General Counsel shall advise the Institute, its Trustees, committees and officers with respect to the legality of all activities and proposed activities. No activity shall be engaged in by any of them which the General Counsel has advised is illegal. The General Counsel shall have charge of all legal matters in which the [fol. 774] Institute is interested; and shall attend in person or by representatives all meetings of the members and Trustees and, upon request of any officer or committee

chairman, any committee meetings. Upon request of the Trustees, the President, the General Manager or the chairman or members of any committee, the General Counsel shall appear in person or by representatives before any public body on behalf of the Institute, and generally shall perform such other services of a legal nature as they or any of them may request. The General Counsel shall be entitled to receive reasonable compensation for services rendered to the Institute, its Trustees, committees and officers.

Other Officers and Employees

66. Other officers and employees of the corporation shall have such duties as shall be prescribed from time to time by the Trustees, or by the President or General Manager pursuant to authority conferred by the Trustees. In case of the absence or disability of any officer of the corporation, or for any other reason deemed sufficient by the Trustees, the Trustees may delegate his powers or duties to any other officer or to any Trustee for the time being, except that the duties of General Manager shall not be delegated to any person other than a full time paid employee of the Institute who is not an officer or employee of any member of the Institute.

Fiscal Year

67. The fiscal year of the corporation shall begin on the first day of January of each year.

Checks

68. All checks drawn by the corporation shall be signed by the President, General Manager and Treasurer, or any two of them.

[fol. 775] Seal

69. The seal of the corporation shall be circular in form and shall have inscribed thereon, "Glass Container Manufacturers Institute, Ohio, 1945."

Disposition of Assets

70. The corporation shall not sell, lease, mortgage or dispose of any real property owned by it or its entire assets except when authorized by a vote of a majority of the regular members present at a meeting called for such purpose if constituting a quorum.

Amendments

71. This code of regulations may be amended or repealed by the written assent thereto of not less than a majority of the regular members of this corporation, or by a majority vote of the regular members present at any annual meeting, or any special meeting called for that purpose, but for such part of the period of five years from the effective date of the final judgment in United States *v.* Hartford-Empire Company, *et al.*, No. 4426 in the United States District Court for the Northern District of Ohio, Western Division, as any defendant in said cause shall participate in any activity of this corporation pursuant to the order of said court entered May 15, 1945, no amendments shall be made to the provisions of Sections 5, 13, 36, 37, 38, 39, 40, 41, 53, 60, 65 and 71 hereof without the approval, in advance, of the United States District Court for the Northern District of Ohio, Western Division.

[fol. 776] GOVERNMENT'S EXHIBIT 317

NATIONAL CANNERS ASSOCIATION
RESEARCH LABORATORY

PROCESSES FOR LOW-ACID CANNED FOODS IN GLASS CONTAINERS

BULLETIN 30-L
Second Edition

WASHINGTON, D. C.
September, 1955

IMPORTANT POINTS FOR CANNERS

1. ***Keep your retort operators informed.*** **Give them a copy of this bulletin or written instructions on processes to be used. See page 19.**

2. ***Keep your other key men informed.*** **Insist that all key men read and understand this booklet.**

3. ***Equip your retorts properly.*** **Tested and properly installed retort instruments are essential. Instruments need periodic testing.**

4. ***Don't reduce processes.*** **Processes in this bulletin give the highest quality consistent with safety.**

5. ***Code your jars.*** **The time period during which each code lot is packed should be as short as practicable—in no case longer than one day.**

6. ***Keep your factory clean.*** **High bacterial contamination may lead to spoilage. See Appendix.**

7. ***Follow approved procedures.*** **The procedures given in this bulletin are based on sound theory and wide practical experience.**

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PROCESSES FOR LOW-ACID CANNED FOODS IN GLASS CONTAINERS

INTRODUCTION

THIS is the 2nd edition of Bulletin 30-L. The first edition was prepared in 1948 to satisfy an increasing demand for authentic information on processes to be used for low-acid foods packed in glass containers.

Process suggestions given in the bulletin are, in general, based on heat penetration data obtained on the products by the National Canners Association and the glass container manufacturers. Where such information was not available factors were used for converting processes for cans to processes for glass jars. These factors were developed from basic data obtained on bentonite in the laboratories of the National Canners Association in a cooperative research project sponsored by the Glass Container Manufacturers Institute. This project involved an extensive investigation on the heating rates of bentonite suspensions in glass jars and tin cans of comparable sizes, and the preparation of experimental inoculated packs of various products in both types of containers.

When further data and information are available, this bulletin will again be revised. Previous editions should then be discarded.

Prefacing the list of processes are recommendations with respect to proper retort equipment and its operation for best results. A thorough understanding of these recommendations is necessary for the best use of the bulletin and is essential for the correct interpretation and proper use of the processes.

Following the list of processes is an appendix which gives information regarding sources of spoilage contamination and its control, the significance of sugar and starch contamination, and precautions for the proper handling of glass containers in the cannery.

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While the procedures recommended in this bulletin are based on sound theory and wide practical experience, references to methods or types of equipment are not to be construed as a guarantee of their sufficiency. The recommendations contained herein are not to be considered as creating any assurance or warranty with respect to production or cost or any responsibility for damage, spoilage, loss, accident or injury resulting from the use of this information by anyone.

IMPORTANCE OF PROPER EQUIPMENT AND PROCEDURE

Foods in glass containers are processed under water with superimposed air pressure. In order to be certain that all jars secure the amount of heat treatment required to prevent spoilage, careful control and recording of temperatures and adequate circulation of water to ensure uniform temperatures are essential. This is true because processes for canned foods are determined by tests made with the jars at a definitely controlled and specified temperature, and when these processes are applied in commercial practice identical conditions must be met. The suggestions under "Equipment" and "Procedure" are based on the results of careful studies to determine what types of equipment and procedure may be relied upon to give the required heat treatment under commercial conditions. Careful attention to details is essential to ensure successful processing.

EQUIPMENT

Retort

The processes contained in this bulletin are for discontinuous, non-agitating (still) retorts. For other types of retorts, processes should be obtained from a laboratory connected with the canning industry.

The retort must have strength sufficient for processing glass containers under water with superimposed air pressure.

At the start of each packing season, the retort should be submitted to a hydrostatic pressure test at 45 psi. pressure.

Since either vertical or horizontal retorts may be used, the

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general details of these two types will be considered collectively and the specific details outlined sparately.

Retort Installation

For proper operation each retort should have the following items of equipment:

(1) *Door or Lid-Securing Devices and Gaskets.* Before subjecting the retort to pressure, the door or lid-securing devices should be examined carefully and worn parts replaced. The gasket should be checked to make sure it is tight and in good condition. For vertical retorts it is recommended that not less than 8 wing nuts per retort be used. Consult the American Society of Mechanical Engineers, 29 West 39th St., New York 18, N. Y., Code for non-fired pressure vessels. For details regarding the ASME Code, see "Accident Prevention Manual for Industrial Operations", Section 4 Pressure Vessels, published by the National Safety Council Inc., 425 North Michigan Avenue, Chicago 11, Illinois. Section 4 may be obtained as a separate reprint.

(2) *Safety Valve.* A safety blow-off valve, of at least 2 inch size, should be provided, separate from the overflow and located above the water level. On vertical retorts this should be a side connection with piped outlet. The safety valves should comply in capacity with local safety codes or the A.S.M.E. Code for unfired pressure vessels.

(3) *By-Pass Valves.* All automatic control valves should have manually operated by-pass valves.

(4) *Steam and Air Valves.* There should be a manually operated valve before and after the steam and air control valves.

(5) *Drain Valve.* Because of the importance of maintaining the water level and preventing leakage, a 125 psi., non-clogging, water-tight valve is required.

(6) *Crate Supports.* Lugs, tracks, or a saddle type support should be used. A ring is also satisfactory for vertical retorts. In no case should baffle plates be used.

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(7) *Thermometer Pocket.* The thermometer pocket or well should:

(a) Preferably be of the hemisphere type having a minimum diameter opening into the retort wall of 9 inches (see sketch).

(b) If of the rectangular type, have a minimum opening into the retort wall of 8 inches by 8 inches.

(c) Be designed with a depth of 4 inches or more.

(d) Have a provision for the pressure gauge in the same pocket as the thermometer (see diagram, page 16).

(8) *Temperature Control and Indicating Equipment.* Adequate automatic controls are essential. Manual control of temperature is not recommended because the possibility of error is too great.

Control and indicating equipment, such as thermometers and pressure gauges, should be so placed with respect to light and position that they are easily readable.

a. *Indicating mercury-in-glass thermometer.* The thermometer should have a temperature range of not more than 100°F., for example, 170°F. to 270°F., and the scale division should be of either one degree or two degrees each—never greater than two degrees. The temperature scale of the indicating thermometer should be at least 7 inches in length. A second thermometer covering the cooling range is also advisable.

The thermometer bulbs should be located in such a position that they are beneath the surface of the water throughout the process. On horizontal retorts, it is desirable

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that this entry be made in the side at the center. The thermometer bulbs should be inserted directly into the shell.

b. *Recording temperature indicator.* The chart should be easily readable to 1°F. and should be graduated in not to exceed 2°F. divisions within the range of plus and minus 10°F. of the process holding temperature used. All charts should have a working scale of not less than 3 inches. The bulbs for these thermometers should be located adjacent to the bulb of the mercury thermometer, except in the case of a vertical retort equipped with a combination controller-recorder.

(9) *Location of Temperature Control Bulb.* In vertical retorts the temperature control bulb should be located at the bottom of the retort, below the lowest crate rest, in such a position that the steam does not strike it directly: such as in a "dead" quadrant described under (11) on page 10. In horizontal retorts, the temperature control bulb should be located between the water surface and the horizontal plane passing through the center of the retort, so that there is no opportunity for direct steam impingement upon the control bulb.

(10) *Pressure Control and Indicating Equipment.* Adequate automatic controls are essential. Manual control of pressure is not recommended because the possibility of error is too great.

a. *Water level and pressure controller.* The top layer of jars should be covered with about 6 inches of water, and the overflow located accordingly. The opening of the overflow should be larger than the water supply line. An adjustable pressure relief, or control, valve should be installed in the overflow line of a capacity sufficient to prevent increase in retort pressure when the water valve is wide open.

b. *Indicating pressure gauge.* The pressure gauge should be graduated in 1 or 2 psi. divisions and have a range of

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0 to 30, or 0 to 60 psi. The minimum diameter of the dial should be 4½ inches and the gauge should preferably be of a type in which the operating mechanism is independent of the case. The gauge should be connected to the retort by means of a gauge siphon or gooseneck. In a vertical retort the gauge should be located at the thermometer pocket. In the horizontal retort the gauge may be either in this position or at the top of the retort.

(11) *Steam Introduction.* The general requirement is for a good steam distributor in the bottom of the retort, providing uniform heat distribution throughout the retort and quick come-up time.

For vertical retorts these results can be achieved by any one of several methods. One means is an assembly of six pipes radiating from a center coupling with fish-tail nozzles at the end of each pipe and directing the steam up the walls of the retort outside the crates. Another means is a four-legged cross in which each pipe leg is perforated along one side only. The legs are arranged in opposing pairs to give alternate live and dead quadrants.

In horizontal retorts, the steam distributor should run the full length of the bottom of the retort with perforations distributed uniformly along the upper part of the pipe.

For details of installation of a steam distribution system, consult a laboratory connected with the canning industry. Details on the mode of operation where the retorts for processing glass are to be used for steam processing of metal containers may also be obtained from a laboratory connected with the canning industry.

(12) *Temperature Controls.* The steam valve arrangement should consist of an automatic, air pressure-to-open, valve or valves.

(13) *Water Level Indicator.* A means of determining the water level in the retort should be provided. This can be accomplished by using a gauge water glass or series of petcocks at different levels on the retort but should be supplemented with an automatic warning device such as that described

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below. Where the gauge water glass is used, attention should be given to proper safety factors.

Drain valves sometimes leak during a process because of the presence of a piece of glass in the valve, or for some other reason, and this may result in some of the upper layers of jars being above the water line during the process. Jars exposed in this manner would be underprocessed because of the lower temperature of the steam-air mixture. In view of this it is strongly advised that an automatic warning device, preferably actuating a horn, be installed in each retort to indicate to the operator that the water has fallen below a safe level (See *Water Level*, page 22).

(14) *Air Supply and Controls.* A reliable supply of compressed air at the proper pressure and a means of introducing it into the retort at an adequate rate are required. The air is required both to maintain water circulation and to maintain the necessary pressure (See page 22). An automatic pressure control unit is recommended for both vertical and horizontal retorts. In both, the air should be introduced with the steam at the bottom of the retort to control "chatter".

The amount of air pressure required will depend upon the steam pressure in the lines to the retort, and upon the location of the point at which the air is introduced into the steam line. It should be in the range of 50 to 70 lbs. psi. If the air pressure at this point does not exceed the steam pressure, no air will pass into the retort during the come-up period; thus, "chatter" will not be controlled. Air circulation should be maintained continuously during the process and cool to ensure uniform temperature distribution and proper temperature and pressure control.

The amount of air required to prevent "chatter" during the come-up depends to a considerable extent on the steam pressure in the line and the back pressure in the steam distributor itself. The amount of air necessary may vary from 8 to 15 cfm. Further details on the amount of air required during this period can be obtained from a laboratory connected with the canning industry.

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The amount of air required during the process and cool periods will vary with the size of the retort. Three (3) cfm is suggested for three (3) crate vertical retorts and four (4) cfm for four (4) crate vertical retorts. These requirements assume that there is no leakage from the retort either through the gasket or through the overflow valves.

A check valve should be provided in the air supply line to prevent water from the retort getting into the system. An air supply line with hand operated valve connected to the head space of the retort may also be provided for auxiliary pressure control. *A separate compressor is recommended for operating the control instruments. If a separate compressor is not provided, the air line to the instruments should be a separate line from the compressed air tank.*

(15) *Air Cleaners.* The installation of an adequate air cleaner is required in the line which supplies air for activating control valves.

(16) *Cooling Water.* A check valve should be included in the cooling water line to prevent drop of pressure in the retort in case the water pressure should fall below the retort pressure.

a. *Vertical retorts.* Cooling water should be introduced at the top below the water level, either through a minimum of four openings equally spaced around the circumference of the retort or through a ring. This recommendation assumes a feeder pipe of 1 inch minimum size with a minimum of 50 psi. water pressure at the retort. When water pressures of 80 psi. or over are encountered, the 1-inch line should be restricted or reduced to prevent excessive water flow rates or pressure during cooling.

b. *Horizontal retorts.* At the start of the cool, water should be introduced into the suction side of the pump so that the cold water can be mixed with the hot water to prevent breakage of jars from too sudden a change in temperature. Near the end of the cool, water can be admitted rapidly through the spreader in the top of the retort.

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Retort Details

1. *Vertical retorts.* The general arrangement of a suitable vertical retort is given in the diagram (page 16). Details of the piping diagrams and specifications may be obtained from a laboratory connected with the canning industry.

Several specific details of vertical retorts require special emphasis:

a. *Retort and crate diameters.* There should be a minimum of 1½ inch clearance between the side wall of the crate and the retort wall to allow ample water circulation up the retort wall. The inside diameter of the retort should be a nominal 42 inches and the outside diameter of the crates should be a nominal 38 inches. Not only should diametric clearance be provided, but centering guides should be installed to assure proper clearance between the side wall of the crate and the retort wall.

b. *Retort headspace.* A minimum of 4 inches headspace should be maintained between the top water level and the top of the retort shell.

2. *Horizontal retorts.* The general arrangement of a suitable horizontal retort is given in the diagram (page 17). Details of the piping diagrams and specifications may be obtained from a laboratory connected with the canning industry.

Several specific details of horozontal retorts require special emphasis:

a. *Water circulating system.* A water circulating system is suggested to ensure uniform heat distribution. This system should be installed in such a way that water will be drawn from the bottom of the retort through a suction manifold and discharged through a spreader which extends the full length of the top of the retort.

The size of the suction manifold, circulating system, pump, and water spreader will depend on the size of the retort. The following are suggestions for *minimum* sizes to be used:

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For retorts under 15 feet in length

1. Size of suction manifold	2 inches
2. Number and size of suction outlets from retort to manifold	Two 1½-inch, equally spaced
3. Size of circulating line and pump	2 inches
4. Size of water spreader	2 inches

For retorts over 15 feet in length

1. Size of suction manifold	2½ inches
2. Number and size of suction outlets from retort to manifold	One 2-inch outlet for each 8 feet of retort length or fraction thereof
3. Size of circulating line and pump	2½ inches
4. Size of water spreader	2½ inches

The holes in the water spreader should be uniformly distributed and should have an aggregate area not greater than the cross-section area of the outlet line from the pump.

The suction outlets should be protected with a screen to keep debris from entering the circulating system, because such debris may foul the pump and clog the water spreader holes.

The pump should be equipped with a pilot light or other signaling device to warn the operator when it is not running, and with a bleeder to remove air when starting operations.

b. *Hot water supply.* It is advisable to have a hot water supply for filling retorts in order to reduce come-up times and avoid thermal shock. A steam heated storage tank equipped with temperature controller and thermometer

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should be provided into which hot water from cooling retorts can be discharged and saved for the next cook. The hot water outlet of the tank should be connected to the retort circulating system on the suction side, so that the circulating pump can be used to pump the water from the tank into the retort.

c. *Retort headspace.* The amount of headspace necessary varies with the diameter of the retort. In general, it may be said that the water level should not be above the bottom of the water spreader.

Stacking Equipment

Crates, trays, gondolas, etc., for holding jars stacked in a vertical position should preferably be of strap iron or expanded metal. When perforated metal crates are used the perforations in the bottoms should be at least 1-inch holes on 1¾-inch centers, or their equivalent (1½-inch on 2½-inch centers, or 1¾-inch on 3-inch centers).

Maintenance of Equipment

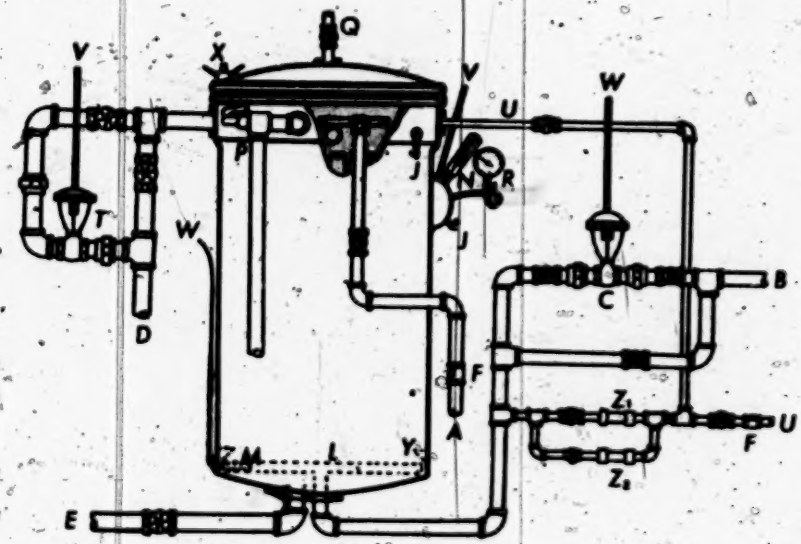
Processing equipment should be maintained in a satisfactory operating condition. The condition of the openings in the steam distribution system should be ascertained periodically to ensure continued efficiency. If a steam cross is used in a vertical retort, the position of the cross should be checked at intervals to see that the steam openings have not changed position relative to the bulb of the temperature controller, which should be in a "dead" location. Safety valves should be tested frequently. Instruments (gauges, thermometers, recorders) should be checked for accuracy at least once a year. Water valves and compressed air valves, especially the latter, should be checked frequently for leaks.

Before each operating season and after any considerable idle period, the entire retort hook-up should be examined carefully, and each retort should be brought to processing temperature (without a load) to test the system for leaks and to test the instruments and control equipment for proper operation and accurate recording.

BASIC REQUIREMENTS FOR RETORTS USED IN PROCESSING GLASS

A Water line
B Steam line
C Temperature control
D Overflow line
E Drain line
F Check valves
G Line from hot water storage
H Suction line and manifold
I Circulating pump
J Petcocks
K Recirculating line
L Steam distributor
M Temperature controller bulb
N Thermometer
O Water spreader
P Safety valve
Q Vent valve
R Pressure gauge
S Inlet air control
T Pressure control
U Air line
V To pressure control instrument
W To temperature control instrument
X Wing nuts—8 required
Y Crate support
Z_1 Constant flow orifice valve used during come-up
Z_2 Constant flow orifice valve used during cook

VERTICAL RETORTS



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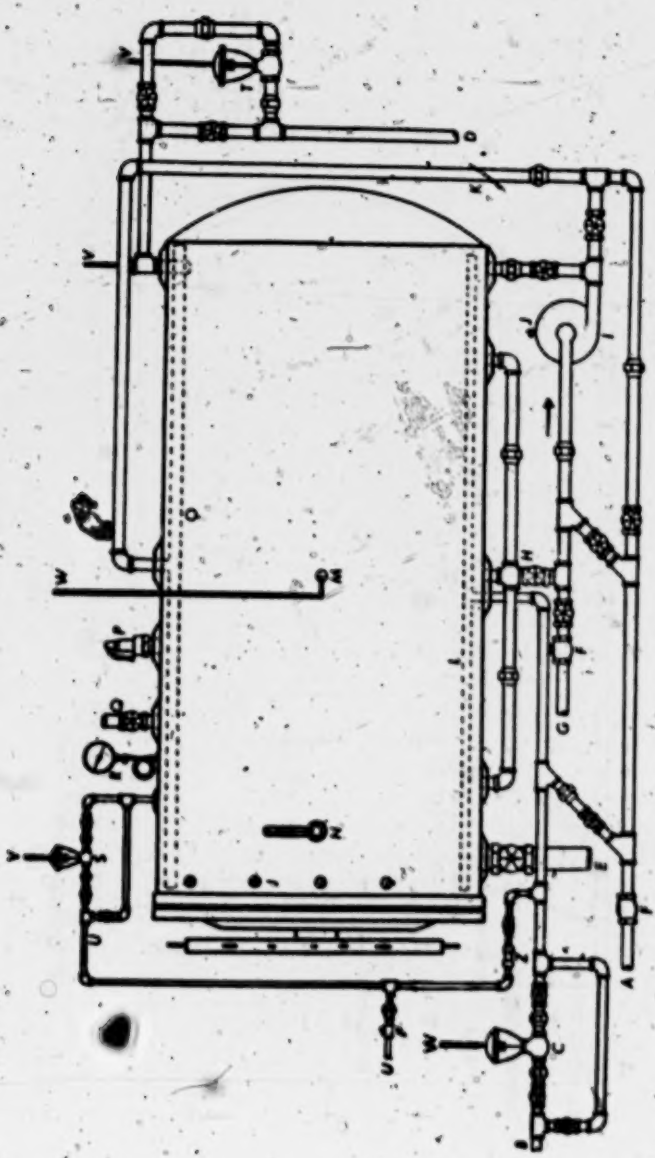

HORIZONTAL RETORTS

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PROCEDURE

The glass containers indicated in this bulletin are those sealed with friction type metal closures, which are not intended to hold internal pressure. The processing of the closed jars is effected in water filled retorts, with a top cushion of air under pressure to hold the closures in hermetic seal throughout the retort cycle.

The headspace for most products should be not less than 6% of the container volume (measured at the sealing temperature) for cooks in the range of 240 to 250°F. Unless the product temperature is very high, less headspace will not allow sufficient space for expansion of the contents of the sealed container and as a result the closure may be displaced.

The following measurements will provide adequate headspace under usual conditions:

Container	Headspace from Top of Finish (Volume in no case less than 6% of jar capacity)
Baby jar	3/16 inch
Junior jar	3/16 inch
No. 303 jar	3/8 inch
No. 2½ jar	7/16 inch

For most products, the temperature at the time of sealing must be above 130°F. Lower sealing temperatures require larger headspaces than those listed above to accommodate product expansion.

In general, retort operating pressure should be 28 to 30 psi. for cooks in the temperature range of 240-250°F.

Acidification

Unless some acidification procedure is followed, sterilization of certain low-acid foods by heat produces unmerchantable products. Notable examples are Globe artichokes and onions. Under proper control such products may be acidified to the point where they are no longer low-acid and then may be processed in boiling water. However, this procedure should not be followed without consulting a laboratory connected with the canning industry. Experience has shown that careful supervision of all details, particularly the blanch, fill and

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brine, is essential when acidification is included in the processing procedure.

Coding

All containers should be coded by marks to identify the time of packing. The time period during which each code lot is packed should be as short as practicable—in no case longer than one day. Strict adherence to this rule has proved to be good economy. Embossing code marks in metal closures is undesirable because of the possibility of corrosion. It is preferable that closure coding be done with ink.

Process

The term "process" as used in this bulletin designates the heat treatment expressed in terms of temperature and time given the product after the container is sealed. The basic, or minimum, requirement for the process for any product is that it be sufficient to destroy *Clostridium botulinum*, the organism of greatest known resistance to heat which, by reason of its survival, may be detrimental to health. There are other types of bacteria still more resistant to heat which may cause spoilage if the product is contaminated with them.

The efficiency of any process is dependent on the heat resistance and the number of contaminating bacteria in the product. In general, the processes listed in this bulletin are regarded as adequate when something greater than an average number of spoilage organisms is present. In some cases contamination by spoilage bacteria may be so high and/or the bacteria of such great resistance to heat that the suggested process may be inadequate to prevent spoilage, and it is therefore essential that all contamination be kept as low as possible. (See Appendix for information regarding precautions which should be taken to keep spoilage contamination low.)

Operation of Cook Room

In order to ensure that unprocessed or underprocessed jars do not reach the warehouse, it is recommended that:

(1) Processes for all products be posted in a conspicuous place near the retorts.

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(2) All baskets, trucks, cars or crates containing unretorted material be plainly and conspicuously marked. If several products are being packed at the same time, each product should also be plainly indicated.

(3) A distinctive marker be hung from the retort opening when the retort holds unprocessed jars. It should be so placed that the door or lid cannot be closed before the marker is removed.

(4) A retort not be closed until the operator indicates that he is ready to start the process.

(5) Jars of unknown status with regard to process, such as any found on the cook room floor, be opened and their contents discarded.

(6) Adequate precautions be taken to clear exhaust boxes and precookers of all jars at the end of each day's operations.

Rapid Handling and Prompt Retorting of Filled Jars

A long holding period between filling and sealing or between sealing and retorting jars may result in souring, off-flavor, and loss of vacuum. Processing should follow within one-half hour after sealing. If longer times are required to obtain enough jars to fill a retort, processing of partial retort loads should be practiced.

Position of Jars in Retort

Heat penetration in canned foods containing freely flowing liquid is mainly by convection currents. The general trend of these currents is in a vertical direction, consequently in the product being heated they seek channels which permit such motion. Where their progress is impeded or baffled by solid material, the currents flow around the obstruction to the nearest point at which they can pass. For this reason the alignment of certain foods in the jar is of the greatest importance as regards heat penetration.

Where the packing or filling of any product in the jar results in stratification, the jars should be processed in such position that the plane of stratification is vertical. In the case of aspara-

gus, for example, the spears are generally parallel and tightly packed in the jars in a vertical position, so that the channels containing liquid are parallel to the spears. As a result, the speed of heat penetration is greater when the jars are placed upright in the retort.

Products such as peas and cut green beans consist of small solid bodies, fairly uniform in size and evenly distributed throughout a liquid medium; consequently the rate of heat penetration is little influenced by the position of the jars in the retort.

Stacking of Jars

Jars should be so stacked as to permit the free circulation of water throughout the retort load. Solid or insufficiently perforated metal trays, crates, or gondolas should not be used, for such equipment can lead to poor heat distribution.

Initial Temperature

The term "initial temperature" as used herein designates the average temperature of the jar contents at the time steam is turned on for the process. Just prior to the start of the process, the contents of the container used for checking the initial temperature should be shaken or stirred and the temperature determined. This container should be representative of the coldest jars in the retort load and should have an initial temperature equal to or greater than the initial temperature specified in this bulletin. The specified initial temperature is to be regarded as a prerequisite minimum of the process suggested.

Where no initial temperature is specified in the tables, it is understood that this is not important between commercial limits such as 130-170°F.

Retort Cycle

In processing most products, the highest quality will result if the retort is brought to processing temperature quickly, the timing of the process is accurate, and the process is completed by prompt and rapid cooling. This procedure not only protects the quality of the product but also shortens the total time

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required for each processing cycle and so effects time economy in the use of the retort. It applies to all processing temperatures and is especially important when the temperature is above 240°F.

During the retort cycle there are a number of details that must be observed if reliable processing is to result.

Water Level. In vertical retorts the starting water level should be sufficient to cover the crates of filled jars as they are being loaded into the retort without a tendency to cause excessive overflow, yet bring the water level to the overflow pipe at the time of the loading of the last crate. To minimize thermal shock to the jars and to promote rapid heating efficiency as soon as the retort is closed, the temperature of the water should be adjusted by the introduction of water or steam to approximately that of the product in the filled jars. If the temperature of the water is more than 15°F. above the sealing temperature of the jars, there is a possibility of displacing the friction closures. The level of the water over the top layer of jars should be about 6 inches. No extra jars should be placed on the top of the last load, if they are not covered by at least this depth of water.

For efficient operation of horizontal retorts, the use of a reserve water storage tank is advised. As soon as the retort is closed, water should flow from the tank into the retort until the top layer of jars is covered by about 6 inches of water. The water temperature should be approximately that of the product in the jars at the time of sealing. Use of water at a substantially higher temperature may cause friction closures to be displaced. Water at substantially lower temperatures may cause breakage. *The water level must remain at approximately 6 inches above the top layer of jars during the entire come-up-time, cook, and cool.*

Air Pressure. The air to the bottom of the retort must be turned on immediately after closing the retort and the pressure built up promptly to the operating range. The steam is then turned on. The operating pressure must be maintained throughout the come-up, process and cool.

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Coming-up Time. Timing of the process should not begin until the specified retort temperature has been reached and agreement is noted between the recording thermometer and the mercury thermometer.

Cool. At the end of the specified process time the steam should be shut off and the operating pressure maintained with air. The cooling procedures should be those specified on pages 11 and 12 of the bulletin under Sections 14 and 16. The duration of the water cooling period either in the retort alone or in combination with cooling canals or sprays shoud be sufficient to bring the temperature of the contents to an average of 100°F. Water cooling should not be continued to the point where external rusting of the container closure may occur.

Storage

When jars whose contents are at temperatures substantially above 100°F. are stacked closely together, and especially if they are sealed in fiber cases, they cool so slowly that spoilage by thermophilic bacteria and injury by heat to the quality of the product (stack-burn) may occur. Such jars should be air cooled before they are put into storage.

CAUTION

To facilitate the presentation of the process times and temperatures in tabular form, it has been necessary to use a number of footnotes. Those who use the bulletin are cautioned to read the footnotes in connection with the tables to which they refer.

JAR DIMENSIONS

The jar sizes are given in the nomenclature usually employed in the industry, which avoids the confusion incident to conflicting local names.

In this system, the jars are identified by a statement of their dimensions (over-all diameter and over-all height). Each dimension is expressed as a number of three digits. The left-hand digit gives the number of whole inches, while the two right-hand digits give the additional fraction of the dimension expressed as sixteenths of an inch.

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The first number given in the size of each jar is the diameter, and the second number is the height. For example, a No. 2½ jar, designated as 401x414, is 4 1/16 inches in diameter and 4 14/16 inches in height, that is, within manufacturing tolerances.

The characteristics of the common sizes of glass jars covered in the Process Tables are:

Container	Dimensions	Approx. Overflow Cap.—Fl. Oz.
Baby jar	200x309	5.0
Junior jar	208x401	8.1
No. 303 jar	303x411	17.0
No. 2½ jar	401x414	28.4

In those cases where the processes apply to jars other than those listed above, the dimensions are indicated under the respective process tables. If jars having capacities or dimensions not listed in the process table are used, consult a laboratory connected with the canning industry.

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PROCESS TABLES

I.—VEGETABLES AND VEGETABLE PRODUCTS

Artichokes, Globe

Pressure cooks adequate for sterilization render artichokes and artichoke hearts unmerchantable. The Standard of Identity promulgated under the Food, Drug and Cosmetic Act requires that artichokes be acidified to ensure safe processing in boiling water and thereby ensure preservation without loss of merchantability. Careful supervision of all details, particularly blanch, fill, and brine, is essential when acidification is included in the processing procedure. These products should not be packed without consulting a laboratory connected with the canning industry.

Asparagus Spears, green (a)

Jar size	Dimensions	Initial temperature Deg. F.	Time at 240° F. Min.
14 oz. tapered	411x311x206	140	28
		170	26

Baby food, chopped: *See* Vegetables, chopped

Baby food, strained: *See* Vegetables, strained

Beans, green or wax, whole or cut

Jar size	Dimensions	Time at 240° F. Min.
303	303x411	25
2½	401x414	30

Beans, kidney: *See* Beans, mature, etc.

Beans, Lima, succulent (b)

Jar size	Dimensions	Time at 240° F. Min.
303	303x411	45

(a) These processes are for all green asparagus spears packed into the jar with the tips at the tapered or narrow end and processed tips up (cap down).

(b) For "Lima beans, dry soaked" the processes given under "Beans, mature, etc." should be used.

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Beans, Soy: *See* Beans, shelled types, succulent (except Limas)

Beans, mature, and soaked dried legumes, shelled types in unthickened sauce (*a*)

Jar size	Dimensions	Time at 240° F.
		Min.
303	303x411	60
2½	401x414	65

Beans, shelled types, succulent (except Limas) (*b*)

Jar size	Dimensions	Time at 240° F.
		Min.
303	303x411	50

Beans with pork, or baked beans (*c*)

Jar size	Dimensions	Initial temperature	Process time at 240° F.	Process time at 250° F.
		Deg. F.	*Min.*	*Min.*
303	303x411	140	100	85
303	303x411	180	85	70
2½	401x414	140	135	115
2½	401x414	180	115	95

Beets, whole, cut, quartered, diced, sliced, or shoestring (*d*)

Jar size	Dimensions	Time at 240° F.
		Min.
303	303x411	35
2½	401x414	40

(a) Classification of this type of product is rather uncertain, and if doubt exists consult a laboratory connected with the canning industry. Unthickened sauce is a packing medium that contains no tomato pulp or similar viscous material and not more than 2½ pounds of starch per 100 gallons of sauce.

(b) These processes are suggested for all succulent shelled beans (except Limas) that are packed in water, with or without, salt, sugar, seasoning, etc.

(c) The process for the sterilization of beans in sauce depends to some extent upon the sauce formulation with respect to tomato pulp and starch content. These processes apply to beans packed in a heavy sauce. If these processes result in a product of unsatisfactory quality, it is recommended that a process for a particular sauce formulation be obtained from a laboratory connected with the canning industry.

(d) If beets are lye-peeled, the cooks apply only provided the lye has been completely removed by washing.

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Carrots, whole, cut, quartered, sliced, diced or shoestring (a)

Jar size	Dimensions	Time at 240° F. Min.
303	303x411	30
2½	401x414	30

Carrots and Peas: *See* Peas and Carrots

Carrot Juice: *See* Specialties

Corn, cream style, or succotash (b)

Jar size	Dimensions	Initial temperature Deg. F.	Time at 240° F. Min.	Time at 250° F. Min.
303	303x411	160	105	80
303	303x411	180	100	75

Corn, whole kernel, in brine

Jar size	Dimensions	240° F. Min.	Time at 245° F. Min.	250° F. Min.
303	303x411	50	40	30

Corn on the cob

Processes necessary for vacuum packed corn on the cob are dependent to a marked degree upon the factors of maturity, variety, fill, amount of water added, and conditions tending to reduce the vacuum. It should not be packed without directions from a laboratory connected with the canning industry.

Hominy, lye or pearl

Jar size	Dimensions	Time at 240° F.
303	303x411	75
2½	401x414	90

(a) These cooks apply only to a brine pack. Other styles of carrots, including carrot chips, should not be packed without directions from a laboratory connected with the canning industry. If carrots are lye-peeled, the cooks apply only provided the lye has been completely removed by washing.

(b) These cooks apply to succotash prepared from cream style corn and beans. For succotash consisting of whole kernel corn and beans in brine use the processes for whole kernel corn in brine.

[fol. 804]

Onions

Pressure cooks adequate for sterilization render onions unmerchantable. It has been found necessary, therefore, to acidify this product to permit safe processing in boiling water and thereby ensure preservation without loss of merchantability. Careful supervision of all details, particularly blanch, fill, and brine is essential when acidification is included in the processing procedure. This product should not be packed without consulting a laboratory connected with the canning industry.

Peas

Jar size	Dimensions	Time at 240° F. Min.	Time at 245° F. Min.	Time at 250° F. Min.
303	303x411	45	35	25

Peas, dry-soaked: *See* **Beans, mature, etc.**

Peas, Black-eye: *See* **Beans, mature, etc.**

Peas, Crowder: *See* **Beans, mature, etc.**

Peas and Carrots

Jar size	Dimensions	Time at 240° F. Min.
303	303x411	45

Peppers or Pimientos, Green

Pressure processes adequate for sterilization render green peppers or green pimientos unmerchantable. It has been found necessary, therefore, to acidify these products to permit safe processing in boiling water and thereby ensure preservation without loss of merchantability. Acidification must be carefully controlled. For detailed procedures consult a laboratory connected with the canning industry.

Peppers or Pimientos, Red

Acidification of red peppers or red pimientos is desirable to prevent spoilage, even though it may not be necessary from the standpoint of public health. Acidification must be carefully controlled. For detailed procedures consult a laboratory connected with the canning industry.

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Potatoes, Sweet, whole, in syrup

In view of the lack of standardized canning procedures for sweetpotatoes, any packer of this product should have direct assistance from a laboratory connected with the canning industry.

Potatoes, White, sliced or diced, in brine

Jar size	Dimensions	Time at 240° F. Min.	Time at 250° F. Min.
303	303x411	40	30
2½	401x414	45	35

Potatoes, White, small whole, in brine

Jar size	Dimensions	Time at 240° F. Min.	Time at 250° F. Min.
303	303x411	35	25
2½	401x414	40	30

Pumpkin or Squash

Jar size	Dimensions	Initial temperature Deg. F.	Time at 240° F. Min.	Time at 250° F. Min.
303	303x411	160	85	70
303	303x411	180	80	65
2½	401x414	160	125	105
2½	401x414	180	110	90

Soups: *See* Specialties

Spinach: *See* Vegetables, chopped and Vegetables, strained

Squash: *See* Pumpkin or Squash

Succotash: *See* Corn, cream style

Vegetables, chopped (*a*)

Products	Jar size	Dimensions	Initial temperature Deg. F.	240° F. Min.	Time at 245° F. Min.	250° F. Min.
Beans, Green	Junior	208x401	150	55	45	40
Beets	Junior	208x401	150	50	45	40
Carrots	Junior	208x401	150	55	50	45
Spinach	Junior	208x401	150	75	65	55

(a) For strained vegetables packed in Junior jars, see processes for "Vegetables, strained".

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Vegetable juices: *See* Specialties

Vegetable salad or mixed vegetables: *See* Specialties

Vegetables, strained

Products	Jar size	Dimensions	Initial temperature	240° F.	Time at 245° F.	250° F.
			Deg. F.	*Min.*	*Min.*	*Min.*
Beans, Green	Baby	200x309	140	45	40	35
Beets	Baby	200x309	140	45	40	35
Carrots	Baby	200x309	140	50	45	40
Peas	Baby	200x309	140	60	50	45
	Junior	208x401	140	80	65	60
Spinach	Baby	200x309	140	55	45	40
Squash	Baby	200x309	140	45	40	35
	Junior	208x401	140	55	50	45
Sweet Potatoes	Baby	200x309	140	45	40	35
	Junior	208x401	140	55	50	45

II.—RIPE OLIVES (*a*)

Whole, with or without pits, in brine

Jar size	Dimensions	Time at 240° F.
		Min.
303	303x411	70
2½	401x414	70

III.—SPECIALTIES

This is a group of products which vary widely from each other in composition and which from the standpoint of processing have little in common with the standard vegetables. They not only differ from each other, but each individual specialty as prepared in different plants is likely to vary in composition and in canning procedure from the same product prepared by another packer. Because of this difference in formula and the variation in preparation methods, specialties should not be packed without directions from a laboratory connected with the canning industry.

(a) For processing minced, crushed, chopped, sliced, or other olive products, a laboratory connected with the canning industry should be consulted, as the size of particles, tightness of pack, and moisture content must be considered before the process is suggested.

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IV.—MEAT OR MEAT PRODUCTS

Due to variations in formula and methods of preparation which may affect process relationships, these products should not be packed without directions from a laboratory connected with the canning industry.

V.—CHICKEN OR CHICKEN PRODUCTS

Due to variations in formula and methods of preparation which may affect process relationships, these products should not be packed without directions from a laboratory connected with the canning industry.

VI.—MARINE PRODUCTS

Due to variations in formula and methods of preparation which may affect process relationships, these products should not be packed without directions from a laboratory connected with the canning industry.

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APPENDIX

PRECAUTIONS FOR HANDLING GLASS JARS

Glass containers can be damaged by excessive mechanical or thermal shocks. With modern high speed filling lines, particular attention should be directed toward eliminating:

1. Bruising jars by abrupt stops or careless handling.
2. Scuffing on conveyors or transfer points.
3. Excess thermal shock during filling, processing or cooling.

The damage done to filled containers by impacts usually is greater than that to empty containers because of the added weight of the contents.

The hermetic seal of the friction closures applied to the jars can be maintained by careful attention to:

1. Maximum filling temperature of product.
2. Adequate headspace in the glass jar.
3. Correct application of the closure.
4. Proper temperature of water during retort loading.
5. Ample counterpressure in retort during processing and particularly during cooling.
6. Proper heat distribution in the retort.
7. Provision for ample cooling after retorting.

GENERAL SOURCES AND CONTROL OF SPOILAGE CONTAMINATION

The efficiency of any process depends in large measure upon the type and number of microorganisms in the product at the time of canning. In general, the processes presented in this bulletin are regarded as adequate when something greater than an average number of spoilage organisms is present. They are not necessarily adequate in cases of extreme contamination by spoilage bacteria that may or may not be associated with insanitary conditions. Control of contamination by applying the strict principles of sanitation, and by other appropriate means, is a necessary adjunct to any process.

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Factory surveys during the past twenty years to determine the identity of contamination sources and to develop means for their elimination have shown that the important sources of contamination are within the canning plant. There are exceptions, notably in the case of asparagus, where soil contamination of the raw product may be a cause of spoilage. As soil bacteria brought into the plant may increase in number and lead to spoilage, the raw product, whenever its character permits, should be thoroughly washed in clean water.

Factory studies to date have centered chiefly upon the canning of asparagus, corn, peas, pumpkin, and spinach, but facts developed in these studies are applicable to other products. Accordingly, use of the following information should serve to control contamination to a degree that will ensure the effectiveness of the processes presented in this bulletin.

Wooden equipment

In general, the use of wood in canning equipment is not recommended, for bacteria may become seeded in the pores and once established may contaminate food materials to such an extent that spoilage may occur with a process that has been satisfactory for years. Any wooden equipment with which food materials may come in contact, such as brine and hot water tanks, conveyors, blanchers, canning tables and even such small items as paddles and rollers, may act as carriers of contamination. For example, wooden tanks used for storage of hot water for general plant purposes may contaminate a whole canning system. Wooden brine tanks, at the beginning of a day's run, may supply large numbers of organisms to the product being canned. Owing to dilution their number decreases markedly during steady operation, only to build up again during a shutdown. Wood, being porous, is able to retain bacteria and hold them mechanically immune from scrubbing and other cleaning processes. "Seeding" may be prevented to a considerable degree by constant cleaning, but in spite of all that may be done, there is at present no practical treatment which will rid wood of organisms that are established in it. Consequently, it has been recommended that tanks

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and other wooden equipment be replaced by those of hard surfaced construction.

Pumps, pipes, extractors, cyclones, etc.

Pumps, pipes, extractors, cyclones, etc., should be selected from the standpoint of ease in cleaning, because such equipment may hold food material that will serve as a medium for bacterial growth and permit the development of sufficient organisms to contaminate seriously the first part of the next day's pack. All such equipment should be thoroughly cleaned after being used, then thoroughly cooled with water and kept cool until next operated. It should likewise be flushed again with water immediately before it is used.

Care should be taken during the cleaning operation to blow steam through the perforations of steam distribution pipes which are submerged in food or brine during operation and to note that all perforations are open. Circulating "feeder" pipes should be thoroughly cleaned at the close of the day's pack. Preferably, they should be so constructed that they may be dismantled and cleaned with brushes. "Dead ends" should be eliminated wherever possible; if not, they should be provided with drains so that they may be thoroughly flushed. Pumps should be dismantled during the clean-up operation and only pumps adapted to daily cleaning should be used. Some persons should be delegated to inspect all cleaning operations to ensure that this work is efficiently done.

Fluming

Flumes, such as those used for conveying peas and whole grain corn, may become sources of bacterial contamination. In particular, the use of water at temperatures in the range of 100°F. to 180°F. should be avoided since this may provide a favorable condition for growth of thermophilic spoilage bacteria. It is advisable to use only fresh, clean, cold water for fluming purposes.

Fillers

Filling machines used with low-acid products have been found to be contaminated with spoilage bacteria. This con-

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tamination is usually the result of the filler being maintained at temperatures within the thermophilic growth range. This might occur during operation from contact with a heated product or during shut-down periods from leakage of steam supply valves.

Fillers should be dismantled and cleaned as frequently as practicable. After the day's clean-up, the fillers should be flushed with cold water with all machinery in motion to chill the equipment, and the fillers should be left clean, cold, and empty during the overnight shutdown. If the filler operates at temperatures within the thermophilic range during actual packing operations, it should be emptied of its product every 4 hours and thoroughly flushed with water with all machinery kept in motion.

Canning ingredients

In recent years there has been a growing appreciation of the importance, as carriers of spoilage contamination, of certain ingredients commonly used in canning. Among these are sugar, starch, flour, and dried milk. Of these, sugar and starch are most important and are further discussed on page 35.

SPECIFIC SOURCES OF SPOILAGE CONTAMINATION

In addition to the preceding general information on sources of contamination, canners of certain products upon which extensive investigations have been made will find of value the following additional information and suggestions.

Corn

PREHEATING SYSTEMS, MIXING AND BLENDING TANKS. The increasing use of mixing and blending equipment in which corn is handled while hot has demonstrated further need for contamination control. Such equipment while hot (180°F. or higher) does not permit the growth of spoilage bacteria, but in the range of 100°F. to 180°F. there is opportunity for development of thermophilic organisms. Usually this development occurs over night and during shutdowns, and the spores which develop during those times serve subsequently to contaminate

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the run. As a rule, it is best to hold the tanks empty over night. However, there appears to be no objection to holding them full of cold water provided care is taken to ensure that there are no leaky valves in the line which might tend to warm the equipment. Care should be taken during the cleaning operation to blow out perforated steam supply pipes; otherwise they may hold food material that will serve as a bacterial medium. Flushing and cooling may be accomplished conveniently by tapping a cold water line into the steam supply line adjacent to the mixer and blending tank.

CIRCULATING SYSTEMS. Such systems represent another step in complexity from the preheating systems. The circulating feeder pipes should be thoroughly cleaned at night and preferably they should be so constructed that they may be dismantled and cleaned with brushes.

WHOLE KERNEL CORN. With this product special care should be taken to prevent contact with wooden equipment and, after being cut, the corn should be subjected to an efficient wash. The use of warm water or hot water in flotation washers should be avoided since such practice may lead to the rapid development of spoilage bacteria. Failure to wash the cut corn properly may result in spoilage.

Peas

The recommendations made with respect to control of blancher contamination in the canning of peas apply also to other products, such as lima beans and green and wax beans, that are blanched in a conventional pea blancher.

BLANCHERS. Both rotary drum blanchers and tubular blancher systems may become contaminated with thermophilic spoilage bacteria. The contamination which occurs during shut-down periods can be minimized by prompt cooling of the blanchers after use, by thorough cleaning, elimination of steam leaks, and flushing of the blancher system before its next use. However, thermophilic contamination may also occur during operation of either type of blancher system.

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In rotary drum blanchers the contaminating bacteria are able to grow on the inner surfaces, above the water line, where temperatures are reduced by cool air drawn into the blanchers under loose-fitting doors and other openings. Any surface in the blancher where the temperature ranges between 100°F. and 180°F. can be the site of bacterial growth from which heat-resistant spores will be washed by condensate into the blanch water, and there contaminate the peas.

Efforts to prevent contamination in rotary drum blanchers should be directed toward elevating inner surface temperatures above 180°F. Blancher doors should be closed and fastened at all times. Doors which are bent or otherwise out of shape should be repaired in order to exclude as much cool air as possible. Vent stacks should be eliminated from the shell of the blancher. The coldest sections within a drum blancher are at the feed end. The use of a spray, inserted at the upper edge of the feed end, which delivers hot water (190°F. or higher) over the inside surfaces has been found useful in preventing contamination. During operation the temperature of the blanch water should be as high as practicable (at least 180°F.), and the reels should be kept in motion continuously while the blanchers are being heated or being held at operating temperature. A continuous overflow from the blancher should be maintained during operation.

The blancher water should be dumped as often as practicable since the number of bacterial spores in the water increases with time and use. The drain and water supply pipes should be of sufficient size to permit rapid draining and re-filling.

In tubular blanching systems a large percentage of the flat sour spore contamination occurs in the de-watering reel into which the peas are discharged from the blanchers. Thermophilic bacteria grow on the mesh of the screen and on the surfaces of the splash boards around the reel and the pan underneath. Spores produced by the bacteria are added to the peas as they pass through the reel or may be washed into the water and re-circulated in the blancher. This contamination can be reduced if sprays are installed to wash the surface

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of the reel with water which is preferably, but not necessarily, chlorinated. The use of cold water for this purpose is desirable to lower the temperature of the peas before they enter the quality grader. Sprays should also wash down the inner surfaces of the splash boards or canopy surrounding the reel. Tests have indicated that cold water is effective in reducing flat sour contamination when used in these sprays. The foam which accumulates on tanks supplying recovered water to tubular blanchers can be the growth site for thermophilic spoilage bacteria. A large, broad overflow should skim the surface of the tank. Top sprays delivering streams of water at a flat angle will help prevent the formation of foam and aid in skimming the tank.

It is important that peas be washed thoroughly after blanching. Adequate washing will remove large numbers of spoilage bacteria but cannot be depended upon to remove all of the bacteria added by a heavy contamination. Washing with cold water will reduce the temperature of the peas and thus help to minimize slime growth in subsequent equipment and prevent undesirable temperature increases in the quality grader brine.

Pumpkin

Practice in pumpkin canning is not standardized and the following suggestions are based upon a study of systems used by a majority of the pumpkin canners. Consideration of sources of contamination in pumpkin canning begins with the wilting equipment.

WOODEN BOX OR TOWER WILTERS. As already noted, wooden equipment is objectionable, but it may be lined with metal if this is practicable.

CONTINUOUS METAL OR WOODEN BOX WILTERS. Both metal and wooden boxes used as continuous wilters may be sources of contamination. They are difficult to clean and cool.

CONTINUOUS CONVEYOR PRESSES. There are various modifications in this type of equipment but the same principle is involved, that is, the pumpkin from the wilter is dropped into a

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hopper and carried between two moving belts. The distance between the belts gradually decreases toward the outlet end, and the pressure that is exerted squeezes the juice from the pumpkin. These presses are complicated mechanically and the parts vary in temperature. Where the temperature is favorable to thermophilic growth there may be some bacterial development. Some measure of control may be exerted by spraying the press "apron" with cold water, but this expedient is not fully satisfactory. From the viewpoint of contamination control the screw type press is much to be preferred. In this equipment the pumpkin is "wormed" through a tapering perforated screen. During operation, the temperature of all parts is so high (180°F. to 200°F.) that no growth is possible. The screw press is readily accessible for cleaning.

CONCENTRATION OF PUMPKIN JUICE: It is usual to discard the juice from the press, but in some cases it is the practice to concentrate this juice and add it to the pumpkin at the finisher. This system is satisfactory when the general packing procedure is such as to keep contamination at a low level. However, the concentration of contamination is increased as the volume of juice is reduced by evaporation, and such contamination as may be present is returned to the product when the juice is not discarded.

Spinach

WASHERS: Spinach washers include "immersion," "spray-rotary" and "spray-belt" types. They are used singly, in multiple, and in various combinations. Their primary function is to remove grit and adhering soil and concurrently the soil-borne bacteria which are present. In all types of equipment, the washing efficiency is determined, at least in part, by the amount of water used. Thorough washing is of primary importance and a large volume of water is required. Washers should not be overloaded because this reduces their efficiency. When both immersion and spray types are used in the same line, better results are achieved if the immersion washer is placed before the spray washer. The first washing should always be done with cold water. The use of warm water in

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the first wash may lead to increase of bacteria that come from the field with the spinach, thus contaminating the equipment. Water should not be re-circulated where a single washer is used.

BLANCHERS: Blanching equipment may be a source of spoilage bacteria, particularly those of the thermophilic group. To minimize the hazards of spoilage from this source, the washing and cooling treatments previously discussed should be applied. Occasionally pea blanchers have been used, but as this type of equipment is difficult to clean there is opportunity for the development of spoilage organisms. Spoilage has been traced to such a blancher and its use is therefore not recommended. The blanch water should be renewed at a reasonably rapid rate.

SIGNIFICANCE OF SUGAR AND STARCH CONTAMINATION

Sugar, both beet and cane in dry or liquid form, may carry spores of all three groups of thermophilic bacteria that are important as spoilage agents in low-acid canned foods. The sugar industry is aware of this condition and has taken steps to control thermophilic contamination in its products. In 1931 the National Canners Association formulated and published bacterial standards for sugar as a basis for its judgment regarding the suitability of sugar to be used in canning low-acid products. These standards have been applied by control laboratories connected with the canning industry, by the sugar industry, by federal and state laboratories, etc. That part of the published statement referring to standards reads as follows:

TOTAL THERMOPHILIC SPORE COUNT: For the five samples examined, there shall be a maximum of not more than 150 spores and an average of not more than 125 spores per 10 grams of sugar.

FLAT SOUR SPORES: For the five samples examined, there shall be a maximum of not more than 75 spores and an average of not more than 50 spores per 10 grams of sugar.

THERMOPHILIC ANAEROBIC SPORES: These shall be present in not more than three of the five samples and in any one

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sample to the extent of not more than four of six tubes inoculated by the standard procedure.

SULFIDE SPOILAGE SPORES: These shall be present in not more than two of the five samples and in any one sample to the extent of not more than five spores per 10 grams.

Sugar that is certified as suitable for use in the canning of low-acid products is produced by large manufacturers of both beet and cane sugar. It is recommended that canners of low-acid products specify that such sugar be provided, and it is suggested as an added safeguard that samples of delivery be submitted from time to time to a laboratory connected with the canning industry to determine whether deliveries conform to specifications. In collecting dry sugar samples, five individual ½ lb. quantities should be taken from each of five bags or other containers of the shipment or lot in question. These samples should be sent to the laboratory in clean, sealed containers. If samples from more than one shipment or lot are submitted each container should be appropriately marked to distinguish the lot of its origin.

It is appreciated that the adequacy of this sampling will vary in relation to the size of the shipment or lot, but it is felt that where there is any significant variability in the shipment this fact will become evident in the majority of cases through individual tests on five samples.

For sampling liquid sugar, three individual samples of approximately 6 oz. each should be drawn from the tank or pumping line. The first sample should be taken at the beginning of the pumping operation, the second at the mid-point and the third near the end of the pumping. Each sample should be sealed and marked with its number and the designation of the lot of its origin.

The significance of starch contamination has also been demonstrated and starch to be used in the canning of low-acid products should be purchased on specification. The standards for sugar contamination apply also to starch and other cereal ingredients, and periodic laboratory checks are desirable.

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DAILY PROCESS RECORD CARD

Location _____ Date _____ 19____

Product	Temp. chart No.	Batch	Retort No.	Size jar	No. jar	Code	Time in	Time up	Time out	Cook min.	Thermometers		Gauge pressure
											Mercury	Recording	

Retort Operator

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IMPORTANT POINTS FOR RETORT OPERATORS

1. Read carefully the entire introduction to NCA Bulletin 30-L.
2. Don't trust your memory on processes. Consult Bulletin 30-L.
3. Keep retort instruments and valves in good working order. Instruments need periodic testing.
4. Keep water level up to overflow and maintain water circulation throughout entire cook.
5. Don't start timing process until the thermometer shows the desired temperature.
6. Maintain the proper operating pressure throughout the entire processing cycle.
7. Timing the process is only part of the job. Keep the retort temperature correct.
8. Don't allow crates of jars to stand around before processing. Spoilage may result. See page 20.
9. Keep permanent time and temperature records of every retort load processed. See opposite page.
10. Cool jars properly. Too little cooling may cause either stackburn or spoilage; too much may cause rusting of caps.

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[fol. 821] GOVERNMENT'S EXHIBIT 318

NATIONAL CANNERS ASSOCIATION
RESEARCH LABORATORY

PROCESSES FOR LOW-ACID CANNED FOODS IN METAL CONTAINERS

BULLETIN 26-L

Eighth Edition

WASHINGTON, D. C.

December, 1955

[fol. 822]

IMPORTANT POINTS FOR CANNERS

1. *Follow approved procedures.* The procedures given in this bulletin are based on sound theory and wide practical experience. For safe processing it is important that they be carefully followed.

2. *Keep your key men informed.* Irregularities in cook room procedure, such as unprocessed cans getting into the warehouse, inadequate venting of retorts during coming-up period, and using a wrong process, will occur unless the cook room is properly supervised. Insist that all supervisory personnel and retort operators read this booklet and understand the significance of the tasks they perform.

3. *Equip your retorts properly.* Tested and properly installed retort instruments are essential. Instruments need periodic testing.

4. *Don't reduce processes.* Processes in this bulletin give the highest quality consistent with safety.

5. *Code your cans.* The time period during which each code lot is packed should be as short as practicable—in no case longer than one day.

6. *Keep your factory clean.* High bacterial contamination may lead to spoilage. See Appendix.

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PREVIOUS EDITIONS

First, January, 1930
Second, June, 1931
Third, June, 1937
Fourth, April, 1939
Fifth, May, 1942
Sixth, March, 1946
Seventh, June, 1950

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1955

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PROCESSES FOR LOW-ACID CANNED FOODS IN METAL CONTAINERS

INTRODUCTION

ON JANUARY 18, 1930, the Board of Directors of the National Canners Association approved for publication the processes suggested for various low-acid foods packed in metal containers. It was anticipated that further experimental work on processes for these foods, changes in the style of pack, and the advent of new products would necessitate revision of the publication at later dates. The first edition of the processing bulletin was published in January, 1930, and this is the eighth edition. The processes given in the present bulletin are based upon technological data relating to the heat resistance of spoilage bacteria in canned foods and upon data pertaining to heat penetration in canned foods.

In some instances process suggestions are based upon analogy with similar products for which heat resistance and heat penetration data are available, and also on the general experience of the canning industry.

It should be understood that when further data and information are available the bulletin will be revised, and previous editions should be discarded.

Prefacing the list of processes are recommendations with respect to proper retort equipment and its operation for best results. A thorough understanding of these recommendations is necessary for the best use of the bulletin and is essential for the correct interpretation and proper use of the processes.

Following the list of processes is an appendix which gives information regarding sources of spoilage contamination and its control; the significance of sugar and starch contamination; and Federal minimum drained weights for spinach and mushrooms for which maximum drained weights are specified in conjunction with process recommendations.

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While the procedures recommended in this bulletin are based on sound theory and wide practical experience, references to methods or types of equipment are not to be construed as a guarantee of their sufficiency. The recommendations contained herein are not to be considered as creating any assurance or warranty with respect to production or cost or any responsibility for damage, spoilage, loss, accident or injury resulting from the use of this information by anyone.

IMPORTANCE OF PROPER EQUIPMENT AND PROCEDURE

Close supervision of the cook room and careful attention to details are essential to ensure successful processing; otherwise, irregularities may occur due to poor organization of the cook room, to carelessness, or to ignorance of safe practices.

In order to be certain that all cans secure the amount of heat treatment required to prevent spoilage, careful control and recording of temperatures and adequate venting of air from all parts of the retort are essential, because processes for canned foods are determined by tests made with the cans in "pure" steam (free of air) at a definitely controlled and specified temperature, and when these processes are applied in commercial practice identical conditions must be met. The suggestions under "Equipment" and "Procedure" are based on the results of careful studies to determine what type of equipment and procedure may be relied upon to give the required heat treatment under commercial conditions.

EQUIPMENT

Type of Retort

The processes contained in this bulletin are for discontinuous, non-agitating (still) retorts. For other types of retorts, processes should be obtained from a laboratory connected with the canning industry. For retorts to be used in processing metal or glass containers under water with superimposed air pressure, see NCA Bulletin 30-L.

Retort Equipment

Control and indicating equipment such as thermometers and pressure gauges should be so placed with respect to light and position that they are easily readable.

For proper operation each retort should have the items of equipment named below:

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(1) *Controller.* An automatic controller to maintain accurately the temperature at the specified point.

(2) *Indicating Mercury-in-Glass Thermometer.* This thermometer should have a temperature range of not more than 100°F., for example, 170°F. to 270°F., and the scale divisions should be of either one degree or two degrees each—never greater than two degrees. The temperature scale of the indicating thermometer should be at least 7 inches in length, and the thermometer should have a pressure scale corresponding to the temperature scale at the altitude above sea level at which the retort is located. The relation between the temperature and pressure scales at various altitudes is given in the table on page 20. The pressure scales of all thermometers should be adjusted in correspondence with these data.

Bulbs of indicating thermometers may be installed within the retort shell or in external wells attached to the retort. External wells should communicate with the principal chamber of the retort through openings having an area not less than that of a circle of ¾-inch diameter. All external wells or pipes must be equipped with at least 1/16-inch bleeders so located as to provide a full flow of steam past the entire length of the thermometer bulb. The bleeder should emit steam continuously and freely during the processing period. A suitable thermometer well is shown in the sketch. If containers are processed under water, the hemispherical well shown in Bulletin 30-L should be used.

(3) *Recording Thermometer.* The chart should be easily readable to 1°F. and should be graduated in not to exceed 2°F. divisions within the range of plus or minus 10°F. of the process holding temperature used. All charts should have a working scale of not less than 3 inches. The bulb may be installed within the retort shell or in a thermometer well attached to the shell. This well should be capable of accommodating both the recorder bulb and a mercury-in-glass thermometer.

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(4) *Pressure Gauge.* The pressure gauge should be graduated in 1-pound divisions, and have a range to 30 pounds. The minimum diameter of the dial should be 4½ inches and the gauge should preferably be of a type in which the operating mechanism is independent of the case. Compound type gauges having both vacuum and pressure scales, are advantageous The gauge should be connected to the retort by means of a gauge siphon or goose neck.

(5) *Stacking Equipment.* Baskets, trays, gondolas, etc., for holding stacked cans should preferably be of strap-iron. Solid or insufficiently perforated metal trays, dividers, crates, or gondolas should not be used, for such equipment can lead to the formation of low temperature regions. When perforated metal baskets are used the perforations in the bottoms should be at least 1 inch holes on 1¾ inch centers, or their equivalent (½ inch on 1 inch centers, ¾ inch on 1½ inch centers, 1½ inch on 2½ inch centers, or 1¾ inch on 3 inch centers).

(6) *Stacking of Cans.* Cans should be so stacked as to permit the free circulation of steam throughout the retort load. If it is necessary to separate two lots in one crate or tray, fish net or onion sacks of ½ inch, or larger, mesh should be used rather than burlap or other tightly woven material.

(7) *Valve-Controlled Vents.* Vents are *large* valve-controlled openings into retorts used for elimination of air during the come-up period. They should be installed in such a way that all the air can be removed from the retort before timing of the process is started. Vents should be controlled by gate, or plug-cock type valves which should be fully open to permit rapid discharge of air from the retort during the coming-up period. The vents and all external lines, manifolds, etc. should be short and as free as possible from bends and other conditions which might retard rapid discharge of air. The outlet pipes should be located in the extreme opposite wall of the retort from that through which the steam is admitted.

No single venting specification is entirely applicable to all retorts, because the choice of a satisfactory specification is dependent upon size, shape, and present equipment of retorts, as well as upon quantity and pressure of steam available,

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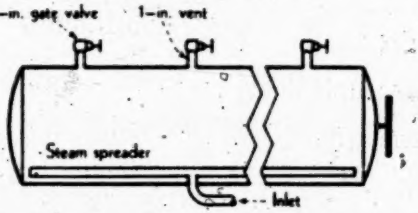
method of stacking cans in the retort, length of coming-up time desired, resistance to outward flow of air from the retort, etc.

Six suggested installations and operating procedures are given in the following diagrams. *Increased venting may be necessary when systems employing divider plates between each layer of cans are used. Where such systems are used, consult a laboratory connected with the canning industry.*

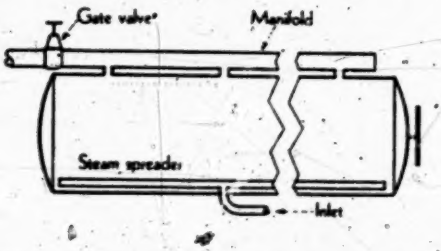
A—Venting through multiple 1-in. vents discharging directly to atmosphere



Specifications: One 1-in. vent for every 5 ft. of retort length, equipped with a gate valve and discharging to atmosphere; end vents not more than 2½ ft. from ends of retort.

Venting method: Valve should be wide open for at least 5 minutes to at least 225°F., or for at least 7 minutes to at least 220°F.

B—Venting through multiple 1-in. vents discharging through a manifold to atmosphere



Specifications: One 1-in. vent for every 5 ft. of retort length; end vents not over 2½ ft. from ends of retort;

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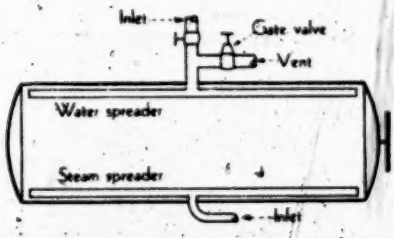
size of manifold—for retorts less than 15 ft. in length, 2½-in.; for retorts over 15 ft. in length, 3-in.

Venting method: Manifold vent valve should be wide open for at least 6 minutes to at least 225°F., or for at least 8 minutes to at least 220°F.

C—Venting through water spreaders



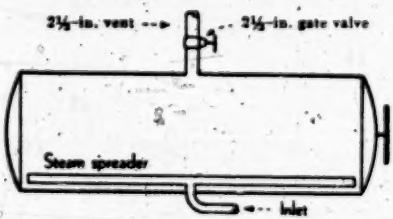
Size of water inlet, vent pipe, and vent valve: For retorts less than 15 ft. in length, 2-in.; for retorts over 15 ft. in length, 2½-in.

Size of water spreader: For retorts less than 15 ft. in length, 1½-in.; for retorts over 15 ft. in length, 2-in.

Number of holes in water spreader: This is an important consideration, and may be governed by local regulations; if not, a laboratory connected with the canning industry should be consulted.

Venting method: Water spreader vent valve should be wide open for at least 5 minutes to at least 225°F., or for at least 7 minutes to at least 220°F.

D—Venting through a single 2½-in. top vent (for retorts not exceeding 15 ft. in length)



Specifications: A 2½-in. vent equipped with a 2½-

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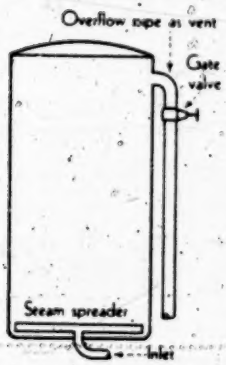
in. gate valve and within 2 ft. of the center of the retort.

Venting method: Valve should be wide open for at least 4 minutes to at least 220°F.

E—Venting through a 1½-in. overflow



Specifications: A 1½-in. overflow pipe equipped with a 1½-in. gate valve and with not more than 6 ft. of 1½-in. pipe beyond the valve.

Venting method: Valve should be wide open for at least 4 minutes to at least 218°F., or for at least 5 minutes to at least 215°F.

F—Venting through a single 1-in. top vent

Specifications: A 1-in. vent in lid, equipped with a 1-in. gate valve and discharging directly into the atmosphere.

Venting method: Valve should be wide open for at least 5 minutes to at least 230°F., or for at least 7 minutes to at least 220°F.

(6) *Bleeders.* Besides the thermometer bleeders, additional bleeders are necessary, located in the extreme opposite wall of the retort from that at which steam is admitted. These bleeders should be of ⅛-inch size. A horizontal retort should have one

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bleeder within 12 inches of each end and additional bleeders not more than 8 feet apart. A vertical retort should have one bleeder at the end opposite to that at which steam is admitted. Bleeders should be open and emit steam continuously and freely during the entire process, including the coming-up time. All bleeders should be arranged in such a way that the operator can observe that steam is escaping during the process.

(7) *Drain Valve.* There should be a drain valve of adequate size to permit the rapid removal of water after cooling. Under some operating conditions the drain valve may be used as a vent.

(8) *Steam Line.* The steam line should lead to a perforated pipe within the retort. The pipe should be so perforated as to ensure proper distribution of steam during the processing period. With horizontal retorts the perforated pipe should extend along the bottom for the entire length of the retort and the perforations should be along the top of this pipe. In vertical retorts the perforated pipe is usually in the form of a cross with the perforations along the top or sides of the pipe.

(9) *By-Pass.* A steam by-pass for the control valve is desirable to make possible hand operation of the retort in the event of a breakdown of the control valve, and also to admit steam rapidly during the coming-up period when steam is usually demanded in larger quantities than the control valve is capable of handling. This steam by-pass should be at least equal in diameter to the pipe bringing the steam to the retort.

(10) *Safety Valve.* Safety valves of adequate capacity are necessary to prevent excess pressure in retorts. These should comply with local safety codes or the A.S.M.E. code for unfired pressure vessels. For details regarding the A.S.M.E. code, see "Accident Prevention Manual for Industrial Operations", Section 4 Pressure Vessels, published by the National Safety Council Inc., 425 North Michigan Avenue, Chicago 11, Illinois. Section 4 may be obtained as a separate reprint.

Pressure Cooling Equipment.

If the cans are to be cooled under pressure, equipment in addition to that described above will be necessary. For information in regard to such equipment or in regard to the oper-

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ation of retorts, a laboratory connected with the canning industry should be consulted.

Maintenance of Equipment

Processing equipment should be maintained in a satisfactory operating condition. Safety valves should be tested frequently. Instruments (gauges, thermometers, recorders) should be checked for accuracy at least once a year. Water valves and compressed air valves, especially the latter, should be checked frequently for leaks.

Before each operating season and after any considerable idle period, the entire retort hook-up should be examined carefully, and each retort should be brought to processing temperature (without a load) to test the steam line for leaks, to check the vents, and to test the instruments and control equipment for proper operation and accurate recording. Never introduce water into an empty retort after testing until the pressure has been released.

PROCEDURE

All cans should be so closed and processed that the ends will remain concave under all commercial storage conditions regardless of temperature and altitude. To satisfy such conditions, commercial experience has indicated that with products packed in brine without steam flow or mechanical vacuum closure, the average temperature (temperature of the contents of the can after thorough mixing) of the contents of each can at the time of closure should be at least 130°F. Cans of large diameter may require a much higher closing temperature to prevent distortion of the ends during processing. For many products a higher vacuum than that obtained from having an average closing temperature of 130°F. will be necessary in order to maintain the canned product in good condition.

Acidification

Unless some acidification procedure is followed, sterilization of certain low-acid foods by heat produces unmerchantable

products. Notable examples are Globe artichokes, onions and green peppers. A health hazard is involved in the case of insufficient acidification. Under proper control such products may be acidified to the point where they are no longer low-acid and then be processed in boiling water. However, this procedure should not be followed without consulting a laboratory connected with the canning industry. Experience has shown that careful supervision of all details, particularly the blanch, fill and brine, is essential when acidification is included in the processing procedure.

Coding

All containers should be coded by marks to identify the time of packing. The time period during which each code lot is packed should be as short as practicable—in no case longer than one day. Strict adherence to this rule has proved to be good economy.

Process

The term "process" as used in this bulletin designates the heat treatment expressed in terms of temperature and time given the product after the container is permanently sealed. The basic, or minimum, requirement for the process for any product is that it be sufficient to destroy the organism of greatest known resistance to heat which, by reason of its survival, may be detrimental to health.

The efficiency of any process is dependent on the heat resistance and the number of bacteria in the product. In general, the processes presented in this bulletin are regarded as adequate when something greater than a minimum number of spoilage organisms is present. In some cases contamination with spoilage bacteria may be so high and the bacteria of such great resistance to heat that the suggested process may be inadequate to prevent spoilage, and it is therefore essential that such contamination be kept as low as possible. (See Appendix for information regarding precautions which should be taken to keep the number of spoilage organisms at a minimum.)

Operation of Cook Room

In order to minimize the possibility of mistakes and reduce

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the danger of unprocessed or underprocessed cans reaching the warehouse, it is recommended that:

(1) Processes for all products being packed be posted in a conspicuous place near the retorts.

(2) All baskets, trucks, cars or crates containing unretorted material be plainly and conspicuously marked. If several products are being packed at the same time, each product should also be plainly indicated.

(3) A distinctive marker be hung from the retort opening when the retort holds unprocessed cans. It should be so placed that the door or lid cannot be closed before the marker is removed.

(4) A retort not be closed until the operator indicates that he is ready to start the process.

(5) Cans of unknown status with regard to process and found on the cook room floor be picked up periodically, punctured and thrown out.

(6) Adequate precautions be taken to clear exhaust boxes and precookers of all cans at the end of each day's operations.

Rapid Handling and Prompt Retorting of Filled Cans

A long holding period between filling and closing or between closing and retorting cans may result in souring, off-flavor, and loss of vacuum. Depending upon the nature of the product, processing should follow within one-half to one hour after closure. If longer times are required to obtain enough cans to fill a retort, processing of partial retort loads should be practiced.

Position of Cans in Retort

Heat penetration in canned foods containing freely flowing liquid is mainly by convection currents. The general trend of these currents is in a vertical direction, consequently in the product being heated they seek channels which permit such motion. Where their progress is impeded or baffled by solid material, the currents flow around the obstruction to the nearest point at which they can pass. For this reason the alignment of certain foods in the can is of the greatest importance as regards heat penetration.

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Where the packing or filling of any product in the can results in stratification, the cans should be processed in such position that the plane of stratification is vertical. In the case of asparagus, for example, the spears are generally parallel and tightly packed in the cans in a vertical position, so that the channels containing liquid are parallel to the spears. As a result, the speed of heat penetration is greater when the cans are placed upright in the retort.

Another example is spinach. In No. 10 cans especially, the spinach is placed in more or less horizontal layers. Convection currents, therefore, travel to the center of the cans faster when the cans are processed on their sides than when in a vertical position.

Products such as peas and cut green beans consist of small solid bodies, fairly uniform in size and evenly distributed throughout a liquid medium; consequently the rate of heat penetration is little influenced by the position of the cans in the retort.

Initial Temperature

The term "initial temperature" as used herein designates the average temperature of the can contents at the time steam is turned on for the process. Just prior to the start of the process, the contents of the container used for checking the initial temperature should be shaken or stirred and the temperature determined. This container should be respresentative of the coldest cans in the retort load and should have an initial temperature equal to or greater than the initial temperature specified in this bulletin. The specified initial temperature is to be regarded as a prerequisite minimum of the process suggested. If a can is closed at a temperature higher than that of the canning room atmosphere and is then held for some time in the room before it is processed, the contents will cool but the temperature at the center of the can may not be appreciably less than the closing temperature. It is for this reason that, from the standpoint of sterilization, the contents of the container should be stirred or shaken and the initial average temperature determined just prior to the start of the process.

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"Initial temperature" should not be confused with "closing temperature". Except when vacuum packing or steam flow closure is practiced, the closing temperature is the major factor influencing the final vacuum obtained in the cans and is an important consideration in preventing undue can strain or damage during processing and cooling and in avoiding development of flippers. The closing temperature must be sufficiently high to satisfy these needs, and this will, in many instances, result in initial temperatures considerably above the minimum specified as a prerequisite to the processes listed.

Starting a Process—Venting—Coming-up Time

At the time the steam is turned on, all bleeders and all valve-controlled vents should be wide open. All bleeders should be left open during the processing period.

Venting. The valve-controlled vents should be left open for a sufficient time after steam is turned on to ensure that all air is swept out of the retort, so that no "pockets" of air remain among the cans. There is a tendency for steam to by-pass the load of cans and to escape through the vents before all air has been driven from the stacks of cans. On page 8 are the venting specifications designed to provide for satisfactory operations.

An air-steam mixture in the retort will cause a non-uniform heat distribution, resulting in a lowering of the rate of heat transfer to the containers. The timing of the process should not begin, even though the proper temperature is indicated, until temperature and pressure instruments on the retort give corresponding readings (see table on page 20).

Lack of agreement between temperature and pressure instruments is an indication of the presence of air in the retort. However, if proper venting procedure is not followed, there can be a "pocket" containing air in a region of the retort that is remote from the thermometer, and the presence of this "air pocket" may not be indicated by a detectable disagreement between the temperature and pressure indicators.

Coming-up Time. There is a minimum limit for the coming-up time because of the necessity for removing the air from the retort by venting during this period. When venting is inadequate for rapid removal of the air, the use of a very short

[fol. 839]

coming-up time is likely to result in an unsterilized product. A coming-up time shorter than the minimum for which the retort has been demonstrated to give satisfactory results with its existing hook-up and specified operating technique should not be used.

With some vacuum-packed products, it is advisable to heat the cans sufficiently to dissipate the internal vacuum before the pressure in the retort is permitted to become greater than two pounds, otherwise the cans may panel or even collapse.

Process Temperatures

The quality of most products will be least affected by the process if the retorts are brought to processing temperature quickly and the process is followed by prompt and rapid cooling. (Some vacuum-packed products are an exception, for the reason given above.) This procedure not only protects the quality of the product but also shortens the total time required for each processing cycle and so effects time economy in the use of the retorts. It applies to all processing temperatures and is especially important when the temperature is above 240°F.

If any deviation from the processes given in this bulletin is desired, a laboratory connected with the canning industry should be consulted.

Short High Temperature Processes. For a product having rapid heat penetration, very short processes at comparatively high temperatures are sometimes used. It is especially important that such processes have the most careful control. An error in either time or temperature in a short high temperature process will have a much greater effect upon the total sterilizing value of the process than a like error will have in a longer process at a lower temperature.

Boiling Water Processes. The sterilizing of low-acid products in boiling water is impracticable without controlled acidification procedures. Without acidification continuous boiling for over ten hours is necessary to secure a sterilizing efficiency equivalent to that of the processes listed in this bulletin.

Cooling and Storage

The duration of the water-cooling period should be sufficient to bring the average temperature of the contents to 100°F., but

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water cooling should not be continued to the point where external rusting of the container may occur. In humid locations water cooling to a temperature of 100°F. may lead to external rusting. In that case, water cooling should be carried to approximately 120°F. and the cans subsequently air cooled before they are put into storage. When cans whose contents are at temperatures substantially above 100°F. are stacked closely together, and especially if they are sealed in fiber cases, they cool so slowly that spoilage by thermophilic bacteria and injury by heat to the quality of the product (stack-burn) may occur.

Air Cooling

If the capacity of the water-cooling equipment is inadequate, or if a shortage of water is experienced, the cans should be so stacked that they will air cool rapidly. Air cooling is sometimes used for products such as hominy in order to effect a proper swelling of the product. It is suggested that the cans be stacked on their sides in single rows, allowing space for air circulation between the rows. The stacks should be arranged parallel to the cross ventilation of the warehouse. Careful attention to the factors affecting air circulation may serve to prevent retarded cooling and to safeguard against spoilage by thermophilic bacteria.

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Corresponding Gauge Pressures and Process Temperatures

The following table shows the gauge pressure corresponding to specified process temperatures at various altitudes:

GAUGE PRESSURE CORRESPONDING TO SPECIFIED PROCESS TEMPERATURES AT VARIOUS ALTITUDES

Temp. Deg. F.	Sea Level	Feet above sea level							Temp. Deg. C
		500	1000	2000	3000	4000	5000	6000	
200	....	....	....	....	....	....	....	....	93.3
205	....	....	....	....	....	....	0.5	0.9	96.1
210	....	....	....	0.4	0.9	1.4	1.8	2.3	98.9
212	0.0	0.2	0.5	1.0	1.5	2.0	2.4	2.9	100.0
215	0.9	1.1	1.4	1.9	2.4	2.9	3.3	3.8	101.7
220	2.5	2.7	3.0	3.4	3.9	4.4	4.9	5.3	104.4
225	4.2	4.5	4.7	5.2	5.7	6.2	6.6	7.1	107.2
230	6.1	6.3	6.6	7.1	7.6	8.0	8.5	9.0	110.0
235	8.1	8.3	8.6	9.1	9.6	10.0	10.5	11.0	112.8
240	10.3	10.5	10.8	11.3	11.7	12.2	12.7	13.1	115.6
242	11.2	11.4	11.7	12.2	12.7	13.1	13.6	14.1	116.7
245	12.6	12.9	13.1	13.6	14.1	14.6	15.0	15.5	118.3
248	14.1	14.3	14.6	15.1	15.6	16.0	16.5	17.0	120.0
250	15.1	15.4	15.6	16.1	16.6	17.1	17.5	18.0	121.1
252	16.2	16.4	16.7	17.2	17.7	18.1	18.6	19.1	122.2
255	17.8	18.1	18.3	18.8	19.3	19.8	20.2	20.7	123.9
260	20.7	21.0	21.2	21.7	22.2	22.7	23.1	23.6	126.7

[fol. 842]

CAUTION

To facilitate the presentation of the process times and temperatures in tabular form, it has been necessary to use a number of footnotes. Those who use the bulletin are cautioned to read the footnotes in connection with the tables to which they refer.

CAN DIMENSIONS

The can sizes are given in the nomenclature usually employed in the industry, which avoids the confusion incident to conflicting local names of cans.

In this system the cans are identified by a statement of their dimensions (over-all diameter and over-all height). Each dimension is expressed as a number of three digits. The left-hand digit gives the number of whole inches, while the two right-hand digits give the additional fraction of the dimension expressed as sixteenths of an inch.

The first number given in the size of each can is the diameter, and the second number is the height. For example, a No. 2 can, designated as 307x409, is $3\frac{7}{16}$ inches in diameter and $4\frac{9}{16}$ inches high, that is, within manufacturing tolerances.

The dimensions are "over-all," the diameter being measured to the outside of the double seam, and the length including the entire seam at each end of the can.

[fol. 843]

PROCESS TABLES

I.—VEGETABLES AND VEGETABLE PRODUCTS

Artichokes, Globe

Pressure cooks adequate for sterilization render artichokes and artichoke hearts unmerchantable. The Standard of Identity promulgated under the Food, Drug and Cosmetic Act recognizes the necessity of acidifying artichokes. Such acidification permits safe processing in boiling water and thereby ensures preservation without loss of merchantability. Careful supervision of all details, particularly blanch, fill, and brine, is essential when acidification is included in the processing procedure. These products should not be packed without consulting a laboratory connected with the canning industry.

Asparagus spears, white and white-green

Can-Name	Dimensions	Initial temperature	Time at (a) 240° F.	Time at (a) 248° F.
		Deg. F.	*Min.*	*Min.*
			Tips Down	
No. 2½ & smaller	401x411 & smaller	70	25	16
		120	23	14
			Tips Up	
No. 2½ & smaller	401x411 & smaller	70	27	19
		120	26	18

(a) Two series of processing times are shown in the last two columns headed tips down and tips up. These headings refer to the position of the spears in the retort during processing. Processing the cans in a vertical position is very important.

[fol. 844]

Asparagus spears, all green

Can Name	Dimensions	Initial temperature	Time at (a) 240° F.	Time at (a) 248° F.
		Deg. F.	Min.	Min.
			Tips Down	
No. 2½ & smaller	401x411 & smaller	70	27	17
		120	25	15
			Tips Up	
No. 2½ & smaller	401x411 & smaller	70	27	19
		120	26	18

Asparagus cuts, white or green, including soup cuts

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 248° F.
		Deg. F.	Min.	Min.
No. 2½ & smaller	401x411 & smaller	70	26	16
		120	25	15
No. 10	603x700	70	32	20
		120	30	18

(a) Two series of processing times are shown in the last two columns headed tips down and tips up. These headings refer to the position of the spears in the retort during processing. Processing the cans in a vertical position is very important.

[fol. 845]

Baby food, chopped: *See* **Vegetables, chopped**

Baby food, strained: *See* **Vegetables, strained**

Beans, green or wax, whole or cut (a)

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 245° F.	Time at 250° F.
		Deg F.	*Min.*	*Min.*	*Min.*
No. 2 & smaller	307x409 & smaller	70	21	16	12
		120	20	15	11
No. 2½	401x411	70	26	19	15
		120	25	18	14
No. 3 Cylinder	404x700	70	32	22	18
		120	30	20	16
No. 10	603x700	70	37	27	22
		120	35	25	20

Beans, green or wax, asparagus style (a) (b)

Can Name	Dimensions	Initial temperature	Time at 240° F.
		Deg. F.	*Min.*
No. 2 & smaller	307x409 & smaller	70	26
		120	25
No. 10	603x700	70	50
		120	45

Beans, green or wax, Sliced Lengthwise or French style (a)

Can Name	Dimensions	Initial temperature	Time at 240° F.	Maximum drained weight
		Deg. F.	*Min.*	*Oz.*
No. 2	307x409	70	26	14
		120	25	
No. 10	603x700	70	50	70
		120	45	

Beans, Kidney: *See* **Beans, mature, etc.**

(a) These processes apply only to beans that are properly blanched.

(b) All cans of asparagus style beans should be processed in a position such that the beans are upright in the retort.

[fol. 846]

Beans, Lima, succulent (a)

Can Name	Dimensions	Initial temperature	240° F.	Time at 245° F.	250° F.
		Deg. F.	*Min.*	*Min.*	*Min.*
No. 2 & smaller	307x409 & smaller	70	40	27	20
		140	35	25	18
No. 3 Cylinder	404x700	70	55	38	28
		140	50	35	25
No. 10	603x700	70	60	45	35
		140	55	40	30

Beans, mature, and soaked dried legumes, shelled types, in brine

Can Name	Dimensions	Initial temperature	240° F.	Time at 245° F.	250° F.
		Deg. F.	*Min.*	*Min.*	*Min.*
No. 2½ & smaller	401x411 & smaller	100–140	45	30	20
No. 10	603x700	100–140	70	55	40

Beans, Soy

Can Name	Dimensions	Initial temperature	240° F.	Time at 245° F.	250° F.
		Deg. F.	*Min.*	*Min.*	*Min.*
No. 2 & smaller	307 409 & smaller	70	45	27	20
		140	40	25	18
No. 10	603x700	70	70	55	40
		140	65	50	35

(a) For "lima beans, dry soaked" the processes given under "Beans, mature, etc." should be used.

[fol. 847]

Beans in Sauce

The process necessary for the sterilization of beans in sauce depends to a considerable extent upon the sauce formulation with respect to tomato pulp and starch content. The processes in the three tables which follow are designed to fit three ranges of sauce formulation. If the formulation used does not fall within the specified limits of ingredients, the proper process should be obtained from a laboratory connected with the canning industry.

Beans in Heavy Sauce, with or without pork, or baked beans

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 245° F.	Time at 250° F.
		Deg. F.	*Min.*	*Min.*	*Min.*
No. 1 (Picnic)	211x400	100	75	65	55
		140	70	60	50
		180	60	50	45
Kitchenette	307x214	100	80	70	65
		140	75	65	60
		180	65	55	50
No. 300	300x407	100	90	80	70
		140	80	70	60
		180	70	60	50
No. 303	303x406	100	95	85	75
		140	85	75	65
		180	75	65	55
No. 303 Cylinder	303x509	100	100	90	80
No. 95	307x400	140	90	80	70
		180	75	70	60
No. 2	307x409	100	105	95	85
		140	95	85	75
		180	80	70	65
Jumbo	307x510	100	105	100	90
No. 2 Cylinder	307x512	140	95	90	80
		180	80	75	65
No. 2½	401x411	100	130	115	110
		140	115	100	95
		180	95	85	80
No. 10	603x700	100	235	215	200
		160	210	190	175

[fol. 848]

Beans, with or without pork, in tomato sauce containing no added starch and 10 to 20 gallons of tomato pulp (1.045 sp. gr.) per 100 gallons sauce.

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 245° F.	Time at 250° F.
		Deg. F.	Min.	Min.	Min.
No. 2½ & smaller	401x411 & smaller	100–140	65	45	35
No. 10	603x700	100–140	100	75	55

Beans, with or without pork, in tomato sauce containing no added starch and 10 gallons or less of tomato pulp (1.045 sp. gr.) per 100 gallons sauce

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 245° F.	Time at 250° F.
		Deg. F.	Min.	Min.	Min.
No. 2½ & smaller	401x411 & smaller	100–140	45	30	20
No. 10	603x700	100–140	70	55	40

Bean sprouts

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 250° F.
		Deg. F.	Min.	Min.
No. 2½ & smaller	401x411 & smaller	70	21	12
		140	20	11

Beets, whole, cut, quartered, diced, sliced, or shoestring, in brine (a)

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 250° F.
		Deg. F.	Min.	Min.
No. 2½ & smaller	401x411 & smaller	70	35	23
		140	30	20
No. 10 (except sliced)	603x700	70	45	30
		140	40	25
No. 10 (sliced)	603x700	70	50	35
		140	45	30

(a) If beets are lye-peeled, the cooks apply only provided the lye has been completely removed by washing.

[fol. 849]

Beet tops: *See* Spinach

Broccoli, green sprouting (*a*)

Can Name	Dimensions	Initial temperature	Time at 240° F.
		Deg. F.	*Min.*
Jumbo	307x510	70	35
No. 2 Cylinder	307x512	140	30

Cabbage, in sections (*b*)

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 250° F.
		Deg. F.	*Min.*	*Min.*
No. 2½	401x411	70	45	30
		140	40	25

Carrots, whole, cut, quartered, sliced, diced or shoestring, in brine (*c*)

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 250° F.
		Deg. F.	*Min.*	*Min.*
No. 2½ & smaller	401x411 & smaller	70	35	23
		140	30	20
No. 10 (except sliced)	603x700	70	45	30
		140	40	25
No. 10 (sliced)	603x700	70	50	35
		140	45	30

Carrots and Peas: *See* Peas and Carrots

Carrot Juice: *See* Specialties

Cauliflower

Can Name	Dimensions	Initial temperature	Time at 240° F.
		Deg. F.	*Min.*
No. 2½ & smaller	401x411 & smaller	70	21
		140	20

(*a*) All cans of broccoli should be processed in a position such that the sprouts are upright in the retort.

(*b*) The weight of cabbage filled into No. 2½ cans should not exceed 17 ounces. These processes should not be applied to other styles of pack because variation in canning procedure may vary the heat penetration. Where it is desired to can cabbage in other styles, a laboratory connected with the canning industry should be consulted.

(*c*) Other styles of carrots, including carrot chips, should not be packed without directions from a laboratory connected with the canning industry. If carrots are lye-peeled, the cooks apply only provided the lye has been completely removed by washing. If carrots are packed "asparagus style," the cans should be processed on end.

[fol. 850]

Celery Cuts

Can Name	Dimensions	Initial temperature	Time at 240° F.
		Deg. F.	Min.
No. 2 & smaller	307x409 & smaller	70	28
		140	25
No. 2½	401x411	70	33
		140	30
No. 10	603x700	70	45
		140	40

Celery hearts (*a*)

Can Name	Dimensions	Initial temperature	Time at 240° F.
		Deg. F.	Min.
Quart Olive & smaller	307x704 & smaller	70	28
		140	25
No. 2½	401x411	70	33
		140	30

Corn, cream style, or Succotash (*b*)

Can Name	Dimensions	Initial temperature	240° F.	Time at 245° F.	250° F.
		Deg. F.	Min.	Min.	Min.
8Z Tall	211x304	140	75	65	55
		160	70	60	50
		180	65	55	45
No. 1 (Picnic)	211x400	140	80	70	60
		160	75	65	55
		180	70	60	50
No. 303	303x406	140	95	85	75
		160	90	80	70
		180	85	75	65
No. 2	307x409	140	105	95	85
		160	100	90	80
		180	90	80	70
No. 3 Cylinder	404x700	140	160	145	130
		160	150	135	120
		180	135	120	105
No. 10	603x700	140	220	205	195
		160	205	190	180
		180	180	165	155

(*a*) Cans of celery packed "asparagus style" should be processed in a position such that the celery is upright in the retort.

(*b*) These processes apply to succotash prepared from cream style corn and beans. For succotash prepared from whole kernel corn and beans use the processes suggested for whole kernel corn in brine.

[fol. 851]

Corn, whole kernel in brine (a)

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 245° F.	Time at 250° F.
		Deg. F	Min.	Min.	Min.
No. 2 & smaller	307x409 & smaller	100	55	40	30
		140	50	35	25
No. 3 cylinder	404x700	140	65	45	35
No. 10	603x700	140	85	60	45
		160	80	55	40

Corn, whole kernel, vacuum pack (b)

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 245° F.	Time at 250° F.
		Deg. F.	Min.	Min.	Min.
No. 2 Vacuum	307x306	70–160	55	45	35

Corn on the cob

Processes necessary for vacuum packed corn on the cob are dependent to a marked degree upon the factors of maturity, variety, fill, amount of water added, and conditions tending to reduce the vacuum. It should not be packed without directions from a laboratory connected with the canning industry.

Dandelion greens: *See* Spinach

Hominy, lye or pearl

Can Name	Dimensions	Initial temperature	Time at 240° F.
		Deg. F.	Min.
No. 2	307x409	70–160	75
No. 2½	401x411	70–160	90
No. 10	603x700	70–160	120

(a) These processes apply only if the corn is well cleaned.

(b) The processes given above are dependent on the following factors for maintenance of their intended sterilizing value: (1) The maintenance of 23 inches of can vacuum immediately before processing; (2) the presence of at least one ounce of free liquid; (3) the control of fill-in weight not to exceed 11¼ ounces of washed corn.

[fol. 852]

Kale: *See* Spinach

Mushrooms, buttons, whole, sliced or pieces and stems, in brine (*a*)

Can Name	Dimensions	Initial temperature	Time at 250° F.	Maximum drained weight (*b*)
		Deg. F.	*Min.*	*Oz.*
2Z Mushroom	202x204	70–140	18	2 3
4Z Mushroom	211x212			4 5
8Z Mushroom	300x400			8 5
Jumbo	307x510	70–140	25	16 5
No. 10	603x700	70–140	30	70

Mustard greens: *See* Spinach

Okra, Northern style (fermented)

Can Name	Dimensions	Initial temperature	Time at 240° F.
		Deg. F.	*Min.*
No. 2 & smaller	307x409 & smaller	70	20
		140	17
No. 2½	401x411	70	23
		140	20
No. 10	603x700	70	40
		140	35

Okra, Southern style (unfermented)

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 250° F.	Maximum fill-in weight
		Deg. F.	*Min.*	*Min.*	*Oz.*
No. 1 (Picnic)	211x400	70	35	25	6 6
		140	30	20	
No. 2	307x409	70	35	25	12 3
		140	30	20	
No. 2½	401x411	70	40	30	18
		140	35	25	
No. 10	603x700	70	55	45	66
		140	45	35	

(*a*) These processes do not apply to mushroom "chips." For styles of pack other than those listed, consult a laboratory connected with the canning industry.

(*b*) For the minimum drained weights contained in the Standard for Fill of Container promulgated under the Federal Food, Drug and Cosmetic Act, see page 55.

[fol. 853]

Onions

Pressure cooks adequate for sterilization render onions unmerchantable. It has been found necessary, therefore, to acidify this product to permit safe processing in boiling water and thereby ensure preservation without loss of merchantability. Careful supervision of all details, particularly blanch, fill and brine is essential when acidification is included in the processing procedure. This product should not be packed without consulting a laboratory connected with the canning industry.

Parsnips (*a*)

Can Name	Dimensions	Initial temperature	Time at 240° F.
		Deg. F.	*Min.*
No. 2½ & smaller	401x411 & smaller	70	33
		140	30
No. 10	603x700	70	45
		140	40

Peas, in brine (*b*)

Can Name	Dimensions	Initial temperature	240° F.	Time at 245° F.	250° F.
		Deg. F.	*Min.*	*Min.*	*Min.*
No. 2 & smaller	307x409 & smaller	70	36	26	16
		140	35	25	15
No. 3 Cylinder	404x700	70	50	32	22
		140	45	30	20
No. 10	603x700	70	55	37	25
		140	50	35	23

Peas, dry soaked: *See* **Beans, mature, etc.**

Peas, Black-eye: *See* **Beans, mature, etc.**

Peas, Crowder: *See* **Beans, mature, etc.**

(*a*) These cooks apply only to a brine pack. Other styles of parsnips should not be packed without directions from a laboratory connected with the canning industry. Cans of parsnips packed "asparagus style" should be processed on end.

(*b*) For processes for vacuum pack peas consult a laboratory connected with the canning industry.

[fol. 854]

Peas and Carrots

Can Name	Dimensions	Initial temperature	240° F.	Time at 245° F.	250° F.
		Deg. F.	*Min.*	*Min.*	*Min.*
No. 2 & smaller	307x409 & smaller	70	45	30	20
		140	40	25	18
No. 10	603x700	70	60	45	28
		140	55	40	25

Peppers or Pimientos, Green

Pressure processes adequate for sterilization render green peppers or green pimientos unmerchantable. It has been found necessary, therefore, to acidify these products to permit safe processing in boiling water and thereby ensure preservation without loss of merchantability. Acidification must be carefully controlled. For detailed procedures consult a laboratory connected with the canning industry.

Peppers or Pimientos, Red

Acidification of red peppers or red pimientos is desirable to prevent spoilage, even though it may not be necessary from the standpoint of public health. Acidification must be carefully controlled. For detailed procedures consult a laboratory connected with the canning industry.

[fol. 855]

Potatoes, sweet, solid pack (*a*) (*c*) (*e*)

Can Name	Dimensions	Initial temperature	Time at 240° F.
		Deg. F.	*Min.*
No. 1 Picnic	211x400	120	75
		150	65
		180	60
No. 2	307x409	120	105
		150	95
		180	85
No. 2½	401x411	120	120
		150	110
		180	95
No. 3 Cylinder	404x700	150	130
		180	115
		190	105

Potatoes, sweet, syrup pack, Eastern types, whole (*b*) (*c*)

Can Name	Dimensions	Put-in syrup strength	Initial temperature	Time at 240° F.	Time at 250° F.
		Deg. Brix	*Deg. F.*	*Min.*	*Min.*
No. 3 Squat & smaller	404x307 & smaller	25° or less	100	34	24
			140	32	22
			160	30	20
		Greater than 25°	100	53	33
			140	48	28
			160	45	25
No. 10	603x700	25° or less	100	50	32
			140	45	29
			160	43	27
		Greater than 25°	100	65	38
			140	55	32
			160	50	29

(*a*) For processes for asparagus style or vacuum pack sweetpotatoes consult a laboratory connected with the canning industry.

(*b*) These processes apply to freshly dug Little Stem Jersey, Maryland Golden or similar varieties.

(*c*) It is emphasized that the sugar used in the canning of this product should comply with the bacterial standards for sugar formulated by the National Canners' Association. See page 54. Under no circumstances should sugar in dry form be added to the cans.

(*e*) Processes for No. 10 cans considered necessary to safeguard against hazard to health result in a product of unmerchantable quality. It follows, therefore, that solid pack sweet potatoes should not be packed in cans larger than a No. 3 cylinder (404x700).

[fol. 856]

Potatoes, sweet, syrup pack, Porto Rico type (yams), whole, cut or sliced (c) (d)

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 250° F.
		Deg. F.	*Min.*	*Min.*
No. 2	307x409	140	60	45
		160	55	40
No. 2½	401x411	140	65	50
No. 3 Squat	404x307	160	60	45
No. 10	603x700	140	80	65
		160	75	60

Potatoes, white, sliced or whole, in brine

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 250° F.
		Deg. F.	*Min.*	*Min.*
No. 2	307x409	70	35	23
		140	30	20
No. 2½	401x411	70	40	30
		140	35	25
No. 10 (except sliced)	603x700	70	50	35
		140	45	30
No. 10 (sliced)	603x700	70	55	38
		140	50	32

(c) It is emphasized that the sugar used in the canning of this product should comply with the bacterial standards for sugar formulated by the National Canners Association. See page 54. Under no circumstances should sugar in dry form be added to the cans.

(d) These processes apply to the Porto Rico or similar varieties packed in a syrup having a put-in concentration of 50° Brix or less.

[fol. 837]

Pumpkin or Squash

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 250° F.
		Deg. F.	*Min.*	*Min.*
No. 300	300x407	140	70	60
		160	65	55
		180	60	50
No. 2	307x409	140	85	70
		160	80	65
		180	75	60
No. 2½	401x411	140	115	100
		160	105	90
		180	95	75
No. 3 Cylinder	404x700	140	135	115
		160	125	105
		180	110	95
No. 10	603x700	140	235	205
		160	215	185
		180	190	165

Soups: *See* **Specialties**

Spinach or other greens

These cooks may not be adequate for continuous cookers, and canners planning to use a continuous cooker should consult a laboratory connected with the canning industry.

Drained weight and net weight are of determining importance with spinach and other greens and must be controlled to ensure that the retort process will carry the intended sterilizing efficiency. The maximum drained weight given cannot be safely exceeded, and the net weight of contents should be at least that given for the respective can sizes. For the minimum drained weights announced by the Food and Drug Administration, see page 56.

Since blanched spinach tends to become stratified horizontally in cans larger than the No. 2, it is found that heat penetration is more rapid when these cans are processed on their sides rather

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Spinach or other greens
(Continued)

than in a vertical position. Therefore the process is shorter for cans processed in a horizontal position.

Spinach or other greens, whole leaf

Can Name	Dimensions	Retort temperature	Initial temperature	Time	Maximum drained weight	Minimum net weight
		Deg. F.	*Deg. F.*	*Min.*	*Oz.*	*Oz.*
8Z Tall	211x304	252	100	40	6.25	7.75
			120	37		
			140	35		
No. 1 (Picnic)	211x400	252	100	40	8.0	10.0
			120	37		
			140	35		
No. 300	300x407	252	100	45	10.5	13.5
			120	43		
			140	40		
No. 303	303x406	252	100	50	11.7	15.2
			120	47		
			140	45		
No. 2	307x409	252	100	55	14.5	18
			120	53		
			140	50		
No. 2½ (horizontal position)	401x411	252	100	55	21	27
			120	53		
			140	50		
No. 2½ (vertical position)	401x411	252	100	65	21	27
			120	60		
			140	55		
No. 10 (horizontal position)	603x700	240	100	105	66	100
			120	100		
		252	100	65	66	100
			120	60		
No. 10 (vertical position)	603x700	240	100	140	66	100
			120	130		
		252	100	85	66	100
			120	75		

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Spinach or Other Greens, cut (a)

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 252° F.	Maximum drained weight	Minimum net weight
		Deg. F.	*Min.*	*Min.*	*Oz.*	*Oz.*
8Z Tall	211x304	100	60	45	6.25	7.75
		140	55	40		
No. 1 (Picnic)	211x400	100	60	45	8	10
		140	55	40		
No. 303	303x406	100	80	60	11.7	15.2
		120	75	55		
		140	75	55		
		160	65	50		
No. 2	307x409	100	90	70	14.5	18
		120	85	65		
		140	80	60		
		160	75	55		
No. 2½	401x411	100	105	80	21	27
		120	100	75		
		140	95	70		
		160	90	65		
No. 10	603x700	100	120	95	66	100
		120	115	90		
		140	105	80		
		160	100	70		

Squash: *See* Pumpkin or Squash

Succotash: *See* Corn, cream style

Sweetpotatoes: *See* Potatoes, sweet

Swiss chard: *See* Spinach

Turnips

Can Name	Dimensions	Initial temperature	Time at 240° F.
		Deg. F.	*Min.*
No. 2½ & smaller	401x411 & smaller	70	34
		140	30
No. 10	603x700	70	45
		140	40

Turnip tops: *See* Spinach

(a) These processes are to be used for ¼-inch to ½-inch cuts only. For processes to be applied to smaller or larger cuts, consult a laboratory connected with the canning industry.

[fol. 860]

Vegetables, chopped (a)

Product	Dimensions	Initial temperature Deg. F.	Time at 240° F. Min.
Beans, green	211x210	120	60
	211x214	140	58
		160	55
Beets	211x210	120	45
	211x214	140	43
		160	40
Carrots	211x210	120	45
	211x214	140	43
		160	40
Spinach	211x210	120	65
	211x214	140	63
		160	60

Vegetable juices: *See* Specialties

Vegetable salad or mixed vegetables: *See* Specialties.

Vegetable soup: *See* Specialties

Vegetables, strained (b)

Product	Can Name	Dimensions	Initial temperature Deg. F.	Time at 240° F. Min.
Asparagus	Baby food	202x214	120	42
			140	40
			160	38
	No. 2	307x409	140	85
			160	80
			180	75
Beans, green	Baby food	202x214	120	42
			140	40
			160	38
	No. 2	307x409	140	85
			160	80
			180	75
Beans, lima	Baby food	202x214	120	53
			140	50
			160	47
	No. 2	307x409	140	105
			160	100
			180	90

Continued on page 41

(a) For strained vegetables packed in 211x210 or 211x214 cans, see processes for "Vegetables, strained".

(b) It should be emphasized that the above processes for No. 2 cans will result in a finished product somewhat below the quality obtained heretofore with shorter processes used for the standard baby food cans.

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Vegetables, strained (a)
(Continued)

Product	Can Name	Dimensions	Initial temperature	Time at 240° F.
			Deg. F.	*Min.*
Beets	Baby food	202x214	120	42
			140	40
			160	38
	No. 2	307x409	140	90
			160	85
			180	75
Carrots	Baby food	202x214	120	42
			140	40
			160	38
	No. 2	307x409	140	90
			160	85
			180	75
Peas	Baby food	202x214	120	53
			140	50
			160	47
	No. 2	307x409	140	105
			160	100
			180	90
Potatoes, Sweet	Baby food	202x214	120	47
			140	45
			160	43
	_____	211x210	120	58
	_____	211x214	140	55
			160	52
Spinach	Baby food	202x214	120	47
			140	45
			160	43
	No. 2	307x409	140	85
			160	80
			180	75
Squash	Baby food	202x214	120	42
			140	40
			160	38
	_____	211x210	120	53
	_____	211x214	140	50
			160	47

(a) It should be emphasized that the above processes for No. 2 cans will result in a finished product somewhat below the quality obtained heretofore with shorter processes used for the standard baby food cans.

[fol. 862]

II.—RIPE OLIVES (a)

Whole, with or without pits, in brine

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 250° F.
		Deg. F.	Min.	Min.
No. 10 & smaller	603x700 & smaller	70–160	60	50

III.—SPECIALTIES

This is a group of products which vary widely from each other in composition and which from the standpoint of processing have little in common with the standard fruits and vegetables. Specialties may be vegetable products, fish products or meat products, or combinations thereof. Specialties not only differ from each other, but each individual specialty as prepared in different canning plants is likely to vary in composition and in canning procedure from the same product prepared by another maker. Because of this difference in formula and the variation in canning procedure by which they are prepared, specialties should not be canned without directions from a laboratory connected with the canning industry.

IV.—MEAT OR MEAT PRODUCTS

Due to variations in formula and methods of procedure which may affect process relationships, these products should not be packed without directions from a laboratory connected with the canning industry.

V.—CHICKEN OR CHICKEN PRODUCTS

Due to variations in formula and methods of procedure which may affect process relationships, these products should not be packed without directions from a laboratory connected with the canning industry.

(a) For processing minced, crushed, chopped, or sliced olives, a laboratory connected with the canning industry should be consulted, as the size of particles, tightness of pack, and moisture content must be considered before the process is recommended.

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VI.—MARINE PRODUCTS (a)

Clams or Clam chowder (b)

Crab meat, Blue or Gulf, hand-picked, in brine (c)

Can Name	Dimensions	Initial temperature	230° F.	Time at 240° F.	250° F.
		Deg. F.	Min.	Min.	Min.
½ Tuna (No liner)	307x113 (e)	70	70	35	20
½ Tuna (One piece liner)	307x113 (e)	70	80	50	35

Crab meat, Blue or Gulf, hand-picked, vacuum pack (c) (d)

Can Name	Dimensions	Initial temperature	230° F.	Time at 240° F.	250° F.
		Deg. F.	Min.	Min.	Min.
½ Tuna (No liner)	307x113 (e)	70	80	45	35
½ Tuna (One piece liner)	307x113 (e)	70	85	50	35
——— (No liner)	307x208 (f)	70	85	55	40
——— (One piece liner)	307x208 (f)	70	95	60	45

Crab meat, Dungeness (a)

Fish flakes (a)

Herring and herring roe (a)

(a) For processes for smoked, kippered or specially treated seafoods, consult a laboratory connected with the canning industry.

(b) Due to variation in raw product and lack of standardized packing procedure, this product should not be packed without directions from a laboratory connected with the canning industry.

(c) Processes for mechanically-picked crab meat should be obtained from a laboratory connected with the canning industry.

(d) The processes given for vacuum pack crab meat are dependent on (1) The maintenance of at least 26 inches of can vacuum immediately before processing; (2) the presence of ½ to 1 ounce of free liquid; (3) the use of a fill-in weight which will result in a drained weight not greater than the maximum specified in the applicable footnotes.

(e) Process times suggested for maximum drained weight of 5.25 ounces.

(f) Process times suggested for maximum drained weight of 7.75 ounces.

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Lobster (a)

Mackerel, in brine

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 250° F.
		Deg. F.	Min.	Min.
8Z Tall	211x304	70	75	60
		130	70	50
No. 300	300x407	70	90	75
		130	80	65

Oysters, Cove, Atlantic and Gulf Coast

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 250° F.
		Deg. F.	Min.	Min.
No. 1 (Picnic) & smaller	211x400 & smaller	70	24	14
		130	23	13
No. 95	307x400	70	28	14
No. 2	307x409	130	27	13

Oysters, Pacific Coast

Can Name	Dimensions	Initial temperature	Time at 240° F.
		Deg. F.	Min.
No. 1 Tall & Smaller	301x411 & smaller	70	43
		130	40

Salmon

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 245° F.	Cool Method
		Deg. F.	Min.	Min.	
¼ Flat	301x106	60	50	40	water
		60	45	35	air
½ Flat	307x201.25	60	75	65	water
		60	70	60	air
No. 1 Tall	301x411	60	100	90	water
		60	90	80	air

(a) Due to variation in raw product and style of pack and to lack of standardized packing procedure, this product should not be packed without directions from a laboratory connected with the canning industry.

[fol. 865]

Sardines, (a)

Shrimp, wet-pack

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 250° F.
		Deg. F.	Min.	Min.
No. 1 (Picnic) or smaller	211x400 or smaller	70	26	14
		90	25	13
		120	24	12
———	307x208	70	27	15
No. 95	307x400	90	25	13
		120	24	12
No. 5	502x510	70	30	19
		90	27	16
		120	26	15

Shrimp, dry pack

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 250° F.
		Deg. F.	Min.	Min.
No. 1 (Picnic) (One piece liner)	211x400	70	80	60
No. 1 (Picnic) (No liner)	211x400	70	70	50
——— (No liner)	307x208			
No. 95 (No liner)	307x400	70	75	55

Tuna, all styles, in oil

Can Name	Dimensions	Initial temperature	Time at 240° F.	Time at 250° F.
		Deg. F.	Min.	Min.
¼ Tuna	211x109	70	65	40
½ Tuna	307x113	70	75	55
No. 1 Tuna	401x206	70	95	80
4 Lb. Tuna	603x408	70	230	190

(a) Due to variation in raw product and style of pack and to lack of standardized packing procedure, this product should not be packed without directions from a laboratory connected with the canning industry.

[fol. 866]

APPENDIX

PRECAUTIONS FOR HANDLING FILLED CANS

The installation of many of the newer labor saving devices for handling filled cans has introduced certain hazards which, if not minimized, may result in some spoilage with the best possible double-seam construction. Before the cans are thoroughly cooled, the seams are slightly expanded and the compound lining is somewhat soft or plastic. In addition to the usual attention to good seam construction, precautions must be taken in handling the cans before they are thoroughly cooled to prevent even small dents on, or near, the double-seams. This involves elimination of fast runways with sharp turns and abrupt stops for handling filled cans both before and after processing. Care should also be taken to avoid conditions which would strain the seams during the processing or cooling; e.g., excessive holding time of unprocessed cans, inadequate exhausting or too rapid release of pressure during cooling. In cooling under pressure, particular attention must be paid to the magnitude of the pressure and the length of time it is maintained since the greater the differential pressure between the inside and the outside of the can, the greater the tendency toward forcing minute quantities of the cooling water into the can during this critical period. Bacterial content of cooling water should be kept as low as possible since the spoilage hazard is reduced in proportion to the number of microorganisms present.

GENERAL SOURCES AND CONTROL OF SPOILAGE CONTAMINATION

The efficiency of any process depends in large measure upon the type and number of microorganisms in the product at the time of canning. In general, the processes presented in this bulletin are regarded as adequate when something greater than an average number of spoilage organisms is present. They are not necessarily adequate in cases of extreme contamination by spoilage bacteria that may or may not be associated with insanitary conditions. Control of contamination by applying the strict principles of sanitation and by other appropriate means, with adequate, organized supervision, inspection and responsibility is a necessary adjunct to any process.

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Factory surveys to determine the identity of contamination sources and to develop means for their elimination have been conducted since 1926. The surveys have shown that the important sources of significant contamination with heat resistant spoilage organisms are located within the canning plant. Spoilage organisms come originally from the soil and are brought to the canning plant on the raw product. Preliminary washing operations are sufficient, with most products, to reduce this initial soil-borne contamination to a level which will not result in spoilage. However, residual spoilage types may seed the canning equipment and increase in numbers to a degree such that they constitute a spoilage hazard. There are exceptions, notably in the case of asparagus and mushrooms where soil-borne contamination of the raw product may be a direct cause of spoilage.

Factory studies to date have centered chiefly upon the canning of asparagus, corn, mushrooms, peas, pumpkin, and spinach, but facts developed in these studies are applicable to other products. Accordingly, use of the following information should serve to control contamination to a degree that will ensure the effectiveness of the processes presented in this bulletin.

Wooden equipment

In general, the use of wood in canning equipment is not recommended, because bacteria may become seeded in the pores and once established may contaminate food materials to such an extent that spoilage occurs with a process that has been satisfactory for years. Any wooden equipment with which food materials may come in contact, such as brine and hot water tanks, conveyors, blanchers, canning tables and even such small items as paddles and rollers, may act as carriers of contamination. For example, wooden tanks used for storage of hot water for general plant purposes may contaminate a whole canning system. Wooden brine tanks, at the beginning of a day's run, may supply large numbers of organisms to the product being canned. Owing to dilution their number decreases markedly during steady operation, only to build up again during a shutdown. Wood, being porous, is able to retain bacteria and hold them mechanically immune from scrubbing and other cleaning processes. "Seeding" may be prevented to a considerable degree by constant cleaning, but in spite of all that may be done, there is at present no practical treatment which will rid wood of organisms that are established in it.

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Pumps, pipes, extractors, cyclones, etc.

Pumps, pipes, extractors, cyclones, etc., should be selected from the standpoint of ease in cleaning, because such equipment may hold food material that will serve as a medium for bacterial growth and permit the development of sufficient organisms to contaminate seriously the first part of the next day's pack. All such equipment should be thoroughly cleaned after being used, then thoroughly cooled with water and kept cool until next operated. It should likewise be flushed again with water immediately before it is used.

Care should be taken during the cleaning operation to blow steam through the perforations of steam distribution pipes which are submerged in food or brine during operation and to ensure that all perforations are open. Circulating "feeder" pipes should be thoroughly cleaned at the close of the day's pack. Preferably, they should be so constructed that they may be dismantled and cleaned with brushes. "Dead ends" should be eliminated or provided with drains so that they may be thoroughly flushed at frequent intervals. Pumps should be dismantled during the clean-up operation and only pumps which are adapted to daily cleaning should be used. Some person should be delegated to inspect all cleaning operations to ensure that this work is efficiently done.

Fluming

Flumes, such as those used for conveying peas and whole grain corn, may become sources of bacterial contamination. In particular, the use of water at temperatures in the range of 100°F. to 180°F. should be avoided since this may provide a favorable condition for the growth of thermophilic spoilage bacteria. The reuse of flume water when hot may aggravate the contamination. It is advisable to use only cold water for fluming purposes.

Fillers

Filling machines used with low-acid products have been found to be contaminated with spoilage bacteria. This contamination is usually the result of the filler being maintained at temperatures within the thermophilic growth range. This might occur during operation from contact with a heated product or during shutdown periods from leakage of steam supply valves.

Fillers should be dismantled and cleaned as frequently as practicable. After the day's clean-up, the fillers should be flushed with cold water with all machinery in motion to chill the equipment, and the fillers should be left clean, cold, and empty during

the overnight shutdown. If the filler operates at temperatures within the thermophilic range during actual packing operations, it should be emptied of its product every 4 hours and thoroughly flushed with water with all machinery kept in motion.

Canning ingredients

In recent years there has been a growing appreciation of the importance, as carriers of spoilage contamination, of certain ingredients commonly used in canning. Among these are sugar, starch, flour, and dried milk. Bacterial standards for sugar and starch are discussed on page 54.

SPECIFIC SOURCES OF SPOILAGE CONTAMINATION

In addition to the preceding general information on sources of contamination, canners of certain products upon which extensive investigations have been made will find the following additional information and suggestions of value.

Corn

PREHEATING SYSTEMS, MIXING AND BLENDING TANKS. The increasing use of mixing and blending equipment in which corn is handled while hot has demonstrated further need for contamination control. Such equipment while hot (180°F. or higher) does not act as breeding points for spoilage bacteria, but when in the range 100°F. to 180°F. there is opportunity for development of thermophilic organisms. Usually this development occurs overnight and during shutdowns, and the spores which develop during those times serve subsequently to contaminate the run. As a rule, it is best to hold the tanks empty over-night. However, there appears to be no objection to holding them full of cold water provided care is taken to ensure that there are no leaky valves in the line which might tend to warm the equipment. Care should be taken during the cleaning operation to blow out perforated steam supply pipes; otherwise they may hold food material that will serve as a bacterial medium. Flushing and cooling may be accomplished conveniently by tapping a cold water line into the steam supply line adjacent to the mixer and blending tank.

CIRCULATING SYSTEMS. Such systems represent another step in complexity from the preheating systems. The circulating feeder pipes should be thoroughly cleaned at night and preferably they should be so constructed that they may be dismantled and cleaned with brushes.

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WHOLE KERNEL CORN. With this product special care should be taken to prevent contact with wood equipment and, after being cut, the corn should be subjected to an efficient wash. The use of warm water or hot water in flotation washers should be avoided since such practice may lead to the rapid development of spoilage bacteria. Failure to wash the cut corn properly may result in spoilage.

Peas

The recommendations made with respect to control of blancher contamination in the canning of peas apply also to other products that are blanched in a conventional pea blancher such as lima beans and green and wax beans.

BLANCHERS. Both rotary drum blanchers and tubular blancher systems may become contaminated with thermophilic spoilage bacteria. The contamination which occurs during shut-down periods can be minimized by prompt cooling of the blanchers after use, by thorough cleaning, elimination of steam leaks, and flushing of the blancher system before its next use. However, thermophilic contamination may also occur during operation of either type of blancher system.

In rotary drum blanchers the contaminating bacteria are able to grow on the inner surfaces, above the water line, where temperatures are reduced by cool air drawn into the blanchers under loose-fitting doors and other openings. Any surface in the blancher where the temperature ranges between 100°F. and 180°F. can be the site of bacterial growth from which heat-resistant spores will be washed by condensate into the blanch water, and there contaminate the peas.

Efforts to prevent contamination in rotary drum blanchers should be directed toward elevating inner surface temperatures above 180°F. Blancher doors should be closed and fastened at all times. Doors which are bent or otherwise out of shape should be repaired in order to exclude as much cool air as possible. Vent stacks should be eliminated from the shell of the blancher. The coldest sections within a drum blancher are at the feed end. The use of a spray or steam jet, inserted at the upper edge of the feed end, which delivers steam or hot water (190°F. or higher) over the inside surfaces has been found useful in preventing contamination. During operation the temperature of the blanch water should be as high as practicable (at least 180°F.) and the reels should be kept in motion continuously while the blanchers are being heated or

being held at operating temperature. A continuous overflow from the blancher should be maintained during operation.

The blancher water should be dumped as often as practicable since the number of bacterial spores in the water increases with time and use. The drain and water supply pipes should be of sufficient size to permit rapid draining and re-filling.

In tubular blanching systems a large percentage of the flat sour spore contamination occurs in the de-watering reel into which the peas are discharged from the blanchers. Thermophilic bacteria grow on the mesh of the screen and on the surfaces of the splash boards around the reel and the pan underneath. Spores produced by the bacteria are added to the peas as they pass through the reel or may be washed into the water and re-circulated in the blancher. This contamination can be reduced if sprays are installed to wash the surface of the reel with water which is preferably, but not necessarily, chlorinated. The use of cold water for this purpose is desirable to lower the temperature of the peas before they enter the quality grader. Sprays should also wash down the inner surfaces of the splash boards or canopy surrounding the reel. Tests have indicated that cold water is effective in reducing flat sour contamination when used in these sprays. The foam which accumulates on tanks supplying recovered water to tubular blanchers can be the growth site for thermophilic spoilage bacteria. A large, broad overflow should skim the surface of the tank. Top sprays delivering streams of water at a flat angle will help prevent the formation of foam and aid in skimming the tank.

It is important the peas be washed thoroughly after blanching. Adequate washing will remove large numbers of spoilage bacteria but cannot be depended upon to remove all of the bacteria added by a heavy contamination. Washing with cold water will reduce the temperature of the peas and thus help to minimize slime growth in subsequent equipment and prevent undesirable temperature increases in the quality grader brine.

Pumpkin

Practice in pumpkin canning is not standardized and the following suggestions are based upon a study of systems used by a majority of the pumpkin canners. Consideration of sources of contamination in pumpkin canning begins with the wilting equipment.

Wooden Box or Tower Wilters. As already noted, wooden equipment is objectionable, but it may be lined with metal if this is practicable.

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CONTINUOUS METAL OR WOODEN BOX WILTERS. Both metal and wood boxes used as continuous wilters may be sources of contamination. They are difficult to clean and cool.

CONTINUOUS CONVEYOR PRESSES. There are various modifications in this type of equipment but the same principle is involved, that is, the pumpkin from the wilter is dropped into a hopper and carried between two moving belts. The distance between the belts gradually decreases toward the outlet end, and the pressure that is exerted squeezes the juice from the pumpkin. These presses are complicated mechanically and the parts vary in temperature. Where the temperature is favorable to thermophilic growth there may be some bacterial development. Some measure of control may be exerted by spraying the press "apron" with cold water, but this expedient is not fully satisfactory. From the viewpoint of contamination control the screw type press is much to be preferred. In this equipment the pumpkin is "wormed" through a tapering perforated screen. During operation, the temperature of all parts is so high (180°F. to 200°F.) that no growth is possible. The screw press is readily accessible for cleaning.

CONCENTRATION OF PUMPKIN JUICE. It is usual to discard the juice from the press, but in some cases it is the practice to concentrate this juice and add it to the pumpkin at the finisher. This system is satisfactory when the general packing procedure is such as to keep contamination at a low level. However, the concentration of contamination is increased as the volume of juice is reduced by evaporation, and such contamination as may be present is returned to the product when the juice is not discarded.

Spinach

WASHERS. Spinach washers include "immersion," "spray-rotary" and "spray-belt" types. They are used singly, in multiple, and in various combinations. Their primary function is to remove grit and adhering soil and concurrently the soil-borne bacteria which are present. In all types of equipment, the washing efficiency is determined, at least in part, by the amount of water used. Thorough washing is of primary importance and a large volume of water is required. Washers should not be overloaded because this reduces their efficiency. When both immersion and spray types are used in the same line, better results are achieved if the immersion washer is placed before the spray washer. The first washing should always be done with cold water. The use of warm water in the first wash may lead to increase of bacteria that come from

the field with the spinach, thus contaminating the equipment. Water should not be re-circulated where a single washer is used.

BLANCHERS. Blanching equipment may be a source of spoilage bacteria, particularly those of the thermophilic group. To minimize the hazards of spoilage from this source, the washing and cooling treatments previously discussed should be applied. Occasionally rotary drum pea blanchers have been used, but as this type of equipment is difficult to clean there is opportunity for the development of spoilage organisms, resulting in continuous contamination of the spinach. Spoilage has been traced to such a blancher and its use is therefore not recommended. The blanch water should be renewed at a reasonably rapid rate.

SIGNIFICANCE OF SUGAR AND STARCH CONTAMINATION

Sugar, both beet and cane in dry or liquid form, may carry spores of all three groups of thermophilic bacteria that are important as spoilage agents in low-acid canned foods. The sugar industry is aware of this condition and has taken steps to control thermophilic contamination in its products. In 1931 the National Canners Association formulated and published bacterial standards for sugar as a basis for its judgment regarding the suitability of sugar to be used in canning low-acid products. These standards have been applied by control laboratories connected with the canning industry, by the sugar industry, by Federal and State laboratories, etc. That part of the published statement referring to standards reads as follows:

TOTAL THERMOPHILIC SPORE COUNT: For the five samples examined, there shall be a maximum of not more than 150 spores and an average of not more than 125 spores per 10 grams of sugar.

FLAT SOUR SPORES: For the five samples examined, there shall be a maximum of not more than 75 spores and an average of not more than 50 spores per 10 grams of sugar.

THERMOPHILIC ANAEROBIC SPORES: These shall be present in not more than three of the five samples and in any one sample to the extent of not more than four of six tubes inoculated by the standard procedure.

SULFIDE SPOILAGE SPORES: These shall be present in not more than two of the five samples and in any one sample to the extent of not more than five spores per 10 grams.

Sugar that is certified as suitable for canning low-acid vegetables is produced by large manufacturers of both beet and cane sugar. It is recommended that canners of low-acid products specify that such sugar be provided, and it is suggested as an added safeguard that samples of delivery be submitted from time to time to a labora-

[fol. 874]

tory connected with the canning industry to determine whether deliveries conform to specifications. In collecting dry sugar samples, five individual 1/2 pound quantities should be taken from each of five bags or other containers of the shipment or lot in question. These samples should be sent to the laboratory in clean, sealed containers. If samples from more than one shipment or lot are submitted each container should be appropriately marked to distinguish the lot of its origin.

It is appreciated that the adequacy of this sampling will vary in relation to the size of the shipment or lot, but it is felt that where there is any significant variability in the shipment this fact will become evident in the majority of cases through individual tests on five samples.

For sampling liquid sugar, three individual samples of approximately 6 ounces each should be drawn from the tank or pumping line. The first sample should be taken at the beginning of the pumping operation, the second at the mid-point, and the third near the end of the pumping. Each sample should be sealed and marked with its number and the designation of the lot of its origin.

The significance of starch contamination has also been demonstrated and starch to be used in the canning of low-acid products should be purchased on specification. The standards for sugar contamination may also be applied to starch and other cereal ingredients, and periodic laboratory checks are desirable.

Minimum Drained Weights

Mushrooms

A maximum drained weight for each can size is specified in the process table which appears on page 32. It is desired here to emphasize again the importance of not exceeding this maximum drained weight. At the same time, it is necessary that the fill of container comply with the Standard of Fill of Container issued by the Food and Drug Administration. The minimum drained weight of mushrooms, in ounces, as contained in the Standard, is listed below for each can size for which processes are suggested:

Can name	Dimensions	Minimum drained weight Ozs.
2Z Mushroom	202x204	2 0
4Z Mushroom	211x212	4 0
8Z Mushroom	300x400	8 0
Jumbo	307x510	16 0
No. 10	603x700	68 0

[fol. 875]

Spinach

In the processes for spinach suggested on pages 38 and 39 a maximum drained weight of spinach and minimum net weight of the entire contents of the can are suggested for each size of can. It is desired here to emphasize again the importance of not exceeding this maximum drained weight and of securing at least the minimum net weight. At the same time it is, of course, important here, as elsewhere, to avoid slack fill. The Food and Drug Administration has announced that the weight of drained spinach should be at least 13.0, 19.0, and 60.0 ounces, respectively, in No. 2, No. 2½, and No. 10 cans. It is also stated by the Food and Drug Administration that a can of any other size should have a drained weight proportional to the weight stated above for the nearest size of can. Corresponding weights for other sizes of cans for which processes are given in this bulletin are shown in the tabular statement given below:

Can Name	Dimensions	Minimum drained weight
		Ozs.
8Z Tall	211x304	5 5
No. 1 (Picnic)	211x400	7 0
No. 300	300x407	9 7
No. 303	303x406	10 7
No. 2	307x409	13 0
No. 2½	401x411	19 0
No. 10	603x700	60 0

[fol. 877]

2438

DAILY PROCESS RECORD CARD

Plant Location _____ Date _____ 19 ____

Product	Temp. chart No.	Batch	Retort No.	Size can	No. cans	Code	Time in	Time up	Time out	Cook min.	Thermometers			Gauge pressure
											Mercury		Chart	
											No. 1	No. 2		

[fol. 878]

IMPORTANT POINTS FOR RETORT OPERATORS

1. Read carefully the entire introduction to NCA Bulletin 26-L in order that you may understand the significance of the tasks you perform.
2. Don't allow crates of cans to stand around before processing. Spoilage may result. See page 15.
3. Don't trust your memory on processes. Consult Bulletin 26-L.
4. Keep retort instruments and valves in good working order. Instruments need periodic testing.
5. Vent retorts thoroughly. Don't start timing process until temperature is up and pressure gauge and thermometer agree. See page 17.
6. Timing the process is only part of the job. Keep the retort temperature correct.
7. Keep permanent time and temperature records of every retort load processed. See opposite page.
8. Cool cans properly. Too little cooling may cause either stackburn or spoilage; too much may cause rusting.

[fol. 879] GOVERNMENT'S EXHIBIT 348

Owens-Illinois Glass Company

Study of Can Costs Versus 1-Way Bottle Cost to Brewer

The following study is based on the best costs and prices obtainable and in effect on May 1, 1956. The items compared are the 12 ounce Flat Top Beer can with a three color lithograph and the 12 ounce One-Way Beer bottle. Both items compared represent the standard container in their field. The comparison covers direct costs only and only those direct costs that are variable between can and bottle.

Requested by: Mr. M. A. Hellrung.
Prepared by: Glass Container Comptroller's.
Date: May 4, 1956.

[fol. 880]

	Cost Per Gross		
	Flat Top Can	One-Way Bottle	Bottle Cost Under/ (Over)
Cost of Container to Brewer	$4.80*	$3.70	$1.10
Carton Cost—Outers for Carriers**	.33	—	.33
Carrier Cost—6 Container Park	.72	1.20	(.48)
Labels	—	.12	(.12)
Crowns	—	.28½	(.28½)
Filling Costs—Labor & Fringe Benefits	.12	.15	(.03)
Direct Cost to Brewer at Dock	$5.97	$5.45½	$ .51½
Outbound Freight—Brewer to Distributor	.51	.67	(.16)
Total Cost Delivered to Distributor	$6.48	$6.12½	$ .35½

All outbound freight is calculated at minimum rates, averaging three hundred miles outbound from breweries.

* Includes average inbound freight on can.
** Cans based on 4 dozen outer, bottles on 2 dozen.

[fol. 881] Line labor and speeds were selected from the most modern lines obtainable. The summary is:

	Packed in 6-Pak Carriers	
	Flat Top Can	1-Way Bottle
Line Speed per Minute	600	400
Direct Line Labor per 2 Dozen Cases	$.020	$.025
Employees Per Line	12	10

The above is subject to individual practices and union restrictions. For example, quality minded brewers sometime have two inspectors on the glass line to make sure no

foreign matter appears in the beer after bottling. This would add ½¢ per 2 dozen case to the filling cost for glass.

The extra man hours needed on the can line is due to the higher filling speed—one man at the unscrambler and one line operator, this latter employee being a combined maintenance-inspector.

It is believed that a 1-way bottle line could approximate can speeds with sufficient capital investment. This is estimated at $150,000 per line to convert an existing line, or $300,000 for an all new line. However, there is some doubt as to whether glass business warrants this type of expenditure. It should also be noted that higher line speeds for bottles would mean adding line labor, so that glass filling cost per case at can speeds would be the same as filling costs for tin.

[fol. 882] An analysis of line labor for 1-way beer containers follows:

	12 Oz. Beer	
	Flat Top Can	1-Way Glass
Line Speed per Minute	600	400
2 Dozen Cases—per Hours	1,500	1,000
2 Dozen Cases—8 Hour Shift	12,000	8,000
Direct Line Labor—Employees		
Feed Empties to Line	2	2
Unscrambler*	2	1
Filler and Crowner	1	1
Closing Machine	1	—
Pasteurizer Discharge	1	1
Labeller	—	1
Casing	2	2
Handling—To Whse. or Loading Dock	2	2
Line Operator	1	—
Total Direct Line Employees	12	10
Man Hours per 8 Hour Shift	96	80
Cost per Shift @ $2.50 per man hour)**	$240.00	$200.00
Cost per Case—Direct Line Labor	$.020	$.025

* Includes rinser.
** Includes fringe benefits.

[fol. 883] The can price is a composite of prices obtained from several sources, none of which varied to any appreciable extent from the average. This can price covers cans only; carton cost is separate. The bottle price includes price of carton designed to handle 6 pack carrier. The carriers are purchased by the brewer.

Crown and label costs cover types of crowns and labels generally standard to the Industry.

On freight costs which are variable with location, the same rates and length of haul was used for both cans and bottles. The length of haul developed for both in and outbound freight represents the best estimate of the average for the industry.

Indirect costs and costs related to the maintenance of equipment, power used, etc., were excluded from the comparison. Reasonably exact estimates of such costs were not available, though indications are that no great variance exists between can and bottle costs for this type of expense.

In general the attempt was made here to show the fairest possible comparison using costs available from as many sources as possible. It should be understood that some variation in costs exists between locations, size and type of brewery operation, etc., while this could have some effect on overall costs for cans and bottles the ratios between the two should be approximately the same.

[fol. 884] GOVERNMENT'S EXHIBIT 348a

April 1, 1955.

Mr. M. A. Hellrung—14

Can vs. Glass Prices—Florida Fruit Packs

Following is approximate can advantage per gross vs. comparable glass items. These are for sizes and items selected as representative for packing fruit sections and crystals. No filling costs or outbound freight are included.

	8 oz.	16 oz.	32 oz.	1 Gallon
F.O.B. Mfg. (also Jacksonville, Fla.)	$1.32	$3.57	$4.23	$10.32
F.O.B. Bradenton, Fla.	1.42	3.86	4.57	11.34
F.O.B. Miami, Fla.	1.28	3.61	4.22	10.38

The attached schedule details the cost elements included, mold and can numbers, etc.

Note: Comparable item to gallon glass is #10 can—105% oz. capacity

Qualifications:

We are not sure the can prices used are those actually paid by the packer. There are three can companies operating eight can plants in the Florida fruit area, and what

the actual price situation is is not known. Parmalee was unable to get any area can prices—those used were secured from Nolde Norman in Indianapolis and some previous figures from Jack Thayer. They are close to can prices published in the 1954 "Canning Trade" almanac. Parmalee did advise can carton prices.

Can bags and label cost were not included. While the can wrap around label is probably more expensive than for glass, the differential in favor of glass is probably pennies per gross and wouldn't affect the total too much. The same is true of can bags—they are 12¢ each, and even where used would affect the largest size can (the No. 10) by only 14¢ per gross.

Another questionable figure is can weights used to calculate inbound freight—we had to estimate these, starting with a known weight in the 8 oz. size. We are getting a collection of packers cans together and will have actual weights later.

Comptroller's Department, Glass Container Division.
N. J. Laird:ed

[fol. 885]

Bottle vs. Can Prices—Per Gross

	8 oz. Crystals		16 oz.		32 oz.		1 Gallon	
	Bottle	Can	Bottle	Can	Bottle	Can	Bottle	Can
Container Cost	$3.22	$3.15	$5.49	$3.61	$ 7.90	$ 5.57	$23.91	$13.78
Reshipper	—	.27	—	.45	—	.68	—	2.70
Closure	1.52	—	2.14	—	2.55	—	2.89	—
Label								
Bags								
Total—F.O.B. Manufacturer	4.74	3.42	7.63	4.06	10.45	6.25	26.80	16.48
Total—F.O.B.: Bradenton, Fla.	4.95	3.53	8.08	4.22	11.04	6.47	28.59	17.15
Lakeland, Fla.	4.95	3.51	8.08	4.19	11.04	6.43	28.59	17.03
Miami, Fla.	4.89	3.61	7.94	4.33	10.86	6.64	28.04	17.66
Jacksonville, Fla.	4.74	3.42	7.63	4.06	10.45	6.25	26.80	16.48
Freight Adds—To:								
Bradenton	.21	.11	.45	.16	.59	.22	1.79	.67
Lakeland	.21	.09	.45	.13	.59	.18	1.79	.55
Miami	.15	.19	.31	.27	.41	.39	1.24	1.18
Jacksonville	—	—	—	—	—	—	—	—
Bottle or Can No.	CP-3265	211x304	CT-3956	300x407	C-4002	401x411	C-2979	603x700
Finish	58-3767	—	77-3750	—	83-400	—	89-400	—
Packing	2 Dz 13	4 Dz. #1 Res.	1 Dz. #13	2 Dz. #1 Res.	1 Dz. 123A	2 Dz. #1 Res.	⅛ Dz. 127A	½ Dz. #1 Res.
Capacity (ounces)	8-13/64	8	16	16	32	32	128	105⅝

[fol. 886] GOVERNMENT'S EXHIBIT 348b

Owens-Illinois Glass Company
Study of Quart 1-Way Beer Containers

Glass vs. Tin

From figures developed under subject study, it is estimated that container and related costs for quart 1-Way beer shows:

1. An advantage per 1 dozen case of 36¢ in favor of glass vs. tin, or 32%.
2. A glass advantage after average estimated freight to distribution of about 32½¢ per 1 dozen case, or 27%.

Requested by: Mr. M. A. Hellrung.
Prepared by: Glass Container Comptroller's.
Date: June 4, 1956.

[fol. 887] This study has been developed in much the same manner as the 12 oz. 1-Way Beer study submitted on May 4th, 1956. Bottle and can prices are the most recent prices, and are on the most common item. As in the case of the 12 oz., the figures in this study are meant to be a composite of the Eastern Brewery Industry cost—they cannot be said to fit any one particular brewery. Quoting from a similar study made by the Stevenson, Jordan & Harrison firm for us in 1939, "Since (Brewery) management efficiency varies widely, comparison of these costs, segregated by packages, *between breweries* is not fruitful; this kind of comparison gives information which bears more on type of management than on type container used."

We have, through Packaging Research, used line speeds which can be attained when processed on equipment of an accepted efficiency available to all breweries, and under achievable good conditions of labor and expense controls. Freight rates, both inbound on cans and outbound to distribution, have been based on what our Sales people feel to be representative lengths of haul.

Prices of cans, crowns and labels were secured from the St. Louis branch through our Sales people. Only the in-

escapable costs of containers, crowns, labels, direct line labor, and freight have been included. No items of bottle house overhead, or Brewery general overhead have been considered—spread of such items would have little practical [fol. 888] effect in a given container's cost.

Detail of study follows in three sections:

Schedule 1—Cost Summary, showing breakdown of direct cost items used in determining glass-tin package differentials.

Schedule 2—Statistics, listing the various elements from which package costs and freight were developed.

Schedule 3—Direct Line Costs, or the detail of direct labor and filling speeds.

[fol. 889] Schedule 1

Cost

	Quart Beer—Cost per Gross	
	Cone Top Can	1 Way Glass
Cost of Container to Brewer	$11.419*	$ 8.370
Carton Cost—Outers	1.359	—
Labels	—	.134
Crowns	.300	.300
Filling Costs—Labor & Fringe Benefits	.264	.264
Direct Cost to Brewer at Dock	13.342	9.068
Outbound Freight—Brewery to Distributor	1.304	1.669
Total Cost Delivered to Distributor	14.646	10.737
Per One Doz. Case	1.221	.895

* Includes inbound freight—Milwaukee to St. Louis.

[fol. 890] Schedule 2

Statistics—Quart Beer Containers

	3 Color Cone Top Can	1 Way Bottle GB-1812
Container Price	$ 74.80/M	$8.37 per gross
Inbound Freight (Milw. to St. Louis)	88¢/Cwt. plus 3%	—
Carton Price	$113.23/M	—
Carton Style	1 Doz. Reshipper—No parts	1 Doz. IV2A 3¼
Carton Weight	1009 # /M	1.44 # per Ctn
Container weight—Each	6.85 Oz.	17½ oz.
Outbound Frt.—Brewer to Distr. (Based on 325 Miles—Milw. to St. Paul)	35¢/Cwt. plus 3%	
Crowns	30¢/Gross	
Labels—Body	—	78½¢/M
Neck (Not die cut)	—	14½¢/M
Pkg. Weight per Gross:		
Container	61.65 #	157.50 #
Carton	12.11	17.28
Total	73.76	174.78
Product	288.00	288.00
Total Per Gross	361.76	462.78
Total per 1 Doz. Case	30.15 #	38.57 #

Note: The can used in above is regulation weight cone-top, and not the new snap-cap featured by Pabst. Comparative sizes and weights follow:

	32 Oz. Cone Top Can	
	Snap Cap	Conventional
Size	3¾" x 6¾" Hght.	3 11/32 x 7 5/16
Weight per Can	6¼ oz.	6.85 oz.
Weight per Gross	55⅛ #	61.65 #

[fol. 891] Schedule 3

Direct Line Costs—Quart 1 Way Beer

	32 Oz. Beer	
	1 Way Glass	Cone Top Can
Line Speed per minute	250	250
1 Doz. Cases—per hour	1,250	1,250
Direct Line Labor:		
Feed to Line	2	2
Uncaser	1	—
Unscrambler & Rinser	—	2
Filler-Crowner	1	1
Pasteurizer Attendant	1	1
Labeller	1	—
Case Packer	2	2
Case Sealer	1	1
Filled Case Handling	2	2
Total	11	11
Direct Line Cost per Hour, @ $2.50 per Man Hour*	$27.50	$27.50
Cost per 1 Dozen Cases	$.022	$.022

* Hourly rate includes fringe benefits.

[fol. 892] Government's Exhibit 348c

Sources of Information

Can vs. Glass Prices—1942-1946 vs. 1-1-57

Can Costs

1942-1946—Vegetable cans from "Canning Trade" almanac. Baby Food—secured verbally from Bob Graham in early 1954. Beer Can—from price lists furnished by Jack Thayer.

January 1, 1957—All cans from current lists.

Can Carton Costs—Developed from can sizes and packing by OI Comptroller—based on board market costs in periods involved.

Inbound Freight—Cans—At estimated 80¢ per cwt. (current) on weight of empty cans and cartons. This 80¢ converted to 1942-1946 period through use of freight tariff increases experienced by OI.

Bottle Costs, Cartons, Inbound Freight—From OI East lists.

Label Costs and Crowns—1-way Beer bottle—Current price from Swan in Milwaukee—his label figures were for

quarts but we converted to 12 oz. body and die cut. neck label. The 1942-1946 figures from 1939 study made by Stevenson, Jordan and Harrison.

Bottle Closures—Current figures from OI East lists. The 1942-1946 period from a White Cap price list for the vegetable jars (66 and 83 m/m for 303 and 2½). The baby food cap—48 m/m—was estimated in the base period from the other sizes.

Comptroller's Department, Glass Container Division,
N. J. Laird:ed—2/27/57.

[fol. 893]

CAN VS. GLASS PRICES

1942-1946 Average vs. January 1, 1957

	#2½ (28 oz. Vegetable)			#303 (17 oz. Vegetable)			5 oz. Baby Food			12 oz. Beer		
Can - Cost Per Gross	1942-1946	1-1-57	Incr.	1942-1946	1-1-57	Incr.	1942-1946	1-1-57	Incr.	1942-1946	1-1-57	Incr.
Container	$ 3.25	$ 6.19	90.5	$ 2.56	$ 4.77	86.3	$ 1.33	$ 2.51	88.7	$ 3.07	$ 5.12	66.8
Carton	.51	.88	72.5	.35	.61	74.3	.14	.23	64.3	.33	.57	72.7
Inbound Freight	.23	.47	104.3	.16	.32	100.0	.05	.12	100.0	.13	.26	100.0
Total	3.99	7.54	89.0	3.07	5.70	85.7	1.53	2.86	86.9	3.53	5.95	68.6
Bottle - Cost Per Gross												
Container, Ctn. Inb. Frt.	3.45	7.62	120.9	2.60	5.17	98.8	1.55	2.72	75.5	2.35	4.05	72.3
Closure	1.48	2.67	80.4	1.12	1.88	67.9	.82	1.25	53.0	.20	.30	50.0
Label	-	-	-	-	-	-	-	-	-	.14	.35	150.0
Total	4.93	10.29	108.7	3.72	7.05	89.5	2.37	3.97	67.5	2.69	4.70	74.7
Bottle - (Over) Under Can:												
Per Gross	(.94)	(2.75)		(.65)	(1.98)		(.84)	(1.11)		.34	1.25	
%	(23.6)	(36.5)		(21.2)	(34.7)		(54.9)	(38.8)		23.8	21.0	

Comptroller's Department
Glass Container Division
N. J. Laird:ed - 2/27/57

[fol. 894] GOVERNMENT'S EXHIBIT 348d

Mr. M. A. Hellrung—14
cc: Mr. E. M. Delaplane—13

April 23, 1958.

1-Way Beer Prices

Following are comparative prices on 1-Way beer containers including the container cost, crowns, labels, carriers, and outer cartons, and including the latest can prices increase. Attached schedule details each item of cost included. Can figures were secured from the Milwaukee Branch.

	Bottle—2 Doz 6 Pak GB7	GB 20	Can—4 Doz 6 Pak Flat Top Can
Cost per Gross	$6.09	$5.73	$6.14
Out. Frt. @ $1.00 Cwt.	.77	.70	.35
Total	$6.86	$6.43	$6.49

N. J. Laird, Comptroller's Department, Glass Container Division.

jr

[fol. 895] 1-Way Beer

Price Per Gross:	GB 7	GB 20	CAN
Container (Include Inb. Frt.)	$4.20	$3.90	$5.21
Carriers	1.32	1.26	.60
Outer	—	—	.33
Crowns (3 Color)	.33	.33	—
Labels—Body	.16	.16	—
—Neck	.08	.08	—
Total	$6.09	$5.73	$6.14
Outbound Frt @ $1.00 Cwt.	.77	.70	.35
Total	$6.86	$6.43	$6.49
Wght per Gross—Container	65.3#	58.5#	27.0#
—Outer Ctn	5.3	5.0	3.0
—Carrier	6.5	6.2	5.3
Total—Container & Pkg.	77.1#	70.4#	35.3#
Price per M—Cans & Lids (3 Color)	—	—	$ 36.19
Carriers—Per M	$55.00	$52.50	$ 25.00
Outer—Per M	—	—	$110.00
Dozen per Outer	2	2	4
Size	2-37/64 x 7½	2-42/64 x 6¼	2¼ x 4¼

[fol. 396] GOVERNMENT'S EXHIBIT 348c

Cans vs. Jars Price Per Thousand—Ground Coffee

Can Price	New (Up 4.7%)	Old
Cans	$76.13	$72.73
Shippers	4.60	4.60
Total Cans Cost	$80.73	$77.33

(Maxwell)

Cans are sold F.O.B. fabricating plant, roaster to pay freight. In this case, no freight involved.

Glass Price	2 Doz.	1 Doz.
G-50 10½ oz Wt. 36 Oz. Overflow		
Per Gross	$ 7.20	$ 7.50
Jars	$50.40	$52.80
Labels	4.00	4.00
Closure	12.84	12.84
	$67.24	$69.64
Excess Freight Jars over Cans $1.00 per cwt.	2.97	2.97
Total Jar Cost	$70.21	$72.61

Weight	Individual	Per M (Exclusive Carton)
Jars	10½ oz.	656 lbs.
Cans	5¾ oz.	359 lbs.
		297 lbs. weight advantage cans

Closure price dependent on new liner being workable. There may also be slight variations in other figures.
Instant Products Division
October 21, 1958

[fol. 897] GOVERNMENT'S EXHIBIT 348f

Baby Foods—Tin vs. Glass
East—Vapak Cap for Glass

	5 oz. Baby Food		8 oz. Baby Food	
	Tin	Glass	Tin	Glass
Per Gross:				
Container	$2.724	$2.770	$3.34	$3.56
Carton	.342	—	.41	—
Caps	—	1.200	—	1.50
Label	.159	.150	.18	.16
Tin Under Glass:	3.225	4.120	3.93	5.22
Per Gross	$ .895		$ 1.29	
%	27.8%		32.8%	

East—Twist-off Cap for Glass

Container	2.724	2.770	3.34	3.56
Carton	.342	—	.41	—
Caps	—	1.180	—	1.38
Label	.159	.130	.18	.16
Tin Under Glass:	3.225	4.100	3.93	5.10
Per Gross	$ .875		$ 1.17	
%	27.1%		29.8%	

West—Vapak Cap for Glass

	5 oz. Baby Food	
	Tin	Glass
Container	$ 2.73	$ 2.99
Cases	.22	—
Caps	—	1.24
Label	.16	.15
Tin Under Glass:	3.11	4.38
Per Gross	$ 1.27	
%	40.8%	

Comptroller's Department, NJL 4/16/59

[fol. 898] GOVERNMENT'S EXHIBIT 348g

Mr. M. A. Hellrung
cc: Mr. L. K. Cooper
b/c Mr. A. C. Hirth

Beer Containers—One-Way Glass vs. Tin

April 27, 1959.

We contacted Kiger in the New York branch for the latest beer can price, and this latest price is included in the following. This new price represents a decrease of 5% from the previous list, and was effective on Feb. 19th, 1959 retroactive to Dec. 15th, 1958. This is the latest beer can price, as Kiger says cuts in can prices since Feb. 19th have not been extended to beer cans.

	Price Per Gross	
	GB 2000	Can
Container	$3.78	$4.98
Carriers	.93	.67
Outer Ctn	—	.32
Crowns	.31	—
Labels	.31	—
Inbound Frt.	—	.04
	5.33	6.01

or 11¢ bottle advantage per 2 doz. case.

Cans based on $24.59 per M. Can carriers at $27.75 per M. Bottle Carriers at $38.75 Per M.

N. J. Laird, Comptroller's Department, Glass Container Division.

jr

[fol. 899] GOVERNMENT'S EXHIBIT 348h

Mr. G. W. Borman
cc: Mr. K. J. Solon
b/c Mr. A. C. Hirth

Cans vs. Glass Prices

May 6, 1959.

Attached is proposed chart for use in Directing Committee meetings, and as suggested by Mr. Bensinger early this year. The can figures came from the Branches, and so far as is known are the most recent prices following the price war. We have included cartons, labels, closures, reshipper, and carriers in the cost per gross. On the Aersol, the valve or fitment is not included. Inbound freight on cans is included, but not outbound freight on customers shipment of filled package. Neither is filling cost included. All the can costs were for a specific customer that the Branches were able to get figures from—it is not known if this is a fair sample nationally. Attached schedule details the figures.

This is another addition to our growing list of charts. Would REG be interested in a review in the interest of weeding out some of them.

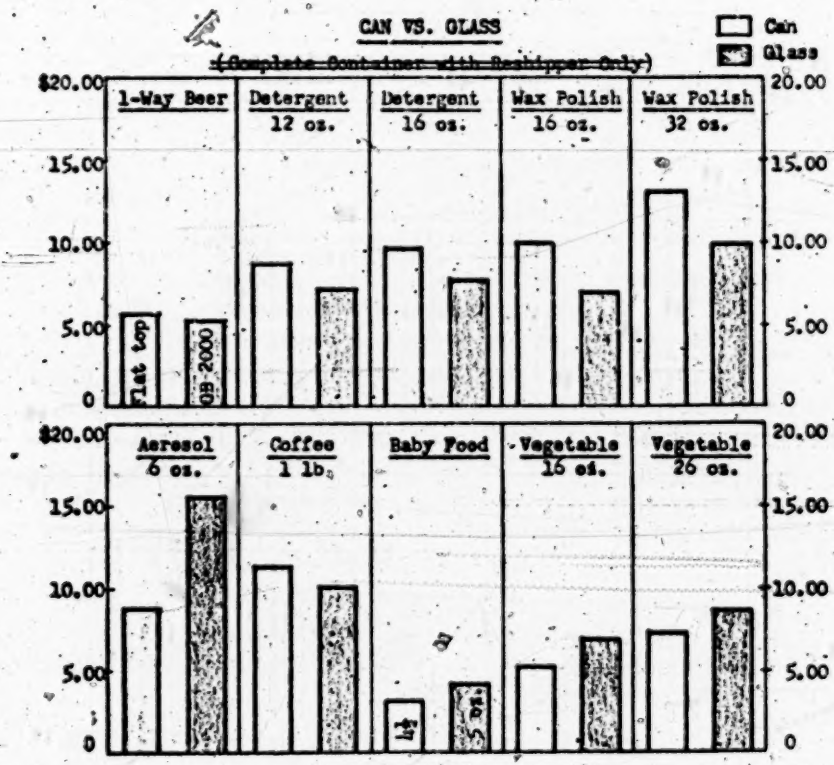
N. J. Laird, Comptroller's Department, Glass Container Division.

jr

[fol. 900]

	Cost Per Gross Can	Glass	Glass (Over) Under Per Gross	%
12 oz Beer	$ 5.73	$ 5.33	$ .40	7.5%
12 oz Detergent	8.71	7.17	1.54	21.5
16 oz Detergent	9.64	7.73	1.91	24.7
16 oz Polish	9.91	6.92	2.99	43.2
32 oz Polish	13.13	9.88	3.25	32.9
6 oz Aersol	8.76	15.53	(6.77)	(43.6)
1 lb Coffee	11.27	10.09	1.18	11.7
5 oz Baby Food	3.09	4.12	(1.03)	(25.0)
303—16 oz	5.18	6.81	(1.63)	(24.0)
2½—26 oz	7.18	8.53	(1.35)	(16.0)

[fol. 901]


CAN VS. GLASS
(Complete Container with Reshipper Only)
Can
Glass
$20.00
15.00
10.00
5.00
0
1-Way Beer
Flat top
OB 2000
Detergent 12 oz.
Detergent 16 oz.
Wax Polish 16 oz.
Wax Polish 32 oz.
Aerosol 6 oz.
Coffee 1 lb.
Baby Food
Vegetable 16 oz.
Vegetable 26 oz.

[fol. 902] GOVERNMENT'S EXHIBIT 349

4/2/58

Detergents

12-oz. (15-oz. Capacity) Round C/T Finish

	Per M Units			
		Glass		
	Tin	Boston Rd.	Spec. Rd.	Plastic
Base Price to Customer	$53.04	$34.09	$38.75	$55.01
3-Color Label	—	5.00	5.00	5.00
Bag Packing	.70	—	—	—
Customer Outbound Freight ($1/Cwt.)	1.68	5.90	6.64	.76
Customer Cost Excluding Caps	$55.42	$44.99	$50.39	$60.77
Shipping Weight per M	168 lbs.	590 lbs.	664 lbs.	76 lbs.

12-oz. (15-oz. Capacity) Oblong C/T Finish

	Tin	Glass	Plastic
Base Price to Customer	(No List)	$45.63	$57.67
3-Color Label		5.00	5.00
Bag Packing		—	—
Customer Outbound Freight ($1/Cwt.)	—	7.50	.78
Customer Cost Excluding Caps	—	$58.13	$63.45
Shipping Weight per M	—	750 lbs.	78 lbs

22-oz. (25.5-oz. Capacity) Round C/T Finish

		Glass		
	Tin	Boston Rd.	Spec. Rd.	Plastic
Base Price to Customer	$68.02	(No List)	$56.25	$70.11
3-Color Label	—		5.00	5.00
Bag Packing	1.00	—	—	—
Customer Outbound Freight ($1/Cwt.)	2.80	—	9.37	1.06
Customer Cost Excluding Caps	$71.82	—	$70.62	$76.17
Shipping Weight per M	280 lbs.	—	937 lbs.	106 lbs.

22-oz. (25.5-oz. Capacity) Oblong C/T Finish

	Tin	Glass	Plastic
Base Price to Customer	(No List)	$76.53	$76.34
3-Color Label		5.00	5.00
Bag Packing	—	—	—
Customer Outbound Freight ($1/Cwt.)	—	12.15	1.14
Customer Cost Excluding Caps	—	$93.68	$82.48
Shipping Weight per M		1,215 lbs.	114 lbs.

[fol. 903] 4/2/58

Detergents

32-oz. (35.35-oz. Capacity) Round C/T Finish

	Per M Units Glass			
		Boston		
	Tin	Rd.	Spec. Rd.	Plastic
Base Price to Customer	$80.50	$57.43	61.53	$92.53
3-Color Label	—	5.00	5.00	5.00
Bag Packing	1.00	—	—	—
Customer Outbound Freight ($1/Cwt.)	3.70	11.10	12.30	1.36
Customer Cost Excluding Caps	85.20	$73.53	$78.83	$98.89
Shipping Weight per M	370 lbs.	1,110 lbs.	1,230 lbs.	136 lbs.

32-oz. (35.35-oz. Capacity) Oblong C/T Finish

	Tin	Glass	Plastic
Base Price to Customer	(No	$83.19	$114.58
3-Color Label	List)	5.00	5.00
Bag Packing	—	—	—
Customer Outbound Freight ($1/Cwt.)	—	16.00	1.64
Customer Cost Excluding Caps	—	$104.19	$121.22
Shipping Weight per M	—	1,600 lbs.	164 lbs.

(32 oz. glass are actually 32 ozs. and not 35.35 oz.)

[fol. 904] 4/2/58

Liquid Waxes and Polishes

16-oz. Round C/T Finish

	Per M Units Glass			
		Boston		
	Tin	Rd.	Spec. Rd.	Plastic
Base Price to Customer	$56.50	$40.00	$42.01	$58.76
3-Color Label	—	5.00	5.00	5.00
Bag Packing	.70	—	—	—
Customer Outbound Freight ($1/Cwt.)	2.00	7.30	8.20	.82
Customer Cost Excluding Caps	$59.20	$52.30	$55.21	$64.58
Shipping Weight per M	200 lbs.	730 lbs.	820 lbs.	82 lbs.

16-oz. Oblong C/T Finish

	Tin	Glass	Plastic
Base Price to Customer	$63.45	$47.71	$62.60
3-Color Label	—	5.00	5.00
Bag Packing	.70	—	—
Customer Outbound Freight ($1/Cwt.)	2.25	9.67	.87
Customer Cost Excluding Caps	$66.40	$62.38	$68.47
Shipping Weight per M	225 lbs.	967 lbs.	87 lbs.

32-oz. Round C/T Finish

	Tin	Glass Boston Rd.	Glass Spec. Rd.	Plastic
Base Price to Customer	$79.15	$57.43	$61.53	$89.32
3-Color Label	—	5.00	5.00	5.00
Bag Packing	1.00	—	—	—
Customer Outbound Freight ($1/Cwt.)	3.60	11.00	12.30	1.30
Customer Cost Excluding Caps	$83.75	$73.43	$78.83	$95.62
Shipping Weight per M	360 lbs.	1,100 lbs.	1,230 lbs.	130 lbs.

32-oz. Oblong C/T Finish

	Tin	Glass	Plastic
Base Price to Customer	$84.89	$83.19	$109.66
3-Color Label	—	5.00	5.00
Bag Packing	1.00	—	—
Customer Outbound Freight ($1/Cwt.)	4.00	16.00	1.57
Customer Cost Excluding Caps	$89.89	$104.19	$116.23
Shipping Weight per M	400 lbs.	1,600 lbs.	157 lbs.

[fol. 905] GOVERNMENT'S EXHIBIT 349a

March 19, 1959.

Mr. O. G. Burch—6 (3)
cc: Mr. R. T. Wallace—T.C.
Mr. G. S. Babcock—14

Detergent Containers

The purpose of this report is to indicate the pricing and customer cost differentials between glass, tin, and plastic packages for liquid detergents. The three sizes of containers used in the detergent industry are 12, 22, and 32 oz. Comparisons have been projected on a per M container basis, since tin and plastics are sold on this unit.

The Glass Container prices and costs have been projected on two styles of containers—List #2 covering rounds and List #4 covering special shapes other than rounds. Tin containers are all rounds. Plastic containers are priced by weight and, at the same weights, can be either rounds or special shapes. We have used the P & G prices and weights because of their representing the intermediate weight range. Recent quotations by Glass Container to P & G on the same shape glass containers we are now supplying in plastic are in line with the list for glass prices.

Customer's delivered cost of empty containers has been computed at distances of 50 and 100 miles. Note that although this delivery cost was computed on glass it was not added to the customer's cost because of glass being sold on a delivered basis. Tin and plastics are sold f.o.b. factory.

Labeling costs have been included on the glass and plastic containers but omitted from tin which is lithographed. Customer's cost of containers, empty freight for 50 to 100 miles, and filled freight for 100, 200, and 400 miles are projected.

We have excluded the cost of closures which would be the same for each type container and would not influence the comparison.

Comptroller's Department, Closure & Plastics Division, P. R. Kelsey.

eb
Attach.

[fol. 906] 12 oz. Detergent Containers

	Glass List #2 Rds.	Glass List #4 Spec.	Tin	Plastic
Service Carton Price/M	$35.48	$44.52	$55.67	$55.21
Dry Color	—	—	—	2.32
R/S Carton—2 Doz.	6.67	7.78	4.50	6.00
Unit Load	—	—	—	.45
Factory Price/M	$42.15	$52.30	$60.17	$63.98
Label Cost—Customer	$ 5.00	$ 5.00	$ —*	$ 5.00
Weight—Empty Container/M	611#	770#	216#	129#
Freight Cost/M— 50 Miles	$ 1.65	$ 2.08	$ 1.23	$ 1.38
Freight Cost/M—100 Miles	$ 2.14	$ 2.70	$ 1.58	$ 1.75
Customer's Delivered Cost—				
Empty Containers— 50 Miles	$47.15**	$57.00**	$61.40	$70.36
Empty Containers—100 Miles	$47.15**	$57.00**	$61.75	$70.73
Weight—Filled Container/M	1611#	1770#	1216#	1129#
Freight Cost/M—100 Miles	$ 4.83	$ 5.31	$ 3.65	$ 3.39
Freight Cost/M—200 Miles	$ 5.96	$ 6.55	$ 4.50	$ 4.18
Freight Cost/M—400 Miles	$ 8.70	$ 9.56	$ 6.57	$ 6.10
Customer's Cost/M;				
Empty Container Del'd.— 50 Miles / Filled Container Del'd.—100 Miles	$51.98	$62.61	$65.05	$73.75
Empty Container Del'd.— 50 Miles / Filled Container Del'd.—200 Miles	$53.11	$63.65	$65.90	$74.54
Empty Container Del'd.— 50 Miles / Filled Container Del'd.—400 Miles	$55.85	$66.86	$67.97	$76.46
Empty Container Del'd.—100 Miles / Filled Container Del'd.—100 Miles	$51.98	$62.61	$65.40	$74.12
Empty Container Del'd.—100 Miles / Filled Container Del'd.—200 Miles	$53.11	$63.63	$66.25	$74.91
Empty Container Del'd.—100 Miles / Filled Container Del'd.—400 Miles	$55.85	$66.86	$68.32	$76.83

* Lithographed 3 color container.
** Delivered Prices—Freight not added.

Comptroller's Department, Closure & Plastics Division.

[fol. 907] 22 oz. Detergent Containers

	Glass List #2 Rds.	Glass List #4 Spec.	Tin	Plastic
Service Carton Price/M	$50.69	$72.42	$71.44	$74.22
Dry Color	—	—	—	3.37
R/S Carton—1 Doz.	10.62	10.97	7.50	9.00
Unit Load	—	—	—	.75
Factory Price/M	$61.31	$83.39	$78.94	$87.34
Label Cost—Customer	$ 5.50	$ 5.50	$ —*	$ 5.50
Weight—Empty Container/M	858#	1202#	355#	185#
Freight Cost— 50 Miles	$ 2.32	$ 3.25	$ 2.02	$ 1.98
Freight Cost—100 Miles	$ 3.00	$ 4.21	$ 2.59	$ 2.52
Customer's Delivered Cost—				
Empty Containers— 50 Miles	$66.81**	$88.89**	$80.96	$94.82
Empty Containers—100 Miles	66.81**	88.89**	81.53	95.36
Weight—Filled Container/M	2233#	2577#	1730#	1560#
Freight Cost—100 Miles	$ 6.70	$ 7.73	$ 5.19	$ 4.68
Freight Cost—200 Miles	$ 8.26	$ 9.53	$ 6.40	$ 5.77
Freight Cost—400 Miles	$12.06	$13.92	$ 9.34	$ 8.42
Customer's Cost/M:				
Empty Container Del'd.— 50 Miles Filled Container Del'd.—100 Miles	$73.51	$96.62	$86.15	$99.50
Empty Container Del'd.— 50 Miles Filled Container Del'd.—200 Miles	$75.07	$98.42	$87.36	$100.59
Empty Container Del'd.— 50 Miles Filled Container Del'd.—400 Miles	$78.87	$102.81	$90.30	$103.24
Empty Container Del'd.—100 Miles Filled Container Del'd.—100 Miles	$73.51	$96.62	$86.72	$100.04
Empty Container Del'd.—100 Miles Filled Container Del'd.—200 Miles	$75.07	$98.42	$87.93	$101.13
Empty Container Del'd.—100 Miles Filled Container Del'd.—400 Miles	$78.87	$102.81	$90.87	$103.78

* Lithographed 3 color container.
** Delivered Prices—Freight not added.

Comptroller's Department, Closure & Plastics Division.

[fol. 908] 32 oz. Detergent Containers

	Glass			
	List #2 Rds.	List #4 Spec.	Tin	Plastic
Service Carton Prices/M	$61.52	$85.97	$84.43	$90.27
Dry Color	—	—	—	4.20
R/S Carton—¾ Doz.	12.46	13.75	9.30	11.50
Unit Load	—	—	—	.75
Factory Price/M	$73.98	$99.72	$93.73	$106.72
Labels Cost—Customer	$ 6.00	$ 6.00	$ —*	$ 6.00
Weight—Empty Container/M	1144#	1581#	462#	236#.
Freight Cost— 50 Miles	$ 3.09	$ 4.27	$ 2.63	$ 2.53
Freight Cost—100 Miles	$ 4.00	$ 5.53	$ 3.37	$ 3.21
Customer's Delivered Cost—				
Empty Containers— 50 Miles	$79.98**	$105.72**	$96.36	$115.25
Empty Containers—100 Miles	$79.98**	$105.72**	$97.10	$115.93
Weight—Filled Container/M	3144#	3581#	2462#	2236#
Freight Cost—100 Miles	$ 9.43	$10.74	$ 7.39	$ 6.71
Freight Cost—200 Miles	$11.63	$13.25	$ 9.11	$ 8.27
Freight Cost—400 Miles	$16.98	$19.34	$13.29	$12.07
Customer's Cost/M:				
Empty Container Del'd.— 50 Miles / Filled Container Del'd.—100 Miles	$89.41	$116.46	$103.75	$121.96
Empty Container Del'd.— 50 Miles / Filled Container Del'd.—200 Miles	$91.61	$118.97	$105.47	$123.52
Empty Container Del'd.— 50 Miles / Filled Container Del'd.—400 Miles	$96.96	$125.06	$109.65	$127.32
Empty Container Del'd.—100 Miles / Filled Container Del'd.—100 Miles	$89.41	$116.46	$104.49	$122.64
Empty Container Del'd.—100 Miles / Filled Container Del'd.—200 Miles	$91.61	$118.97	$106.21	$124.20
Empty Container Del'd.—100 Miles / Filled Container Del'd.—400 Miles	$96.96	$125.06	$110.39	$128.00

* Lithographed 3 color container.
** Delivered Prices—Freight not added.

Comptroller's Department, Closure & Plastics Division.

[fol. 909] **Detergent Containers**

Statistical Information

Rates on Empty Containers:	50 Miles	100 Miles
Glass 30M # Minimum	$ .27 per Cwt.	$ .35 per Cwt.
Metal 20M # Minimum	.57 per Cwt.	.73 per Cwt.
Plastic 10M # Minimum	1.07 per Cwt.	1.36 per Cwt.

Rates on Filled Containers:	100 Miles	200 Miles	400 Miles
Glass, Tin, and Plastic—			
50M # Minimum	$.30/Cwt.	$.37/Cwt.	$.54/Cwt.

Comptroller's Department, Closure & Plastics Division.

[fol. 910] GOVERNMENT'S EXHIBIT 349B

10/30/57

Detergents

12-Oz. (15-Oz. Capacity) Round C/T Finish

	Per M Units			
		Glass		
	Tin	Boston Rd.	Spec. Rd.	Plastic
Base Price to Customer	$53.04	$34.09	$38.75	$55.01
3-Color Label	—	5.00	5.00	5.00
Bag Packing	.70	—	—	—
Customer Outbound Freight ($1.00/cwt.)	1.68	5.90	6.64	.76
Customer Cost Excluding Caps	$55.42	$44.99	$50.39	$60.77
Shipping Weight Per M	168 lbs.	590 lbs.	664 lbs.	76 lbs.

12-Oz. (15-Oz. Capacity) Oblong C/T Finish

	Tin	Glass	Plastic
Base Price to Customer	(No List)	$45.63	$57.67
3-Color Label		5.00	5.00
Bag Packing	—	—	—
Customer Outbound Freight ($1.00/cwt.)	—	7.50	.78
Customer Cost Excluding Caps	—	$58.13	$63.45
Shipping Weight Per M	—	750 lbs.	78 lbs.

22-Oz. (25.5-Oz. Capacity) Round C/T Finish

	Tin	Glass Boston Rd.	Glass Spec. Rd.	Plastic
Base Price to Customer	$68.02	(No	$56.25	$70.11
3-Color Label	—	List)	5.00	5.00
Bag Packing	1.00	—	—	—
Customer Outbound Freight ($1.00/cwt.)	2.80	—	9.37	1.06
Customer Cost Excluding Caps	$71.82	—	$70.62	$76.17
Shipping Weight Per M	280 lbs.		937 lbs.	106 lbs.

22-Oz. (25.5-Oz. Capacity) Oblong C/T Finish

	Tin	Glass	Plastic
Base Price to Customer	(No	$76.53	$76.34
3-Color Label	List)	5.00	5.00
Bag Packing	—	—	—
Customer Outbound Freight ($1.00/cwt.)	—	12.15	1.14
Customer Cost Excluding Caps	—	$93.68	$82.48
Shipping Weight Per M		1,215 lbs.	114 lbs.

[Ltr. 911] 10/30/57

Detergents

32-Oz. (35.35-Oz. Capacity) Round C/T Finish

Per M Units

	Tin	Glass Boston Rd.	Glass Spec. Rd.	Plastic
Base Price to Customer	$80.50	$57.43	$61.53	$92.53
3-Color Label	—	5.00	5.00	5.00
Bag Packing	1.00	—	—	—
Customer Outbound Freight ($1.00/cwt.)	3.70	11.10	12.30	1.36
Customer Cost Excluding Caps	$85.20	$73.53	$78.83	$98.89
Shipping Weight Per M	370 lbs.	1,110 lbs.	1,230 lbs.	136 lbs.

32-Oz. (35.35-Oz. Capacity) Oblong C/T Finish

	Tin	Glass	Plastic
Base Price to Customer	(No	$ 83.19	$114.58
3-Color Label	List)	5.00	5.00
Bag Packing	—	—	—
Customer Outbound Freight ($1.00/cwt.)	—	16.00	1.64
Customer Cost Excluding Caps	—	$104.19	$121.22
Shipping Weight Per M	—	1,600 lbs.	164 lbs.

(32 oz. glass are actually 32 oz. and not 35.35 oz.)

[fol. 912] 10/30/57

Liquid Waxes and Polishes

16-Oz. Round C/T Finish

	Per M Units			
		Glass		
	Tin	Boston Rd.	Spec. Rd.	Plastic
Base Price to Customer	$56.50	$40.00	$42.01	$58.76
3-Color Label	—	5.00	5.00	5.00
Bag Packing	.70	—	—	—
Customer Outbound Freight ($1.00/cwt.)	2.00	7.30	8.20	.82
Customer Cost Excluding Caps	$59.20	$52.30	$55.21	$64.58
Shipping Weight Per M	200 lbs.	730 lbs.	820 lbs.	82 lbs.

16-Oz. Oblong C/T Finish

	Tin	Glass	Plastic
Base Price to Customer	$63.45	$47.71	$62.60
3-Color Label	—	5.00	5.00
Bag Packing	.70	—	—
Customer Outbound Freight ($1.00/cwt.)	2.25	9.67	.87
Customer Cost Excluding Caps	$66.40	$62.38	$68.47
Shipping Weight Per M	225 lbs.	967 lbs.	87 lbs.

32-Oz. Round C/T Finish

		Glass		
	Tin	Boston Rd.	Spec. Rd.	Plastic
Base Price to Customer	$79.15	$57.43	$61.53	$89.32
3-Color Label	—	5.00	5.—	5.00
Bag Packing	1.00	—	—	—
Customer Outbound Freight ($1.00/cwt.)	3.60	11.00	12.30	1.30
Customer Cost Excluding Caps	$83.75	$73.43	$78.83	$95.62
Shipping Weight Per M	360 lbs.	1,100 lbs.	1,230 lbs.	130 lbs.

32-Oz. Oblong C/T Finish

	Tin	Glass	Plastic
Base Price to Customer	$84.89	$ 83.19	$109.66
3-Color Label	—	5.00	5.00
Bag Packing	1.00	—	—
Customer Outbound Freight ($1.00/cwt.)	4.00	16.00	1.57
Customer Cost Excluding Caps	$89.89	$104.19	$116.23
Shipping Weight Per M	400 lbs.	1,600 lbs.	157 lbs.

[fol. 913] GOVERNMENT'S EXHIBIT 357

List of Revlon Products March 1958 to October 1959

Ladies Line

1) Aqua Lotion, Glass & Plastic
2) Hi-Dri deodorant, Plastic
3) Aqua Bath Freshener, Glass
4) Clean and Clear Lotion, Glass
5) White Sable Face Cream, Glass
6) 7 Wonders Cream, Glass
7) Waking Beauty Cream, Glass
8) Touch and Glow Facial Makeup, Glass
9) Moondrops Lotion, Glass
10) Ultima Creams, Glass
11) Sunbath Suntan Lotion, Plastic
12) Aqua Shampoos, Glass & Plastic
13) Silicare Hand Lotion, Glass
14) Aerosol Hair Sprays, Cans
15) Nail Enamel and Treatment Line, Glass
16) Professional Line—Larger sizes of the above products in similar type containers. Glass

Mens Line

1) Top Brass Deodorant, Plastic
2) Top Brass Shaving Lotion, Glass
3) Top Brass Hair Dressing, Metal Tube

[fol. 914]

GOVERNMENT'S EXHIBIT 363

June 21, 1960.

Continental Can Co., Inc.
Hazel-Atlas Division

By Plant and Serial Number as of July 31, 1958

Revised as of September 1, 1958

Plant	I.S. Ser. No.	Year Shipped	No. of Sections	Date Ordered	P.O. Number	Purchase Authorized by	Machine Ordered With: 62 S.G.	62 D.G.	B & B S.G.	B & B D.G.
Lancaster, New York	1117	4/26/57	6	10/29/56	610-28214	Continental Can			X	X
	1118	4/26/57	6	10/29/56	610-28214	Continental Can	X		X	
	1127	4/30/57	6	2/13/57	451-164	Continental Can			X	X
Total	—	—	18							
Montgomery, Ala.	1114	1/31/57	6	12/56	461-1	Continental Can	X	X	X	X
	1132	6/27/57	6	2/13/57	461-327	Continental Can	X	X	X	X
Total	—	—	12							
Oakland, Calif.	81	1/14/38	4	—	—	Hazel-Atlas	—	—	—	—
	1133	7/24/57	6	2/14/57	441-238	Continental Can	X	X		
	1134	7/22/57	6	2/14/57	441-238	Continental Can	X	X	X	X
Total	—	—	16							
Washington Plt. 1	885	5/21/54	5	—	—	Hazel-Atlas	—	—	—	—
	893	6/25/54	5	—	—	Hazel-Atlas	—	—	—	—
	1137	7/26/57	6	2/13/57	402-591	Continental Can	X	X	X	X
Total	—	—	16							

[fol. 915]

[fol. 915]

Plant	I.S. Ser. No.	Year Shipped	No. of Sections	Date Ordered	P.O. Number	Purchase Authorized by	Machine Ordered With: 62 S.G.	62 D.G.	B&B S.G.	B&B D.G.
Washington Plt. 2....	1082	9/27/56	6	4/23/56	610-11293	Hazel-Atlas	X	X		
	1083	9/27/56	6	4/23/56	610-11293	Hazel-Atlas	X	X		
	1084	9/27/56	6	4/23/56	610-11293	Hazel-Atlas	X	X		
	1107	3/14/57	6	6/13/56	610-16289*	Hazel-Atlas*	X	X		
	1108	3/28/57	6	6/13/56	610-16289*	Hazel-Atlas*	X	X		
	1109	4/2/57	6	6/13/56	610-16289*	Hazel-Atlas*	X	X		
	1116	6/28/57	6	10/29/56	610-28214	Continental Can			X	X
	1130	5/28/57	6	2/13/57	403-553	Continental Can	X	X	X	X
	1131	5/9/57	6	2/13/57	403-553	Continental Can	X	X		
Total	—	—	54							
Zanesville #1	164	8/29/40	4	—	—	Hazel-Atlas	—	—	—	—

[fols. 916-917]

	41	4/17/35	4	—	—	Hazel-Atlas	—	—	—	—
	62	8/4/36	4	—	—	Hazel-Atlas	—	—	—	—
	68	2/2/37	4	—	—	Hazel-Atlas	—	—	—	—
	77	6/25/37	4	—	—	Hazel-Atlas	—	—	—	—
	80	1/11/38	4	—	—	Hazel-Atlas	—	—	—	—
	110	3/10/39	4	—	—	Hazel-Atlas	—	—	—	—
	114	4/24/39	4	—	—	Hazel-Atlas	—	—	—	—
	115	7/3/39	4	—	—	Hazel-Atlas	—	—	—	—
	124	3/6/40	4	—	—	Hazel-Atlas	—	—	—	—

*Initially ordered as shown. Confirming order issued by Continental Can.

Plant	I.S. Ser. No.	Year Shipped	No. of Sections	Date Ordered	P.O. Number	Purchase Authorized by	Machine Ordered With: 62 S.G.	62 D.G.	B & B S.G.	B & B D.G.
Zanesville #1	125	3/4/40	4	—	—	Hazel-Atlas	—	—	—	—
	126	3/6/40	4	—	—	Hazel-Atlas	—	—	—	—
	430	6/25/48	5	—	—	Hazel-Atlas	—	—	—	—
	938	3/22/55	6	3/4/55	510-06187	Hazel-Atlas			X	X
	1020	3/22/56	6	1/9/56	610-428	Hazel-Atlas			X	X
	1021	3/26/56	6	1/9/56	610-428	Hazel-Atlas			X	X
	1112	1/24/57	6	12/14/56	610-28686	Continental Can			X	X
	1113	1/22/57	6	12/14/56	610-28685	Continental Can			X	X
	1115	5/31/57	6	12/18/56	610-28230	Continental Can	X	X	X	X
	1125	3/23/57	6	2/7/57	422-505	Continental Can	X	X		
Total	—	—	91							
Plainfield, Ill.	975	7/31/56	6	8/22/55	510-22607	Hazel-Atlas	X		X	
	976	6/18/56	6	8/22/55	510-22607	Hazel-Atlas	X		X	X
	977	6/29/56	6	8/22/55	510-22607	Hazel-Atlas		X	X	X
	1136	10/23/57	6	8/6/57	471-1194	Continental Can	X	X	X	X
Total	—	—	24							

[fol. 918] GOVERNMENT'S EXHIBIT 364

Mr. McManus
Mr. Greenberg

Emhart Manufacturing Company
333 Homestead Avenue
Hartford 2, Connecticut

Cable Address: Emhart Hartford, Conn.

October 21, 1958.

United States Department of Justice
Antitrust Division
Washington, D. C.

Attention Mr. Samuel V. Greenberg

Re: Inquiry Concerning Glassware Forming Machines and Related Subjects—Ref. VRH:GDR 60-0-37-129

Gentlemen:

In compliance with the requests of Mr. Samuel V. Greenberg presented at a conference held September 19 in the office of Cahill, Gordon, Reindel and Ohl, 63 Wall Street, New York, we are pleased to furnish the following information and material.

As stated at the conference, the following conditions apply to the material delivered herewith:

No material which is the property of a customer should be turned over to the Government without that customer's consent.

No material with respect to Continental Can or Owens-Illinois should be turned over to the Government unless simultaneously therewith copies of such material are furnished to those parties.

No material thus turned over should be introduced into court as evidence except pursuant to a subpoena.

The preparation of the material and the answers to questions has required much more time and effort than may be apparent. However, we are glad to answer the reasonable requests of the Government, and hope that the information

furnished will be helpful in developing the true facts concerning the production of glass containers.

(1) Hartford-Empire Forming Machines—Number at Each Company and Plant as of September 1, 1958.

The following lists are enclosed (in some cases the loca-
[fol. 919] tions of machines may not be up to date):

I. S. Machines:

Summary of leased and purchased machines.
Summary by company, showing number of machines and number of sections for each company.
List by plant, showing serial number, date of shipment, and number of sections.

"28" Machines:

List by plant, showing serial number and date of shipment.

"65" Machines:

List by plant, showing serial number, date of shipment, and number of sections.

(2) Forming Machines Shipped 1955-1957 to Owens-Illinois, Anchor Hocking, and Continental Can (Hazel-Atlas)

The following lists are enclosed:

Summary of I. S. Machine shipments to these three companies.
Individual lists for Owens-Illinois, Anchor Hocking, and Continental Can showing shipments by plant and other details.

Characteristics of Hartford-Empire Forming Machines.

The characteristics of Hartford-Empire I. S. Machines for making narrow neck and wide mouth ware and the "28" Machine for making paste mold ware are described in the following items, copies of which are enclosed:

The H-E I. S. Glass-Forming Machines—15-page brochure.

I. S. Machine and Conveyor—Questionnaire and Request for Estimated Price—Issue No. 2, March 26, 1954—26 pages.
Contains technical data supplementing above-mentioned brochure.
Specifications—HE-142 I. S. Press Attachment.
Hartford-Empire 28 Machine—4-page brochure.
Chart—Estimated Average Time for 6 Man Crew to Change Processes on a 6 Section I. S. Machine.

[fol. 920] The Hartford "65" Machine is similar to the I. S. Machine.

Characteristics of Machines Used by Owens-Illinois, Anchor-Hocking, and Continental Can.

All three companies make use of the convertible and versatile features of the I. S. Machine—that is, the double gob and the 62 Process for converting from blow and blow to press and blow or from press and blow to blow and blow.

Anchor Hocking and Owens-Illinois use the Hartford-Empire "28" Machine, but Continental Can does not.

(3) Other Companies' Machines

A list of such machines, showing characteristics, is enclosed.

Certain of the Lynch machines are equipped for double gob operation, and certain Lynch machines may be converted from narrow neck blow and blow to wide mouth blow and blow. But Lynch blow and blow machines cannot be converted to press and blow machines, nor is the converse true of Lynch press and blow machines.

The Knox WD machine is a blow and blow type which, so far as we know, is not convertible to press and blow or to double gob, but the Knox JK is convertible to double gob.

In general, machines of other companies are capable of producing merchantable glassware at economic speeds, but are not as versatile as to the range of weight and convertibility as is the Hartford-Empire I. S. Machine.

(4) Reconditioning of Machines

Although machines were occasionally reconditioned by Hartford-Empire years ago, substantially all reconditioning is now done, where necessary, by the users of the machines. When ordered by customers, Emhart furnishes parts and supervision service to assist in repairing, reconditioning, or modernizing machines.

(5) Continental's Plainfield Plant and Gallo's Plant

Emhart was not engaged to perform the engineering of Continental's Plainfield plant and has no data of the kind requested concerning it. It did furnish forming machines for this plant, as shown by the lists referred to in (1) and (2).

An estimate of plant costs furnished to Gallo is contained in Emhart's letter of December 4, 1956, copy of which is enclosed. Emhart designed the furnace and furnished the machines for this plant. It did not act as engineer for the plant and does not have final cost data.

[fol. 921] (6) Costs of New Plant or Plant Addition

For the reasons set forth below, there is no basic distinction between the cost of a new plant and the cost of a plant addition, nor is there any basic difference between the cost of a new plant of a new company and that of an established company. In each case, costs depend upon requirements and the particular circumstances.

No data concerning hypothetical costs of plants is available. Emhart does not attempt in practice to give hypothetical plant costs to manufacturers, but estimates costs of plants to produce specified types and volumes of ware on the basis of the following elements:

Batch system
Furnace
Feeders
Forming machines
Lehrs
Stackers
Factory buildings
Services—water, gas, fuel, electricity

Warehousing and equipment therefor
Excluding cost of land and cost of excavations

The elements upon which estimates are based all vary according to the requirements of volume and types of glassware to be produced and to variations in demand.

The Gallo letter referred to in (5) above is an example of the application of the foregoing.

(7) New Plants and Companies and Exits

The following lists are enclosed:

Glass Container Plants—New Companies Since 1950—Exits from Field Since 1950

Glass Container Plants—New Plants or Plant Additions Since 1950—Existing Companies

(8) Development of New Machines

Emhart's new forming machine development is subject to the reservation regarding trade secrets, except for such recent improvements in the I. S. Machine as

Quick Change Conversion (see Questionnaire and Request for Estimated Price referred to under (2)—page 2)

Seamless Mold Attachment (see same, page 4)

Press Attachment (see Specifications—HE-142—referred to under (2)

[fol. 922] Emhart carries on a continuous research and development program for the improvement of its machines. Information regarding new or recent forming machine developments by other companies is contained in the enclosed list etitled

"Publications Referring to New Types of Machines Being Developed for Use of Glass Container Makers."

(9) Activity of Hazel-Atlas

Any increased activity on the part of Hazel-Atlas in 1955 is revealed in the lists of shipments of forming machines referred to in (1) and (2).

(10) Relationship of Hazel-Atlas and Anchor Hocking Machines Before and After Merger

Here again, reference should be made to the lists of machine shipments, it being noted that Hazel-Atlas has at times employed large numbers of Lynch machines but that Emhart has no detailed information regarding these machines. Anchor Hocking has not been a substantial user of Lynch machines in recent years. See also comments under (2) above.

(11) Relationship of Machines for Cans, Glass, Plastic, Paper

So far as Emhart knows, the machines used for forming cans, glass, paper, and plastics, respectively, are separate and distinct and are in no way interchangeable.

(12) Breakdown of Machines by Makers

Emhart has no record of percentages of glass container machines of various types made by different makers.

(13) GCMI

Emhart is not a member of Glass Container Manufacturers Institute, Inc. It is assumed that the Department has communicated or will communicate directly with this association.

(14) Glass Container Business Requirements

It is Emhart's opinion based on its experience that an essential requirement in entering the glass business is to obtain the services of at least one good man of executive or managerial caliber, experienced in the art of manufacturing glassware. A great deal of know-how is required, but the glass technology and engineering services of Emhart and others specializing in this industry are available. Machine operators are usually obtained from the unions. A large amount of capital is required. A real problem exists in finding a market for new production in competition with established manufacturers.

[fol. 923] (15) Convertibility of Packers' Machinery

The subject of the convertibility of packers' machinery for filling and closing is one on which Emhart has very little knowledge, not being engaged in this branch of industry. It is known that a certain amount of convertibility exists, but the character and extent of it are not known. See Modern Packaging Encyclopedia for 1957, page 440, picture of Triangle Package Machinery Co. referring to the handling of any style container, and page 486, Pneumatic Scale Company advertisements of machines for handling of (1) boxes, cans, or jars and (2) 1-ounce to 1-gallon bottles or cans.

Very truly yours, Emhart Manufacturing Company,
By John R. Hobson, Secretary.

JRH/mel

CC: Mr. Jerrold G. Van Cise, Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York 5, N. Y.

[fol. 924] Hartford-Empire—I. S. Machines September 30, 1958.

Summary of: Hartford-Empire I.S. Machines in Domestic Plants as of September 1, 1958***

Prepared from Company Records which in some instances may not be up to date.

	Leased		Purchased		Total	
	No. of Machines	No. of Sections	No. of Machines	No. of Sections	No. of Machines	No. of Sections
1 Section	—	—	3	3	3	3
2 Section	—	—	2	4	2	4
4 Section	17	68	86	344	103*	412
5 Section	100	500	329	1645	429**	2145
6 Section	16	96	175	1050	191	1146
Total	133	664	595	3046	728	3710
		18% Leased		82% Purchased		Total 100%

* Includes 11—8 Section Machines.

** Includes 15—10 Section Machines.

*** The letter "L" before the serial number on the following tabulations indicates that the machine is leased at the present time; otherwise, machine is a purchased machine. Many of the purchased machines were originally leased but later purchased by the customer.

MOA/eld

M. O. Ahearn, Sales Department.
9-30-58

[fol. 925] Summary of Hartford-Empire
I. S. Machine by Company as of 7-31-58

Company	No. of Machines	No. of Sections
Anchor Hocking	113	561
Armstrong Cork	44	221
Ball Brothers	24	124
Brockway	35	190
Chattanooga	8	38
Glass Containers	16	78
Continental	44	235
Kerr	4	23
Knox	3	14
Metro	17	90
Owens	202	1,028
Thatcher	43	227
All Others	175	881
Total	728	3,710

[fol. 926] Copies: Messrs. Cressy, McKinney, Crouse, Powers, M. Ahearn (2), Central File

Hartford-Empire—I. S. Machines

By Plant & Serial Number as of July 31, 1958
Revised September 1, 1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections
American Thermos	57	5- 7-36	4
	L- 64	8-24-36	4
	L-109	6-23-39	4
	L-201	6-28-41	4
	L-236	6- 4-42	4
	L-272	6-12-42	4
			24
Anchor Hocking—Carr-Lowrey	6	2-27-28	4
	10	4- 9-28	4
	14	11- 2-29	4*
	15	11- 6-29	5
	28	6-27-33	4
	29	7- 6-33	4
	48	9- 6-35	4
	70	2-27-37	4
	71	3- 6-37	4*
	84	8-12-38	4
	85	8-12-38	4
	92	8-19-38	4*
	105	2-24-39	4
	242	10-23-43	4
	1085	1-16-57	5
	1165	12-20-57	5*
			67
Anchor Hocking—Connellsville	22	10-14-31	4
	25	3-11-33	5*
	27 } 10	5-25-33	5 }
	593 } 10	4-26-47	5 }
	72B	3-22-37	6*

*Equipped with Double Gob.

Plant	I. S. Serial Number	Year Shipment	No. of Sections
Anchor Hocking— Connellsville (Cont'd.)	91	4-27-38	5
	119B	7-27-39	4
	172	12-11-40	5
	196	4- 2-41	5
	209	7-17-41	5*
	258	3-12-43	5*
	259	8- 3-45	5*
	262	10-27-45	5
	503	11-29-46	5
	424	5-10-46	5
	504	11-30-46	5*
	553	4-30-47	5*
	579	4-15-47	5*
	591	4-30-47	5
	592	1-20-47	5
	759	8-28-52	5*
	896	7-21-54	5*
	1023	3-28-56	6
	1095	11-23-56	6*
	1153	10-25-57	6*
	1154	10-31-57	6*
			133
Anchor Hocking—Maywood	86	10-30-37	5*
	93B	7- 7-38	5*
	117	7- 8-39	5*
	423	4-27-46	4
	808	3-31-53	5*
	881	4-29-54	5*
			29

*Equipped with Double Gob.

[fol. 927] Hartford-Empire—I. S. Machines

By Plant & Serial Number as of July 31, 1958
Revised September 1, 1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections
Anchor Hocking—Salem	33	3-21-34	5*
	72A	3-22-37	4
	90	3-15-38	6
	95	9- 9-38	5
	119A	7-27-39	5*
	130B } 10	12-18-39	5 }
	760 }	7-30-52	5 }
	147	3-13-40	5
	150	6-21-40	5*
	169	10-22-40	5*
	194	3-26-41	4
	243	11- 1-41	5
	244	11- 8-41	4*
	256	2-20-43	5
	261	8-14-45	5*
	421	3-25-46	6
	422	3-25-46	6*
	505	12- 4-46	5*
	575	9-30-46	5
	576	1-21-47	5*
	577	1-28-47	5*
	594	5-17-47	5
	761	7-30-52	5*
	762	8-29-52	5
	882 } 10	4-22-54	5 }
	883 }	4-23-54	5 }
	897	7-29-54	5
	898	8-31-54	5*
	914	2- 2-55	6
	1024	3-29-56	6

*Equipped with Double Gob.

Plant	I. S. Serial Number	Year Shipment	No. of Sections
Anchor Hocking—Salem (Cont'd.)	1094	11-21-56	6*
	1097	2-27-57	6
	1138	7- 6-57	6*
			170
Anchor Hocking—Winchester	30	11- 1-33	5*
	39A	7-24-34	4*
	54	2-21-36	5*
	69	2-20-37	5
	104	1-16-39	5
	146 } 10	5- 3-40	5 }
	502 } 10	11-26-46	5 }
	151	6-21-40	5
	166	8-10-40	6
	167 } 10	8-31-40	5 }
	257 } 10	3- 6-43	5 }
	175	11-12-40	5*
	195	3-26-41	5
	263	11-10-45	5*
	479 } 10	1- 7-49	5 }
	603 } 10	1-25-49	5 }
	506	12-11-46	5*
	578	9-24-46	4*
	595	6-25-47	5*
	895	7-28-54	5
	913	2- 3-55	6
	1096	2- 2-57	6*
	1152	8-29-57	6
			117

*Equipped with Double Gob.

[fol. 928] Hartford-Empire—I. S. Machines

By Plant & Serial Number as of July 31, 1958

Revised September 1, 1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections
Anchor Hocking—Jacksonville	24	8-12-32	5
	87	11-13-37	5
	100	1- 6-39	5
	130A	12-18-39	5
	150A	6-21-40	5
	210	10-11-41	5
	260	10-20-45	5*
	486	6-27-47	5
	758	3- 6-52	5
			45
Armstrong Cork—Dunkirk	141	3-20-40	5*
	L-144	7-27-40	4
	L-357	4-25-46	5*
	L-358	4-25-46	5
	L-359	5-17-46	5
	L-508	3-20-47	5
	L-509	3-25-47	5*
	510	3-26-47	5*
	701	10-22-51	5
	702	12-21-51	5
	827	5-29-53	5
	857	2-24-54	5
	1158	1-30-58	6*
	1176	5-29-58	6
	1177	6-18-58	6
			77

*Equipped with Double Gob.

Plant	I. S. Serial Number	Year Shipment	No. of Sections
Armstrong Cork—Millville	46	7- 2-35	5
	97	9-30-38	4
	107	9- 8-39	4
	123	10- 7-39	5
	134	2- 3-40	5
	142	5- 7-40	5
	143	5-11-40	5
	155	7-27-40	6*
	L-156	9-10-40	4*
	158	9-10-40	6
	170	11-27-40	5*
	177	2- 5-41	6
	198	7-24-41	5
	200	8- 4-41	4
	202	2-28-41	4
	L-211	6-13-42	4
	L-232	9-17-43	4
	245	7-16-43	6
	246	7-24-43	6*
	247	8-14-43	5
	L-248	8-14-43	5*
	L-250	9-10-43	4
	L-360	5-22-46	5
	L-361	5-22-46	5
	L-511	2- 7-47	5
	699	11-30-51	5*
	700	1-30-52	5
	1161	4-18-58	6
	1174	5-22-58	6*
			144

*Equipped with Double Gob.

[fol. 929] Hartford-Empire—I. S. Machines

*By Plant & Serial Number as of July 31, 1958

Revised September 1, 1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections
Ball Brothers—El Monte	L-178	3-14-41	6
	L-582	4- 9-47	6
	L-583	4-16-47	5*
	L-584	4-17-47	5
			22
Ball Brothers—Hillsboro	219	12-19-42	6
	L-226	1-16-43	5
	L-394	2-27-46	5
			16
Ball Brothers—Muncie	L-205	9-26-41	4
	L-225	1- 2-43	4
	L-383	2-26-46	5
	L-395	2-26-46	5*
	L-397	9- 1-46	5
	L-398	9-14-46	5*
	L-711	11-26-51	5
	L-712	11-27-51	5
	L-713	11-29-51	5
	L-714	11-30-51	5
	800	2-24-53	5*
	801	2-25-53	5
	802	2-27-53	5*
	L-996	11-28-55	6
			69
Ball Brothers—Okmulgee	218	12-19-42	6
	L-396	4-17-46	5
	886	10-18-54	6
			17
Brockway—Plant #1	102	3- 1-39	5*
	135	5-20-40	6
	173	10-29-40	6
	321	2- 2-46	6
	356	4-29-47	5
			28
Bartlett Collins	1135	8-30-57	5

*Equipped with Double Gob.

[fol. 930] Hartford-Empire—I. S. Machines

By Plant & Serial Number as of July 31, 1958
Revised September 1, 1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections
Brockway—Plant #2	174	11- 8-40	5*
	270	12-13-43	5*
	328	1-28-47	5
	329	1-29-47	5
	338	2-27-47	5*
	339	2-27-47	5
	340	2-28-47	5*
	341	2-28-47	6
	342	3- 7-47	6*
	L-655	7-14-50	5
	L-673	11-30-51	5
	L-792	7-31-52	5
	829	6-10-53	5
			67
Brockway—Plant #3	353	2- 6-46	5
	354	2- 6-46	5
	L-795	12- 2-52	5
	899	9-28-54	6
	900	9-30-54	6
			27
Brockway—Lapel	271	1-25-44	5*
	337	2-26-47	5
	L-654	7-14-50	5
	L-715	11-21-51	5
	901	12-20-55	6
	902	12-21-55	6
			32
Brockway—Freehold	253	7- 2-43	6
	254	7- 2-43	6
	352	1-29-46	6
	355	5- 8-46	6
	998	2-16-56	6
	999	2-22-56	6
			36
Buck	61	6-19-36	6
	249	9-10-43	6
	116	3-31-39	4
	145	3-20-40	4
			20
Chattanooga—Tennessee	234 } 8	6-17-43	4 }
	252 }	6-17-43	4 }
	599	9-30-47	5
	906 } 10	9-30-54	5 }
	907 }	9-30-54	5 }
	952	9-23-55	5
			38
Chattanooga—Corsicana, Texas	942 } 10	12-30-55	5 }
	943 }	12-30-55	5 }
			10

*Equipped with Double Gob.

[fol. 931] Hartford-Empire—I. S. Machines

By Plant & Serial Number as of July 31, 1958
Revised September 1, 1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections
Corning	47	7-12-35	4
	179	5- 7-41	4
	674	11-29-50	1
			9
Diamond	34	8-15-34	5
	51	1- 7-36	6*
	148	3-15-40	5*
	233	9-23-42	4
	336	6- 7-45	5
	418	2-24-47	5*
	949	8-31-55	5
			35
Fairmount	161	5-29-40	5
	193	3- 5-41	5*
	199	5-28-41	5
	251	5-29-43	5
	324	11- 3-45	5
	807	2- 5-53	5
	867	3-25-54	5
	912	1-26-55	6
	969	10-20-55	6*
	1123	2-22-57	6*
	1213	7-29-58	6
			59
Foster—Forbes	868	4-29-54	5
	937	3-15-55	6*
	1015	3-26-56	6*
	1016	3-29-56	6
	1162	12-16-57	6
	1178	7- 3-58	6
			35
Gallo	1140	9-10-57	6
	1141	9-18-57	6
	1142	10- 7-57	6
	1143	10-25-57	6
	1194	7-18-58	6
	1196	8-29-58	6
			36
Gayner	40	1-26-35	4
	50	10- 7-35	4
	L-76	6-12-37	4
	L-264	2-13-43	4
	1160	6-19-58	6
			22

*Equipped with Double Gob.

[fol. 932] Hartford-Empire—I. S. Machines

By Plant & Serial Number as of July 31, 1958

Revised September 1 ,1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections
Glass Containers—Antioch	55	3-13-36	6*
	346	12-16-46	5
	347	12-19-46	5
	348	12-27-46	5*
	406	12-30-46	5
	830	10-15-53	5*
			31
Glass Containers—Los Angeles	74	5-25-37	5
	189	3-18-41	4
	237	12- 4-41	5*
	308	5-19-44	4
	309	5-19-44	4
	407	12-30-46	5
	474	10-28-48	5*
	484	8-14-46	5*
	485	8-30-46	5
	692	11-23-51	5
			47
Glenshaw	978	9-29-55	5
	1139	9-26-57	6
			11
Gulfport	35	8-13-34	6
	162	10-30-40	6*
			12
Continental Can Co. Inc. Hazel-Atlas Division— Lancaster	1117	4-26-57	6
	1118	4-26-57	6
	1127	4-30-57	6
			18
Montgomery, Ala.	1114	1-31-57	6
	1132	6-27-57	6
			12
Oakland, Calif.	81	1-14-38	4
	1133	7-24-57	6
	1134	7-22-57	6
			16
Washington Plant #1	885	5-21-54	5
	893	6-25-54	5
	1137	7-26-57	6
			16
Washington Plant #2	1082	9-27-56	6
	1083	9-27-56	6
	1084	9-27-56	6
	1107	3-14-57	6

*Equipped with Double Gob

[fol. 933] Hartford-Empire—I. S. Machines

By Plant & Serial Number as of July 31, 1958
Revised September 1, 1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections
Washington Plant #2 (Cont'd.)	1108	3-28-57	6
	1109	4-2-57	6
	1116	6-28-57	6
	1130	5-28-57	6
	1131	5- 9-57	6
			54
Zanesville Plant #1	164	8-29-40	4
Zanesville Plant #2	41	4-17-35	4
	62	8- 4-36	4
	68	2- 2-37	4
	77	6-25-37	4
	80	1-11-38	4
	110	3-10-39	4
	114	4-24-39	4
	115	7- 3-39	4
	124	3- 6-40	4
	125	3- 4-40	4
	126	3- 6-40	4
	430	6-25-48	5
	938	3-22-55	6
	1020	3-22-56	6
	1021	3-26-56	6
	1112	1-24-57	6
	1113	1-22-57	6
	1115	5-31-57	6
	1125	3-22-57	6
			91
Continental Can Co., Inc. Hazel-Atlas Division— Plainfield, Illinois	975	7-31-56	6
	976	6-18-56	6
	977	6-29-56	6
	1136	10-23-57	6
			24
Kerr-Huntington	313	5- 4-46	6
	1128	5-23-57	6*
			12
Kerr-Santa Ana	315	4-25-46	5
	1129	6- 4-57	6
			11
Knox-Marienville	L-149	6-26-40	5
	L-501	4-29-46	5
			10
Knox-Knox	L-289	3-18-44	4

*Equipped with Double Gob.

[fol. 934] Hartford-Empire—I. S. Machines

By Plant & Serial Number as of July 31, 1958

Revised September 1, 1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections
Lamb	718	2- 6-52	5
	984	1-24-56	5
	1175	5-20-58	6
			16
Latchford	129	1-12-40	6
	152	3-29-40	4
	280	8-28-44	4
	284	2-19-44	4
	285	2-19-44	4
	287	1-18-46	5*
	288	1-18-46	5
	493	2-19-48	5
	894	10-21-54	6
			43
Laurens	168	12- 3-40	6
	220	10-15-43	6
	291	2-17-47	5
	292	2-19-47	5
	383	2-20-47	5*
	L-681	7-13-51	5
	L-703	12-21-51	5
	945	10-25-55	6
			43
Liberty	523	4-21-47	5
	524	4-21-47	5
	781	1-29-52	5*
	798	10-30-52	5*
	799	12-17-52	5
	L-970	11-11-55	5
	L-1157	2- 5-58	6
			36
Maryland	L-31 } 8	11- 3-33	4 }
	206 }	6-10-41	4 }
	52	1-23-36	5*
	82 } 10	9-14-37	5 }
	99 }	10-27-38	5 }
	121	8-21-39	6
	139	2- 8-40	5
	159	5-22-40	6
	37	11-27-34	5*
	221	3- 4-44	6
	241	3- 4-44	4
	399	12-18-45	5
	400	7- 8-46	5
	401	7- 7-48	5
	L-626	1- 9-50	5
	L-669	7-16-52	5
	L-851	1-21-54	5*
	L-908	1-13-55	5
			90

*Equipped with Double Gob.

[fol. 935] **Hartford-Empire—I. S. Machines**

By Plant & Serial Number as of July 31, 1958

Revised September 1, 1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections
Metro-Jersey City, N. J.	38 } 8	1-15-35	4 }
	127 }	12- 5-39	4 }
	98 } 8	11- 4-38	4 }
	128 }	12- 5-39	4 }
	137	4-17-40	4*
	848	1-29-54	6*
	971	10-31-55	6
	972	12- 2-55	6
	973	12-19-55	6
	974	11-29-55	6
	988	11- 1-56	6
	1163 } 10	12-19-57	5 }
	1164 }	12-19-57	5 }
			66
Metro-Dolton, Illinois	879	9-27-54	6
	909	12-23-54	6
	910	11- 5-54	6
	989	11-15-56	6
			24
Northwestern	157	5-15-40	5*
	188	3-14-41	6*
	265	1-25-43	5
	335	5- 3-46	5
	349	3-30-45	6*
	601	4-25-47	5
			32
Obear-Nester	828	4-30-53	5
	980	9-28-55	5
	979	9-30-55	5
			15
Oil City	11	8-30-28	4*
	53	3- 3-36	4*
	936	4-29-55	5
	1195	8- 1-58	5
			18
Owens-Illinois—Alton	122	9-21-39	2
	204	10-21-41	4
	296	7-20-44	5
	370	3-30-46	5
	372	3-30-46	5*
	373	7-31-46	5
	374	8- 3-46	5
	375	8-23-46	5
	379	9-30-46	5
	408	10-26-46	5*
	I-611	7-15-47	5
	I-612	7- 1-47	5
	614	7-31-47	5
	651	7- 7-50	5*

*Equipped with Double Gob.

[fol. 936] Hartford-Empire—I. S. Machines

By Plant & Serial Number as of July 31, 1958

Revised September 1, 1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections
Owens-Illinois—Allon (Cont'd.)	L-684	6-25-51	5*
	L-685	6-22-51	5*
	690	9-27-51	5
	L-740	7- 3-52	5*
	L-741	7-24-52	5*
	L-742	7-25-52	5
	L-743	9-10-52	5*
	L-744	9-12-52	5
	L-745	9-23-52	5
	813	7-29-53	5*
	816	10-30-53	5
	817	9-29-53	5*
	819	10-29-53	5
			131
Owens-Illinois—Atlanta, Georgia	676	5-17-51	5
	L-739	7- 3-52	5
	953	1-25-56	6
	954	1-25-56	6
	955	1-25-56	6
	956	1-30-56	6
	957	1-31-56	6*
	958	3-12-56	6*
	960	2-24-56	6
	961	2-24-56	6
	962	4-25-56	6*
	963	4-25-56	6
	964	4-30-56	6*
	965	4-30-56	6
	966	5-24-56	6
			88
Owens-Illinois—Bridgeton, N. J.	411	7-23-46	5*
	302 10	6-26-45	5
	822 10	11-18-53	5
	871	5-28-54	6
	872	5-28-54	6
	873	6- 4-54	6
	874	6- 9-54	6
	875	6-23-54	6*
	876	6-25-54	6
	877	6-30-54	6*
	878	6-30-54	6*
	887	10-28-54	6
	888	10-28-54	6*
	889	11-30-54	6
	890	11-30-54	6*
	891	11-30-54	6*
	892	12- 8-54	6
			99

*Equipped with Double Gob.

Hartford-Empire—I. S. Machines

By Plant & Serial Number as of July 31, 1958
Revised September 1, 1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections
Owens-Illinois—Clarion	180	2- 1-41	5
	184	1-24-41	5
	186	5-16-41	5*
	300	2-14-46	5
	303	7-26-45	5*
	368	3-28-46	5
	460	6-22-46	5*
	L-615	6-26-47	5
	L-638	4-27-50	5
[fol. 937]			
Owens-Illinois—Clarion (Cont'd.)	678	6-30-51	5
	L-688	9-28-51	5
	691	5-11-51	5
	815 } 10	9-29-53	5* }
	824 }	11-27-53	5* }
	820	10-30-53	5*
			75
Owens-Illinois—Huntington	153 } 8	8- 2-40	4* }
	154 }	8- 2-40	4* }
	160 } 8	8-22-40	4* }
	183 }	1-17-41	4* }
	181 } 8	2- 1-41	4* }
	222 }	4-15-43	4* }
	182	5- 3-41	4
	187	5-16-41	4
	212 }	4-24-43	4* }
	214 } 8	5-15-43	4* }
	215 } 8	5-22-43	4* }
	277 }	2-17-45	4* }
	298	2-19-46	5
	299	2-12-46	5*
	301	3-23-46	5*
	369 } 10	8-30-46	5* }
	414 }	5-29-46	5* }
	413	8- 2-46	5
	416	5-31-46	5
	417	7- 2-46	5

*Equipped with Double Gob.

Hartford-Empire—I. S. Machines

By Plant & Serial Number as of July 31, 1958
Revised September 1, 1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections
Owens-Illinois—			
Huntington (Cont'd.)	432	7-25-46	5*
	461	6-29-46	5*
	462	6-29-46	5
	L-565	10-29-46	5
	L-609	7-25-47	5
	610	6-27-47	5*
	L-616	7-28-47	5
	650	9-11-50	5
	671	7-26-51	5
	675	6-12-51	5*
	677	5-31-51	5*
	679	7-25-51	5
	680	8-28-51	5*
	L-683	8-31-51	5
	L-687	7-31-51	5*
	811	6-19-53	5
	812	6-25-53	5
	825	1-27-54	6*
			179
Owens-Illinois—			
Kimble (Chicago Heights)	36	11-27-34	4
	75	6- 2-37	4
	203	7- 3-41	4
	307	2- 9-44	5
	351	5-17-45	5
	507	3-13-47	5
	751	5-29-52	5
	823	11-23-53	5
			37

*Equipped with Double Gob.

[fol. 938] Hartford-Empire—I. S. Machines

By Plant & Serial Number as of July 31, 1958
Revised September 1, 1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections
Owens-Illinois Kimble (Toledo)	429	4-30-48	2
Owens-Illinois—Los Angeles	133	1-27-40	5*
	138	8-29-40	5*
	165	8-29-40	5
	185	5- 3-41	4
	275	6-30-44	5*
	295	5-12-45	5
	L-436	11-23-46	5
	L-456	11-22-46	5
	471	5- 6-48	5
	L-618	8-18-47	5*
	L-662	3-21-51	5*
	L-724	12-28-51	5
	L-725	12-31-51	5*
	726	11-29-51	5*
	985	6-27-56	6*
			75
Owens-Illinois—Oakland	207	8-20-41	5*
	208	8-20-41	5
	213	5- 6-43	5
	224	8-15-42	5
	230	10- 1-42	5
	274	4-28-44	5*
	276	6-30-44	6*
	294	2-17-45	6*
	377	6- 8-46	5
	378	6- 8-46	5
	380	6-29-46	5*
	381	7- 2-46	5*
	385	9-18-46	5*
	L-435	11-22-46	5
	455	10-25-46	5
	468	3-24-48	5*
	469	3-24-48	5
	L-520	3- 2-48	5*
	643	4-20-50	5*
	L-661	4-20-51	5*
	670	9-29-51	5*
	727	12-28-51	5*
	821	11-17-53	5*
	946	10-25-55	6*
	947	10-31-55	6
	986	6-29-56	6*
	1087	12-28-56	6
			141
Owens-Illinois—Streator	266	6-20-45	5
	297	3-23-46	5*
	312	8-30-45	5
	412	7-22-46	5
	458	11-12-46	5

*Equipped with Double Gob.

Hartford-Empire—I. S. Machines

By Plant & Serial Number as of July 31, 1958

Revised September 1, 1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections
	459	11-13-46	5
	637	4-27-50	5
	652	7-24-50	5*
	682	9-19-51	5
[fol. 939]			
	L-686	9-21-51	5*
	L-737	6-25-52	5
	L-738	6-30-52	5
	L-747	9-25-52	5
	810	6-16-53	5*
	818	10-22-53	5
	959	3-28-56	6
	967	5-24-56	6
	987	7-27-56	6
	1079	8-31-56	6*
	1080	9-26-56	6
	1081	10-17-56	6*
			111
Owens-Illinois—Portland, Oregon	56	4-15-36	5
	L-290	9- 6-45	5
	376	6- 1-46	5
	L-382	8-31-46	5
	384	5- 2-46	5*
	386	9-20-46	5*
			30
Owens-Illinois—Waco	304	9-17-45	5
	371	3-30-46	5*
	457	11-13-46	5*
	L-613	6-28-47	5
	L-617	7-31-47	5
	653	7-20-50	5*
	689	9-12-51	5*
	746	4-30-52	5*
	L-748	5- 8-52	5
	L-749	5-14-52	5
	L-750	5-22-52	5*
	814	8-12-53	5*
			60
Phoenix-Monaca	L-367	11-28-45	4
Star City	1046	10-25-56	6
Thatcher-Elmira	190	5-13-41	4
	191	5-13-41	4
	216	1-19-42	5*
	235	5-23-42	5
	278	12-31-43	6
	L-316	7-29-46	5
	L-320	1-11-46	5
	L-322	7-11-46	5
	L-323	5-17-47	5

*Equipped with Double Gob.

Hartford-Empire—I. S. Machines

By Plant & Serial Number as of July 31, 1958

Revised September 1, 1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections
	513	9- 2-47	5*
	L-697	10-31-51	5
	L-698	10-31-51	5
	L-859	3- 9-54	5*
	L-860	2-25-54	5
	L-869	6-29-54	6*
[fol. 940]			
	L-870	7-27-54	6*
	L-1032	5-29-56	6
	L-1033	5-31-56	6
			93
Thatcher-Lawrenceburg	305	12- 6-43	6
	L-318	4- 6-46	5
	L-343	5-20-47	5
	345	5-24-48	5
	L-695	10-22-51	5*
	L-1093	4-11-57	6
			32
Thatcher-McKee	L-317	7-25-46	5
	L-656	7-20-50	5
			10
Thatcher-Saugus, California	78	7- 8-37	6
	L-514	8-29-47	5
	517	5-26-47	5*
	L-1025	7-20-56	6*
	L-1026	7-25-56	6
			28
Thatcher-Streator	268	4- 9-45	5
	269	4-20-45	5
	279	12-31-43	6
	310 } 10	10-13-45	5 }
	311 }	10-13-45	5 }
	319	12- 6-45	5*
	L-344	5-25-48	5
	L-515	9-26-47	5
	539	10-25-46	6
	L-696	10-25-51	5*
	L-911	1- 7-55	6*
	L-944	7-15-55	6
			64
Tygart Valley	518	5- 7-48	5
	630	3-27-50	5
	L-716	1-29-52	5
	717	2- 6-52	5*
	L-796	11-28-52	5
	L-797	12-17-52	5
	L-905	1-10-55	6
	L-915	3-16-55	6
	983	10- 1-55	6
	L-1155	2-17-58	6
			54

*Equipped with Double Gob.

[fol. 941] Puerto Rico & Canadian Plants—I. S. Machines

Revised September 1, 1958

Plant	I. S. Serial Number	No. of Sections
Dominion-Hamilton	108	6
	163	6
	326	5
	466	5
	467	5
	478	5
	551	5*
	607	5
	608	5
	705	5
	730	5
	804	5
	805	5
	852	5
	992	6
	993	6
		84
Dominion-Pt. St. Charles	325	6
	477	6
	552	5
	627	6
	628	5
	629	6
	645	5
	646	6
	704	5
	728	5
	729	5
	803	5*
	865	6
	866	6
	994	6
	1031	6
		89
Dominion-Redcliff	420	5
	427	6
	990	6
	991	6*
	644	5
	706	5
	732	5
	861	6
		44

Total Dominion	
23-5 Section	115
17-6 Section	102
40	217

Puerto Rico	941	5*
	1103	5
	1104	5
	1105	5
		20

*Equipped with Double Gob.

[fol. 942] Hartford-Empire—I. S. Machines

By Plant & Serial Number as of July 31, 1958
Revised September 1, 1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections
Universal	L-463	12-18-46	5
	L-464	12-23-46	5
	L-554	6-28-47	5
	L-793	3-18-53	5
			20
United Can & Glass	83	10-16-37	6*
	475	10-28-48	5*
	625	1-25-50	5
	659	2- 8-51	5
	660	2-21-51	5
	806	1- 6-53	5*
			31
Wheaton, T. C.	26	3- 3-34	4
	88	2- 3-38	1
	101	4-11-39	5
	197	6-25-41	4
	217	9-15-41	5
	255	10-25-41	5
	281	5-18-43	1
	282	4- 3-43	5
	286	6-19-43	5
	306	1-19-44	4
	327	3-27-45	5
	334	10- 3-45	5
	350	11-20-45	5
	366	11-20-45	5
	438	9-21-46	5
	439	9-26-46	5
	440	9-28-46	5
	441	9-30-46	5
	442	9-30-46	5
	521	3-31-48	5
	522	3-31-48	5
	622	1-20-50	5
	623	1-20-50	5
	639	7- 3-50	5
	640	6-21-50	5
	641	6-28-50	5
	642	6-29-50	5
	665	11-25-50	5
	666	12- 4-50	5
	667	12-29-50	5
	723	2-14-51	5
	752	3-28-52	5
	753	4-8-52	5
	754	4-17-52	5
	755	4-18-52	5
	756	4-24-52	5
	880	7-30-54	6
	903	9-30-54	6
	939	4-25-55	6
	1027	5- 7-56	6
	1028	6-19-56	6
	1029	8-25-56	6
			205

*Equipped with Double Gob.

[fol. 943]

Summary

Hartford-Empire—I. S. Machines

By Plant & Serial Number as of July 31, 1958

Revised September 1, 1958

Plant	I. S. Serial Number	Year Shipment	No. of Sections	No. of Machines	Total	No. of Sections
Hartford Exp.	763	6-18-51	1	3	1 Section	3
	1034	7-24-56	5	2	2 Section	4
				81	4 Section	324
				399	5 Section	1995
				191	6 Section	1146
				11	8 Section	88
				15	10 Section	150
				702		3710

M. O. Abearn.
Sales Department 9-30-58

[fol. 944] **Hartford "28" Machines**

In Domestic Plants as of 9-1-58*

12-Head Machines

Plant	Serial Number		Year Shipment
Anchor Hocking, Lancaster #1	1		6-33
	2		6-20-33
	4		12-7-39
	9		3-21-46
	19		2-11-49
	22		12-23-48
	23		12-47
	24		8-26-48
	27		2-24-50
	28		3-17-50
		Total 10	
Bartlett-Collins	6		3-7-42
	L 10		1-10-46
	L 21		6-18-48
		Total 3	
Corning, Charleroi	29		1-31-51
		Total 1	
Federal	3		5-26-39
	5		11-26-41
	8		11-7-45
	11		9-27-46
	45		2-28-58
		Total 5	
Owens-Illinois—Libbey	7		9-21-45
	L 13		2-6-47
	L 14		3-25-47
	L 16		10-24-47
	L 17		4-30-48
		Total 5	
Total All Plants 24			

L—The letter "L" before the serial number indicates that the machine is leased at the present time; otherwise machine is a purchased machine. A portion of the purchased machines were originally leased, but later purchased by the customer.

*Prepared from company records which in some instances may not be up-to-date.

[fol. 945] Hartford-Empire "65" Machines

In Domestic Plants as 9-1-58

Plant	Serial No.	Year Shipment	No. of Sections
Anchor-Hocking, Winchester	1	1-24-50	4
Owens-Illinois, Oakland	2	1-8-53	6

[fol. 946] Summary of I. S. Machine Shipments

Owens-Illinois, Anchor Hocking & Continental Can

1955, 1956 and 1957

	Year	No. of Machines	No. of Sections
Owens-Illinois	1955	2	12
	1956	21	126
	1957	0	0
Total		23	138
Anchor Hocking	1955	2	12
	1956	2	12
	1957	6	36
Total		10	60
Continental Can	1955	1	6
	1956	8	48
	1957	19	114
Total		28	168

[fol. 947]

I. S. Machine Shipments To Owens-Illinois
1955, 1956, and 1957

I. S. Machine Shipments To Owens-Illinois
1955, 1956, and 1957

Company	Plant	Section	Serial No.	Date Shipped	"62" S.G.	"62" D.G.	B&G S.G.	B&G D.G.	Leased	Purchased
Owens-Illinois	Oakland	6	946	10-28-55			x	x		x
Owens-Illinois	Oakland	6	947	10-31-55			x	x		x
Total 1955—2 Machines—12 Sections										
Owens-Illinois	Los Angeles	6	985	6-27-56			x			x
Owens-Illinois	Oakland	6	986	6-29-56			x			x
Owens-Illinois	Oakland	6	1087	12-28-56			x	x		x
Owens-Illinois	Atlanta	6	953	1-25-56			x			x
Owens-Illinois	Atlanta	6	954	1-25-56			x			x
Owens-Illinois	Atlanta	6	955	1-25-56			x			x
Owens-Illinois	Atlanta	6	956	1-30-56			x			x
Owens-Illinois	Atlanta	6	957	1-31-56			x			x
Owens-Illinois	Atlanta	6	960	2-24-56			x			x
Owens-Illinois	Atlanta	6	961	2-24-56			x			x
Owens-Illinois	Atlanta	6	958	3-12-56			x			x
Owens-Illinois	Atlanta	6	959	3-28-56			x			x
Owens-Illinois	Atlanta	6	962	4-25-56			x			x
Owens-Illinois	Atlanta	6	963	4-25-56			x			x
Owens-Illinois	Atlanta	6	964	4-30-56			x			x
Owens-Illinois	Atlanta	6	965	4-30-56			x			x
Owens-Illinois	Atlanta	6	966	5-24-56			x			x

[fol. 948]

Owens-Illinois	Atlanta	6	967	5-24-56			x			x
Owens-Illinois	Streator	6	987	7-27-56			x			x
Owens-Illinois	Streator	6	1079	8-31-56			x			x
Owens-Illinois	Streator	6	1080	9-26-56			x			x
Total 1956—21 Machines—126 Sections										
Total 1957— 0 Machines— 0 Sections										

[fol. 949]

I. S. Machine Shipments to Anchor Hocking
1955, 1956, and 1957

I. S. Machine Shipments To Owens-Illinois
1955, 1956, and 1957

Company	Plant	Section	Serial No.	Date Shipped	"62" S.G.	"62" D.G.	B&G S.G.	B&G D.G.	Leased	Purchased
Anchor Hocking	Salem	6	914	2-2-55			x			x
Anchor Hocking	Winchester	6	913	2-3-55			x			x
Total 1955—2 Machines—12 Sections										
Anchor Hocking	Connellsville	6	1023	3-28-56			x			x
Anchor Hocking	Salem	6	1024	3-29-56			x	x		x
Total 1956—2 Machines—12 Sections										
Anchor Hocking	Winchester	6	1096	2-22-57			x	x		x
Anchor Hocking	Salem	6	1097	2-27-57			x			x
Anchor Hocking	Salem	6	1138	7-6-57			x	x		x
Anchor Hocking	Winchester	6	1152	8-29-57			x			x
Anchor Hocking	Connellsville	6	1154	10-31-57			x	x		x
Anchor Hocking	Connellsville	6	1153	10-25-57			x	x		x
Total 1957—6 Machines—36 Sections										

[fol. 950]

I. S. Machine Shipments to Continental Can
1955, 1956, and 1957

I. S. Machine Shipments To Owens-Illinois
1955, 1956, and 1957

Company	Plant	Section	Serial No.	Date Shipped	"62" S.G.	"62" D.G.	B&G S.G.	B&G D.G.	Leased	Purchased
Continental Can	#2 Zanesville	6	938	3-22-55			x	x		x
Total 1955—1 Machine—6 Sections										
Continental Can	#2 Zanesville	6	1020	3-22-56			x	x		x
Continental Can	#2 Zanesville	6	1021	3-26-56			x	x		x
Continental Can	Plainfield	6	976	6-18-56	x		x	x		x
Continental Can	Plainfield	6	977	6-29-56		x	x	x		x
Continental Can	Plainfield	6	975	7-31-56	x		x			x
Continental Can	#2 Washington	6	1084	9-27-56	x	x				x
Continental Can	#2 Washington	6	1082	9-27-56	x	x				x
Continental Can	#2 Washington	6	1083	9-27-56	x	x				x
TOTAL 1956—8 Machines—48 Sections										
Continental Can	#2 Zanesville	6	1112	1-24-57			x	x		x
Continental Can	#2 Washington	6	1107	3-14-57	x	x				x
Continental Can	Montgomery	6	1114	1-31-57	x	x	x	x		x
Continental Can	#2 Washington	6	1108	2-27-57	x	x				x
Continental Can	#2 Zanesville	6	1125	3-22-57	x	x				x
Continental Can	#2 Washington	6	1109	4-2-57	x	x				x
Continental Can	Lancaster	6	1127	4-30-57			x	x		x
Continental Can	#2 Washington	6	1131	5-9-57	x	x				x
Continental Can	Lancaster	6	1118	4-26-57	x		x			x
Continental Can	Lancaster	6	1117	4-26-57			x	x		x
Continental Can	#2 Washington	6	1130	5-28-57	x	x	x	x		x
Continental Can	#2 Zanesville	6	1115	5-31-57	x	x	x	x		x
Continental Can	Montgomery	6	1132	6-27-57	x	x	x	x		x
Continental Can	#1 Washington	6	1116	6-28-57			x	x		x
Continental Can	Oakland	6	1134	7-22-57	x	x	x	x		x
Continental Can	#1 Washington	6	1137	7-26-57	x	x	x	x		x
Continental Can	Oakland	6	1133	7-24-57	x	x				x
Continental Can	#2 Zanesville	6	1113	1-22-57			x	x		x
Continental Can	Plainfield	6	1136	10-23-57	x	x	x	x		x
Total 1957—19 Machines—114 Sections										

Continental Can	Plainfield	6	1136	10-23-57	x	x	x	x		x		
Total 1957—19 Machines—114 Sections												

[fol. 952] Estimated Average Time for 6 Man Crew to Change Processes on a 6 Section I. S. Machine

From	To	Single Gob Blow & Blow		Single Gob "62"		Double Gob Blow & Blow		Double Gob "62"		Quick Change Single Gob Blow & Blow		Quick Change Double Gob "62"	
		Man Hours	Elapsed Time	Man Hours	Elapsed Time	Man Hours	Elapsed Time	Man Hours	Elapsed Time	Man Hours	Elapsed Time	Man Hours	Elapsed Time
Single Gob				*35½	*6	*88¾	*21	*151¾	*31¾				
Blow & Blow				15	3	36	7¾	57½	13¾				
Single Gob		*15	*3			*96	*21½	*157¾	*33	1½	¼		
"62"		15	3			42	7¼	66	14½				
Double Gob		33	7¼	*72	*15½			*68½	*14½				
Blow & Blow				40¾	8½			21½	5½				
Double Gob		51½	10¾	*90	*19¼	*22¾	*4¾			1½	¼		
"62"				57½	12	22¾	4¾						
Single Gob				1½	¼								
Blow & Blow													
Quick Change													
Double Gob		51½	10¾					1½	¼			1½	¼
Blow & Blow													
Quick Change													

*Data Applies to First Installation Only.

The above figures do not include time for Job Changes, which are estimated at an average of 1½ hours.
October 8, 1958

[fol. 953] Listing and Characteristics of Other Companies' Machines

	Single Gob			Double Gob	
	Blow & Blow	Press & Blow	Press	Blow & Blow	Press & Blow
Lynch B	x				
Lynch LA	x				
Lynch 10	x			x	
Lynch 16	x			x	
Lynch JP		x			
Lynch JPL		x			
Lynch JPM		x			
Lynch JPS		x			
Knox JK		x			x
Lynch MB		x			
Lynch MPLS			x		
Knox WD	x				
Lynch MDP			x		

[fol. 954] December 4, 1956.

Air Mail

Mr. Ernest Gallo, President
Gallo Wine Company
Modesto, California

Subject: Estimated Cost of Glass Plant

Dear Mr. Gallo:

Attached are an estimate for the cost of constructing a four-shop glass plant capable of producing somewhat more than 40,000 tons of glass per year, and a preliminary layout drawing #703-D-4063. The estimate and the layout are based on our discussion of specifications November 27.

The drawing 703-D-4063 shows the main plant area. It consists of a corregated iron building 110 feet wide by 240 feet long. In addition to this building, there would be added a warehouse building of 53,000 square feet and general service and office space of 4,800 square feet. The office space and service building can be provided by a lean-to on one side of the manufacturing building. Other features not shown are a mezzanine for handling of cartons and a mezzanine charging platform at the rear of the glass melting furnace. At the rear or side of the furnace, there would be a batch plant of cylindrical shape for handling 200 tons of batch per day.

The melting furnace is 22 feet wide by 38 feet long making a melting area of 836 square feet. At a melting rate of six square feet per ton per day, this will provide almost 140 tons. It will be capable of producing at five square feet per ton per day, equivalent to 167 tons. Under very favorable conditions, it would be possible to produce 210 tons per day but this would depend on skill of operation and on control of raw materials and glass.

Fuel requirements for the furnace are conservatively estimated at 552,000 cubic feet per day plus 4,800 cubic feet for each ton of glass melted per day. At 140 tons the fuel consumption would be 1,223,000 cubic feet per day or a little less than 9,000 cubic feet per ton. On the basis of results obtained in furnaces designed by us during the last five years, the fuel consumption should be considerably below our estimate, possibly as much as fifteen per cent. Properly constructed, the furnace should operate at least three years before need of repair, and with good maintenance and operation, may be expected to last four years. After three years of operation, the repair costs would be estimated at approximately $250,000 making the furnace cost, based on 40,000 tons per year, approximately $2.00 per ton.

[fol. 955] The production equipment consists of four Type 144 Feeders, four 6-Section I. S. Machines, two of which are arranged for double gob operation, and the necessary stackers and lehrs. The following is a tabulation of production requirements and schedules based on the information which you gave us.

Bottle	Capacity	Weight	6-Section Speed	Tons/da.	Gross/da. 87% pack	Required Gr.	Days
1/10th Qt. D.G.	12.8 oz.	8¾ oz.	84	33	730	133,333	183
Pint (flask) S.G.	16 oz.	11 oz.	47	23	410	133,333	325
4/5th Qt. D.G.	25.6 oz.	13¼ oz.	58	35	500	202,083	405
Quart S.G.	32 oz.	14⅜ oz.	42	27	360	58,334	162
Half Gallon S.G.	64 oz.	29 oz.	31	41	270	57,500	213
Gallon S.G.	128 oz.	45¾ oz.	20	41	170	18,889	111

According to this tabulation, double gob operation amounts to 405 days for 4/5th quart plus 183 days for the 1/10th quart or a total of 588 days. Single gob operation amounts to 325 days for the pint plus 162 days for the quart plus 213 days for the half gallon, 111 for the gallon or a total of 811 days. The total machine days is 1399 which with 4 shops on the furnace accounts for 350 operating days.

Based on 350 operating days per year, the scheduling of jobs would be about as follows:

Shop #1	4/5th quarts D. G.	350 days	35 tons/day
Shop #2	Half Gallons	213 days	41 tons
	Gallons	111 days	41 tons
	Quarts	26 days	27 tons
Shop #3	Pints	325 days	23 tons
	Quarts	25 days	27 tons
Shop #4	4/5th Quarts D. G.	55 days	35 tons
	1/10th Quarts D. G.	183 days	33 tons
	Quarts S. G.	112 days	27 tons

The maximum tonnage with this scheduling would be 35 + 41 + 27 + 35 or 138 tons per day. Minimum tonnage would be 35 + 27 + 23 + 27 or 112 tons per day. If gallons and half gallons were made on separate shops, the maximum tonnage would be 152 tons.

With the addition of a 5th shop, the maximum tonnage could be 138 + 23 or 161 tons. If the 5th shop is used for additional production of gallons or half gallons, the maximum tonnage could be 138 + 41 or 179 tons. This would require furnace operation at 4.7 square feet per ton per day which should be easily attained.

[fol. 956] The general approach has been to design the plant so as to provide reasonable operating efficiency with the four shops needed in the beginning, and to provide also for melting an adequate supply of glass when the 5th shop is added.

For handling of cartons we propose a mezzanine floor equipped with carton sealers and delivery conveyors extending to the packing table on each lehr. Delivery of cartons to the mezzanines would be by service elevator or by high lift trucks.

Warehousing is based on 10,000 square feet per shop. This is small for normal commercial operation, but we be-

lieve it to be adequate considering the additional warehouse space available in your present operations.

We estimate that the work force for this size plant would be a minimum of 150 people and it might be as large as 200.

Hartford-Empire Company is equipped to supply all of the engineering, design, and specifications for this plant. In addition, Hartford can supply supervision of construction, installation and start-up of operation. Charges for engineering services, consisting of plant layout, general specifications, design of furnace and specifications of all auxiliary equipment would be $55,000 to $65,000 depending on the amount of detail required. An outline of the engineering services would be submitted in the form of a Letter Agreement.

Cost of supervision would be on the basis of man days at established rates, plus transportation and living expenses at cost. For installation of Hartford-Empire equipment, supervision is at the rate of $6.25 per hour, and for operating service the charge is $80.00 per day. For general supervision, involving construction of the furnace, and general plant work, the current rate is $80.00 per day. These figures are, of course, subject to change.

In addition to employing our engineering services, it would be advisable for you to employ a general engineering supervisor, who might be the ultimate Plant Manager, to organize drawings, confer with contractors and schedule purchasing and delivery of equipment.

Elapsed time for completing a project such as this is estimated at eighteen months. If plant location, layouts and requirements can be established quickly, it might be possible to shorten the time several months.

[fol. 957] We are indeed pleased that you have called on us for this preliminary information and trust that it is sufficient in detail to allow you to reach a decision and to establish budgets. Because our Glass Plant Engineering Section is very busy at present with the design of one complete new plant and with furnace designs and revisions for several others, there will be a problem in scheduling the work of our engineers. However, by the time all of the preliminary details are established, we should be in position to

schedule work for your plant without delay. If further information is needed, we shall be glad to supply it.

Sincerely yours, A. K. Lyle, Technical Manager.

AKL/jhm
Encl.

[fol. 958]

A	Batch Plant—200 Tons Batch Material/Day	
	Track Hopper	
	Power Scoop	
	Cullet Crusher	
	Elevator—Raw Material	
	Storage Silo	
	Weigh Hopper	
	Beam Scale	
	Batch Mixer	
	Elevator—Mixed Batch	
	Belt Conveyor	
	Storage Bins	$200,000
B	836 Sq. Ft. Melting Furnace by formula	
	836 x $440 = $367,840 ± Fixed Portion 50,000	
	= 417,840 Use 420,000	
C	Buildings	
	Office 24' x 100' = 2,400 Sq. Ft.	
	@ $10.00	$ 24,000
	Service Building 24' x 100' = 2,400 Sq. Ft.	
	@ $8.00	$ 19,200
	Furnace & Lehr Building 240' x 110' = 26,400	
	@ $8.00/Sq. Ft.	$211,200
	Mezzanines for above	
	Rear 40' x 110' = 4,400 Sq. Ft.	
	@ $4.50	$ 19,800
	Front 20' x 110' = 2,200 Sq. Ft.	
	@ $6.50	$ 14,300
	6,600 Sq. Ft.	
	Warehouse 480' x 110' = 52,800	
	@ $8.00/Sq. Ft.	$422,400
	Office Furnishings 24' x 100' = 2,400 Sq. Ft.	
	@ $2.00	$ 4,800
		$715,700

[fol. 959] Summary of Estimated Investment 4—Shop Glass Container Plant

			Total
A	1	Batch Plant	$ 200,000
B	1	Glass Melting Furnace 836 Sq. Ft. (22438)	420,000
C		Factory Building	715,700
D		Hartford-Empire Production Equipment (Schedule I)	769,640
E		Cafton Making and Conveying Equipment	25,000
F		Compressed Air and Fan Equipment	94,500
G		General Service Equipment	250,000
H		Mold Repair Shop Equipment	85,000
I		Warehouse Equipment	28,000
J		Bottling Testing & Laboratory Equipment	10,000
K		Molds for 6-Section Machines	20,000
		Total Items A-K—Estimated	$2,617,840
		Contingencies at 10%	261,784
		Total Items A-K with Contingencies	2,879,624
		Purchasing Expense	85,000
		Engineering Design and Installation Supervision @ Approximately 5% Total Items A-K	143,981
		Grand Total	$3,108,605

[fol. 960] Hartford-Empire Production Equipment

Per 703 D-4063

				Estimated Sales Price
D				
	2	Class 144 Feeders Single Gob 14' 7½" KW Forehearth—Deep Spout	$19,954	$ 39,908
	2	Class 144 Feeders Double Gob 16' 7½" KW Forehearth—Deep Spout	$21,351	$ 42,702
	2	6-Section I.S. Machines S.G. B & B	$87,347	$174,694
	2	6-Section I.S. Machines D.G. B & B	$91,944	$183,888
	4	6-Section S.D.P. Conveyor 8' 11½" Extension	$ 8,332	$ 33,328
	4	6' Gang Stackers with Ware Transfer & Cross Conveyor	$11,679	$ 46,716
	4	70' Type 125 Lehrs—Thermal Shock	$34,756	$139,024
		Total A		$660,260
	1	Set Fixtures & Spares		$ 30,000
		Total B		$690,260
		Installation and Freight Estimated @ 11.5%		$ 79,380
		Total		$769,640

[fol. 961]

E		Gluers, Sealers & Conveyor Equipment	$ 25,000
F		Compressors & Fans	
		5—125 H.P. Compressors with gas engines, after coolers, filters, traps and receiver	
		Piping	
		4—60 H.P. Mold Cooling Fans	
		Feeder Platform	
		Installation	
		Total	$ 94,500

[fol. 962]

G General Service Equipment—Installed Price
Gas Regulating and Metering Equipment
Auxiliary Generating Equipment—Rated 100 KVA—
Gas Engine Drive
Site Improvement, Sidewalks, Lawn, etc.
Transformer Substation & Switch Gear
Power Line Tie In
High Side Switch
Plant Power & Lighting
Office & Warehouse Lighting
Well and Pump Station
All Plumbing including Fixtures
Sewer Lines, Sanitary & Storm Sewers
600 Lineal Ft. Roadway 20' Wide
2,300' Fence
Estimated Total $250.000

[fol. 963]

	Equipment	Estimated Cost
H	Universal Type Milling Machine Drill Press—1-2 Spindle Lathes—3—1 with contour turning attachment Mold Cleaning Unit Polishing Machines—2 Grinders—2 Gorton Duplicating Machine Mold Inspection Equipment Small Tools Jigs & Fixtures Hand Tools Power Hack Saw Welding Torch Total	$ 85,000
I	Warehouse Equipment Lift Trucks Pallets. Total	$ 28,000
J	Process and Control Bottle Cutting Machine Thermal Shock Hydrostatic Pressure Testing Ring Section Polarising Microscope, Density Comparator. Capacity Measuring Equipment and Bottle Gaging Equipment Chemicals Total	$ 10,000
K	6 Sets of Molds for 6-Section I.S. Machine (Minimum Requirement) 6 at $3,300 = 19,800 use	$ 20,000

[fol. 964] Glass Container Plants
New Companies—Since 1950

Arkansas Glass Company	Jonesboro, Arkansas	1 furnace
Castle-Hanson Corporation	Rochester, New York	1 furnace
Gallo Glass Company	Modesto, California	1 furnace
Gulfport Glass Company	Gulfport, Mississippi	2 furnaces
Underwood Glass Company	New Orleans, Louisiana	2 furnaces

Exits From Field—Since 1950

Reed Glass Company	Rochester, New York	3-4 furnaces information not complete

[fol. 965] Glass Container Plants
New Plants or Plant Additions—Since 1950
Existing Companies

Anchor Hocking Glass Corp.	Jacksonville, Florida	1 furnace added
Brockway Glass Co.	Freehold, New Jersey	1 furnace, new plant
Chattanooga Glass Co.	Corsicana, Texas	1 furnace, new plant
Continental Can Co.	Montgomery, Alabama	1 furnace added
Continental Can Co.	Plainfield, Illinois	1 furnace, new plant
Diamond Glass Co.	Royersford, Pa.	1 furnace added
Foster Forbes Glass Co.	Marion, Indiana	2 furnaces added
Knox Glass Co.	Dayville, Conn.	1 furnace, new plant
Knox Glass Co.	Knox, Pa.	1 furnace added
Knox Glass Co.	Palestine, Texas	1 furnace added
Laurens Glass Works	Laurens, S.C.	1 furnace added
Liberty Glass Co.	Sapulpa, Oklahoma	1 furnace added
Metro Glass Bottle Co.	Dolton, Illinois	1 furnace, new plant
Metro Glass Bottle Co.	Jersey City, N.J.	1 furnace added
Metro Glass Bottle Co.	Washington, Pa.	1 furnace, new plant
Northwestern Glass Co.	Seattle, Washington	1 furnace added
Owens-Illinois Glass Co.	Atlanta, Ga.	2 furnaces, new plant
Owens-Illinois Glass Co.	Bridgeton, N.J.	1 furnace added
Owens-Illinois Glass Co.	Los Angeles, Calif.	1 furnace added
Owens-Illinois Glass Co.	Portland, Oregon	2 furnaces, new plant
Owens-Illinois Glass Co.	Waco, Texas	1 furnace added
Pierce Glass Co.	Port Allegany, Pa.	1 furnace added
Thatcher Glass Mfg. Co.	Lawrenceburg, Ind.	1 furnace, new plant
Thatcher Glass Mfg. Co.	Saugus, Calif.	1 furnace, new plant

[fol. 966] Publications Referring to New Types of Machines Being Developed for Use of Glass Container Makers

Company	Machine	Reference
Owens-Illinois Glass Co. Toledo, Ohio	G 50	Ceramic Industry—November 1955, page 51 Glass Industry—October 1955, pages 520 and 557 American Glass Review—October 1955, pages 12 and 13 Wall Street Journal—May 23, 1956
Knox Glass Co. Knox, Pa.	JK	Knox Glass Co. Annual Report 1957 Glass Packer—September 1958, page 47—descriptive advertisement
Lynch Corporation Anderson, Indiana	Two New Machines	Lynch Corporation 1957 Annual Report

[fol. 967] GOVERNMENT'S EXHIBIT 400

Tin vs. Glass

United States and Canada
Commercial Research Dept.
Metal Container Section

December, 1954

[fol. 968] January 10, 1954.

Mr. R. G. Fisher

Tin Versus Glass—Fruit & Vegetable—Canada and the United States

Unfortunately there is a dearth of statistical data on the breakdown between tin and glass used in fruit and vegetable packing in Canada. On the other hand, published information on the United States is available. Thus, though this is a qualitative analysis, it seems quite clear that glass is more important as a fruit and vegetable packaging medium in the United States than in Canada. In this country, 90% of the major fruits and vegetables packed is in cans; in Canada, a rough estimate is that 95% is in tin. Although strict quantitative information is available just for tomato catsup in Canada, only two other products, chili sauce and grape juice, account for any quantity of glass in Canada. In neither Canadian nor United States figures has baby food been included in making the above comparisons. However, it is interesting to note that all Canadian baby food is in cans, while about 60% of the pack in this country is in glass.

Post-war trend data indicates that tin has been the F & V growth item in this country while both tin and glass have grown significantly in Canada. Glass usage in the United States for all packing purposes, however, has mushroomed. Since pre World War II the number of glass units used has increased 141% while can usage has gone up only 90%.

Dana Hill.

DH/mla

cc: Messrs: T. C. Fogarty, P. P. Wojtul, W. K. Neuman, L. Ylvisaker, L. C. Dudley, J. R. Brewer, J. W. Cuff.

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[fol. 970] Tin vs. Glass

United States and Canada

Growth of Glass Packages Far In Excess of Tin In United States

Although there are only about half as many glass containers presently used in packaging as metal cans, the glass industry has shown a much stronger growth than tin since 1940. Shipments of all glass containers (approximately 18 billion actual count) this year will show an increase of 141% above shipments for the year 1940. The same comparison shows that shipments of metal cans (#2 basis) will be about 37 billion units in 1954 or an increase of 85-90% over the 1940 level.

Greater Percentage of Tin Used For Food Products Than Glass In This Country

Slightly less than ½ of the glass containers produced are used in food products. The greatest portion of these are wide mouth jars (the type used for fruit and vegetable packs). Normally about 2/3 of the metal containers produced are used for food products. Fruit and vegetable packs require about 34% of the metal containers produced in the U. S.

10 Months '54 Food Packs In Glass Show Increase Over '53 While Tin Lags

Food Packs in glass for the first 10 months of 1954 lead the same period in '53 by about 7%. Total food packs in metal for 10 months of 1954 are about 2.5% behind the same period in 1953. Fruit and vegetable packs in tin as a group lag by 3%.

The above comparison on Canadian packs cannot be made because figures on glass and tin usage are not reported in such a form to permit the same comparisons. However, in the following portion of the report we have traced specific trends as far as figures and estimates will permit on the glass vs. tin pack of fruits and vegetables for both Canada and the U. S.

Tin Retains First Place In Fruit And Vegetable Packing In Both The United States And Canada

Tin remains the dominant package in both the United States and Canada in the processing of fruits and vegetables. [fol. 971] Growth since 1947 has gone into tin while glass has remained more or less static.

In 1947, when tin restrictions were being removed, the United States packed over 277 million cases of fruits, vegetables and juices (excluding citrus) in the tin container. This was 86% of the total pack (322 million cases). As tin restrictions became less and less, this percentage increased—to 90.2% in 1949. During the following years, tin continued to share about 90% of the U. S. fruit and vegetable packs. In 1953, the pack in tin amounted to 369.4 million cases (90.1%) while the glass pack was only 40.6 million cases (9.9%).

Canada leans even more to tin than does the United States. As for the basic fruit and vegetable packs, almost 100% is put up in the tin package. Items such as tomato catsup, chili sauce and grape juice, however, (this is also true in the U.S.) are heavier in glass. Tomato catsup, for instance, averages about 84% in glass and 16% in tin.

But Baby Food Favors Glass In U. S. And Tin In Canada

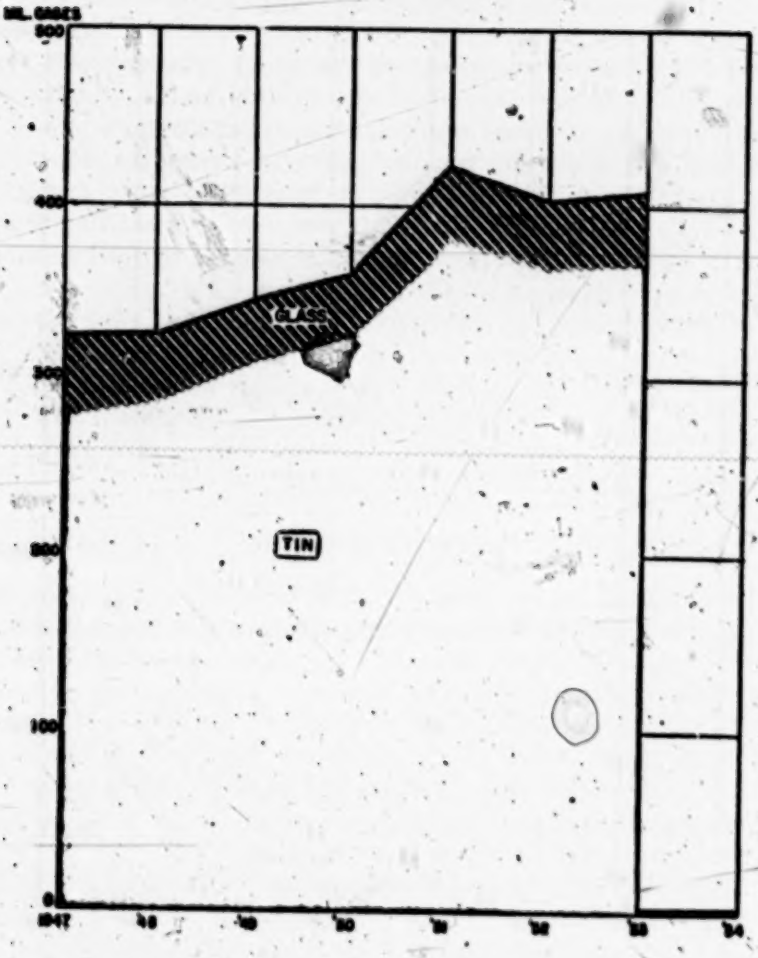
Baby food is one category in the United States packaging field where the pack is greater in the glass container than in tin. Prior to World War II very little baby food (fruits, vegetables, meat products, custards, puddings and soups) was placed in glass but by 1947 more than 61% of the pack was in glass. Since that year more than 53% of the baby food pack in the United States has been put up in glass. In Canada, however, all baby food packed to the present time has been placed in the metal container.

The following group of charts and tables give specific comparisons of the use of tin and glass in the U. S. and Canadian vegetable packs.

[fol. 972]

CHART I

TREND IN U.S. PACKS[a]
FRUITS, VEGETABLES & JUICES
TIN VS. GLASS



[a] EXCLUDES CITRUS AND BABY FOODS

COMMERCIAL RESEARCH DEPT.
DECEMBER 1954

[fol. 973] **Table I**

U. S. Packs of Fruits, Vegetables & Juices*
Tin vs. Glass
(millions of cases)

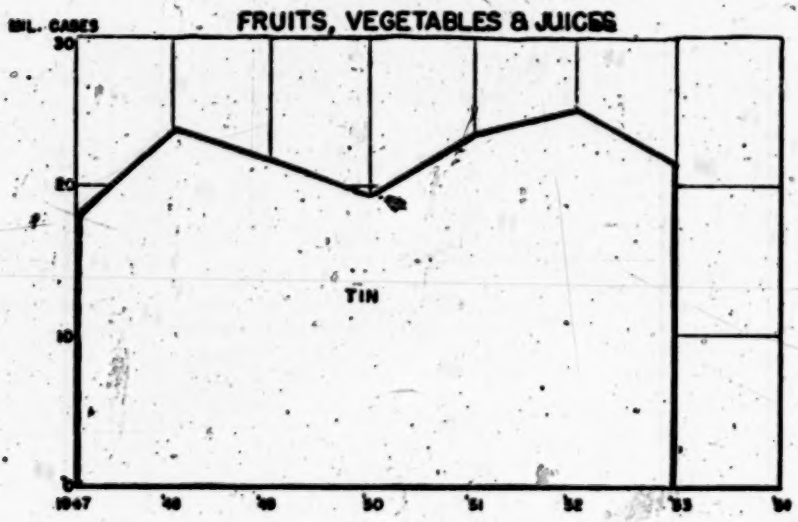
Year	Tin Qty.	Tin % of Tot.	Glass Qty.	Glass % of Tot.	Total Tin & Glass Qty.	Total Tin & Glass %
1947	277.1	86.0	45.2	14.0	322.3	100.0%
1948	286.9	88.1	38.9	11.9	325.8	100.0
1949	310.2	90.2	33.7	9.8	343.9	100.0
1950	322.8	89.4	38.1	10.6	360.9	100.0
1951	379.6	89.6	44.1	10.4	423.7	100.0
1952	362.1	90.0	40.2	10.0	402.3	100.0
1953p	369.4	90.1	40.6	9.9	410.0	100.0

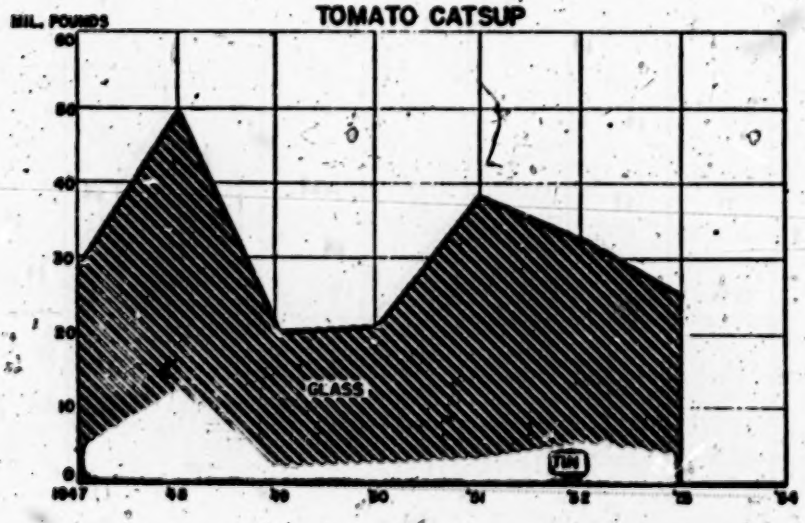
*—These figures include fruits (excl. citrus), seasonal vegetables, non-seasonal vegetables (incl. dried beans), non-citrus juices, and vegetable juices.
p—Preliminary.
Source: Western Canner & Packer.

CHART II

TREND IN CANADIAN PACKS

TIN VS. GLASS





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[fol. 975]

Table II

Canadian Packs of Fruits, Vegetables & Juices

Tin vs. Glass

Year	Total Tin* (mil. of cases)	Tomato Catsup Tin Qty.	Tin % of Tot.	Glass (millions of pounds) Qty.	Glass % of Tot.	Total Qty.	Total %
1947.....	18.0	4.4	15.2	24.4	84.8	28.8	100.0
1948.....	23.9	11.8	23.8	37.7	76.2	49.5	100.0
1949.....	21.7	2.2	11.2	17.8	88.8	20.0	100.0
1950.....	19.2	2.9	13.8	18.0	86.2	20.9	100.0
1951.....	23.6	3.6	9.5	34.5	90.5	38.1	100.0
1952.....	25.1	5.3	16.2	27.6	83.8	32.9	100.0
1953*	21.4	4.1*	16.0	21.4*	84.0	25.5	100.0

*—These figures include fruits, seasonal vegetables, non-seasonal vegetables, tomato & apple juices. These items are virtually all in tin. The exception is tomato catsup which is shown separately by tin and glass. The portion of this item in tin, however, is included in the total tin picture.

*—Preliminary.

*—Estimated.

Source: Canadian Food Industries. The Fruit & Vegetable Preparations Industry. The Canning Trade.

CHART III.

TREND IN FRUIT, VEGETABLE & JUICE PACKS
UNITED STATES AND CANADA
TIN VS. GLASS

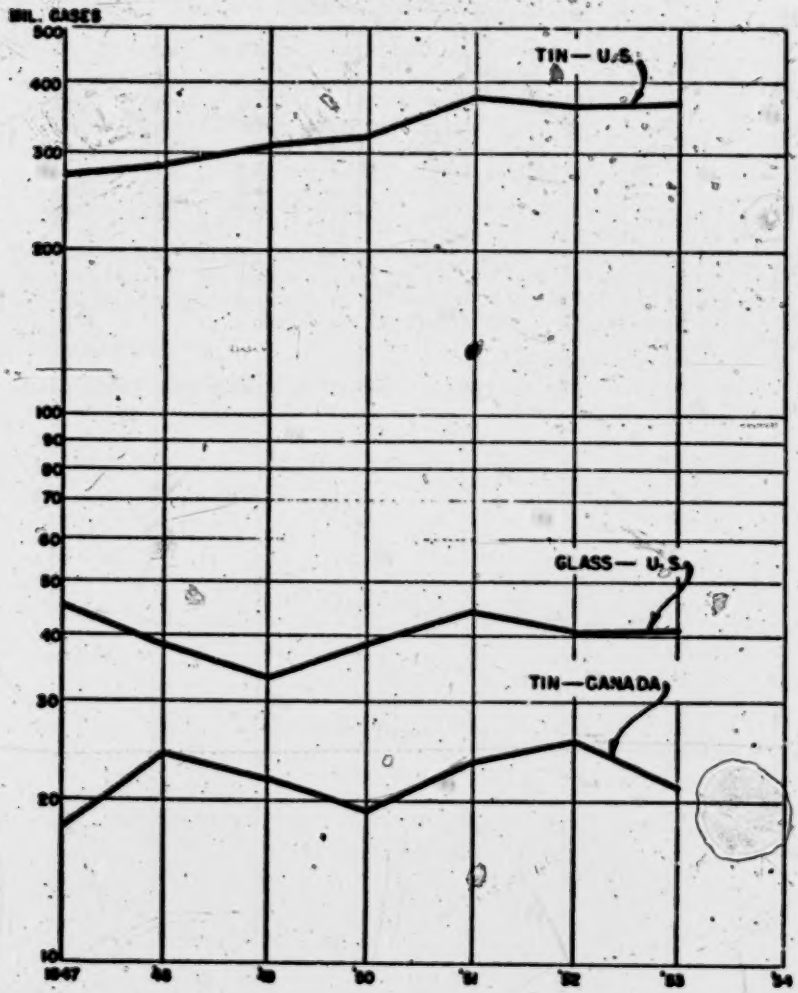

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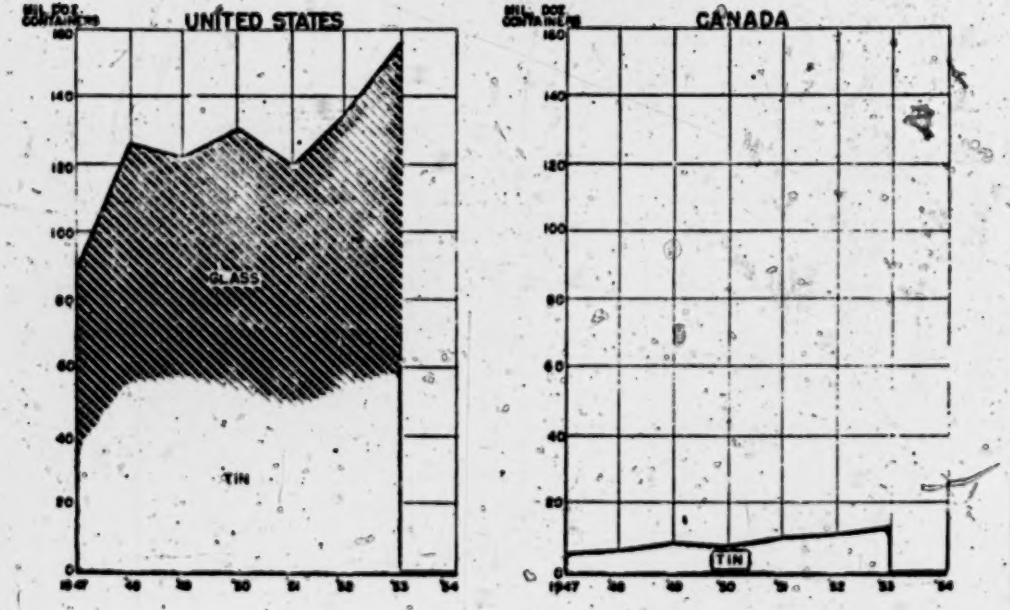
CHART IV

TREND IN BABY FOOD PACKS

TIN VS. GLASS



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[fol. 977]

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[fol. 978]

Table III

Baby Food Packs*
U. S. and Canada
Tin vs. Glass

Year	United States						Canada**
	Tin		Glass		Total		
	Mil. Doz. Containers	% of Tot.	Mil. Doz. Containers	% of Tot.	Mil. Doz. Containers	%	Mil. Doz. Containers
1947	35.0e	38.9	54.9e	61.1	89.9	100.0	5.3
1948	54.9	43.3	71.8	56.7	126.7	100.0	6.1
1949	56.7	46.4	65.4	53.6	122.1	100.0	8.3
1950	52.6	40.4	77.6	59.6	130.2	100.0	7.6
1951	47.2	39.5	72.4	60.5	119.6	100.0	9.8
1952	52.2	38.9	81.9	61.1	134.1	100.0	10.2
1953	59.2	37.9	97.2	62.1	156.4	100.0	12.5

*—Includes vegetables, fruits, meat products, custards, puddings & soups.
**—All tin.
e—Estimated.
Source: U.S.—National Canners Associations.
Canada—Canadian Food Industries.

[fol. 979] GOVERNMENT'S EXHIBIT 400A

New York #43
November 24, 1947.

Mr. G. H. Muth

Competition—Glass vs. Tin

Attached are data sheets summarizing information received from our division offices on the comparative costs of tin and glass containers for the following products: Processed Foods, Baby Food, Insecticides, Soluble Coffee, Vacuum Packed Coffee, Ovaltine, Baking Powder, and Syrup.

It is our feeling that these figures should be considered only as an indication of price difference in the two types of containers because there are so many variables affecting the cost of each type to the individual packer.

Freight on the empty cans to the packer will differ according to the distance from his source of supply. The zone prices of glass, on the other hand, do not reflect actual freight costs from the source of supply.

The extent of a packer's market area will materially affect the comparative difference in cost to the packer or his delivered selling price because of the added weight in glass.

Costs of production, of course, will vary according to the efficiency of the equipment used on tin and that used on glass.

One packer of Insecticides pays over $9.00 per M for his quart bottle label, while another is content to pay only $3.00 per M. One packer of Baby Food spends but $1.70 per M cans for his reshipping cartons and another spends $2.12 per M cans.

However, we think that the following conclusions can be taken from these comparisons and from other information received with the reports from the division offices.

In general, the glass package is less expensive to the packer of Non-Processed Food items. *The closure cost of the jar makes the glass package more expensive for Processed Foods.*

Except for exceptionally high-speed operations, glass can be run at the same filling and closing speeds as tin with approximately the same investment.

Referring specifically to these attached comparisons:

Containers for Processed Foods—From a price standpoint, we are in a favorable position on Processed Food [fol. 980] items, and consumer preference will dictate the volume of these items packed in glass. Packers and distributors favor tin almost unanimously.

Containers for Baby Food—Our Baby Food can prices as compared to glass would seem to offer sufficient attraction to the packer to use tin, but here the consumer preference for glass controls the package used and the packer is somewhat indifferent because his price in glass more than compensates for the increased cost of that package. This probably will not change until the housewife becomes more price conscious.

Containers for Insecticides—The packer and distributor seem to prefer tin as a package for this product, but should our can prices further increase, the lower cost of glass may offer a saving which the buyer cannot afford to pass up.

Containers for Soluble Coffee—It would appear that we will have to guard against any material increase in the price of our Soluble Coffee can if we want to make inroads on the glass container volume. We have no definite statements as to packer, distributor or consumer preference, but it is indicated that consumers may favor the more positive reclosure of the glass jar.

Vacuum Packed Coffee—While the cost to the packer of the glass container is less, apparently packer, distributor, and consumer preference for tin outweighs this price consideration.

Container for Ovaltine—We have priced ourselves out of this $600,000 market.

Containers for Baking Soda—A further increase in the price of cans will price us out of the business with this particular packer, which is estimated at twenty million units per year. We received but one report on containers for this product and you will notice that it is only because of the extensive market area for the finished goods that cans now compare favorably with glass.

Containers for Syrup—Our New Orleans District Office has told us that we are not competitive with glass and are losing business because of the difference in cost in favor of

glass. However, it is also reported that there is substantial consumer preference for glass in the "table" sizes.

We hope to be able to gather further data on the comparative costs of cans and glass containers used for packing Prune Juice and Apple Juice but, as yet, have been unsuccessful. These will be passed along to you when they are received.

[fol. 981] We understand that you plan to incorporate this data with that which you have accumulated on comparative costs of containers for Beer, and will also develop further information on consumer and packer preference, as well as the total volume of business available in the respective fields.

If you require any more detailed information than is being furnished on these comparisons, please let us know and we will try to obtain it for you.

R. S. Hatfield.

RSH.S
encs.

CC:—Mr. T. C. Fogarty,
Mr. P. L. Brachle,
Mr. F. W. Rosenbauer.

[fol. 982]

Glass and Tin
Processed Food Containers
(All prices Per Thousand Containers)

	Ravioli		Green Beans		Fruit	
	300 x 407 Plain In Bags	16 oz. Jar	303 x 406 Plain Bodies .50 Ends L/I In Bags	16 oz. Jar	401 x 411 Plain In Bags	28 oz. Jar
I. Packaging Materials:						
Price per thousand	17.21	20.00*	19.94	20.96	26.80	30.35
Approx. delivered freight	.74	In base price	.95	In base price	1.35	In base price
Approximate price reshipping cartons	2.60	In base price	3.56	In base price	4.79	In base price
Approxi. price labels	1.25	.85	2.30	1.12	3.70	.83
Closure cost	In base price	8.05	In base price	8.13	In base Price	10.50
Complete Packaging Materials	21.80	28.90	26.75	30.21	36.64	41.68
Net Difference In Favor of Tin	7.10		3.46		5.04	
II. Production Costs:	Direct Labor Costs on Filling & Closing Line Only					
	23.55	28.10	.60	1.05	.65	.90
III. Delivery Costs:						
To Market at 35¢ cwt. (about 250 mi.)	4.15	5.20	4.25	5.20	7.15	8.80
IV. Total Cost:	49.50	62.20	31.60	36.46	44.44	51.38
Net Difference In Favor of Tin	12.70		4.86		6.94	
V. Tinplate Price Factor:						
Price Change for 10¢ Fluctuation in Tinplate Price						
Tin	.22		.23		.33	
Glass	.03		.04		.04	
Net Change	.19		.19		.29	

Sources: Chef-Boy-Ar-Dee Quality Foods, Milton, Pa., LaKeside Packing Co., Manitowac, Wis., Stokeley Foods Inc., Indianapolis, Ind., Michigan Fruit Canners, Fennville, Mich.
November 14, 1947.

Glass and Tin

Baby Food Containers

(All Figures Per Thousand Containers)

	Gerber Products Company Freemont, Michigan			Clapp Baby Food Division American Home Foods, Inc. Rochester, New York		
	202 x 214 Can I/S Lac.	5 oz. Jar 2 3/32 x 3 5/16" 1 5/8" White Cap	202 x 214 Can I/S Lac.	5 oz. Jar	211 x 210 Can I/S Lac.	7¾ oz. Jar
I. Packaging Materials:						
Price per M in Bags	11.03	12.56	11.03	13.06	14.20	15.42
Approx. delivered freight per M	.45	In base price	.18	In base price	.23	In base price
Approx. price reshipping cartons	1.70	In base price	2.12	In base price	3.23	In base price
Approx. price per M Labels	.83	.62	.80	.60	.90	.70
Closure cost	In base price	5.75	In base price	5.84	In base price	7.50
Comparative Cost						
Packaging Materials	14.01	18.93	14.13	19.50	18.56	23.62
Net Difference In Favor of Tin		4.92		5.37		5.06
II. Production Costs:						
Cost of Production	8.56	9.72		No Information		
III. Delivery Costs:						
To New York Market	2.44	3.50	1.59	2.11	2.16	3.12
IV. Total Costs	25.01	32.15	15.72	21.61	20.72	26.74
Net Difference In Favor of Tin		7.14		5.89		6.02
Selling Price of Goods	8.17 Higher in Glass			No Information		
Production Line Investment	$17,800.	$21,800.		No Information		
Filling & Closing Speeds	250/Min.	250/Min.		Same for Glass as Tin		
Price Change Per 10¢ Fluctuation in Tinplate Price						
Tin	.11		.11		.14	
Glass (Closure)	.02		.02		.03	
Net Change	.09		.09		.11	

[fol. 984] November 21, 1947.

Glass and Tin Syrup Containers

	307 x 308 Single Friction Can (16 oz.)	24 oz. Bottle Screw Cap	401 x 411 Single Friction (32 oz.)
I. Packaging Costs:			
Price Per Thousand	26.82	26.32	34.99
Delivered Packing Plant	In base price	In base price	In base price
Approx. Price of Reshipping Cartons	2.80	In base price	5.12
Approx. Label Cost	1.50	1.50	1.75
Closure Cost	In base price	2.60	In base price
	31.12	30.42	41.86
Packaging Cost Per Gallon	.25	.16	.17
II. Production Cost:	Reported To Be Run At Same Speed On Same Line —Possibly One Less Operator On Cans		No Information
III. Delivery Costs:			
Selected Destination Little Rock, Ark. from New Orleans, La. @ LCL Rate of $1.05 cwt.	.10 per Gal.	.13 per Gal.	.10 per Gal.
IV. Total Cost:	.35 per Gal.	.29 per Gal.	.27 per Gal.
V. Tinplate Factor:			
Price Change for each 10¢ Fluctuation in Price of Tinplate	1.92 per 1,000 Gal.	.05 per 1,000 Gal.	1.49 per 1,000 Gal.

Source: Anheuser-Busch, Inc., St. Louis, Mo.

[fol. 985]

November 21, 1947.

Glass and Tin
Containers for Dry Products
(All Figures Per Thousand Containers)

	Soluble Coffee		Baking Powder[A]		For Ovaltine			
I. Packaging Materials:	2 7/16 x 3 7/16 Lock Top Paper Seal	4 oz. Jar	211 x 400 Fric. Top Cans	8 oz. Wide Mouth Jar	300 x 501 Paper Seal 6 oz. Fric. Top	6 oz. Wide Mouth	312 x 604 Paper Seal 14 oz. Fric. Top	14 oz. Wide Mouth
Price Per M	24.89	14.72	21.41	17.36	*29.73	21.20	*44.59	28.12
Approx. Freight to Packer	.73	In base price	In base price	In base price	In base price	In base price	In base price	In base price
Approx. price reshipping cartons	2.00	In base price	5.00	In base price	6.48	In base price	8.68	In base price
Approx. price labels (3 colors)	In base price	2.00	In base price	.85	In base price	1.50	In base price	1.50
Closure	In base price	5.06	In base price	5.61	In base price	7.44	In base price	7.44
Complete Packaging Materials	27.62	21.78	26.41	23.82	36.21	30.14	53.27	37.06
Net Difference	5.84 less in glass		2.59 less in glass		6.07 less in glass		16.21 less in glass	
II. Delivery Costs:	Sunbury, O. to NY		Customers Aver.		Selected Chicago to Minneapolis			
Delivery Cost to Market	2.10	3.25	6.77	9.70	4.17	5.00	7.50	9.17

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Glass and Tin Containers for Dry Products

(All Figures Per Thousand Containers)

	Soluble Coffee		Baking Powder		For Ovaltine			
	2 7/16 x 3 7/16 Lock Top Paper Seal	4 oz. Jar	211 x 400 Fric. Top Cans	8 oz. Wide Mouth Jar	300 x 501 Paper Seal 6 oz. Fric. Top	6 oz. Wide Mouth	312 x 604 Paper Seal 14 oz. Fric. Top	14 oz. Wide Mouth
III. Production Cost:	Reported to be run at same speed (150/min.) same number operators		Reported to be run at same speed (120/min). Same number operators		No Information			
IV. Total Cost:	29.72	25.03	33.18	33.52	40.38	35.14	60.77	46.23
Net Result	4.69 less in glass		.34 less in tin		5.24 less in glass		14.54 less in glass	
V. Tinplate Factor:								
Price Change Per 10¢ fluctuation in tinplate—								
Tin	.16		.20		.28		.42	
Glass (closure)	.02		.02		.04		.04	
Net Change	.14		.18		.24		.38	

* Cost plus 10% Profit.

Sources: Nestle's Milk Products, Inc., New York, N. Y., Great Starr Coffee Co., New York, N. Y., Jacques Mfg. Co., Chicago, Ill., The Wander Company, Chicago, Ill.

[fol. 986] November 21, 1947.

Glass and Tin
"F" Style Cans
(All Prices Per Thousand Containers)

	6 Oz. 500,000 Lots	½ Pint 500,000 Lots	1 Pint 500,000 Lots	1 Quart 250,000 Lots
I. Base Prices:				
Tin				
Plain S.C.M.T. (No Litho) (Jersey City)	25.65	23.99	29.70	42.03
Screw Fitting	—	6.18	6.18	6.18
Paper Bags	.40	.40	.65	1.00
	26.05	30.57	36.53	49.21
Glass				
Plain (No Label)	17.85	20.84	28.48	43.41
Closure	2.12	2.12	2.40	3.00
	Base Price Includes Reshipping Cartons			
Packaging	19.97	22.96	30.88	46.41
Difference in favor of Glass	6.08	7.61	5.65	2.80
II. Decorating:				
3 Colors Tin	1.88	2.09	2.84	3.10
Label Cost (Approximate)	1.50	1.50	2.50	3.50
Approx. Cost Difference	.38	.59	.34	— .40
III. Reshipping Cartons:				
For Cans (Approximate)	3.35	3.05	4.15	9.50
For Glass	Included In Base Price Glass			
IV. Total Packaging Materials:				
Difference in favor of Glass	9.81	11.25	10.14	11.90
V. Production Costs:				
Direct Labor at $1.00 per Hour on Filling & Closing Line Only				
Tin	.50	.50	.50	.63
Glass	1.00	1.00	1.00	1.25
VI. Delivery Costs:				
Extra Cost in Glass to Market about 250 miles Distant, (35¢ per cwt., approx.)	.55	.99	1.27	2.26
VII. Net Cost:				
Difference in favor of Glass	8.76	9.76	8.37	9.02
VIII. Price Change:				
For 10¢ fluctuation in Tinplate per base box.				
Tin	.16	.18	.28	.40
Glass	.01	.01	.01	.02
Net Change	.15	.17	.27	.38

Sources: Boyle Midway Inc., Jersey City, N. J. and Chicago, Ill. Stanco Inc., New York, N. Y. Taylor, Lowenstein Co., Mobile, Alabama.

[fol. 987] November 21, 1947.

Glass Vs. Tin

Containers For Coffee

(All Prices Per Thousand Cans)

	1 Pound Can Body Litho. 4 Colors 5⅛" x 3⅝" 500,000 Lots	1 Pound Jar Dura Glass-Ultra Vac-66 M/M Press On Cap
I. Packaging Materials:		
Base Price Per Thousand	$43.61 (in bags)	$38.46
Delivered Freight	In base price	In base price
Reshipping Cartons (Approximate)	5.21	In base price
Label Cost (Approximate)	In base price	1.30
Closure Cost	In base price	In base price
Total	$48.82	$39.76
II. Production Costs:		
Excess Glass over Tin	—	5.10
III. Delivery Cost:		
To Market (at 35¢ cwt. or about 250 miles)	5.25	6.85
IV. Comparative Costs:	54.07	51.71
Net Difference	2.36 In Favor of Glass	
V. Tinplate Factor:		
Price Change Per Ba[illegible] Fluctuation in Tinplate Price:		
Tin	.43	
Glass	.03 (Close)	
Net Change	.40	

Source: Standard Brands, New York City.

[fol. 988] GOVERNMENT'S EXHIBIT 401

The Packaged Syrups Market

An Appraisal of the Metal Container's Competitive Position

Commercial Research Department

April 1949

[fol. 989] Contents

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Summary .....
Introduction .....
I Size and Nature of the Market .....
II The Element of Price in Package Preference ...
III Continental's Competitive Position .....

[fol. 990] Summary

Our appraisal of the packaged syrups market and the competitive status of metal cans versus glass containers permits the following conclusions:

(1) The over-all packaged syrups market, for household and institutional consumption, is estimated to be around 750 million pounds per year. Of this total, corn syrups sold as such and blended in other syrups would normally average about 350 million pounds. Cane syrups, honey, molasses and maple syrup would make up the balance of the syrups or sweeteners.

(2) The market is logically divisible into two groups: (a) the small size market, packages smaller than 5 pounds, estimated at around 500 million pounds per year; and (b) the large size market, containers of 5 pounds or larger, estimated at about 250 million pounds per year. Of the latter group, roughly 100 million pounds are probably consumed by institutions, including restaurants, while the remaining 150 million go into household consumption, primarily in rural areas.

(3) In the small size market probably more than 90% of syrups consumed are packaged in glass containers. In this market package design is more important than the cost of the container. Glass predominates in these sizes primarily because of consumer preference, the glass jar currently being more acceptable for use on household tables and seemingly more adaptable for continued use in small amounts. The most common sizes are the 12 ounce and the 1½ pound (1 pint) jar.

(4) In the large size market the metal can retains its traditional overwhelming dominance, primarily because of preference among producers, wholesalers and retailers, due to the can's lower shipping, handling and breakage costs.

(5) The price of the container to the packager is not a dominant factor in the selection of either glass or metal. In the small sizes, metal cans are competitive costwise, but [fol. 991] currently lack consumer acceptance. In the large size market the glass jar has, up until the present, been unsuccessful in making any significant inroads at prevailing price ratios to metal. It, therefore, follows that a price reduction on metal cans in the 5 or 10 pound sizes would not result in any additional business. Likewise, price reduction alone on the smaller 1½ or 2½ pound capacity cans would probably not result in any additional business.

(6) However, there is apparently a critical area in between the small size market and the very large, where the cost of the container could be the deciding factor. Since the 5 pound size is logically the next size into which glass might make important inroads, if glass jars were priced sufficiently below the price of metal cans to more than offset higher handling, shipping and breakage costs, syrup packagers could probably be persuaded to shift to glass in this size. Thus, although a price reduction on metal cans in the 5 pound size would not be expected to increase materially the volume of business, it may well be a critical factor with respect to holding our present participation.

(7) At present there is a price differential in favor of glass jars in the 5 pound size amounting to nearly 20% of quoted delivered prices for glass containers. While this amounts to less than 1.4 cents per can for a product which would retail at around 60 cents or higher, it could well prove to be a significant cost advantage in favor of glass jars which might result in the loss of part of the large market for 5 pound containers. The 5 pound size accounts for around 48% of Continental's nearly $2 million volume of business in syrup cans. Furthermore, this is a size which is important to most of Continental's large customers, the top 5 of whom account for about 45% of Continental's syrup can business. The loss of one or more of these customers to glass would obviously be serious.

[fol. 992] (8) It is quite possible that the metal can could secure additional business—i.e., the lost business in the small container market—if it could be made sufficiently attractive and adaptable to be used on household tables with-

out increasing the retail price to the consumer. Here, however, package design would be the critical factor.

The foregoing conclusions appear to us to support the following recommendations:

1. That serious consideration be given to Sales Department recommendations for reducing the quoted price on #5 round single friction cans from the present price of $67.38 per thousand to a price in the neighborhood of $60, in order to reduce a potentially dangerous spread in favor of glass jars.
2. That consideration be given to the development and market testing of a small-sized metal container, sufficiently attractive and adaptable for continued use to compete effectively with glass jars for use on household tables. The cone-top beer can, adapted with a replaceable cap and attractively lithographed, appears to offer one possibility in this respect.

DHW
4/27/49

[fol. 993] GOVERNMENT'S EXHIBIT 402

The Market for Peanut Butter in Cans

I. The Peanut Butter Market

Peanut butter is a simple substance. Although requiring constant and critical control in its manufacture, it is little more than mashed peanuts. Raw peanuts are shelled, cleaned, roasted, blanched, cooled, inspected and ground, and the resultant butter is packaged, typically while it is still hot (145° or so) from the grinding. It is generally accepted that there is a weight loss, after shelling, of about 15% in the manufacturing process: thus 100 pounds of *shelled* peanuts will normally yield about 85 pounds of peanut butter. Currently popular is peanut butter to which small chunks of peanuts have been added.

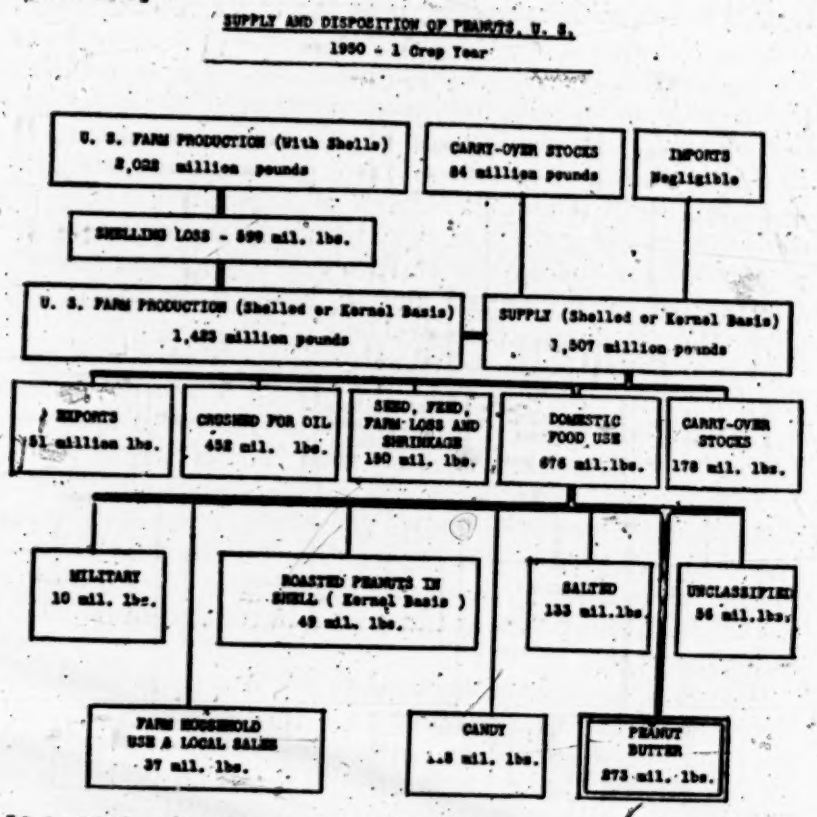
Because of its tendency to rancidity when exposed to air, peanut butter is packed in air-tight containers and a substantial portion of it is vacuum-packed. Shelf-life varies with the care used in manufacture and inversely to storage temperatures. At room temperatures typical shelf-life (in

terms of acceptable rancidity) is apparently about 300 days, although a range of 100 to 600 days was observed in one test. This undoubtedly does not apply to vacuum-packed peanut butter prior to its initial opening. Storage at 50° F or less not only retards rancidity and unpalatability, but also prevents separation of peanut oil from peanut solids. Protection from light similarly reduces oil separation and preserves flavor. In storage at room temperature finely ground peanut butter separates more than coarsely ground butter. Homogenization of peanut butter, however, seems to be eliminating this separation problem.

Peanut butter is the primary domestic food use of the United States peanut supply. In 1950-51 it accounted for nearly 20% of the total United States peanut supply and for over 40% of all peanuts used for food. Peanut butter made by candy manufacturers for use in their own candy (probably 25 million pounds or more) is excluded from the peanut butter figures used in this report. The relationship of peanut butter to total U. S. peanut supply and disposition in the 1950-1951 crop year is illustrated in the diagram on the following page.

Peanut butter was introduced to the American public at the close of the 19th Century as a food for invalids. Its popularity as a spread has grown to the point, where, according to one survey, it is used in 9 out of 10 homes, a higher proportion than that of any other single spread. As indicated in Chart I, per capita production has doubled in the last 25 years and rose to over 2 pounds per person during World War II, when other spreads, particularly butter, were scarce. In 1950, production per capita was 1.5 pounds or 4 to 5 pounds per family, while total production was 232 million pounds (85% of the 273 million pounds of peanuts used for this purpose).

[fol. 994]



[fol. 995] The 232 million pounds of peanut butter estimated to have been packed in 1950 represent a manufacturers sales value of $75-$80 million, and a retail value of $90-$100 million. On the basis of the relationships existing in 1947, this is about one-third the value of all jams, jellies and preserves produced in the U. S., and about one-fourth of the poundage of these competing spreads. In the post-War period, the price of peanut butter has averaged some 10% above that of jams and jellies and 20% below that of American cheese. However, in 1950, peanut butter was 20% above jams and jellies and but a shade below American cheese. Thus, the price pattern has recently tended to favor jams and jellies over peanut butter as a spread for bread and for similar uses.

Although no regional analyses of peanut butter consumption are available, it is probable that per capita consumption in the South is higher than in the rest of the nation. How-

ever, peanut butter is not a poor man's fare, for consumption shows a pattern of increase from lower to higher income groups. The leveling off in production per capita in the post-War period is attributable not only to the readjustment to wartime shortages of other spreads, but also to the decline in the consumption of bread and a consequent decline in the use of all spreads.

II. The Nature of the Peanut Butter Industry

Although 198 firms are reported as packers or private brand distributors of peanut butter in the United States and are indicated as such by location on the accompanying map, the actual number currently engaged in business is probably considerably less. The manufacture of peanut butter is not exceptionally complicated and the capital equipment involved is not extensive. Consequently, numerous packers of related products can enter or leave the market as its attractiveness warrants and marginal producers can similarly come and go. Thus, the number of operating packers or private brand distributors is probably closer to 150 or less.

As is common in many industries, a small percentage of the producers account for a majority of the sales. The leading manufacturers of peanut butter, separately indicated on the map, undoubtedly command over 50% of all peanut butter sales. These firms are:

Brand	Manufacturer	Location
Peter Pan	Derby Foods, Inc.: Sub. Swift & Co.	Chicago, Ill.
Skippy	Rosefield Packing Co.	Alameda, California
Swift's	Swift & Co.	Portsmouth, Va. Chicago, Ill.
Planters	Planters Nut and Chocolate Co.	Suffolk, Va.
Armour	Armour & Co.	San Francisco, Calif. Chicago, Ill. (Plant: Fort Worth, Texas)
Beech-Nut	Beech-Nut Packing Co.	Canajoharie, N. Y.
Ann Page, Sultana	Quaker Maid Co., Inc. (A & P)	New York, N. Y.
Beverly, Real Roast	Table Products, Inc. (Div.: Glenfield Food Co.)	San Francisco, Calif. (other plants)
Monarch or other	Reid, Murdoch Div., Consol. Grocers Corp.	Chicago, Ill.
Kroger	Kroger Co.	Cincinnati, Ohio
Laura Scudder	Scudder Food Products, Inc.	Monterey Park (L.A.), Calif.
Finast	First National Stores, Inc.	Somerville, Mass.
Tom's	Tom Huston Peant Co.	Columbus, Georgia
Sunny Jim	Pacific Food Products Co.	Seattle, Washington

[fol. 996] Peter Pan (Derby Foods) is reportedly the nation's leading seller and claims complete national distribution. Skippy is most likely second in sales, with the others taking position in unspecified order. Peter Pan claims to outsell the next 12 brands combined; if this is true, it is most likely that the 14 packers or distributors listed on the preceding page sold from 125 to 150 million pounds of the 232 million pounds of peanut butter packed in 1950. Even if 30 to 50 million pounds of this 232 million pound total were large-quantity sales to institutions and other manufacturers, these 14 packers would still have sold 100 to 125 million pounds of peanut butter for home consumption.

In either case, the remaining 125 to 150 packers believed to be in operation in 1950 would have shared a packaged market of but 50 to 100 million pounds, for an average of 300,000 to 800,000 pounds each. While this quantity range is not inconsequential, it is minor compared with the 50 million or so pounds probably attributable to Peter Pan, the estimated 25 million pounds sold by Skippy (Rosefield Packing) and the 4 to 6 million pound average of the other 12 major firms.

The locational pattern of the peanut butter manufacturing industry, as seen on the map, is partly market-oriented and partly drawn to the peanut-producing regions of the South. A majority of the principal cities of the nation have at least one firm reported to be a packer or private brand distributor of peanut butter. Skippy (Rosefield Packing) is an exception to the generalization that the important packers also offer products other than peanut butter.

III. Peanut Butter Containers

If it can be reasonably assumed that about 200 million of the 232 million pounds of peanut butter produced in 1950 were packaged for home use, then the quantity of containers required was probably from 200 to 250 million packages. Although peanut butter is offered in a variety of sizes, the most popular units are in the 12 ounce to 16 ounce range.

Virtually all peanut butter is packed in air-tight glass containers and not uncommonly under vacuum. The only packer of any consequence known to be using metal cans is Peter Pan (Derby Foods). This firm, prior to Korea, packed peanut butter in 12 ounce and 28 ounce Trutite cans sup-

plied by Continental but, because of the inconvenience of metal restrictions, has eliminated the use of cans for the small size and packs in metal in the 28 size only (except for #10 cans for bulk sales). In 1951 Peter Pan purchased 2.2 million Trutite cans from Continental (value: $143 thousand) but 1952 requirements are running at a lower rate. The Trutite can is a relatively expensive container for a product such as peanut butter but it is apparently popular in certain markets, such as insect-infested sections of the South, where its tight reclosure feature in combination with vacuum-packing is important.

The overwhelming popularity of glass containers for this product is largely attributable to their relative cost and the widespread acceptance of their reuseability. A one-pound glass jar today costs about $4.50 per gross ($31 per thousand) plus another $10 or so per thousand for caps. With labels, this would total something over 4¢ each for a one-pound (16 ounce) glass jar for vacuum packing. This com- [fol. 997] pares with the average of 6½¢ per 28 ounce Trutite peanut butter can supplied by Continental in 1951, and with an estimated 4½¢ to 5¢ per can for a 12 ounce Trutite in that year. It is probable that a one pound Trutite can today would cost close to 5½¢ per unit, which is some 20% higher than an equivalent glass jar at 4¢-plus per unit.

Also of major significance in this preference for glass containers is their popularity for reuse. One survey indicates that peanut butter jars are reused for storage, canning, deep freezing, and carrying food for lunches and picnics, while peanut butter *tumblers* are used for drinking, canning, storage and as gifts. This survey also revealed that most housewives prefer a *tumbler* with a pry-off lid to a *tumbler* with a screw cap, but that, for *jars*, the screw cap receives far stronger preference. Reasons given particular brand selection, with percentage importance, were:

1. Taste and flavor	67%
2. Previous usage	53
3. Keeping quality	47
4. Type of container	47
5. Cost	40
6. Appearance of quality	20
7. Carry-over of family brand	17
8. Type of cap	17
9. Advertising	14
10. Premiums	5
	5

(Total exceeds 100% due to duplicate-answers)

It is apparent that the type of container used by the packer is an important selling point in the marketing of peanut butter. On the other hand, vacuum-packing did not appear directly as a significant factor, although its effect on taste, flavor, keeping quality and appearance is not to be minimized.

Since Peter Pan (Derby Foods) is apparently the most important producer of peanut butter, its opinions in regard to packages are of value. This firm packs peanut butter under vacuum only and is not interested in anything other than a vacuum container. It is the only user of consequence of metal cans for retail packages and these are necessarily the Trutite or similar reclosure vacuum-pack can. Its only interest in metal cans at the moment is in regard to reduction of Trutite can costs (possibly through the use of a collar can), and even under such developments it does not anticipate a return to metal for smaller-than-28 ounce sizes. Peter Pan is relatively satisfied with present glass containers and, although it admits to considering new packages, expresses no desire to experiment with any new containers unless they can be vacuum-packed and compete effectively cost-wise with their existing packages.

Armour and Company is another major packer of peanut butter, although it does a volume considerably smaller than that of Peter Pan. Armour packs its retail sizes solely in glass but in both vacuum pry-off cap tumblers or jars, and in screw cap jars. Since the screw cap used has a gasket, the cooling of the hot butter after filling creates a partial vacuum in the screw cap jars. Armour points out, however, that the pry-off vacuum cap container is less expensive both in initial cost and in the filling operation. Speeds of 400+ units per minute are reported for pry-off caps, whereas a CT (Continuous Thread) screw cap line seldom exceeds 300 units per minute. Although Crown Cork and Seal has developed a vacuum screw cap (through the use of a more effective gasket), Armour is not interested because of its higher cost, the necessity for purchasing a Crown closing machine at $9-$12 thousand, and the fact that the line speed limit could still be no more than 300 per minute.

[fol. 998] IV. Conclusions and Recommendations

The peanut butter market of perhaps 250 million 12 to 16 ounce containers is not inconsequential, even though it is minuscule in comparison to that for beer packages, for example. Because of its tendency to rancidity, peanut butter for household consumption is now packed primarily in air-tight glass tumblers and jars, which are of considerable importance to consumers because of their reuse value. Furthermore, a significant proportion of all peanut butter is packed under vacuum. To date, the glass container has cost the packer less than a comparable can and has been readily accepted by both the industry and the public as the standard type of peanut butter container. Metal is used for institutional packaging and for a small quantity of consumer units. Although the major known packer of small sizes in cans used both 12 and 28 ounce Trutite cans for peanut butter prior to Korea, only the 28 ounce size is now being filled and this at a rate of about 2 million cans per year.

For these reasons it appears that many packers of peanut butter would not be interested in conversion to metal cans for retail packaging unless significant cost or marketing advantages could be shown. In addition, the multitude of sizes currently on the market could be a serious problem facing the introduction of a metal can. Sizes exist at almost one ounce intervals from 5 ounces to 16 ounces, and at wider intervals to 28 ounces or more. This use of many sizes is a method of varying price less obtrusively, particularly in an inflationary period. A peanut butter can would presumably have to be standardized on one or two sizes, such as a 10 or 12 ounce and/or a 14 or 16 ounce package, which would cover the range of the most popular sizes.

Under these circumstances, it appears *unlikely* that the mere offering of a new metal container to the widely scattered peanut butter industry would produce rewarding results, particularly in view of the industry's present dollar and market investment in glass containers and their filling and closing equipment. On the other hand, it is possible that one or more packers could be *sold* on the use of a lock top can, for example, as a means of product differentiation. Should such tactics prove successful, a volume of from 5

million to as high as 50 million cans might be expected, although the latter figure would be highly optimistic.

Thus, except for presently unforeseen cost savings to the packer, the novelty approach offers the only encouragement for putting peanut butter in metal. It is reported that, at one time, a packer did successfully merchandise a child's toy pail, with handle, filled with peanut butter. This relatively expensive type of premium package is a further thought in the direction of product differentiation. It is likewise possible that a Decoware canister or other novelty item might in some way be promoted by one or more packers desiring to improve their market position.

Another suggestion is that peanut butter be packed in wax or plastic lined paper cups or tubs. If the paper and lining could withstand the filling temperatures of 145°F, and if there were no problems such as leaking, a 16 ounce paper container, for example, would offer significant cost savings over both glass and metal. A 16 ounce tub at under 3¢ compares quite favorably with glass and closure of 4¢-plus, and with a Trutite can at perhaps 5½¢ each. A 10 or 12 ounce paper tub, which might be a more popular size, would probably have a proportionate cost advantage. [fol. 999] Such a paper container would admittedly not be capable of being vacuum packed with peanut butter nor would it be as air-tight as glass or metal, but temperatures below 50°F and darkness retard rancidity and oil separation. A paper tub, possibly fitted with a slip cover if that is technologically and economically feasible, might, if necessary, be sold from a refrigerated display case in conjunction with a promotional campaign built around a freshness or economy theme. If a container could be developed which is suitable from a technological stand-point, it might then be given a preliminary marketing test by attempting to sell one or more smaller packers on introducing his product as a *unique* product in an *economy* package

It is therefore recommended that:

1. Continental explore the periphery of the peanut butter packing industry in an attempt to interest one or more packers in the use of a metal container for product differentiation. Such a package might be a lock top can, a pail, a canister or some similar device which would also aid the sale of the product because of the desirability of the container

itself. This would not be expected to have any large volume prospects, but conceivably could be profitable business.

2. Continental's Paper Container Division evaluate the paper tub as a potential peanut butter package and, if warranted, attempt to interest certain packers in the use of paper containers for peanut butter, possibly as suggested above.

Commercial Research Department
November 25, 1952

[fol. 1000] GOVERNMENT'S EXHIBIT 404

From: R. D. Cleaves — August, 1956.

Continental's New Savorlock Can

We have chosen the name Savorlock as a one-word description of an outstanding new metal container which Continental is now ready to supply to the packaging trade in two sizes.

These containers have been designed to meet the specific needs of many products now being marketed in glass or other packaging materials. They are lock-top metal cans for consumer convenience. They are light-weight to save shipping costs. They are sealed against moisture penetration for long shelf life. They are styled and well-proportioned to give excellent display characteristics.

All of the desirable features which have been built into these containers, and which are discussed in more detail in

this Bulletin, are expected to bring enthusiastic acceptance by packers, retailers and, most important, consumers. We believe that the Savorlock can will prove to be one of the most successful packages ever introduced by Continental Can Company.

Packaging For Impulse Buying

Package design today has an importance that was not the case in the days before the supermarket. Shopping habits have changed. Formerly the housewife did not "market" as we now understand the word. She would take a grocery list to the corner store and the clerk would select her "two cans of peas, one pound of coffee, etc." Or, she might telephone her list and have the items delivered.

Today, the same housewife goes to the supermarket, with or without a list, and wheels her cart up and down the aisles. She has been conditioned by brand advertising but most of her buying is done on impulse.

[fol. 1001] Impulse buying has brought about a revolution in packaging practices. Actual time studies made in supermarkets show that it takes a housewife an average of 4 seconds to choose an item from a grocery shelf, but it takes her 20 seconds not to buy something. The package itself either provides this impulse to buy, or lacks it.

The significance of impulse buying was not lost when the Savorlock cans were designed. Continental called upon an outside Industrial Designing firm, informed them of the approximate cubic capacities that were desired in these containers, and of manufacturing restrictions, and asked their recommendations on proportions and special features. To meet proper design criteria, the designers specified diameters of 204 and 305, which were accepted by Continental even though they were non-standard. Our two Savorlock cans are now 204 x 315 and 305 x 507. They represent one of the first "styled" metal cans ever offered by the industry, and with the other special features are a real Continental first.

Display

In the pleasing proportions of the Savorlock cans, we have provided the important element necessary for a su-

perior package display. A second requirement has been met in the stacking feature which enables the storekeeper to build up the display to the full height of the shelf.

Because metal cans are so compact, we have fulfilled another requirement of the retailer, which is to get as many units as possible per running foot of shelf. With all products competing for display space, this is an important merchandising consideration for the packer as well as for the retail storekeeper.

A final and conclusive element of the display needed to catch the eye of the "impulse buyer" is the decoration of the package.

[fol. 1002] On the Savorlock can, as contrasted to labeled jars, we provide not only excellent lithography but also a greater space for design and text. Continental is unsurpassed in the industry in the excellence of its lithography. Too, many of the outstanding lithographed designs on grocers' shelves today were created in Continental's Art Department.

The merchandiser who is looking for a new packaging vehicle to move his product off the self-service shelf will find much to appeal in the Savorlock cans. They have the attributes which will put his product in the "4 second" category and keep it out of the "20 second" category.

Container Costs

Our Savorlock containers are the first reclosure cans of this type ever to be produced on high speed lines. Thus, because our costs are reasonable, the containers can be priced advantageously in comparison with other containers with similar features. It is reasonable to state that there is no other container being offered today that combines so many advantages in one package and which is so low in price.

The big volume unit which our new container is expected to replace in large part is the glass jar. Glass jar prices are not consistent in that they are influenced by the potential volume of the product to be packed, and by the degree of competitive threat from cans and other types of packages. Also, glass is priced on a delivered zone basis. Nevertheless, the pricing level of Savorlock cans in reshippers is

generally competitive with glass jars in reshippers, although in certain locations the first cost will be greater. This latter point is not necessarily an argument in favor of glass, as the prime interest of the marketer is in a distinctive package that will sell his product. In that area, the Savorlock can is worth whatever additional cost is involved.

[fol. 1003] Shipping Costs

Prospects who are comparing the merits of Savorlock cans versus glass jars will find that the adoption of the Savorlock can will enable them to realize substantial savings in the shipment of filled containers to point-of-sale. This is brought about not only by the lighter gross weight of the metal container but also because many more cases of cans can be loaded in a railroad car. Glass is heavy and fragile and usually can be stacked only part way up in a railroad car, while cases of cans can be loaded right up to the roof.

Here are some significant data with typical comparisons, glass of average weight versus Savorlock cans. In establishing filled case weights we have assumed 2-oz. of product for the 204 x 315 size and 6-oz. of product for the 305 x 502 container. The comparative data given for glass jars assumes the same product weight:

	2-Oz. Size		6-Oz. Size	
		Savorlock		Savorlock
Wt. Per Case of Filler Containers	Jars 9#	Cans 6.6#	Jars 19#	Cans 15.6#
No. of Filled Cases Per Carload	4,500	7,300	1,800	2,700

The above will show that a packer buying Savorlock cans will realize major overall savings in the cost of getting the product to the retail outlet. This is a particularly important consideration for firms that pack at central locations and distribute over a wide marketing area.

Savings in Production

There are important savings realized in production that will benefit the packer who switches from glass jars to Savorlock cans.

[fol. 1004] Probably the one thing that gives most con-

cern to the packer of food products is broken glass. When a jar shatters in a filling line, production stops until all the glass is cleaned up. In addition, to assure that no particles will remain in any container, a certain number of jars, including product, both before and back of the broken container must be scrapped.

In the case of Instant Coffee, as many as 48 jars of product are thrown away every time one jar breaks. In a 6-oz. line, this would mean a loss of over $50.00 for each stoppage caused by a broken jar.

Savorlock cans do not break!

Product Protection

A packer giving thought to the adoption of the Savorlock can will want to know, "Will this container protect my product for a normal shelf life period?"

Obviously, each product candidate will have its own requirements, and in some cases test packs arranged through Customer Research will have to provide the answer. However, in the specific case of Instant Coffee, the answer is "Yes". Presumably the same answer will apply to other such products which are packed atmospherically and which must be protected against moisture or odor pick-up.

Metal R & D has a long test pack experience with the Savorlock can, employing many variables in structure and vapor-seal. The product used in their test was Instant Coffee, which is one of the most hygroscopic of food products being marketed today.

These test packs have been evaluated after both accelerated and long-term test conditions. The basic tests were made in the laboratory, but served to indicate what might be expected under commercial conditions of packing, shipping and storage.

More recently, in conjunction with a major market test of Instant Coffee in the Savorlock can, our Metal Research and Development Department has been able to confirm [fol. 1005] their original findings. Evaluations have been made of cans filled and sealed on a production basis and distributed in normal commercial channels. Accelerated laboratory tests of cans taken from the production line have demonstrated the efficacy of the vapor-seal. Also, cans taken

from retailers' shelves over four months after filling have demonstrated no appreciable moisture pick-up.

These comprehensive evaluations have given us the assurance that Continental's Savorlock containers can be offered for Instant Coffee and other hygroscopic products as a package that will offer the necessary protection for a normal shelf life period. From these tests, also, Metal R & D has developed information which will enable our Customer Research to recommend specific adhesives and adhesive applicators which the packer should use in commercial production to achieve the necessary vapor-seal.

Products

No attempt will be made here to list all of the product candidates for Savorlock cans, as almost any powdered or granulated product, food or non-food, is a possibility. We will list some of the more important categories, which should stimulate in the minds of our sales force the generation of a long list of specific items for which this container will answer a packaging need:

Instant Coffee

With over 30% of all coffee, cup for cup, marketed in the instant form, this product seems to represent the greatest potential for Continental's Savorlock can. In 1955, about 1.3 billion oz. of instant coffee, with a total retail value of $350 million, was consumed in the United States. The forecast of package usage in 1956 is 370 million 2-oz. containers, and 123 million in the 4-oz., 5-oz., and 6-oz. size, with the trend toward increased usage of the 6-oz. package.

[fol. 1006] As is well-known, practically all instant coffee is marketed in glass jars. The advantages of the Savorlock can over glass, plus the association by the consumer of coffee with tin, should enable us gradually to take over a sizeable portion of this market.

Tea, Soluble Tea and Tea Bags

This is another important area for potential Savorlock can sales. More than 160 million packages were used in the marketing of these products in 1955.

Chocolate and Cocoa

The Savorlock can affords many advantages over packages now considered standard for the marketing of chocolate and cocoa. Being metal it can be packed much faster than the paper-bodied oblong containers which tend to jam in the packing line. Full opening makes it easier for the housewife to spoon out the product, and the lock top of the Savorlock can is simple to open and reseal. The oblong can, with its plug reclosure, is very unhandy from the consumer standpoint.

The estimated unit market in this product category is 88 million packages.

Non-Fat Dry Milk

125 MM units of non-fat dry milk are sold annually. Most packers use a labeled cardboard box with an inner package, but one company is successfully merchandising the product in glass. The large Savorlock can should be very interesting to the concerns who are looking for a superior package to compete with the glass jars.

Dehydrated Soups

These items have had good acceptance by the consumer, with approximately 138 million packages sold annually. Our small Savorlock can is of a good size for a small serving of soup, and the larger container will make an "economy" serving for a large family, or several smaller servings. The [fol. 1007] reseal feature of the Savorlock can is important in connection with this latter use. As these products are sometimes gas packed, it may be necessary to arrange test packs through Customer Research.

Prepared Sweetened Chocolate Mix

Savorlock containers can be a powerful merchandising vehicle for those products which are now packed principally in glass. Prepared chocolate mixes are priced higher than unsweetened chocolate or cocoa and are merchandised agressively. The package cost is a relatively small part of total retail price.

The estimated usage in this product category is 75 million containers.

Baking Powder—Baking Soda

The principal package used for these products is the paper box, but some concerns are now using cans. Ordinarily, a product as inexpensive as this could not afford additional package costs. However, because the item is purchased infrequently by the housewife, and consumed over a relatively long period of time, a superior package offering additional consumer convenience should enable the product to be marketed at a price premium.

About 190 million packages of baking powder and baking soda are sold annually.

Laundry Starch and Powdered Bleach

These products are examples of potential non-food candidates for the Savorlock can. They have a potential of 90 million packages annually.

Spices and Vegetable Flakes

While the standard Savorlock can may not be presently suitable for spice and flavorings which must be sifted (such as ground pepper, paprika, etc.) there are other spices and [fol. 1008] flakes for which the container is exceptionally good. We are thinking of such products as peppercorns, whole cloves, dry mustard, parsley flakes, onion flakes, dehydrated garlic, Rosemary, Oregano, Anise Seed, Basil Leaves, etc. Many of these are now being marketed in round reclosure type cans.

Pharmaceuticals

Items of the general nature of Boric Acid (18 MM units) and Epsom Salts (16 MM units) are the types of pharmaceuticals for which these containers would be an excellent package. Aspirin tablets and vitamins are logical candidates.

Brown Sugar and Confectionery Sugar

These two products should be good candidates for the larger Savorlock container, as the standard paper box with overwrap being used does not protect the product. The housewife has a problem in keeping the product dry after the package is opened, and many times it picks up moisture

during normal shelf life periods and comes to the consumer in caked form.

Generally, one package of brown sugar or confectioner's sugar is used over an extended period of time in the home, and must be stored between uses. The convenience of the Savorlock can and its positive reseal feature should provide a merchandising advantage which will enable the packer to get a premium price for the product in the Savorlock can and still increase sales. These two products represent a potential for over 100 MM packages.

Peanut Butter

This is a "hard to hold" product, in that Peanut Butter will creep because of its oily texture. The Savorlock can has not been tested commercially with this product but it does seem to have possibilities of being an excellent retail package for Peanut Butter as a replacement for glass. Packers of Peanut Butter should be given an opportunity [fol. 1009] to see the can, with the thought that those who are interested will want to arrange for test packs and perhaps a retail market test.

Estimated potential of packages for Peanut Butter amounts to 150 million units annually.

Miscellaneous Products

Other candidates for Savorlock cans are represented in such product areas as: Instant Gravy Mix, Bouillon Cubes, Powdered Egg Whites, Dry Coconut, Prepared Dips for Fried Foods, Bread Crumbs, Hard Candy, Cookies, Dessert Powders, Dry Rice, Instant Potatoes, Banana Flakes.

Conversion of Glass Packing Lines

The filling and capping of Savorlock cans is essentially the same operation as the filling and capping of glass jars. Many potential customers in addition to those in the Instant Coffee field already have glass jar lines. The following general information will show that the conversion of a glass jar line to a Savorlock can line is relatively simple and inexpensive:

1—*Materials Handling*—There probably will be no changes necessary in the carton conveyor handling

system, either direct to an unscrambler, or through storage on pallets. A greater number of cans than jars can be handled per pallet.

2—*Unscrambler*—It may be necessary to make a slight adjustment on the unscrambler because of the top bead of the Savorlock can.

3—*Slat Chain Conveyor*—Usually, the conveyor is adjustable and thus adaptable to the conveying of cans.

4—*Cleaner-Blower*—This equipment may require a new twister to take care of the diameter and height of the can, which is different from that of a standard jar. It may be necessary to adjust the pusher to a different height.

[fol. 1010] 5—*Labeler*—Presumably, the cans will be lithographed and the labeler will not be used. It can stay in the line, operating as a conveyor. It may be necessary to make a slight adjustment of the V-belt to avoid running on the top bead of the can.

6—*Filler*—Change parts will probably be required for the filler. The cost, depending upon the type of filler used, should be approximately $850.00.

7—*Gluer*—Because the adhesive recommended for cans is different from that ordinarily used for glass, the type of adhesive applicator used on a jar line may not be suitable for cans. Information on the recommended adhesives and type of applicator will be furnished on request by Customer Research.

8—*Capper*—The cost of change parts for the capping machine should range from approximately $180.00 to $425.00 for a 4-spindle machine; from $270.00 to $1,125.00 for a 6-spindle machine; and from $360.00 to $1,500.00 for an 8-spindle machine.

9—*Caser*—A new grid may be required for the caser. The cost, depending upon the type of caser used, should be approximately $500.00.

The above figures are estimates, and are only to serve as a guide in indicating what may be involved in equipping a jar line to handle the Savorlock can.

The Division Can Handling Equipment Engineers should be called in as consultants and advisers on line change-overs from glass jars to cans.

[fol. 1011] General

The introduction of this excellent new container will open numerous doors to the Continental Can sales representatives. In the case of many prospective customers, we shall have an opportunity to make best use of the team approach.

Division and Head Office Sales will be available to assist Districts in developing the best sales story, or in making the actual sales presentation to important prospects. Customer Research should be called in with reference to test packs and container specifications for individual products, and should also be consulted concerning recommended adhesives. The Can Handling System Department can supply a great deal of assistance in connection with the conversion of a glass jar line, or in laying out a new line for Savorlock cans.

Because of the importance of the package as a merchandising vehicle, the creative ideas of the Art Department can be used effectively in providing a customer with a colorful package that will increase his sales, prestige, and profits.

. . . . . .

[fol. 1012] GOVERNMENT'S EXHIBIT 405

June 1956.

To: Division Managers of Sales,
District Sales Managers

Subject: Savorlock Cans

Re: Freight Allowance—Instant Coffee

Price Lists for the 204 x 315 and 305 x 507 Savorlock cans show selling prices f.o.b. Passaic, N. J.

For packers of instant (soluble) coffee *only*, a carload freight allowance will be made up to $1.03/cwt. ($1.00 plus 3% transportation tax). This pricing policy will hold until and unless specifically rescinded.

The purpose of this allowance is to provide an incentive for packers of instant coffee to switch from glass jars to cans. Jars for instant coffee are sold on a delivered basis, and the effect of the allowance on cans is to make our pack-

age competitive on a first-cost delivered basis in an area where many large instant coffee packers have plants.

For all products except instant coffee, Savorlock cans will be sold F.O.B. Passaic, New Jersey.

RDC/ah

R. D. Cleaves.

[fol. 1013] From: R. D. Cleaves,
June, 1956.

Continental's New Savorlock Can

The Product Bulletin which has just been issued on the Savorlock cans gives a considerable amount of general information concerning these containers. As a ready reference for sales representatives, we have tried to anticipate some specific questions which may be asked by prospects for the cans, and this New Development Letter is designed to provide the answers.

Q. How would one describe the Savorlock cans?

A. The Savorlock cans, which come in two sizes, can be described as: Round lock top cans, side seam soldered outside, with covers fitted with pulpboard liner and glassine tamper-proof seal.

Q. What sizes are available?

A. The standard sizes are the 204 x 315, and the 305 x 507.

Q. Can they be produced in other sizes?

A. These are the only sizes which we are tooled to make, or which we plan to make in the foreseeable future. Height change parts and diameter change parts are very costly for these particular containers, and consideration would be given to different dimensions only if firm requirements were to run into several millions of cans.

Q. Are samples available?

A. Yes. Savorlock samples in lithographed stock design are being supplied to each district sales office for presentation to prospects. Additional samples, lithographed or plain, may be secured from Passaic #30 on a regular sam-

[fol. 1014] ple order.

Q. What are the particular advantages of the Savorlock can which should be pointed out to prospects?

A. The Product Bulletin discusses the special characteristics of these containers at some length. In the actual sales presentation to prospects, it is suggested that several cans

of each size be shown in order to demonstrate the excellent display characteristics of the Savorlock containers as they would be stacked on a shelf. By itself, one can may not appear to be very large. However, a solid bank display makes the can seem much larger.

Q. Where are Savorlock cans being manufactured?

A. Both cans will be manufactured at Plant #30 Passaic, New Jersey.

Q. When will these lines be in operation?

A. Both lines are expected to be in commercial production about August 1, 1956.

Q. Are there any limitations on orders as to minimum quantities?

A. The minimum acceptable order for a lithographed 204 x 315 can is 100,000. On the 305 x 507, the minimum order for a decorated can is 50,000.

Q. Will minimum orders, as stated above, be run as soon as received?

A. It is expected that, as production gets under way, orders may have to be pooled to make a minimum run of 500,000 of either size. As orders are placed, the plant will give shipping promises.

Q. Can Savorlock cans be vacuum packed or gas packed? [fol. 1015] A. No. However, they are designed to prevent moisture pick-up in the product during normal shelf life periods.

Q. How is the moisture seal affected?

A. Inside the covers of the Savorlock cans is a disc of waxed paper backed up by a cardboard disc. In the filling line adhesive is applied to the top of the curl of the can body, and this causes a seal between metal and paper as the can is capped. After the seal has been removed by the housewife, the pressure of the cardboard disc affords continued protection against moisture absorption.

Q. How are the cans shipped?

A. Savorlock cans are shipped only in reshippers. The 204 x 315 can is packed 6 x 4 (one layer) and the 305 x 507 can is packed 4 x 3 x 2 (two layers). The plant is not equipped to ship bulk, in bags, in large returnable cartons or in throw-away cartons.

Q. In what form are the cans shipped; with covers

affixed and bottoms loose, or with bottoms double seamed on and covers shipped loose?

A. The 305 x 507 can is supplied only one way, which is with the bottoms double seamed on and with covers shipped separately. The smaller, 204 x 315 container can be supplied either way. However, we strongly recommend that they be ordered with bottoms double seamed on and covers shipped loose for capping at the customer's plant. We have found through actual shipping experience that there is considerable damage to lithography if the cans are shipped with the bottom end open. On such small containers where display is so important, much of the sales appeal is lost when the cans are badly scratched.

[fol. 1016] Q. Would the packer derive any production advantage if he were to take the 204 x 315 can with the caps affixed, with bottoms shipped loose to be double seamed at his plant?

A. We do not see that there would be any manufacturing advantage which would offset the problem of scratched lithography. There would be no increased line speed over a line with capper, as the bottleneck is in the filler. Also, from a standpoint of expense, the line with double seamer would probably be more expensive than a line with a capper. Most of the concerns who will be considering the Savorlock can probably will already have a jar filling and capping line. As pointed out in the Product Bulletin the cost of changing over to a can capping line is reasonable.

Q. I have a prospect who merchandises his own brand of Instant Coffee which is packed by a contract packer. Are there any contract packers who are equipped to fill cans?

A. American Home Foods (Freehold, N.J.) and Tenco, Inc. (Linden, N.J.) are equipping to fill and pack Savorlock cans.

Q. If additional information is needed, where shall inquiries be made?

A. Questions on price information not contained on the Price Lists should be directed to Contract & Price. Production Planning will be able to supply information on scheduling of cans out of Passaic #30. If test packs are required, or a recommendation for can specifications for a particular product, the assistance of Customer Research should be solicited. The services of C.H.S.D. should be used to assist

customers in planning equipment to fill and cap the Savorlock cans. Sales policies should be taken up with Division Sales Managers. Both Division and Head Office personnel [fol. 1017] can be called upon to assist in making the best possible sales presentation to major prospects.

* * * * * * *

[fol. 1018] GOVERNMENT'S EXHIBIT 405A

Packaging Engineering Report

Progress Report No. 1

November 21, 1956.

Test Pack Of American Home Foods' Soluble Coffee in Savorlock Cans

Test pack of soluble coffee in 2 oz. Savorlock cans to test the moisture-vapor transmission characteristics of various tamper-proof seal materials and adhesives.

Eight Week Examination

Purpose

The purpose of this test pack was to evaluate the performance of several tamper-proof seal materials and adhesives with respect to moisture-vapor transmission. These materials were used in making a test pack of American Home Foods' soluble coffee in two ounce Savorlock cans.

Summary of Results:

1. Results at this time indicate that the container giving the best performance with respect to moisture-vapor transmission is the Savorlock can with a tamper-proof seal of .00035 aluminum foil laminated to 25# super calandered pouch stock. This material is supplied by the Shelmar-Betner Division.
2. The performance of commercially packed American Can Company soluble coffee can appears to be

somewhat better than the performance of the commercially packed glass jar. The performance of the commercially packed American can, and the Savorlock can having a seal of .00035 aluminum foil laminated to a paper backing with Irving pressure-sensitive wax in place of adhesive were comparable with respect to moisture-vapor transmission.

3. The performance of the Savorlock can having a 57# glassine seal and EC-871 adhesive appears to be comparable to the commercially-packed glass jar.
4. All other variables appear to give poorer performance than the glass jar with respect to moisture-vapor transmission.

Recommendations

Further information will be available after the conclusion of the twelve week storage period. A report will be written giving a final evaluation of all of the variables with respect to moisture-vapor transmission at that time.

Introduction

The American Home Foods division of American Home Products Company which packs G. Washington instant coffee as well as private labels has been considering using the Savorlock can as a package for their product. At the present time their G. Washington label is being packed in a 2 oz. modified single friction can manufactured by the American Can Company.

[fol. 1019] In order to demonstrate the performance of the Savorlock can with respect to moisture-vapor transmission, and at the same time test some new tamper-proof seal materials and adhesives, a test pack was made at the American Home Foods soluble coffee manufacturing plant on September 14, 1956. Some of the containers were retained by American Home Foods for their own evaluation, while the majority of the cans were returned to Chicago for moisture-vapor transmission tests.

Materials

The variables tested include three adhesives and six tamper-proof seal materials. The codes which were packed are as recorded in Table I at the end of the report.

The EC-871 and EC-917 adhesives are made by the Minnesota Mining and Manufacturing Company. The XA-143-77-1044 adhesive is made by the Union Paste Company. The 57# glassine is supplied by General Felt, Inc. The papers with Irvington pressure-sensitive wax were samples obtained from the Irvington division of the Minnesota Mining and Manufacturing Company. The Marasafe paper was supplied by the Marathon Corporation, while the Rhinelander material came from the Rhinelander Paper Company.

The cans used were 2 oz. Savorlock cans with promotional lithography obtained from Passaic #30.

The cans were filled on a commercial filling machine with approximately 2 ounces of soluble coffee and then closed by hand.

The Union Paste Company, XA-143-77-1044 adhesive sample was curdled when opened, and the solid fraction would not go into solution upon vigorous shaking. Therefore the sample was used just as it was received.

Apparatus

The caps were applied to the cans and jars using a Spring Torque Tester manufactured by the Owens' Illinois Glass Company.

The humidity cabinet in which the cans were stored was an Aire Regulator Cabinet manufactured by Food Technology, Incorporated.

The can samples were weighed on a Gram-Matic balance manufactured by E. Mettler Company, Zurich. The jars were weighed on a high capacity pan balance.

Procedure

All of the Savorlock cans were closed by hand. Where adhesive was used, it was applied by means of a small rubber roller approximately one inch in diameter and six inches long. A thin layer of adhesive was poured into a shallow enamel tray, and the roller was coated by rolling it in the adhesive. The roller was then rolled over the top curl of the can leaving a ring of adhesive. The quantity of adhesive applied to the top of each unit was not determined.

Covers containing chipboard liners and tamper-proof discs were applied to the cans with a force of 30 pound-inches of torque.

[fol. 1020] The American Can Company cans and the glass jars were packed commercially, samples being removed directly from the closing line.

One addition sample was taken from each of the following codes: A, B, C, D, E, F, G, H, J, and L. These samples were used to determine the initial moisture content of the soluble coffee when packed.

The cans and jars were shipped to Chicago by truck. The percent moisture contents of the samples for initial moisture determination were obtained by drying samples of known weight at 65°C for five hours at 28 inches of vacuum. The remaining samples were weighed and placed in a humidity cabinet where the temperature was maintained at 100°F and relative humidity at approximately 93%. The containers were removed at two week intervals, reweighed, and returned to the cabinet. Moisture pickup was determined by subtracting the original weight of the container from the weight after storage. The moisture pickup of the cardboard liner and can was corrected for by subtracting the net pick-up of the empty Savorlock cans (code N) from the net pickup of the full cans. By this method it was possible to calculate the amount of moisture picked up by the soluble coffee. At the conclusion of the test, the moisture content of the coffee samples will be determined by drying samples of known weight. By comparing these figures with the initial moisture content figures already obtained, we will have a second method for determining the moisture pickup in the soluble coffee.

Data

The moisture pickup data are recorded in Table II at the end of the report. Data are recorded as the average, minimum, and maximum moisture pickup in milligrams per can for each variable. Cans which did not have complete seals (with the exception of codes B and C) were not included in the averages.

Analysis of Results

An analysis of the data at this point in the test permits one to point out several indicated results:

(1) The best variable with respect to moisture vapor transmission was the Savorlock can with the tamper-proof seal of .00035 aluminum foil laminated to 25# super calandered pouch stock supplied by Shelmar-Betner. These tests indicate that the shelf life of this variable should be several times that of any other variable.

(2) Neither of the new adhesives tested (codes D and E) appeared to be superior or even comparable to EC-871 in performance.

(3) Of the new tamper-proof seals tried, the Shelmar-Betner material (code J) is the best. The Irvington laminated aluminum foil with pressure-sensitive wax (code G) also appears to perform well. In contrast, the Irvington glassine with pressure-sensitive wax (code F), the 200 Marasafe with pressure sensitive wax (code H), and the Rhinelander 58# Silver Clarophane (code L), appear to be completely unsatisfactory with respect to moisture-vapor pickup.

H. P. Lankelma, Jr., Special Product Section.

HPL:jv

[fol. 1021]

Table I

Code	No. Cans for CCC	No. Cans for Customer	Liner	Adhesive	Sealing Conditions
A	48	24	57# Glassine	EC-871	Seal glued on. Cap in place.
B	24	—	57# Glassine	EC-871	Seal glued on. Cap removed.
C	24	—	57# Glassine	—	Seal not glued on. Cap in place.
D	48	—	57# Glassine	EC-917	Seal glued on. Cap in place.
E	24	—	57# Glassine	XA-143-77-1044	Seal glued on. Cap in place.
F	24	24	Glassine with Irvington Pressure-sensitive wax	—	Seal seated by cap. Cap in place.
G	20	—	.00035 Al. foil laminated to paper backing with Irvington pressure-sensitive wax	—	Seal seated by cap. Cap in place.
H	24	—	Series 200 Marasafe Paper with pressure-sensitive wax	—	Seal seated by cap. Cap in place.
J	24	72	Shelmar-Betner 25# Super calandered pouch stock laminated to .00035 Al. foil	EC-871	Seal glued on. Cap in place.
L	24	—	Rhinelander 58# Silver Clarophane	EC-871	Seal glued on. Cap in place.
M	24	—	Commercially packed ACC cans		
N	24	—	57# Glassine (Empty Savorlock cans)	EC-871	Seal glued on. Cap in place.
P	24	—	Commercially packed glass jars		

[fol. 1022]

Table II

Moisture Pickup/Can in Milligrams
(Corrected for Moisture Pickup in Cardboard Liner)

Code	Average	Min.	Max.
A	218	154	400
B	2105	260	4967
C	1582	994	3441
D	254	171	436
E	261	187	476
F	434	276	584
G	147	33	264
H	1053	761	1889
J	32	0	78
L	511	419	576
M	152	3	565
P	198	124	339
N (control)	88.6		

Sales Information

Sales Information

CONTINENTAL CAN COMPANY

100 East 42nd Street New York 17, New York

[fol. 1024] possible after grinding. Continental Can Company offers its customers the last word in cans for packing coffee under a very high vacuum in ordar to remove the flavor-robbing oxygen. The coffee packer who uses Continental cans has a container that will support his advertising claims and guarantee "roaster-freshness" to his customers.

The Advantages of Vacuum Packing in Cans

During the war the coffee roasters were forced to use glass and paper containers for the packaging of their product. This gave the glass people the sole responsibility for handling the vacuum packed portion of the total. The glass manufacturers did an admirable job on this in producing jars and vacuumizing equipment but their heyday seems to have passed.

In spite of a price advantage arising from the use of glass, the vacuum coffee can has made a strong come-back. In almost all sections of the country and with all grades of coffee, the vacuum can has replaced glass to the full extent of their availability. The reason is obviously that the vacuum can is the ideal package for coffee.

The roaster sells flavor and aroma as well as coffee and this must be protected. The tamper-proof hermetically sealed can as free of oxygen as commercially feasible is the answer to their packaging problem. The can is strong, durable, light-weight, positive in its seal and convenient to use and handle from the roasters plant to the ultimate consumer.

Further, the can possesses many other advantages that are applicable to the roaster, wholesaler, retailer and consumer. They are as follows:

Advantages of Cans to the Roaster

1. Coffee is protected from light in cans. Light accelerates the rate of development of rancidity of coffee packed in glass jars.
2. Breakage is entirely eliminated and the extra care in handling to prevent breakage of the glass jar is not necessary.
3. Cans are lighter and more compact and thus are easier to handle in the roaster's plant.

4. Cans provide more area which can be lithographed to provide neat and distinctive labeling for brand name association.
5. Coffee in cans is less expensive to ship by common carrier because of less weight. The roaster pays the freight to destination in all instances, therefore, this is an important factor in overall costs.

[fol. 1025] Advantages of Cans to the Wholesaler

1. No loss through breakage.
2. Lighter to handle.
3. Less storage space required.
4. Delivery trucks can carry more cans due to weight and compactness.
5. Lower freight costs of shipments made by common carrier because of less weight.

Advantages of Cans to the Retailer

1. Cans stock on shelves better than jars.
2. No loss through breakage.
3. Larger variety of brands may be displayed in smaller shelf space.
4. Less care is needed in the handling of cans.
5. Neater appearance; distinctive lithographed labeling that won't come off.
6. The housewife will save glass jars, but then they clutter up her pantry and she won't buy any more coffee in glass.

Advantages of Cans to the Consumer

1. Coffee arrives at the home fresh and in better condition.
2. Cans are more easily opened than the Ultra-Vac glass jar without damage to tablespoon, which is the recommended method of opening the latter.
3. Easy to replace cover on can.
4. Opening the glass jar sometimes bends and dents the cover so it does not fit when replaced, or it cannot be replaced.
5. No loss through breakage.

[fol. 1026] Vacuum Packed Coffee—Glass Competition

The glass jar which is being offered most generally by the Owens-Illinois Glass Company is their Duraglas Ultra-Vac jar with a 66mm. press-on cap. The comparison shown below is made on this jar against our 1# can, size 5⅛" X 3⅝", lithographed 4 colors and varnished, packed in bags. This particular comparison is made on the basis of costs to a roaster in New York City.

	Can	Jar
Price	$47.79 Per M*	$43.46 Per M**
Label	—	1.30 Per M
Shipping Cartons (24s)	5.21 Per M cans Delivered***	Included in jar price Delivered
Freight on Empty Containers		
Extra Cost for Packing Glass Over Cans	—	5.10 Per M****
Extra Freight on Delivery of Coffee in Glass Jars—Carload	—	1.33 Per M*****
	$53.00 Per M	$51.19 Per M
Comparative Weights:		
Individual Unit Empty	6¼ oz.	13 oz.
Per M Containers Empty	418 lbs. in bags	1000 lbs. in cartons (approx)
Per Case (24s) Filled	36 lbs.	47 lbs.

All figures shown are based on quotations in effect May 15, 1948.

Explanation of Asterisks:

* The can price is subject to a sales and servicing differential depending upon the customer's total purchases. The maximum of the two differentials of 3% would reduce this price by approximately $1.46 Per M. The can price shown is our price f.o.b. Passaic for 4 color lithography based on the can made of .25 electrolytic tinplate throughout.

** This price includes jar caps at $9.08 Per M and is for delivery in Official Zone #1. In Zone #2, the Southern territory, the price of glass jars is $1.88 Per M higher and on the Pacific Coast it is $2.50 Per M higher than that shown.

*** If cans are shipped to a roaster who is not located at a basing or equalization point, it will be necessary to add the freight to the roaster's plant to make a fair comparison.

**** This figure represents the increased cost of handling, filling and closing Ultra-Vac jars over vacuum cans. This comparative cost was furnished us by one of the large users of both glass and cans at comparable speeds.

***** Coffee packed in glass jars weighs approximately 25% more than if packed in cans. This figure of $1.33 varies, of course, with the distance the filled packages are shipped. The $1.33 is the average on carload shipments to wholesale grocers within a radius of 300 miles of New York City. L.C.L. shipments are substantially more expensive in glass than in cans. Also, the extra freight costs for glass increase in direct proportion to the distance shipped.

[fol. 1027] In spite of the price advantage of glass, the majority of coffee roasters are anxious to use cans to as high a percentage as possible. In certain areas there is some slight consumer preference for coffee in glass jars. This preference in many cases, is for the screw top jar and not

the Ultra-Vac as the latter has no re-use value for home canning.

The Owens-Illinois Glass Company have a high-speed vacuum closing machine. Our 78-VDS vacuum closing machine is comparable in speed and closes the can under a higher vacuum.

Coffee Closing Machines

Continental Can Company has several types of coffee closing machines. These models are known as 350 VSC type 3, 38 DS and 78 VDS. We recommend their use as follows:

1. Coffee packers with an annual output of 1 to 2 million cans—350 VSC type 3
2. Coffee packers with an annual output of 2 to 6 million cans—38 DS
3. Coffee packers with an annual output of 6 million cans and over—78 VDS

The necessary information, pictures, diagrams and layouts are listed in the catalogue. However, for purposes of convenience and completeness we shall again supply all the data for the above mentioned closing machines.

[fol. 1028] GOVERNMENT'S EXHIBIT 407

Instant Coffee

by Chase & Sanborn...

...Cans by Continental

[fol. 1029] Table of Contents

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[fol. 1030] A New Chapter in the Story of Packaging

In the area of modern merchandising, today's big changes are taking place in the field of Packaging.

To Continental Can Company, the most diversified of all major manufacturers of containers, this creates an opportunity to be of increased service to packers with packaging that protects and moves their product. We constantly strive to meet newly developed products with the creation of the proper packages for them.

Thus, Continental's development of metal containers for instant coffee stems from recognition of the need for an improved package to hold this fast-growing product. We believe that the can is the proper package for instant coffee, just as it has already proved itself to be the proper package for ground coffee.

It is the aim of these pages to demonstrate that the metal container is the merchandising vehicle that will increase sales of Chase and Sanborn Instant Coffee, reduce packaging costs, and build up your profits on this product.

[fol. 1031] Coffee Packaging Costs Reduced With Metal Cans

In recent weeks, the competitive battle for the instant coffee market has become more intense. Each packer is trying to whet the consumer's appetite for his brand through such sales techniques as premiums, "specials", etc. This situation is likely to prevail for some time and the probable result will be a continuing trend toward a lower general price level for the product.

Thus, package costs are becoming most significant to your company as an instant coffee packer—not only first costs but the increments that affect the ultimate price to the consumer, and the profit margin realized.

Continental Can Company has an answer for the problem: packaging costs can be reduced through use of metal containers, affording you major savings.

1.) Container Costs

First costs are important, and we have recognized that the can in cartons must be competitive with jars in cartons, including cost of labels. Although we presently

manufacture instant coffee cans only at Passaic, New Jersey, we are providing a freight allowance of $1.00 per cwt., which will make your delivered cost at New Orleans reasonably close to the delivered cost of glass. [fol. 1032] The following prices are f. o. b. our Passaic, New Jersey plant, freight of $1.00/cwt. allowed on shipments to New Orleans, Louisiana.

	2-Oz. Size	6-Oz. Size
Cans (Max. quantities)—bodies lithographed 3 prints on a coat, and tops 1 print on a coat	$31.99/M	$ 50.37/M
Cartons, printed 3 colors, 10M and over, current. (125# for 2-oz.; 175# for 6-oz.)	$60.00/M	$111.00/M

Including cartons, we estimate that your delivered cost of cans at New Orleans, in carload lots, will be approximately 87¢ per case for the 2-oz. size and $1.43 per case for the 6-oz. container.

2.) Freight Savings

Substantial savings will be realized by Chase and Sanborn in the shipment of filled containers to point of sale. Obviously, cans weigh much less than even lightweight glass, and more cases of metal containers can be loaded per railroad car or truck. It should be noted that the freight rates shown are current, and do not include the recently-announced 7% increase which the railroads have filed with ICC, to take effect March 7, 1956.

[fol. 1033] The rates given below are based on a 30,000# minimum per car, and include the 3% transportation tax.

Other factors used are:

	2-Oz. Size		6-Oz. Side	
	Jars	Cans	Jars	Cans
Wt. Per Case of Filled Containers	9#.	6.6#	19#	15.6#
No. of Filled Cases Per c/l	4.300	7.300	1.800	2.700

The figures for shipment from New Orleans to two locations will show the comparative shipping costs, and indicated savings, realized through the lighter weight of cans.

	C/L Frt. Rate	Frt. Cost Per Filled Case			
		2-Oz. Glass	2-Oz. Can	6-Oz. Glass	6-Oz. Can
New Orleans-Memphis	.793	7.1¢	5.3¢	15.1¢	12.4¢
New Orleans-St. Louis	.876	7.9¢	5.8¢	16.6¢	13.7¢

[fol. 1034] Instant Coffee Can Design
Dictated By Merchandising Needs

When the instant coffee can was in the first stages of development, fullest consideration was given to the ideal size and style of can, and type of reclosure. Continental recognized that the criteria for an acceptable package would have to include the following elements:

1. Suitability for product.
2. Ease of opening and reclosure.
3. Good display characteristics.
4. Reasonable cost.

The services of an outside industrial designer were secured to advise on style and proportions of the container. His recommendations, together with those of Continental engineering and sales people, determined the final styling of our instant coffee cans, confirmed as to their high marketing qualifications by coffee merchandisers.

We knew that we would have to furnish a "family" of can sizes and that the proportions of the 2-oz. can would be dictated by the necessary proportions for the larger sizes. It was recognized that a short can with a wide diameter would create opening difficulties for the housewife, especially in the 6-oz. and larger sizes. This problem made necessary a can having a greater height than diameter.

Display requirements also pointed in the same direction. Because the can, when first introduced, will usually be displayed next to glass jars, it was important that its propor-
[fol. 1035] tions be such that the consumer would recognize that its capacity was as great as that of the jar.

It was found that none of our standard can diameters would give us the desired "tall" look while still maintaining a pleasing visual appearance. Design requirements dictated that we adopt a non-standard 204 diameter for the 2-oz. can, and a non-standard 305 diameter for the 6-oz. size. The result you see—nicely proportioned containers with excellent display characteristics.

[fol. 1036] Retailers and Consumers Favor
Metal Cans for Instant Coffee

There are two principal groups who must be sold on any packaged product offered for sale through retail stores.

The first of these is the retail merchant and the second is the consumer. We have approached both groups for their opinions on instant coffee packaging. Both favor the can!

To secure the storekeepers' reaction, Continental approached managers of stores where instant coffee is now being sold in cans. Their comments, for the most part, are typical of those which are almost always expressed when glass and metal packages are compared. Preference for cans is stated in such terms as: greater area for design and selling label, better mass display possibilities, less shelf space required, no breakage, lighter weight and easier handling of cases. With specific reference to Continental instant coffee cans, retailers are pleased that their display problems have been considered, and that we have made the can so that it will stack easily on the shelf.

We also know a great deal about consumer views of the can as a package for instant coffee, through two consumer reaction evaluations which were made for our 2-oz. can. The first of these surveys was conducted by National Family Opinion in 1954, and a more recent test by W. R. Simmons & Associates during the month of November, 1955.

The National Family Opinion report confirmed some points which we had anticipated, but it also brought some pleasant surprises. It was expected that the glass-packed [fol. 1037] product (controlling virtually all of the present market) would take the edge here—which it did—44% of the respondents preferred it. However, 29% stated their strong preference for the tin-packed product. Also significant was the fact that 25% stated they had no particular preference. This means that this sizeable group could be influenced to come into either camp. Therefore, it can be assumed that no prejudice would have to be overcome to influence slightly over half—or 54%—of the respondents to buy their instant coffee in tin.

The Simmons & Associates test was conducted in stores where instant coffee is now being offered for sale in cans as well as in glass. There were some very significant findings which are interpreted to be even more favorable to the can than were the reactions obtained through the National Family Opinion test.

The salient point brought out by the more recent test is that the consumer, as represented by the respondents, has

very little reticence concerning purchasing instant coffee in tin. When given the specific opportunity to voice a *dislike* for the tin container, 73% had nothing at all to say against it, or, in effect, said they saw no difference between the glass and the tin.

On the *positive* side, when they were asked what they liked about the tin, the following types of answers were given:

(1) Can't break it (49%)
(2) See no difference (25%)
(3) Stays fresh longer or holds flavor better (13%)
(4) "Lighter", "easier to store", "handles well", etc.

[fol. 1038] These reactions signify that there is no basic resistance on the part of the consumer to a can for instant coffee.

Other reactions, however, brought out the fact that the consumer must be alerted to the fact that a new type of container is being offered. It was amazing that only 11% of the instant coffee users interviewed had ever heard of the fact that some brands are being packed in tin; this, in spite of the fact that brands in tin were present on the shelf in plain sight. The metal package will sell the product; but it must be merchandised and supported by promotion, if the housewife is to be aware of its existence. Then, her impulse will be to select her favorite brand in a can, or to switch to a new, but well-known brand because she has read about it in printed advertisements or learned of its availability through radio or television.

This situation is an opportunity for a hard-selling *brand* promotion. Many of the factors for successful promotion are present:

A new package.

A readiness to accept the package on the part of the consumer.

Availability of sales themes, derived from the reactions already *voiced* by consumers—"unbreakable"; "protected from light"; "re-use of container"; "easy to store"; "lighter"; "nice for travel"; "easy to dispose of"; "easier to spoon out"; etc.

With a "family" of instant coffee cans in the two most popular sizes, a merchandising job with a new twist can be done in promoting Chase & Sanborn Instant Coffee to the public.

[fol. 1039] Metal Cans Offer Complete Product Protection to Instant Coffee

Any packer of instant coffee who is considering the metal can would have uppermost in mind the question, "In a can, will the product have a shelf life comparable to that in a jar"? The answer is "Yes".

The only qualification is that the packer must follow the capping and sealing practices recommended by the Continental Can Research and Development Department as providing the best finished package with the greatest resistance to moisture penetration. Specific comments as to equipment and adhesives will be found in the next section of this presentation.

A long period of experimentation, with many variables, is behind our determination of the best can structure, the sealing methods and the type of adhesives to be used. Numerous test packs were evaluated, after both accelerated and long-term test conditions. These basic tests were made in the labofatory, but served to indicate what might be expected under commercial conditions of packing, shipping and storage.

More recently, in conjunction with a major market test of the instant coffee can, our Metal Research and Development Department has been able to confirm their original findings. Evaluations have been made of cans filled and sealed on a production basis and distributed in normal commercial channels. Accelerated laboratory tests of cans taken from the production line have demonstrated the efficacy of the vapor seal. Also, cans taken from retailers' shelves [fol. 1040] over four months after filling have demonstrated no appreciable moisture pick-up.

These comprehensive evaluations have given us the assurance that Continental's metal containers can be offered to instant coffee packers as a package that will meet all the requirements of the product itself and offer the complete protection needed during normal shelf life periods.

[fol. 1041] Instant Coffee Packaging Lines can Be Quickly, Economically Converted to Metal Cans

The conversion of a glass jar line to an effectively operating instant coffee can line is relatively simple. The costs will vary, depending upon the type of equipment used and the line layout, but in most cases such costs will not be excessive. Once the change parts have been received, the change-over from jars to cans and the change-back from cans to jars can be made with very little interruption of production.

Listed below are the various operations of an instant coffee line, with comments concerning adaptability to the handling of cans:

1.) Materials Handling

There probably will be no changes necessary in the carton conveyor handling system, either direct to an unscrambler, or through storage on pallets. A greater number of cans than jars can be handled per pallet.

2.) Unscrambler

It may be necessary to make a slight adjustment on the unscrambler because of the top bead of the instant coffee can.

3.) Slat Chain Conveyor

Usually, the conveyor is adjustable and thus adaptable to the conveying of cans.

[fol. 1042] 4.) Cleaner—Blower

This equipment may require a new twister to take care of the diameter and height of the can, which is different from that of a standard jar. It may be necessary to adjust the pusher to a different height.

5.) Labeler

Presumably, the cans will be lithographed and the labeler will not be used. It can stay in the line, operating as a conveyor. It may be necessary to make a slight adjustment of the V-belt to avoid running on the top bead of the can.

6.) Filler

Change parts will probably be required for the filler. The cost, depending upon the type of filler used, should be approximately $850.00.

7.) Gluer

Because the adhesive recommended for cans is different from that ordinarily used for glass, the type of adhesive

applicator used on a jar line may not be suitable for cans. Information on the recommended type of applicator will be furnished on request, as will brand names of recommended adhesives.

8.) Capper

The cost of change parts for the capping machine should range from approximately $180.00 to $425.00 for a 4-spindle machine; from $270.00 to $1,125.00 for a 6-spindle machine; and from $360.00 to $1,500.00 for an 8-spindle machine.

[fol. 1043] 9.) Caser

A new grid may be required for the caser. The cost, depending upon the type of caser used, should be approximately $500.00.

The above figures are estimates, and are only to serve as a guide in indicating what may be involved in equipping a jar line to handle the instant coffee can.

We recommend the services of our can handling equipment engineers as consultants and advisers on line changeovers from glass jars to cans.

[fol. 1044] Continental Can Company is proud to offer its "family" of metal cans to Chase & Sanborn.

These containers, now available to the instant coffee industry, should result in lower packaging costs, increased profits for the packer, and, potentially, a broadening of the Instant Coffee market through making possible a lower retail price level.

[fol. 1045] GOVERNMENT'S EXHIBIT 408

New Development
. . . for immediate sales action

Soluble Coffee Cans
204 x 315 2-Oz. Container

July 21, 1955.

From: R. D. Cleaves

Passaic #30 has now successfully completed the first production run of the 204 x 315 lock top soluble coffee can. The line will not operate during the last two weeks in July while Passaic plant is on vacation, but will be back in production about the middle of August.

Because of the anticipated heavy demand for the can, the available line production has been put on an allocation basis. Your Division has received its allocation and the distribution will be by the Division Sales Manager.

The Division Sales Manager will also determine sales policy within the Division and each District Office should direct questions concerning allocation and policy to him.

Inasmuch as this office is responsible for coordinating among the three Divisions, it is requested that we be kept informed, through copies of correspondence, of negotiations with your customers concerning the sale of our 2-oz. soluble coffee can.

The following information will be of value to you in discussing our soluble coffee container with your prospects.

Prices

Contract & Price is issuing a price bulletin on the 2-oz. soluble coffee can.

Manufacturing

The preferred method of manufacturing is to have the bottom end seamed on and caps shipped loose. The caps will have the waxed cardboard disc and the glassine vaporproof seal already inserted, and cans will be glued and capped by the customer.

[fol. 1046] There are several reasons for recommending to customers that the factory seam on the bottom end. In most cases, customers will have their own glass jar lines, or their product will be supplied by a contract packer who has a glass jar line. The cost of changing a jar line to a can line is relatively simple and inexpensive as contrasted to the building of a line for cans only, which would require a double seamer and other equipment.

Cans shipped with bottoms seamed on will not suffer flange damage and the incidence of scratched lithography will be kept to a minimum.

Cartons

The first commercial shipments from Passaic were made in 175# test reshippers, packed 24 to a carton. The cost of

these cartons, printed three colors, is approximately $62.50/M cartons in lots of 10,000.

Presently, we are making some test shipments in 125# cartons which we believe will be sufficiently strong for 24 2-oz. cans of soluble coffee. If, as expected, the 125# cartons prove satisfactory, additional savings will be realized in carton costs.

Shipping Weights

The 2-oz. can, packed in 175# test cartons weighs approximately 150# per M cans. About 175M cans in cartons can be loaded in a 40′ car and a 35′ truck trailer will take approximately 100,000 cans.

Samples

Orders for plain tin samples may be placed with Passaic #30. If the cans are to be used by a prospect for a test pack, the order should state, "For test pack—Include adhesive."

Conversion of Jar Lines

The cost of converting customers' lines from jars to cans will depend upon the type of equipment used and the line layout. The services of Continental's Can Handling Equipment Engineers should be employed to assist customers in planning the change over. Once the change parts have been received, the change over from jars to cans and the change back from cans to jars can be made with very little interruption of production.

Listed below are the various operations of a soluble coffee line, and comments concerning adaptability to the handling of cans.

1) *Materials Handling*—There probably will be no changes necessary in the customers carton conveyor handling system, either direct to an unscrambler, or through storage on pallets.
2) *Unscrambler*—It may be necessary to make a slight adjustment on the unscrambler because of the top bead of the soluble coffee can.
3) *Slat Chain Conveyor*—Usually the conveyor is adjustable and thus adaptable to the conveying of cans.

[fol. 1047] 4) *Cleaner, Blower*—This equipment may require a new twister to take care of the diameter and height of the can, which is different from that of a standard jar. It may be necessary to adjust the pusher to a different height.

5) *Labeler*—Presumably, the cans will be liothographed and the labeler will not be used. It can stay in the line, operating as a conveyor. It may be necessary to make a slight adjustment of the V-belt to avoid running on the top bead of the can.

6) *Filler*—Change parts will probably be required for the filler. The cost, depending upon the type of filler used, should be approximately $850.00.

7) *Gluer*—Because the adhesive recommended for cans is different from that ordinarily used for glass, the type of adhesive applicator used on a jar line may not be suitable for cans. Information on the recommended type of applicator will be furnished on request, as will brand names of recommended adhesives.

8) *Capper*—The cost of change parts for the capping machine should range from approximately $180.00 to $425.00 for a 4 spindle machine, from $270.00 to $1,125.00 for a 6 spindle machine, and from $360.00 to $1,500.00 for an 8 spindle machine.

9) *Caser*—A new grid may be required for the caser. The cost, depending upon the type of caser used, should be approximately $500.00.

The above figures are estimates, and are only to serve as a guide in indicating to prospects what may be involved in equipping a jar line to handle a 2-oz. soluble coffee can.

6-Oz. Soluble Coffee Can—305 x 509

Equipment is now being built for the manufacture of a 305 x 509 soluble coffee can. The line will be installed at Passaic #30 and is expected to be in production during the first quarter of 1956. Because the 6-oz. can will be the companion container to the 2-oz. can, the sales pattern will parallel that of the 2-oz. container. In other words, the customers buying the 2-oz. soluble coffee can will automatically participate in the production of the 6-oz. line.

General

The advantages of the soluble coffee can over the glass jar are obvious. The can has been designed specifically for this product, and our evaluation of the can over a long period of time shows that it compares favorably with the jar in such important respects as attractiveness, ease of opening, reclosure feature, and vapor seal.

From this point of equality, the specific advantage to the packer is the lighter weight which affords freight savings up to approximately 40% in the filled and cased product. A further saving is realized in the elimination of the separators now used by most packers in shipping jars.

[fol. 1048] We expect to gain a real sales advantage with our soluble coffee containers and believe that in a relatively short time the Continental soluble coffee container will be a major factor in this product field.

RDC/wv

[fol. 1049] GOVERNMENT'S EXHIBIT 409

Continental Can Company, Inc.
100 East 42nd Street
New York 17, N. Y.

Mr. W. W. Hodgson
#44 San Francisco

August 18, 1955.

To: Sales Department List A-2

Subject: Soluble Coffee Can

Re: 204 x 315 2-Oz. Container

It is now general knowledge in the Coffee Industry that J. A. Folger & Company, Kansas City, Missouri, is making a major market test of their soluble coffee in Continental's 2-oz. can. The test is being made in twelve cities in the Middle-West with Waterloo, Iowa as the key test area. At Waterloo, an independent market research organization is

securing detailed consumer reactions which will be used as a basis for interpreting data in all test cities.

Folger is interested in a can for soluble coffee because they recognize the strong sales features of the can as compared to the glass jar. The following are particularly compelling.

1) The consumer associates coffee with the metal can

This is best demonstrated by what happened after World War II when metal was again available to pack ground coffee which had been merchandised in glass jars during the metal shortage. Even though the glass manufacturers had been afforded a real opportunity to entrench themselves in this field, and were quite confident that the key opening coffee can was a dead issue, the consumer proved that wrong. It is expected that this same association, and preference, will eventually make itself felt in the case of soluble coffee.

2) The can dominates the food container field.

A glance at any grocery store shelf will support this statement and the reasons for the dominance of cans are not hard to find.

Packers prefer cans over glass because of lower filling and closing costs and easier handling.

The Retailer prefers cans for reasons of easier handling, better display and no breakage.

The Consumer prefers cans for convenience, ease of storage and no risk of breakage. The latter point is very important to the housewife, particularly one with small children. In every market study we have undertaken, where we have sought consumer reaction to cans vs. glass, a preponderance of the replies have mentioned the danger of breakage of glass containers. Disposal of glass after use has also been emphasized as a problem.

[fol. 1050] 3) The lithographed can displays more advantageously than the labeled glass jar.

Samples of the Folger 2-oz. can have been ordered from Passaic #30 for all District Sales Offices for showing to customers. In comparing this lithographed can with any

labeled jar, one will see that the can has greater display space. The stacking feature on the can and the overall lithography enables the retailer to make a solid eye-catching display of our package.

4) The can costs less than the glass jar.

This statement is generally true although exceptions can be found for the reason that glass jars for soluble coffee are sold on a delivered price basis and we now sell f.o.b. the plant location at Passaic.

Nevertheless, in comparing basic costs of lithographed cans in cartons and jars plus cartons and labels, we find that the cans can be delivered at a price lower than the jars in a shipping area even greater than normal. This is because the basic price of the container at the plant is less, the cartons are smaller, and it is not necessary to use separators in the cartons.

As can lines are established in the future in the major soluble coffee packing areas, the above statement should prove to be 100% accurate.

5) The can protects the product

Any coffee expert will agree that light will cause flavor deterioration in packaged coffee. This is not as true with soluble coffee as with the ground product, but the consumer believes it to be the case. This fact was brought out in the National Family Opinion consumer survey which was undertaken late in 1954 where a substantial number of questionnaires developed the fact that consumers preferred the can because it protected the product from light.

6) Glass is expensive to ship

Generally, soluble coffee is packed at a central location and shipped into a fairly large market area. The weight of filled cans in cartons is about 40% less than that of filled glass in cartons.

For example, a carton of 24 2-oz. filled cans weighs about 7 pounds. The same number of filled glass units in cartons weighs from 11 to 12 pounds.

It is estimated that if all soluble coffee were in cans rather than in glass, the freight savings which would be enjoyed

by the entire Industry would be approximately three million dollars annually. This could represent added profits to the Industry if they switched to cans or could stimulate sales of soluble coffee through being passed on as savings to the consumer.

[fol. 1051] The following information supplements that in the "New Development" letter of July 21, 1955.

National Family Opinion Consumer Test

As stated above, in 1954 N.F.O. made a consumer reaction test of glass vs. tin containers for soluble coffee. This survey developed a great deal of detailed findings and comment and the report is summarized below to bring out some of the salient reactions.

It may be well just to briefly recount the way this job was carried out. Two containers, (one our test can, the other a regular glass jar) each having 2-oz. of identical soluble coffee, were sent out to 450 families. These families had previously been determined to be instant coffee users and in the 431 questionnaires returned (93.9% of those sent out) only 25 respondents said they did not use soluble at all. The dispersion of the test families was controlled by census data to get the proper balance as to 1) population by geographic regions, 2) city size, 3) age groups of homemakers and 4) income groups.

The panel was told to use each product for a few days and then return the completed questionnaire. Care was taken not to direct too much attention to the container, thereby enabling the panel to give an unbiased response whether related to the coffee or the container. The panel was not told that the two coffees were identical.

Overall Preference

It was expected that the glass packed product (controlling virtually all the present market) would take the edge here —which it did—44% of the respondents preferred it. However, 29% chose the tin-packed product. But, also significant was the fact that 25% stated they had no particular preference. This means that this sizeable group could be influenced to come into either camp. Therefore, it can be assumed that no prejudice would have to be overcome to

influence slightly over half—or 54%—of the respondents to buy their soluble coffee in tin.

Preferences on Specific Characteristics of the Test Packs

In addition to being asked their overall preference for use of the two products (not the packages themselves), the respondents were asked specifically what their preferences were on taste, freshness, attractiveness of container and convenience of package. Some reactions to the taste and freshness questions appeared definitely psychological in nature. Although it seems possible, after reviewing the pattern of the comments made, that taste and freshness of the product in tin could have been affected either by the metal container or the repacking operation, it is felt unlikely that the strong differences which showed up in consumer preference were based on true product differences. Here is the way the respondents answered on these four charactristics:

[fol. 1062]

	% Pref. Glass	% Not Pref. Glass	% Pref. Tin	% Having No Spec. Pref.	% No Answers	Total
Taste	46	54	31	22	1	100%
Freshness	24	76	16	60	1	100%
Attractiveness of Container	46	54	23	30	1	100%
Convenience of Package	28	72	31	40	1	100%

Taste is one characteristic of soluble coffee that is probably most important (of the above 4) to the consumer. This is emphasized when we note that 77% had a specific preference on this point, but in spite of these firm opinions, more than half of all respondents failed to show preference for the familiar traditional glass container. Contrast with this the large percentage (60%) who had no preference on *freshness*. One big reason for this heavy "no preference" on freshness is that soluble has no aroma (probably the point on which freshness is judged particularly in the case of kitchen coffee) in the powdered state. In view of the very plain white can used in this test (not to mention the unpainted side seam, bottom seam and bottom) we did very well to get 23% to choose the can. A good job of color and design should put us right back in the race here.

This panel of housewives ran true to form on the *convenience* angle. Here, we were convinced, was a very strong

point in favor of our container and our conviction was right. The large group (40%) who had "no preference" on the convenience angle would be in our favor since Mrs. Consumer has had plenty of time to be convinced on the convenience factor of soluble coffee in glass jars in the years that glass has had a virtual monopoly in the soluble coffee market.

Considering the odds that were against tin in this test, we can say our batting average is very high—certainly good enough to show that the tin container for soluble coffee is probably destined to replace, to a great extent, the glass jar.

Samples from Passaic

The July 21st letter provided that only plain samples could be supplied from Passaic. It is now possible to secure lithographed samples which will be in the Folger design. It is preferred that these be shown to prospects rather than plain tin samples because of their excellent appearance.

Cans for Test

Recently, Metal R & D has been evaluating moisture pick-up in test cans which have been manually sealed as against cans which have been mechanically sealed. The results indicate that manually sealed cans do not reflect what will be realized under commercial packing conditions as the moisture pick-up averaged about 10 times that experienced with mechanically sealed cans.

This should be made known to any packers who are now making their own evaluation tests with our 2-oz. can. In the future, it is suggested that test cans from Passaic be supplied with seal and caps applied, with bottoms to be seamed on after filling at the packer's plant. Local Customer Research Representatives can secure seaming heads for the 204 diameter 2-oz. can from Metal R & D which can be used in making test packs.

[fol. 1053] Conversion of Jar Lines

The only automatic gluer now approved by Continental for use in the soluble coffee can line is the Filma-Seal Automatic Adhesive Applier manufactured by Ferdinand Gutt-

man & Company, 36th Street and 14th Avenue, Brooklyn, New York.

This applicator is equipped with a 1/20 H.P., 110-V, AC motor, and sells for about $450.00 f.o.b. Brooklyn. Delivery can be made in about two to three weeks after order. If new adhesives are developed, other types of applicators may be recommended.

Adhesives

The adhesive which is now recommended for gluing the tamper-proof seal to the soluble coffee can is made by the Union Paste Company, 1605 Hyde Park Avenue, Hyde Park, Massachusetts. It is identified as Code #XA-143-77-613.

Other adhesives are now being evaluated by Metal R & D and additional types made by other manufacturers may be approved in the near future.

General

The interest in soluble coffee cans on the part of both larger and medium size packers is continuing to grow. The whole Industry is following the Folger market test and many soluble coffee packers have picked up filled Folger samples at retail. Two concerns, one a large grocery chain and the other a major packer of ground coffee, are now negotiating with contract packers with the thought that they may put their product in cans even before the completion of the Folger test.

A word on the potential market for our 2-oz. and 6-oz. cans. It is estimated that in 1954, over one billion ounces of soluble coffee were consumed. If all of this consumed product had been packaged in cans, the requirements would have utilized the output of eight soluble coffee can lines operating on a two-shift basis.

This great potential market provides Continental with an opportunity to grow in sales and profits. If we can succeed in getting two or three strong brands in our cans, competition will force the rest of the Industry to follow.

R. D. Cleaves.

RDC/wv

CC: Mr. D. B. Wiesley—#43,
Mr. S. B. Smart—#43.

[fol. 1054] GOVERNMENT'S EXHIBIT 411

Container Requirements for Coffee, Soluble

Prepared 6/15/55
Revised 5/1/56

Introduction

During the last 20 years there has been a large increase in the use of soluble coffee. Up to this time the product has been packed almost exclusively in glass. The Continental Can Company has felt that a considerable portion of this market could be obtained by metal containers, provided a suitable container meeting all technical and economic requirements could be developed. A metal container would have many advantages, the most important being lower initial cost, considerable savings in weight and, therefore, freight charges, and elimination of breakage.

(a) Market Potential and Competitive Situation

During 1955, 18,813,000 bags of coffee were roasted in this country, 2,323,000 of these bags, or 12.3% being used in making soluble coffee. This soluble coffee accounted for some 30% of the sales volume of all coffee in 1955. The total number of packages of soluble coffee used in 1955 consisted, approximately, of the following:

2 ounce glass jars—250,000,000
4, 5, and 6 ounce glass jars—150,000,000

There were also a comparatively small number of 2-ounce can units packed.

Continental's competitive position should be excellent. We now enjoy a substantial share of the ground coffee container business. Since many of our present customers are major producers of soluble coffee, we are in a good position to become the major supplier of the soluble coffee can.

(b) Containers Presently Used

As indicated above, this product is being packed almost entirely in glass jars. The jars are equipped with a glassine paper seal affixed to the top of the jar by means

of an adhesive. This paper seal acts as a primary moisture-vapor-barrier, and also provides a tamper-proof feature. A metal screwcap with waxed paperboard liner completes the closure.

(c) Previous Trial Containers

1. Lock-top with drumhead seal—Mennen side seam. This can was used commercially for several years for Nescafe. Both the Mennen side seam and closure allowed too much moisture pick-up.
2. Single Friction. Used to some extent commercially but reclosure inconvenient.
3. Trutite. Reclosure found unsatisfactory.

[fol. 1055] Product Description

(a) Composition

Soluble coffee is produced from roasted and ground coffee having a blend composition of 60-80% Santos and 20-40% Milds. A medium roast is used. A water extraction of a pulverized roast is prepared by a counter-current extraction system.

(b) Physical and Chemical Characteristics.

The product is extremely hygroscopic. It has a moisture content of about 2% when made, and as little as 0.5% additional moisture will cause it to cake. Chemically the product is quite stable. It does not have the delicate aromatic character of ground coffee, and is not subject to oxidation deterioration. The product is not corrosive to metal since it is neither extremely alkaline nor acid in nature, and is a dry powder with a very low moisture content.

Analysis of Competitive Containers

The only competitive container now used is a modified, single friction can made by American Can Company for American Home Foods Company. This can has a locking feature in the friction plug and has a fiber gasket in the chime of the plug.

In all other respects, it is a standard single friction can holding 2 ounces of soluble coffee and has dimensions of

.208 X 306. We understand it is more expensive than the commonly used 2-ounce glass jar.

No information is available concerning the performance of this container. It is being used by only one packer, and apparently meets his particular requirements satisfactorily in spite of its cost.

Container Requirements (Tentative)

(a) Structure

A container for soluble coffee must provide a nearly perfect moisture-vapor barrier sufficient to prevent moisture pick-up greater than 0.5% during the shelf-life of the product. Although we have no definite information, we would expect the shelf-life of soluble coffee in glass to be at least one year. The container must have a reclosure feature such that when reclosed, a good moisture-vapor barrier is provided. It must be of convenient size to permit removal of small amounts of the product with a teaspoon. No vacuum or pressure resistance is necessary except for vacuum resistance in the vacuum filling procedure. In some cases, customers may be interested in vacuum or pressure packs for advertising purposes. A tamper-proof feature on unused cans will probably be required by most customers.

(b) Materials

Since the product is dry, there is no corrosion problem but the materials used must be flavor-free and have sufficient strength to withstand many openings and reclosings.

[fol. 1056] (c) Shelf-Life

The container should provide a satisfactory moisture-vapor barrier for a period of at least one year at room temperature before opening.

Interim-Container Specifications

(a) Structure

The proposed structure (STK-422) which Continental believes will meet all the requirements except for vacuum or pressure packing is as follows:

The can is essentially a slip cover can, except that the cover is threaded to engage threads on the upper portion of the body. A waxed, chip-board lining is incorporated in the cover to serve as a reclosure moisture-vapor barrier in a manner similar to that used in glass jars. A glassine disc is cemented to the top curl of the can body to serve as a primary moisture-vapor barrier, and as a tamper-proof feature. The side seam is soldered, and the bottom end compound lined and double seamed. Provision is made so that the customer will have the option of assembling the disc and cover onto the can after filling, or double seaming the bottom onto the preassembled can. Sizes are 204 X 315 (2-ounce) and 305 X 507 (6-ounce). Tooling exists for the 2-ounce size, and is being set up for the 6-ounce size.

(b) Materials

Plain #25 plate throughout will be used with provision for outside lithography on bodies and covers, where desired. Except for special fittings mentioned above, all other specifications will follow the Choice of Container Manual for the product and can sizes involved.

(c) Shelf-Life

It is estimated that this container will provide a shelf-life of approximately one year under ordinary conditions.

(d) Capacities

No can capacities have been run as yet on either the 2-ounce or 6-ounce container.

(e) Filling and Closing

The customer will have the option of filling through either end. If he wishes to fill through the bottom and double seam the bottom end, he can receive cans which have the covers attached and glassine discs glued to the top curl of the can. If, on the other hand, he wishes to fill through the top end, he will then attach the covers and glassine seals after filling the cans as is presently done with jars. Most present packers of soluble coffee

will probably prefer the latter method, as they can convert their present equipment to can packing with a minimum of expense. However, a new packer might consider the former method to be easier.

This product is filled on a vacuum filler drawing approximately 15 inches of vacuum. As yet, we have had little experience with filling equipment but one machine which has been used to fill both 2-oz. and 6-oz. cans is [fol: 1057] the sixteen station Vacuflow Filler manufactured by the Pneumatic Scale Corporation, Ltd., Quincy, Massachusetts. This machine is capable of running at speeds up to 150 cans per minute.

If the covers are to be applied, the cans pass under a roller which applies a layer of adhesive to the top curl. The cans then are capped on a machine such as an 8 station CaPeM machine manufactured by the Consolidated Packaging Machine Corporation, Buffalo, New York.

Other Possible Container Types

(a) Cemented Side Seam Cans

A screw cap cemented side seam can would provide a wrap-around lithography and a less expensive can. However, so far, these cans have been inferior to soldered cans in moisture-vapor transfer. More work is needed on this can to perfect a good moisture seal.

(b) Inside Soldered Cans

An inside soldered can would provide a wrap-around lithography similar to that of a cemented side seam can, and would provide a better moisture-vapor barrier. However, this can would cost more to manufacture than a cemented side seam can, and might also present some manufacturing problems.

(c) Screw Cap Can With Drawn Body

Such a can would eliminate problems of moisture transmission through the side seam and simplify the sealing of the glassine disc at the top curl. However, manufacturing and lithographing this type of can would present many problems.

(d) Conoseal Type Closure

A soluble coffee can with a Conoseal closure would eliminate the need for sealing a glassine disc to the top of the can as well as eliminating the screw cap. It is questionable whether this structure could provide a satisfactory moisture seal upon reclosure. Up to this time, development of this can has not proceeded far enough to consider any particular proposed structure for soluble coffee.

(e) Trutite Can

This type of can has been considered by a large food chain as a possible 5 or 6 ounce size soluble coffee package. This type structure would permit vacuum packing for advertising purposes, as well as provide an excellent moisture-vapor barrier before opening. However, the moisture-vapor barrier provided upon reclosure might not be satisfactory. Also, manufacture of a 2 ounce package would create difficulties.

[fol. 1058] (f) Lug-Type White Cap Closure

A container now under development, consisting of a can with a lug-type White Cap closure, would appear to be an excellent possibility for use as a soluble coffee can. Such a can should provide an excellent moisture-vapor barrier, with vacuum packing for advertising purposes being possible. It should also provide convenient reclosure and a good moisture-vapor barrier upon reclosure. However, as this can is still in the early stages of development, it is unlikely to be available on a commercial scale for some time.

Work In Progress

(a) Adhesives

Tests are now being run evaluating new adhesives for use in sealing the glassine discs to the cans. An adhesive manufactured by Minnesota Mining and Manufacturing Company, code EC-871, seems to be the most promising.

(b) Structures

Modifications of the existing top structure of the proposed structure (STK-422) are under way in order to provide a more nearly level surface at the top curl. The modified 2-oz. cans should be available for evaluation within the near future.

(c) Colored Side Stripes

It has been requested that some samples of Folger 2-oz. cans be made up with a colored side stripe in order to show their appearance. It is hoped that these cans will approach the wrap-around lithography in appearance.

H. P. Lankelma, Jr., Special Products Section.

HPL/bw

[fol. 1059] GOVERNMENT'S EXHIBIT 412

Instant Coffee Container Study
Conducted for Continental Can Company

Conducted By

National Family Opinion, Inc.
1621 Canton Street
Toledo, Ohio

February 15, 1955
National Family Opinion, Inc.

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[fol. 1061]

Foreword

The results of a blind Product Test of two different kinds of Instant Coffee Containers are herewith presented. This study was conducted for the Continental Can Company, New York City, New York, by National Family Opinion, Inc., of Toledo, Ohio, during the months of January and February, 1955.

Purpose

It was the purpose of this study to gather information on consumer acceptance of a metal versus a glass container for instant coffee products.

Procedure

On December 29, 1954, test products, questionnaires and letters of instructions were mailed to a selected national panel of 459 instant coffee using families.

All participants in the study had previously agreed to cooperate voluntarily and without remuneration in the activities of National Family Opinion, Inc. The panel was built to represent instant coffee using families by United States Census geographic division, population density, family income and age of homemaker controls.

The test products differed only in the material used for packing and were identified only by the code letters "L" and "V" (for "tin can" and "glass" respectively) the testing period was set at a few days for each product.

On February 2, 1955, the survey was closed for editing, coding and tabulating. As of that date, a total of 431 questionnaires, or 93.9% of the original mailing, had been returned.

[fol. 1062] A detailed copy of the sample distribution can be found in the Historical Section of this report, while a copy of the questionnaire and coding list used has been included in the Appendix of this Final Report.

Note: Percentages shown in the findings section of this report have been rounded off to the nearest full percent (.5-.9 to the nearest higher, .1-.4 to the nearest lower full percent). No attempt has been made at adjustments where, due to this procedure, individual percentage columns do not add to 100%.

[fol. 1063] GOVERNMENT'S EXHIBIT 413

Folger Soluble Coffee Can Investigation in Kansas City
November—1955

In Store Interviewing Conducted by W. R. Simmons &
Associates

New York, N. Y.
Commercial Research Dept.
December—1955

[fol. 1064] Method of Conducting Test

On November 17, 18 and 19 a series of personal interviews on instant coffee was conducted in three Kansas City super markets (Prairie Village Pay Less, Thriftway Super Market and Cascio) selected by the Folger Company. All of these stores stocked the 2 oz. Folger tin of instant (which had been on the shelf but not consistently for about two months) as well as Folger's instant in glass.

A total of 372 interviews were conducted. Prime emphasis was placed on interviewing all persons who bought soluble coffee by having the interviewer approach persons immediately after they had made a purchase. When interviewers were not occupied with persons just having purchased soluble, they confronted people shopping in the vicinity of the soluble counter to determine whether or not they were users of soluble in spite of the fact they were not buying it that day. Interviews were conducted with only those in this non-buyer group who were regular users of instant coffee. Of the 372 total interviews, 208 purchased on the day of the interview while 164 did not.

The test was conducted by W. R. Simmons and Associates of New York City—using one of their most capable field supervisors on the scene in Kansas City. Objective methods were used and it is believed the conclusions are sound within the limits of the test design.

[fol. 1065] GOVERNMENT'S EXHIBIT 415B

Promotion of Baby Food in Cans
Structural Changes in Cans and Advertising Programs

[fol. 1066] Baby Food Advertising Program
—Past & Present

The history of our advertising department's program to promote baby food in cans started back in 1940. During that year, a series of advertisements were placed in such media as Parents Magazine, New York Sunday Tribune, New Yorker Magazine, and Baby Talk. These media were chosen and suggested to us by Gerber's Advertising Agency. Our budget on this series was $8,348.00.

In 1945, a baby food survey was conducted by our Market Analyses Department. This survey indicated a preference for glass packed baby food where both tin and glass packages were available. As a result of this survey, it was decided to have BBD&O conduct a Baby Food Depth Survey, which would result in specific reasons for the preference of glass packed baby food. The Depth Survey was conducted in New York and Los Angeles. The Depth Survey gave us the following results.

1. Question: Whether or not mothers are prejudiced against the use of canned baby food because of fear that left-over food stored in a can will spoil.
   Results: The results point out that this is one of the major obstacles to the acceptance of canned baby food.

2. Question: Whether or not a plastic cap, to be used to cover the unused portion of food stored in the can for future use, would remove the fear of food spoilage.
   Results: The study points out that a plastic cap for the opened can, would not remove the fear of food spoilage in an open can.

3. Question: What other factors are involved which operate against mothers using canned baby food in preference to jarred food?
   Results: The Survey points out these additional objections to the can:
   A. Can hard to open;
   B. Cannot feed directly from cans;
   C. Can not sanitary;

D. Cannot heat food in cans;
E. Product not visible in cans.

4. Question: Is there any solution to the problem, which would persuade mothers to use canned rather than jarred baby food?
Results: A. Eliminate structural disadvantages of the can;
B. Conduct an advertising campaign stressing the cans advantage over glass;
C. Conduct advertising campaign to convince mothers their objections to canned food are unfounded.

Using the market survey and the Baby Food Depth Survey as a basis, a concentrated campaign to promote baby food in cans was started in Philadelphia early in April of 1946.

The campaign was conducted in cooperation with Gerber, Clapps, CMI, and Continental Can Company. This campaign consisted of the following efforts:

[fol. 1067] 1. Testimonial advertisements in two local Philadelphia newspapers once each week.
2. Plastic covers for opened cans and folders on "How to Feed Your Baby" were sent to mothers that had children between five months and one year of age.
3. Baby food in cans was promoted by the CMI on a morning radio show.
4. Continental Can Company promoted baby food in cans using cut-in announcements on their, then existant, network radio program.
5. Direct mailing pieces were sent to Doctors and Food Editors to publicize the campaign.
6. The Clapp and Gerber salesmen carried out a point of sale promotional campaign.

This campaign was carried on for six months. At the end of the six months, glass packed baby food was still gaining in sales. The campaign did not increase the sales of canned baby food, therefore, it was dropped.

The present advertising campaign was started in 1949. This program is designed to combat any prejudices that the

Doctors might have against baby food in cans. It is aimed at convincing the Doctors of the following five points in favor of the canned baby food:

1. Economical: Baby food in cans is usually priced as low or lower than baby food packed in other containers.
2. Sterile: Processing sterilizes the inside, and light, dust, and germs cannot get into a hermetically sealed can.
3. Extra Safety: Cans are sealed to stay sealed until they are opened.
4. Shatterproof: Steel and tin will not break or chip.
5. Safe for Left-overs: Food can be safely left in the can; just keep it covered and under refrigeration.

These ads also contain a statement from the Council on Foods and Nutrition of the American Medical Association: "The wholesomeness and nutritional value of canned baby foods has been repeatedly demonstrated. Furthermore, cans offer a high degree of protection against contamination."

Our present campaign consists of advertisements in the following monthly periodicals:

1. Journal of American Medical Association
2. American Journal of Nursing
3. Journal of Pediatrics

Copies of the type advertisement that is used for this campaign are attached.

July 1952—American Journal of Nursing; Journal of Pediatrics;
August 23—Journal of the American Medical Association.

The only fully suitable container for baby foods is one that is shatterproof, light- and dust-proof, and constructed with a positive seal. All these requirements are met by the eco-

5 REASONS WHY CANS ARE AN IDEAL CONTAINER FOR BABY FOODS

1. **ECONOMICAL.** Baby food in cans is usually priced as low or lower than baby food packed in other containers.

2. **STERILE.** Processing sterilizes the inside, and light, dust and germs can't get into a hermetically sealed can.

3. **EXTRA SAFETY.** Cans are

you look at it—

BABY FOOD BELONGS IN CANS

The only fully suitable container for baby foods is one that is shatterproof, light- and dust-proof, and constructed with a positive seal. All these requirements are met by the economical tin can. Processing sterilizes the inside of a can as thoroughly as the instruments you use. And baby foods can be safely left in opened cans – just keep the food covered and under refrigeration.

Says the Council on Foods and Nutrition of the AMA: "The wholesomeness and nutritional value of canned baby foods has been repeatedly demonstrated. Furthermore, cans offer a high degree of protection against contamination." Continental Can Company, New York 17, N. Y.

5 REASONS WHY CANS ARE AN IDEAL CONTAINER FOR BABY FOODS

1. **ECONOMICAL.** Baby food in cans is usually priced as low or lower than baby food packed in other containers.
2. **STERILE.** Processing sterilizes the inside, and light, dust and germs can't get into a hermetically sealed can.
3. **EXTRA SAFETY.** Cans are sealed to stay sealed until the consumer opens them.
4. **SHATTERPROOF.** Steel and tin won't break, shatter or chip.
5. **SAFE FOR LEFT-OVERS.** Food can be safely left in the can, just keep it covered and under refrigeration.

Vitamins—

PRESENT AND A

Continental research has helped vitamins in canned vegetables, fr

This may surprise you. However, it's a f in vitamin content as the same foods bou by the housewife.

That's because fruits and vegetables use and "pressure-cooked" in sealed cans—oft for vitamins to escape as they do during foods to the market.

To make sure that more and more vi research scientists have pioneered in stud value of canned foods. They have suggest ning equipment and procedures to the ca canning plants all over the country to help

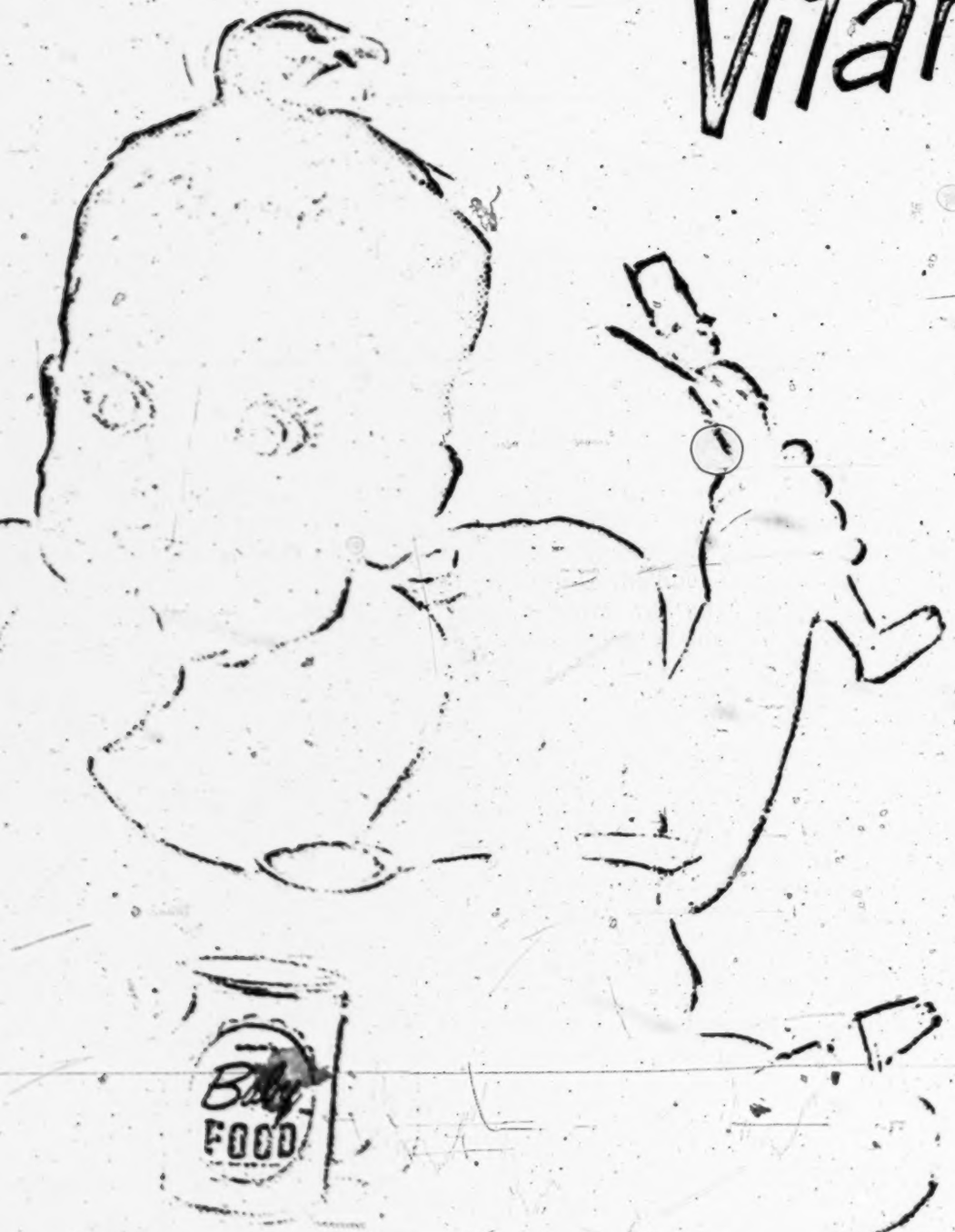
Today when you serve a canned food, most of the nutritive qualities and vitam research has helped bring more food and

If it's a packaging

If you are a food packer, you will find that th are major reasons why so many people like to d Our one goal is to ... packing problems of all

Vitamins—

PRESENT AND ACCOUNTED FOR



Continental research has helped canners preserve vitamins in canned vegetables, fruits and fruit juices

This may surprise you. However, it's a fact that canned foods are just as high in vitamin content as the same foods bought in the market and cooked at home by the housewife.

That's because fruits and vegetables used for canning are picked at their prime and "pressure-cooked" in sealed cans—often within the hour. There's little time for vitamins to escape as they do during the days it usually takes to deliver raw foods to the market.

To make sure that more and more vitamins reach your table, Continental's research scientists have pioneered in studies of the vitamin content and nutritive value of canned foods. They have suggested many specific improvements in canning equipment and procedures to the canning industry. And each year they visit canning plants all over the country to help individual food packers do a better job.

Today when you serve a canned food, you can be sure that the food contains most of the nutritive qualities and vitamins that nature put into it. Continental research has helped bring more food and better food to more people!

If it's a packaging problem—it's our baby!

If you are a food packer, you will find that the quality and scope of our research service are major reasons why so many people like to do business with Continental Can Company. Our one goal is to [illegible] packing problems of all kinds.

...Vitamins in canned vegetables, fre...

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Continental Can has 65 plants in the United States, Canada and Cuba, 16 field research laboratories and 63 sales offices.

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CONTINENTAL CAN COMPANY

[fol. 1070] Baby Food Advertising—Plans

On June 4 Del Johnson had lunch with Mr. Ken Plumb, Vice President of the D'Arcy Advertising Agency, which organization handles the Gerber account. This meeting was for the purpose of getting Mr. Plumb's suggestions for any changes in our advertising copy, as well as to discuss direct mail as an alternative for space advertising, since we were faced with a good deal of waste circulation in areas where baby food in cans are not available.

Mr. Plumb said that they were completely satisfied with our advertising copy and would suggest no changes. He did admit that the problem of waste circulation was realistic, but in a communication after his visit to Fremont, pointed out that direct mail to a selected list of doctors probably would be just as expensive as our present campaign. Therefore, he suggested no changes in copy or media selection.

In this meeting, and in subsequent correspondence, he indicated that the Gerber people would look with favor upon our doing a mailing to young mothers on the subject of baby food *in cans*. This list of young mothers, which Gerber's compiles, would be made available to us at $10 per thousand names, the names being supplied on gummed label's. Gerber's estimate that the number of names in areas in which they now sell in cans is about one million, so that the total mailing list costs about $10,000 over a year's time.

At the present writing, Mr. Johnson feels that we should continue our space program in the Journal of the American Medical Association, the Journal of Pediatrics and the American Journal of Nursing through the balance of the year, but in the meantime launch a direct mail campaign to young mothers, using the Gerber list. If we take this approach, we will have a chance to study the results of our direct mail effort, and then decide whether to use both space and direct mail together, or confine our efforts to one or the other.

During the week of July 13, Mr. Johnson will review these plans separately with Mr. Dave Danforth of BBD&O, and then again with Mr. Ken Plumb.

Structural Changes In The Baby Food Can

The need for more basic structural improvements in our baby food can was evident from a Baby Food Depth Survey made by BBD&O during 1945.

This study showed that the greatest need for structural improvement was in the ease of opening and to provide for reclosure. Our efforts to accomplish these improvements have been directed toward manufacture of a key opening Trutite style reclosure can. The problems encountered with this style structure and some of the Trutite style's inherent disadvantages for processed foods have to date prevented a successful fulfillment of this development. As a result, we have recently decided to go all out on attempting to develop a reclosure style baby food can based on the "Conoseal" type structure.

If the "Conoseal" type structure proves feasible and economical, it will overcome the two major objections to the present baby food can.

Another improvement contemplated for the present baby food can is to provide it with a more sanitary appearing interior by the use of a white enamel. The Research Department is currently making test packs with baby food cans for meat with recently developed white inside enamels. The initial evaluations of these test pack cans indicate a good possibility of success for a commercial white inside enamel for baby food meat cans.

Experimental inside white enameled baby food cans are being fabricated for test packing fruits and vegetables. These cans will be ready for shipment early in July.

If white enamels can be successfully used for the inside of baby food cans for meats, fruits and vegetables, they will greatly enhance the internal appearance of the cans and help overcome some of the present sales disadvantages of the can compared to the glass jar.

A minor objection to the can was that the consumer could not see the contents of the package. This probably could be overcome by improved labeling and the use of lithographed cans.

Some work on lithographed versus labeled cans is now

being done and should provide the answer to the effectiveness of this approach from a cost as well as consumer acceptance angle.

The other inherent disadvantages to canned baby foods are basic fallacies on canned foods such as food spoiling in opened cans, tin tastes imparted to foods, "Cannot heat food in cans", which can be overcome only by direct consumer education advertising.

The Advertising Department has prepared a summary of past, present and future programs for baby food can promotions which is attached.

L. C. Dudley

[fol. 1072] GOVERNMENT'S EXHIBIT 415C

#43—Head Office
February 10, 1947.

Messrs. P. E. Pearson,
T. C. Fogarty,—
P. L. Brachle.

New Style Baby Food Can With Drawn One Piece Body and Pry Off Compound Lined—Snap on Reclosure Cover

We have received a sample of the above style container from Mr. Pearson and have made the following notes comparing the new container with the 4¾ ounce glass jar currently used for baby food as they might be evaluated by the packer or baby food buyer.

From Packers Point of View

(1) Does container and closure provide a safe and suitable package for the product, which is baby food?

(2) Is it a package which will have universal buyer acceptance and does it have competitive advantages over the glass jar and can now used?

(3) What is Cost—Compared to standard open top can now used?—Compared to standard glass jar—4¾ ounce size and 7½ ounce size?

(4) Is equipment available to perform handling, filling,

capping, processing and cooling, labeling and casing operations? Is changeover equipment cost excessive?

(5) What problems and expenses will be incurred in introducing and merchandising a new style container?

From Consumers Point of View

On the attached page we have tabulated a list of indicated consumer preferences for baby food containers and have endeavored to interpret these as they might apply to the 4¾ ounce jar and the new style can.

Retail Prices of Product

An important point in favor of the present open top can for baby foods from the consumer point of view is its cheaper retail price. While there are also certain convenience factors in its favor, the price differential seems to be the main incentive. If this differential were eliminated, the selling would be on a container basis with a well known style of glass jar vs. a new and untried style of metal container.

[fol. 1073] Shelf Appeal to Consumer

The glass jar with its visible contents retains the see-what-you buy advantage over the new style metal can. The jar's taller height may also give the impression of greater net content. This eye appeal comparison could be made more readily when sample cans are available complete with labels and perhaps with outside gold enameled covers similar to the jar caps.

Container Sizes

If at any time it should be decided to make a consumer preference or opinion test it might be advisable to consider using both the can sizes which would normally compete with the 4¾ ounce and 7½ ounce jar.

G. H. Muth.

GHM:em

[fol. 1074]

Baby Food Containers

Tabulation of Possible Favorable and Unfavorable Consumer Preferences—4¾ oz. Glass Jar vs. 210 x 114—Drawn Body, Reclosure Cover Can Enameled White Inside.

Specific Consumer Preferences, Prejudices and Opinions	4¾ Oz. Glass Jar	Reclosure Cover Can
Style, Shape and Closure		
Consumers frequently associate products with specific styles, shapes and closures. At first glance the buyer might question the safety of the slip cover style of closure, as it has been largely used in the past for non-processed items and the buyer is accustomed to an open top style can for processed foods.	This attitude favors the glass jar closure. Mothers hesitate to take risks where baby food is involved.	From a "safe" seal point of view we believe the consumer would prefer the present open top can.
Store Leftovers in Containers Most Sanitary Food Package		
There is a strong prejudice against leaving baby food leftovers in metal cans and it should be ascertained if this condition would be overcome by use of the new style container. A recent survey made by Benton and Bowles indicated that 86% of the buyers interviewed felt that a glass jar after being opened is the most sanitary container for leftovers. About 80% felt it was unsafe to leave unused portions of food in cans. This is one of the principal objections to the metal can as a baby food container. The white inside enamel may be helpful in correcting this thinking. Does it have other advantages than "looks more sanitary."	Current thinking favors glass jar.	Consumer reaction to white inside can enamel must be determined.

[fol. 1075]

Specific Consumer Preferences, Prejudices and Opinions	4¾ Oz. Glass Jar	Reclosure Cover Can
Visibility of Contents	The glass jar will continue to have the advantage of indicating the quantity of left overs in the container.	———
Easy to Open—No Can Opener Needed The new can closure is an improvement over the present open top can. However, it is not as easily pried off as the cap on the glass jar. However, this difference could probably be corrected. This form of construction raises the point as to the possibility of a curious buyer opening the can to see its contents which are visible in the glass jar.	Assume both to be equal	Assume both to be equal
Reclosure Feature	Assume both to be equal	Assume both to be equal
Heat in Container	———	Food in the can should heat more quickly than in the glass jar; being metal and having a larger exposed area.

[fol. 1076]

Specific Consumer Preferences, Prejudices and Opinions	4¾ Oz. Glass Jar	Reclosure Cover Can
Feed From Container or Easy to Feed From		
The current containers due to their small diameter and heighth fit the hand, spill very little and are easy to feed from. The shorter heighth and larger diameter of the new can should be checked for these features.		
Easy to Dispose of—Easy to Use When Travelling		Favorable to new style can
No breakage or glass particles		Favorable to new style can
No tin plate slivers due to opening as with present open top can		Favorable to new style can
Contents not affected by sunlight		Favorable to new style can
No Rusting of Inside Container	Claimed as favorable to jars	
No Taste or Odor due to Enamel Coatings	Claimed as favorable to jars	
Product Background		
Glass forms a neutral or accepted background for many vary-colored food products. The white enamel background in the can should be checked against the various products packed and also as a background for leftovers.		
Comparative Retail Prices	On an equal retail price basis we believe consumers would buy glass jars since they are accustomed to paying a premium for glass packs.	

[fol. 1077] GOVERNMENT'S EXHIBIT 416

Report of Consumer Survey Made in Philadelphia on Baby Food For Continental Can Company, Inc. Batten, Barton, Durstine & Osborn, Inc.

Boston Buffalo Chicago Cleveland
Detroit Hollywood Los Angeles
New York Minneapolis Pittsburgh
San Francisco

[fol. 1078] Report of Consumer Survey

Made in Philadelphia on Baby Food for
Continental Can Company, Inc.

Foreword

The findings in this report are based upon the results of making personal interviews on a total of 2003 young mothers whose babies range in age from three to fourteen months. The field work was conducted during the latter part of March 1946.

Kinds of Persons Interviewed:

The interviews were confined to women who are mothers of babies of an age to be fed prepared baby food—three to fourteen months of age.

Reporters judged the income of the families called upon and, as will be noted in Table #11, the spread by income groups comprises a sound cross-section.

By age groups, 41 per cent of the mothers are under 25 years of age, 58 per cent between 25 and 40 years and 1 per cent are over 40 years of age.

[fol. 1079] Method of Interviewing:

The calls were made in the home by trained female reporters in the employ of Fact Finders Associates, whom we engaged to conduct the field work. Experienced supervisors check the work of the field force. Fact Finders Associates have been employed by us on many surveys over a period of years and we have complete confidence in the reliability of their field staff.

In order to locate mothers with babies, the reporters had a list of such families. Addresses were selected at random from this list in various sections of the city and suburbs, called upon and on completion of the interview, respondent was usually able to guide the reporter to another young mother's home in the neighborhood.

A copy of the questionnaire used will be found following the tables and charts.

Scope of the Survey:

Interviews were made in Philadelphia and environs. They were widely spread over the city and in outlying sections such as; Camden, Germantown, North and West Philadelphia, etc. A list of the areas covered is shown in Table #8.

[fol. 1080] Objectives of the Study:

This study was planned to obtain information on the relative use of brands and the attitude of women toward the use of tin cans versus glass as containers for baby food. The principal purpose of making the survey at this time was to obtain the information prior to starting an advertising and promotion campaign in this territory. The results of this study will be used as a base for comparison with a comparable survey that will be made at the close of the campaign in order to measure the penetration and effectiveness of the advertising activities; (1) on brand sales and (2) on mothers' preference for types of containers and the degree to which they have been influenced to switch to tin cans.

The follow-up survey at the close of the campaign will be a matched sample—interviewing as many of the same mothers as can be contacted and the same series of questions will be asked with possibly some additional questions on knowledge of baby food advertising that has run during the interim.

[fol. 1081] Summary:

The results of the survey are shown in complete detail on the tables and charts following and this summary will touch only on the high-spots.

Every woman has bought one or more products in both tin cans and glass containers and they are, therefore, qualified to give an honest opinion for preference for type of containers and the reasons for their choice.

Eight out of every ten of the mothers interviewed have bought baby food in tin cans but if they had their choice of containers at no extra cost, less than one out of ten would take the tin can. With some variations this same relative

situation exists with all the other kinds of products discussed in the study.

On brands of baby food used at present, Heinz and Beechnut are used by 53 and 51 per cent respectively, Gerber is in third place, mentioned by 38 per cent and following, in the order named, are Clapp 22 per cent, Libby 16 per cent, Campbell 15 per cent and "Other Miscellaneous Brands" 5 per cent.

[fol. 1082] When brands used are analyzed according to economic status of the family, some significant variations are indicated. For example, Heinz, Beechnut and Libby are purchased by larger proportions of the upper economic groups than of the lower. The reverse is true of Gerber's, Clapp's and Campbell. These three brands are used by heavier proportions of the lower economic groups than by mothers in the top brackets.

Multiple buying of brands is very heavy, 72 per cent of the total mothers use more than one brand. The average number of brands used is two per family.

Of the 28 per cent of the total mothers using one brand exclusively, 9 per cent buy Heinz, 8 per cent Beechnut, 7 per cent Gerber, 2 per cent Libby and 1 per cent each use Clapp and Campbell.

In connection with multiple brand buying, which is shown in detail in Table #5b, Heinz and Beechnut are in the best position.

For example, of the total users of Beechnut, 30 per cent also use Gerber while of those using Gerber, 40 per cent also buy Beechnut.

A more extreme case is with Heinz users, only 19 per cent of whom also buy Clapp while of the Clapp users, 46 per cent also use Heinz.

[fol. 1083] This analysis also shows that 58 per cent of the Clapp users also buy Gerber while only 33 per cent of the Gerber users also buy Clapp.

Of the mothers now using Clapp's and Gerber's baby food, (which they get in tin cans) only 18 and 15 per cent respectively prefer tin containers. Six mothers out of ten using these brands prefer glass and two out of ten have no preference.

Of the women buying glass packed baby foods, less than

5 per cent prefer tin and only some ten per cent have no choice. Over 85 per cent prefer glass.

It is apparent that the habit of buying in tins has some effect in influencing women in favor of tin cans but it is very slight.

By economic groups there is a gradual increase in the proportion of women preferring tin for baby foods of from 6 per cent in the "A" or top bracket to 12 per cent in the "E" or lowest economic group.

Nearly all of the tables and charts are broken down according to economic status and age groups and, it will be noted, that with some few exceptions there are no significant variations.

Respectfully submitted, Batten, Barton, Durstine & Osborn, Inc.

May 3, 1946.
RNK

[fol. 1084] GOVERNMENT'S EXHIBIT 417

Reclosure Baby Food Can

Relationship Between Market Acceptability Information and Contemplated Can Developments

I. Feeding from Container and Storage of Food

The outstanding and major reasons for consumers preferring glass jars instead of metal cans for baby food is the deep seated belief that jars are completely sanitary containers which can be used in place of dishes for feeding and are also ideal for storing unused portions of food in a refrigerator while conventional cans are not suitable for either direct feeding use or storage of partial contents. The fear of storing unused portions of food in cans is related to the conviction that "tin" is poisonous and that there is a distinct health hazard in eating food that has been stored in an opened can.

A. White Enamel Lining of Cans

The proposition of providing a can having a white enamel lining to create the reaction that a metal can is clean, sani-

tary, and safe vessel for foods is certainly logical. The value of using such a lining would be greatly enhanced through the use of an identifying name for the lining such as "Porcelainite", "Sani-White", etc. which could be used in advertising in conjunction with a general campaign to educate the public to the fact that food may be as safely stored in cans as in jars.

B. Opening Size of Container

One of the few objections to the glass jars was that the opening was too small making it difficult to remove the contents. Actually it is felt that the inside "shelf" of the jar which is the result of necking in the top of the jar is responsible for this reaction rather than the dimensions of the opening. In either event this is an objection which would not exist with the Trutite, Conoseal or Screw Cap cans.

C. Feeding Directly from Cans

Due to the great convenience when baby food is heated in the container and is fed without transferring to a dish or bowl, this important attribute of the glass jar cannot be [fol. 1085] overlooked in designing a suitable can. Here again, the Trutite, Conoseal or Screw Cap can styles all involve almost straight body walls making them suitable as feeding containers although the Trutite structure does not completely fulfill the requirement of a smooth inside surface. It would seem that a major point of concern might be the resistance of the enamel lining to scratching, particularly along the side seam, when a spoon is scraped across the surface during feeding. Here again, the double body fold of the Trutite can would not provide as good assurance against removal of enamel lining as would a can having an uninterrupted body wall.

D. Lithograph vs. Paper Label

Associated with either direct feeding from the container or when the contents are transferred to a dish, most consumers have found it convenient to plate jars in hot water for heating purposes. Paper labeled jars have been criticized because the labels have come off in the heating water and have been a nuisance to remove from the water and in

addition the residual label glue remaining on the jar surface has caused difficulty in handling by causing hands to become soiled and also by resulting in dropped jars. Certainly a lithographed can would overcome these particular objections to jar labels.

E. Raw Edges

Obviously, any raw edges that might lead to corrosion problems inside the container or which might cause the person opening a can to receive finger cuts, are to be avoided. The presence of cut edges that are formed during opening, in standard open top cans, are further objectionable in baby food cans in that the containers may not be placed in the hands of the babies due to the hazard of cuts. The hinged Trutite structure does not fulfill this requirement but both the Conoseal with the hemmed edge cover and the [fol. 1086] Screw cap type cans do meet the desired condition. (The question of how much of a cutting hazard is present during opening of a Conoseal can has not been established.)

II. Ease of Opening and Security of Reclosure

A major feature of the preference of white cap jars over conventional cans is the relative ease of removing the lid from jars with almost any of the implements found in the kitchen as compared to the problems in using either a wall type of portable can opener with the attendant problems of removing dirt and dust from the can end, having the end drop into the product, cutting fingers while trying to pull end up, etc. As to the reclosure, one objection to the jar cap is that it is frequently deformed during removal and therefore fails to provide a secure reclosure. (The implication is that a satisfactory reclosure must give the impression of being *tight* and a mere dust cap is not adequate.)

Relating the above requirements to various can closures under consideration, it will be realized that:

1—The Trutite does not actually meet the requirements of being "easy opening" and further does not fully give assurance of a tight reclosure.

2—The Conoseal largely fulfills the easy opening requirements and when a close fit between the end

cover is provided would seem to fulfill the tight reclosure attribute.

3—A screw cap reclosure that did not require a strong opening torque would meet the first requirement and the reclosure would automatically be adequate.

4—Many of the possibilities of friction covers on crowns would not provide a suitable reclosure either because of damage during opening or the difficulty [fol. 1087] in forcing the crown back by hand. The side seal cap type of reclosure as used on jars would of course have to be considered largely satisfactory from the standpoint of opening and reclosing.

The importance of heating the product in containers is partly emphasized by the fact that in 1945, 25% of the jar users interviewed stated that heating was done by placing unopened glass jars in hot water while only 6% of the can users heated in unopened cans. If this is a really important factor in providing a can to compete with jars on as many scores as possible, it would seem that an opening feature requiring the least amount of handling would be imperative. Of those types of closures already mentioned it is suggested that they would be preferred in the following order from best to poorest:

1) Pry off lid
2) Conoseal
3) Screw cap
4) Open top

In the foregoing attempts to relate certain of the features which are known to be requirements for an improved baby food can with some of the structures under consideration for development it should be made clear that these are only the opinion of the writer. In some cases, opinions may differ and in others a determination of actual consumer acceptance would be necessary to establish the true value of some of the factors. However, it seems apparent that if we knew today that all of the structures were equally satisfactory with respect to leakage the order of preference from a consumer acceptability and cost standpoint would be as follows:

First Choice— *Screw Cap Type*

Relatively easy opening, no cutting hazard, good reclosure, no raw edges, full opening, smooth body wall. Esti-
[fol. 1088] mated cost $1.00 more than open top.

Second Choice— *Pry Off Lid Type*

Relatively easy opening, no cutting hazard, good reclosure, no raw edges, full opening, beaded body wall. Estimated cost $1.00 more than open top.

Third Choice— *Conoseal Type*

Relatively easy opening, possible cutting hazard, fair reclosure, no remaining raw edges, full opening, smooth body wall. Estimated cost $2.15 more than open top.

Fourth Choice— *Trutite Type*

Difficult opening, fair reclosure, some cutting hazard, raw edges after opening, full opening, folded body wall. Estimated cost $2.75 more than open top.

RAL/lb
7/15/53

[fol. 1089] GOVERNMENT'S EXHIBIT 419A

#43—Head Office
July 5, 1945

Messrs. T. C. Fogarty
R. L. Perin
F. E. Falk

Baby Food Survey

The Market Analysis Department conducted a test survey in May to determine consumer preference as regards baby food in tin versus glass. A total of 1,392 mothers of babies were surveyed, 1,341 of whom buy baby food.

The survey was divided into two parts: (1) New York City and (2) sixteen representative cities located in all parts of the country. 783 mothers were surveyed in New York and 609 in the sixteen cities. The charts following show the survey results in graphic form.

New York City

Consumer preference is strongly in favor of glass in New York City with 97% of the mothers preferring glass at the same price as tin, and with 89% still preferring glass even if they could get their regular brand at a lower price in tin. Very little baby food in tin is apparently offered in retail stores in New York currently; 97% of the mothers say their regular brand comes in glass and 3% say their brand comes in tin.

The chief reasons given by New York mothers for preferring baby food in glass are: more convenient; can keep leftovers in glass jar; can see contents of glass jar; and more sanitary. "More convenient" includes several specific reasons: easier to open; can heat in jar; have to transfer to jar anyway; and feed from jar. Beechnut is the outstanding brand, bought by 45% of those surveyed.

Sixteen Cities

In contrast with New York, the mothers surveyed in the sixteen cities have not had as much experience with glass. In fact, 66% of these mothers say their regular brand comes in tin, and 34% say it comes in glass. In the Central Division 80% of mothers surveyed say their regular brand comes in tin.

However, it seems likely that there will be a trend to glass when baby food is more available in glass than at present, judging from the following figures:

74% of the mothers would choose glass if they could buy their regular brand in either glass or tin at the same price. This contrasts with only 34% now buying their baby food in glass.

[fol. 1090] Furthermore, 52% would still choose glass

even if they could buy their regular brand in tin at a lower price.

Price may be a more important factor than in New York City because 74% would choose glass at the same price as tin, but only 52% would buy in glass if they could get their regular brand at a lower price in tin.

The same reasons for preferring glass are cited by these mothers as by New York mothers. However, it may be interesting to note that "more convenient" and "glass breaks" are the chief reasons given by the 26% minority who would choose tin if their regular brand came in either tin or glass, at the same price. Gerber is the leading baby food brand, used by 33% of the mothers surveyed in the 16 cities.

Please bear in mind that this survey is not broad enough to be taken as final or conclusive. Nevertheless, it is believed to be valid in suggesting the main points of the large picture as regards current consumer attitude toward tin vs. glass.

We hope that the nine charts will show you the survey's findings in a clearer way than would a mass of figures. If any questions occur to you on any of the points covered, please don't hesitate to let me know and I will reply by return mail.

Sincerely, S. T. Frame, Manager of Market Analysis.

STF/md

cc—Messrs. W. H. Funderburg,
R. R. Carlier,
J. E. Baldwin,
C. B. Nichols,
W. W. Hodgson.

[fol. 1091] GOVERNMENT'S EXHIBIT 419B

Baby Food Survey

The baby food survey was conducted in two parts: New York City and 16 representative cities. 1392 mothers of babies at the baby food eating age were included, of whom 1341 buy baby food.

New York City

783 mothers were surveyed in New York City, 751 of whom buy baby food.

560 mothers were surveyed by mail questionnaire, and 223 were surveyed by personal interview.

Survey includes principal racial and income groups. The attitude toward baby food was found to be the same among the different racial and income groups.

16 Cities
(excluding New York)

609 mothers were surveyed in the sixteen cities listed below. 590 of these mothers buy baby food.

548 mothers were surveyed by mail questionnaire, and 61 were surveyed by personal interview.

The sixteen cities are:

Springfield, Mass., Wilmington, Del., Charlotte, N. C., Jacksonville, Fla., Columbus, Ohio, Indianapolis, New Orleans, La., Kansas City, Mo., Tulsa, Okla., Minneapolis, Des Moines, Salt Lake City, Corpus Christi, WKN 9/8.
St. Louis, Mo., San Francisco, Seattle, Wash.

Market Analysis Department,
June, 1945.

[fol. 1092] GOVERNMENT'S EXHIBIT 419C

1. Do you buy strained or chopped baby foods?

Yes ☐ No ☐

(If you checked "Yes" please answer these questions)

2. What brand do you usually buy?....

3. Does this brand come in:

A glass jar ☐ A tin can ☐

4. If you could buy your regular brand of strained or chopped baby food in either a glass jar or tin can (both at the same price), which would you choose?

A tin can ☐ A glass jar ☐

5. Please tell why you prefer the container you checked in question 4.

_____

_____

_____

_____

6. If you could buy your regular brand at a lower price in tin cans than in glass jars which would you choose?

A glass jar ☐ A tin can ☐

Market Analysis Department,
June, 1945.

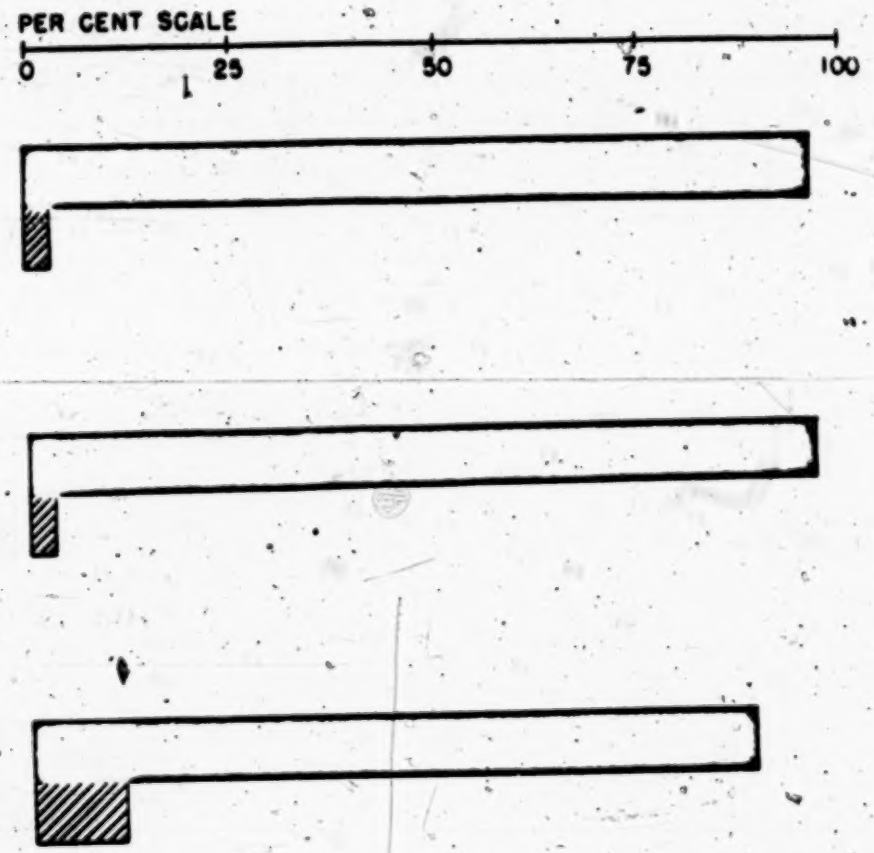
[fol. 1093]

BABY FOOD SURVEY

NEW YORK CITY

CONSUMER PREFERENCE
TIN VS. GLASS

	NO.	%
BUY BABY FOOD IN:		
GLASS	734	97
TIN	19	3
TOTAL	753	100%
AT SAME PRICE PREFER:		
GLASS	699	97
TIN	19	3
TOTAL	718	100 %
IF TIN CHEAPER PREFER:		
GLASS	652	89
TIN	78	11
TOTAL	730	100%



MARKET ANALYSIS DEPT.
JUNE 1944

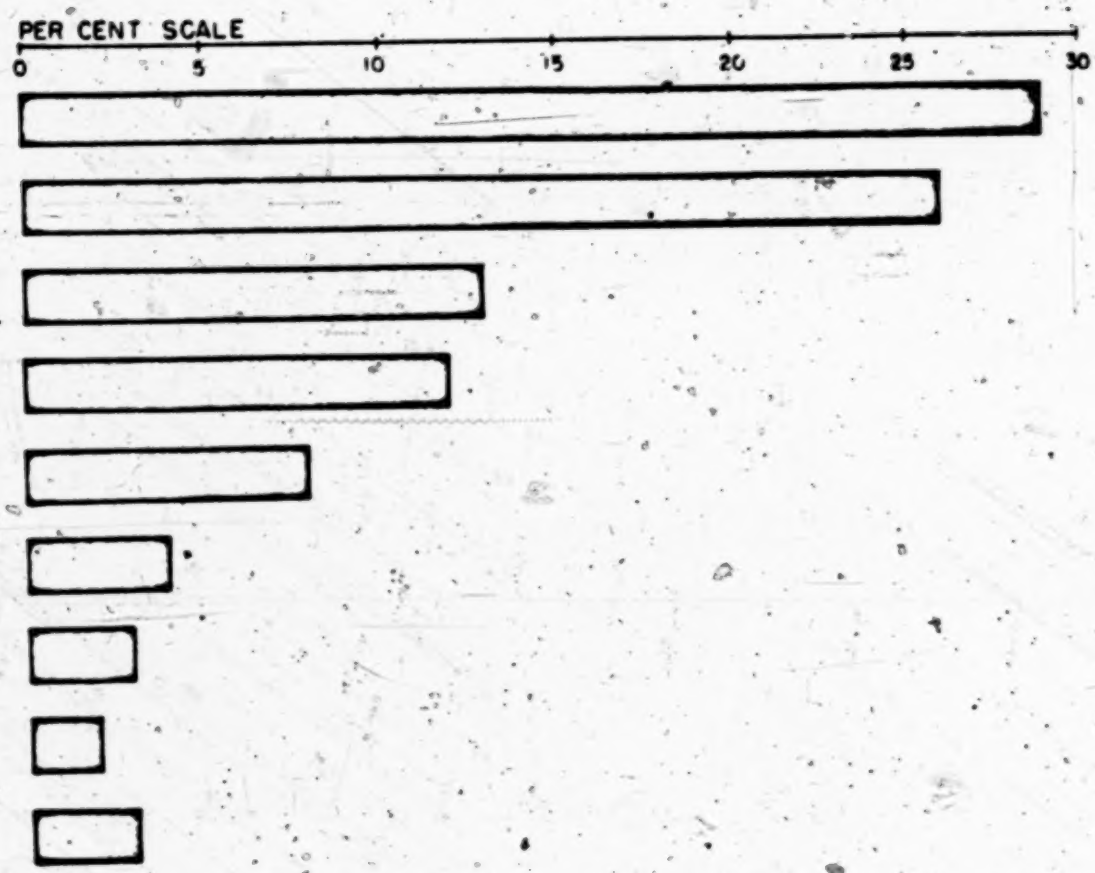
[fol. 1094]

BABY FOOD SURVEY

NEW YORK CITY

REASONS FOR PREFERRING GLASS JARS AT SAME PRICE AS TIN*

	NO.	%
MORE CONVENIENT	398	29
CAN KEEP LEFTOVERS IN GLASS JAR	355	26
CAN SEE CONTENTS	179	13
MORE SANITARY	163	12
SAFER	117	8
CAN RECLOSE GLASS JAR	58	4
CAN RE-USE GLASS JAR	36	3
TASTE OR ODOR BETTER	34	2
OTHER REASONS	40	3
TOTAL	1380	100%



* GIVEN BY 699 PERSONS

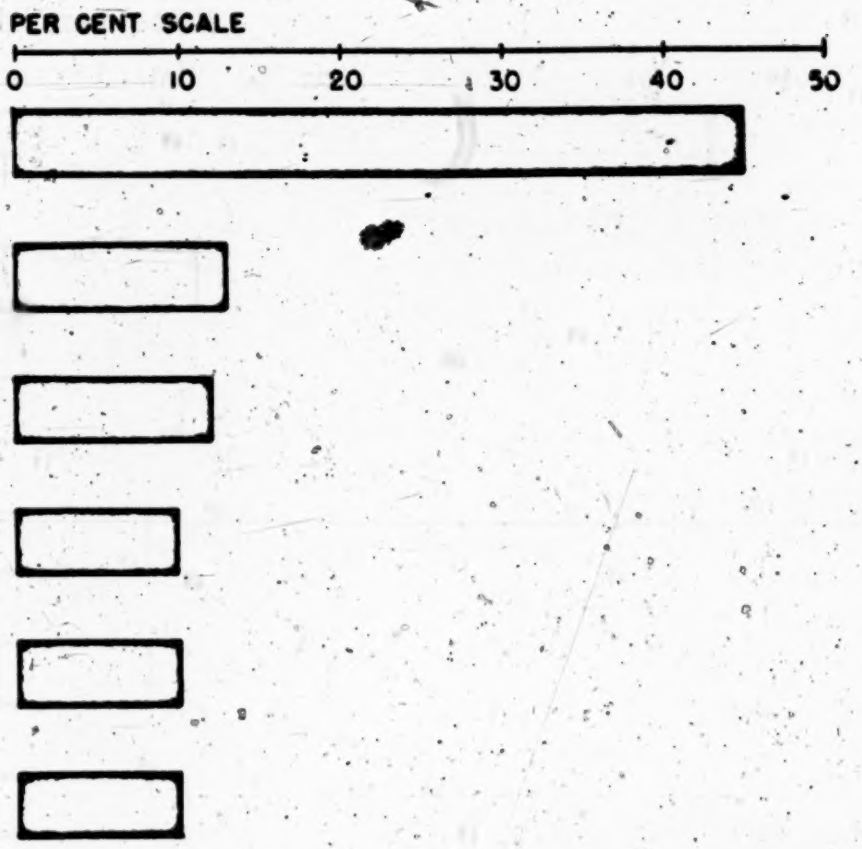
[Fol. 1095]

BABY FOOD SURVEY

NEW YORK CITY

WHAT BRAND DO YOU USUALLY BUY?

BRAND:	NO.	%
BEECHNUT	446	45
HEINZ	126	13
GERBER	111	12
LIBBY	103	10
CLAPP	96	10
ANY BRAND*	103	10
TOTAL	985	100%



*INCLUDES WHITE ROSE (3) AND GIBBS (1)

MARKET ANALYSIS DEPT.
JUNE 1945

[Col. 1096]

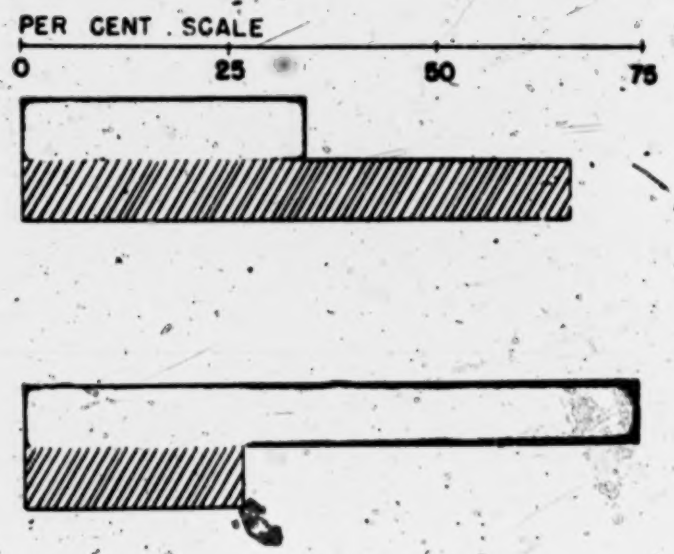
BABY FOOD SURVEY

16 CITIES EXCLUDING NEW YORK

CONSUMER PREFERENCE

TIN VS. GLASS

	NO.	%
BUY BABY FOOD IN:		
GLASS	211	34
TIN	403	66
TOTAL	614	100%
AT SAME PRICE PREFER:		
GLASS	419	74
TIN	150	26
TOTAL	569	100%
IF TIN CHEAPER PREFER:		
GLASS	290	52
TIN	271	48
TOTAL	561	100%



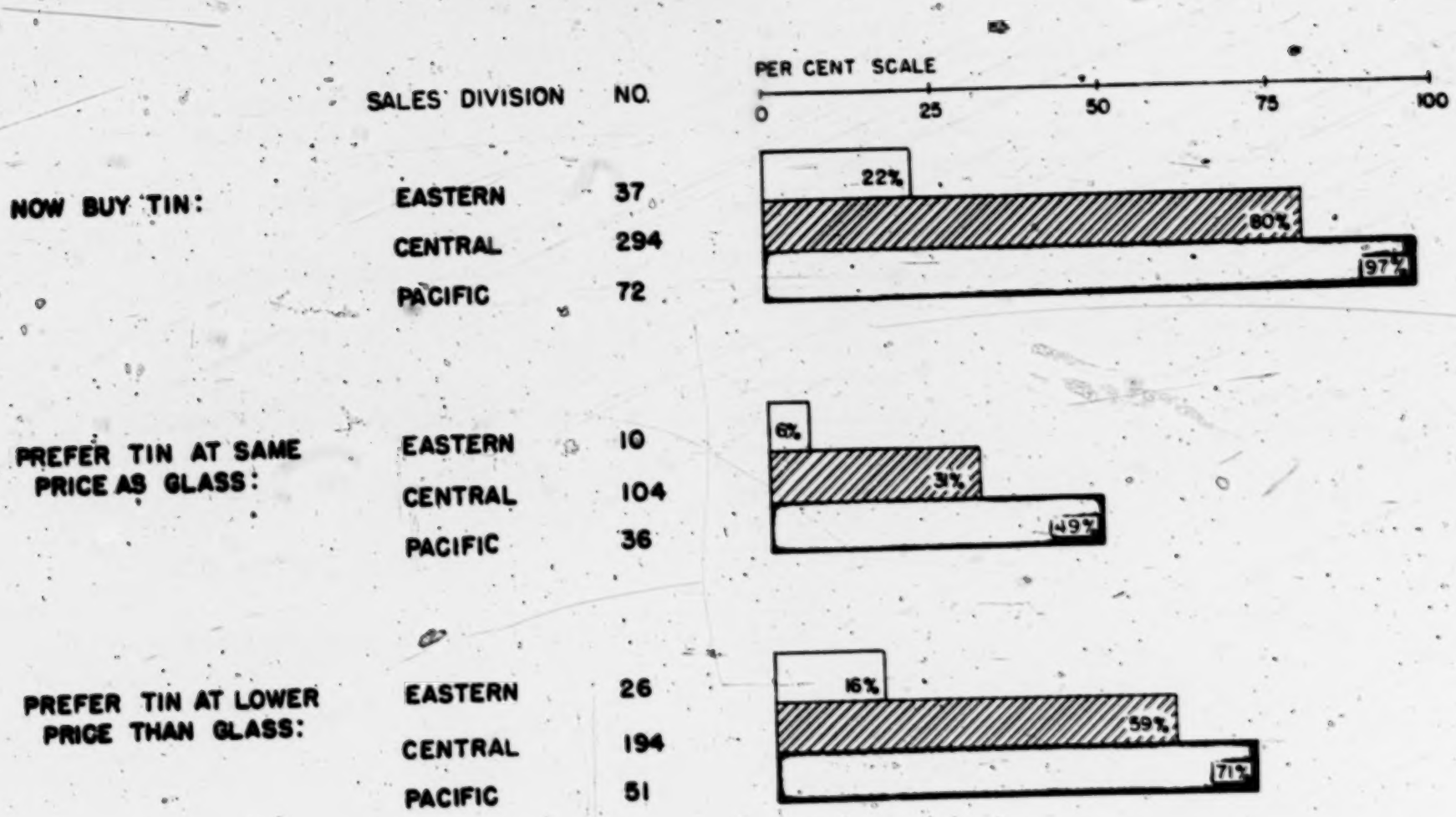
MARKET ANALYSIS DEPT.
JUNE 1945

[fol. 1097]

BABY FOOD SURVEY

16 CITIES EXCLUDING NEW YORK

GEOGRAPHIC DIFFERENCES IN ATTITUDES
TIN VS. GLASS



MARKET ANALYSIS DEPT.
JUNE 1945

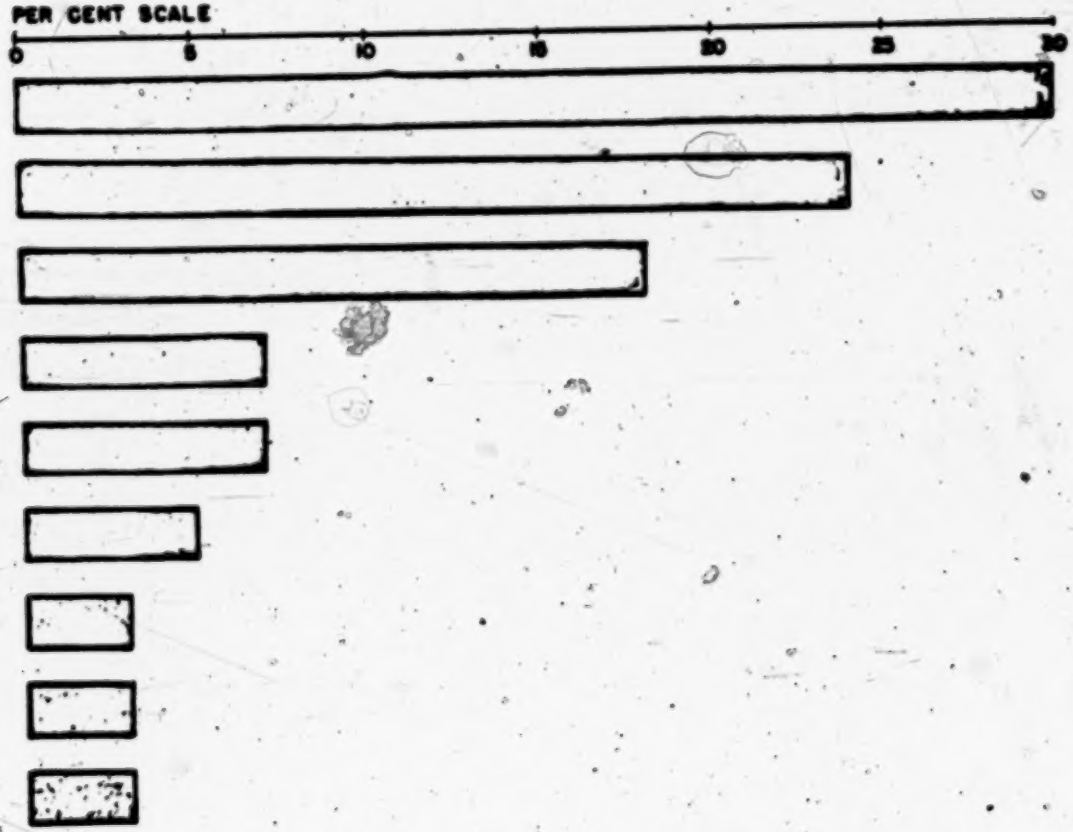
[fol. 1098]

BABY FOOD SURVEY

16 CITIES EXCLUDING NEW YORK

REASONS FOR PREFERRING GLASS JARS AT SAME PRICE AS TIN*

	NO.	%
CAN KEEP LEFTOVERS IN GLASS JAR	247	30
MORE CONVENIENT	197	24
CAN SEE CONTENTS	146	18
SAFER	58	7
CAN RE-USE GLASS JAR	56	7
MORE SANITARY	41	5
CAN RECLOSE GLASS JAR	23	3
TASTE OR ODOR BETTER	24	3
OTHER REASONS	25	3
TOTAL	817	100%



*GIVEN BY 419 PERSONS

MARKET ANALYSIS DEPT.
JUNE 1945

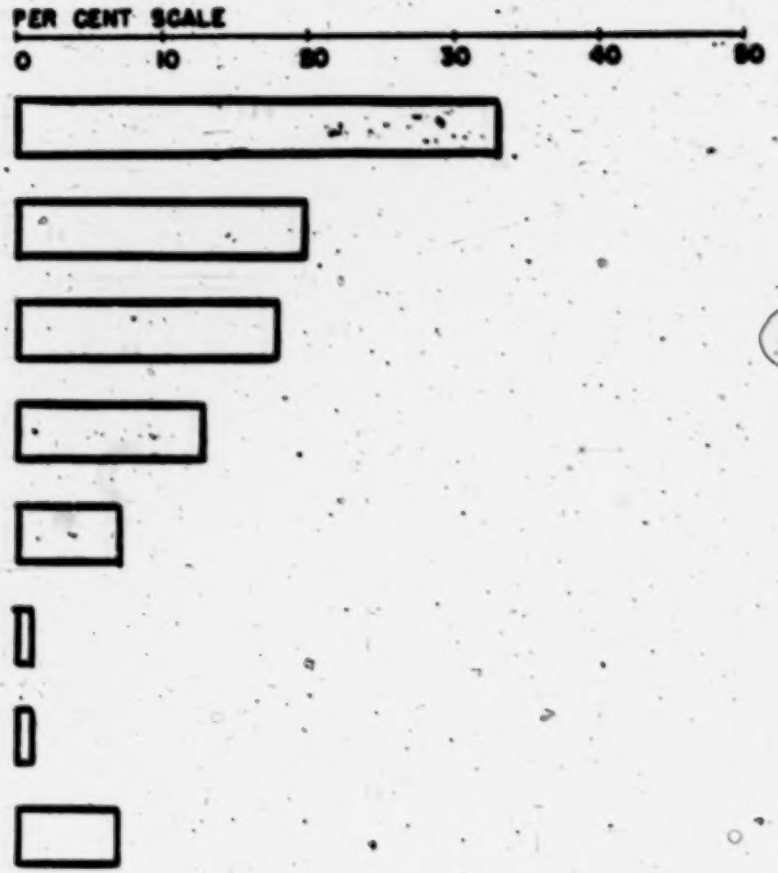
[fol. 1099]

BABY FOOD SURVEY

16 CITIES EXCLUDING NEW YORK

WHAT BRAND DO YOU USUALLY BUY?

BRAND:	NO.	%
GERBER	270	33
HEINZ	165	20
CLAPP	150	18
BEECHNUT	104	13
LIBBY	56	7
RICHELIEU	9	1
STOKELY	9	1
ANY BRAND*	59	7
TOTAL	822	100%



*INCLUDES CAMPBELL (3), MISS RILEY (3), JACK SPRATT, FAIRVIEW, AND MEAD (1).

MARKET ANALYSIS DEPT.
JUNE 1948.

[fol. 1100] GOVERNMENT'S EXHIBIT 420

Los Angeles, California

Use, Attitudes and Opinions of Cans vs. Glass Jars For Prepared Baby Food Among Young Mothers and Doctors

Made for the Continental Can Company, Inc.
February, 1954
By S-D Surveys, Inc.

[fol. 1101] GOVERNMENT'S EXHIBIT 421A

Continental Can Company, Inc.

Internal Correspondence

To: Location #43—Head Office
Attention: Mr. W. K. Neuman
From Location: #43—Head Office
Date: August 13, 1953
Refer To: Request for Product Development Project
Subject: Tomato Catsup Can

R. Larson:

I've sat on this too long already—what do you think?

In reviewing food products packed in containers other than metal cans, it has occurred to us that tomato catsup, now packed exclusively in glass in retail sizes, presents a potential market for us. The results of a preliminary study of this problem are outlined below.

Previous Studies: The idea of catsup in cans is not new. In 1938, 1946, and again in 1949, the possibilities were investigated, giving consideration to various can-making materials and techniques then available. In each instance, the project was abandoned because of the corrosive properties of the product, and its tendency to change color when exposed to air.

The most thorough investigation, that of 1949, included a small test pack of catsup in a 12 ounce cap-sealed cone top can. Several plate and enamel combinations were tested.

Storage life and usage tests were made. After 15 months at room temperature (and 11 months at 98°F) pressure developed within the most promising cans. Results of a 22 day usage test were similarly sub-standard.

A major limiting factor appears to have been the difficulty in fabricating an enamelled cone top with low metal exposure.

No controls of bottled catsup were reported as being included in the tests.

Preliminary Market Analysis: The bulk of the tomato catsup packed in the United States goes into retail-sized

bottles with a capacity of 12 fluid ounces (net weight of product 14 oz.). Average annual pack of such containers for 1951, 1952, and 1953 was:

Tomato Catsup	377,000,000 bottles
Chile Sauce	23,000,000 bottles
Total annually	400,000,000 bottles

Assuming that 50% of this potential could be switched to metal, and that Continental's participation was 50% of the metal business, we would then enjoy a volume of:

100,000,000 cans @ $30.50/M $3,050,000

Glass Container: Specifications of a typical glass container, made by Owens-Illinois, are outlined below:

[fol. 1102]

Height overall	8⅛4
Diameter	2⅛6
Volume, fl. oz.	12.5
Shelf space required, cu. in.	19.6
Tare weight, ounces	9.6
Gross weight, filled, ounces	23.6
Material	Clear white glass
Brand identification	Label
Closure	White "vapor-vacuum" cap
Cost per M (delivered without caps)	
Bulk	$26.10
Add for reshippers	8.90
Cost of closure, per M	6.00

No figures are available on spoilage through breakage, but it can be safely assumed that, with a hot-fill product, such losses will require consideration.

Can-Making Materials

At present, 603x700 open-top cans are used for institutional packs of catsup. Choice of Container manual specifies;

Body: 1.25# HDTP—I.S.E.
Ends: 1.25# HDTP—I.S.E. or #25 Electrotin.—I.S.E.

The repeated opening and closing of a small container, in household use, requires a package which will protect the product and metal plate against oxidation and corrosion under more difficult circumstances. It may prove desirable to investigate such materials as aluminum cones, or plastic spouts, in addition to enamel and tin plate research.

Requirements For Can: In developing a metal package for catsup, the basic advantages of metal should be considered, particularly:

(1) Metal is lighter than glass
(2) Metal is more resistant to temperature and impact failure.
(3) Metal may be lithographed.
(4) Being non-transparent, the metal package remains attractive when partly empty.
(5) Metal containers usually require less space than glass bottles of equal volume.

In addition, the metal catsup package should conform to the following general specifications required by the method in which the product is packed and used:

[fol. 1103] (1) Can should hold 12 fluid ounces (14 oz. net weight) of product.
(2) Can should resist processing temperatures up to 190° F.
(3) Can should be hermetically sealed.
(4) Can should be reclosable.
(5) Can should be suitable for dispensing product.
(6) Can should be attractive enough to place on restaurant tables, etc.
(7) Can must show cost advantage (delivered to consumer).

Further specifications can be developed when a detailed study is made in connection with development of the new container.

12-Ounce Cone Top Beer Can: One possible package, the cap-sealed cone top beer can, has been previously considered for catsup. While other packages may prove more suitable for catsup, the cone top can at least merits consideration, and can be readily compared to a glass bottle.

Beer can specifications appearing to apply most closely to catsup would be:

Body: 1.25# HDTP, I.S.E.
(Outside lithography extra)

Bottom: 1.25# HDTP, I.S.E.
Standard or multibeaded contour.

Top: 1.25# HDTP, I.S.E.
Added shoulder to permit vacuum cap to be pried off with knife.

This can is thus similar to the beer can, but with a higher tin coating, no wax lining, and changed end contours. The height could also be reduced slightly, since the domed bottom is eliminated.

Such a can would compare with the glass bottle as follows:

Specification	Bottle	Can
Height overall	804	503
Diameter	206	211
Volume, fluid oz.	12.5	12.5
Shelf space required, cu. in.	19.6	14.0
Tare weight, ounces	9.6	2.9
Estimated Price per M (without caps)		
Bulk	$26.10	$30.50
Add for reshippers	$ 8.90*	$ 3.58**
Shipment to canner, estimated	(included)	$ 1.00
Cost of Closure, per M	$ 6.00	$ 6.00
Typical transportation, filled bottles (Baltimore to Chicago)	$12.14	$ 8.70
Typical total cost to consuming area (excluding product, etc.)	$53.14	$49.78

*—Includes separators and set-up.
**—No set-up charge; separators not required.

[fols. 1104-1131] For comparative purposes, we have assumed the same closure for can and bottle. However, a substantial saving would be realized by us if a screw cap at perhaps $3.00/M, proved satisfactory for our containers.

Conclusions

Assuming that a suitable 12 ounce can, such as the above, can be developed, its advantages would be:

(1) A lower total cost for container *delivered to consumer*. The typical saving of $3.36 shown comes entirely from the cost of shipping the *filled* container, and will vary depending on the distance from packer to market. West Coast canners would therefore be particularly susceptible to a can. In California, which packs 33% of U. S. total of Tomato Products, our participation is 28%, compared

to U. S. Average CCC participation of 37% (3 yr Average).

(2) Reduced space requirements. The bottle requires 40% more space, causing higher warehouse costs, retail shelf usage, and home storage capacity. No dollar value reflecting this advantage of the can is presently available.

(3) Reduced breakage in packing and distribution.

(4) Presumably, a more attractive package, through use of lithography (to be confirmed by consumer survey)

(5) A more stable container. The wider base and lower center of gravity make the can harder to tip over.

Recommendations: It is therefore recommended that the Package Development Department be asked to undertake the problem of designing a retail-sized metal container for tomato catsup.

Consideration should include, but not be limited to, a modification of the 12-ounce cap sealed beer can.

This office will be glad to assist Mr. Larson in this matter in any way that may be necessary.

L. C. Dudley, per S. B. Smart.

SBS/dh

[fol. 1132] GOVERNMENT'S EXHIBIT 423

Packaging Guide for Pressure Dispensed Foods

Barbecue Sauce

Product No. II

Description: Barbecue sauce is a formulated liquid sauce used primarily to season meats as they are being roasted, broiled or grilled. Originally this was a vinegar-base product with added salt, pepper and other spices; but now it is available on the commercial market with a wide range of basic ingredients such as salad oil, tomato, pineapple pulp, or pimiento pulp. Its consistency may range from that of water to a thicker sauce similar to catsup. Because of this wide variance in ingredients and consistency, no single

packing procedure will be applicable to all barbecue sauces.

Suggested Packing Procedure:

1. After rinsing the cans, the product is filled into them at a temperature of 190 to 200°F. A fill of 7 to 10 fluid ounces is used for 12-ounce containers and 10 to 13 fluid ounces for 16-ounce containers dependent on the product ingredients and the spray characteristics desired. The prescribed fill is generally inversely proportional to the solubility of gas propellent employed.
2. The filled cans are closed immediately by crimping the valve in place and are then inverted to allow hot product to sterilize the headspace area of the can. Note: This procedure should provide sufficient sterilization for most barbecue sauce formulations. However this factor requires checking for each product encountered. There are other sterilization procedures under study.
3. Cans are cooled to 85°F in cold water bath or sprays.
4. Cooled product is gassed through valve with desired gas at required pressure. To obtain a liquid stream of product, nitrogen gas* charged at 75 to 95 psig pressure is suggested. To obtain a foamy stream or spray; nitrous oxide, carbon dioxide or a suitable mixture of these two gases is used at a pressure range of 85 to 100 psig. Shaking is employed while charging these latter gases to hasten solution and bring container to equilibrium pressure. The exact pressure employed depends on the product formulation and controls to a high degree the percent product delivery obtained.

* Use of Nitrogen covered in U.S. Patent #2,723,200.

Containers: As with all formulated products, shelflife studies must be conducted before a specific container recommendation can be offered. Suggested container variables that are expected to perform best with the product may be obtained from Metal R & D. Any available knowledge of product's composition would be helpful for this purpose.

Valves: Several of the existing valves could be used to dispense many barbecue sauces satisfactorily. Because the

dispensing characteristics are dependent to a great degree on the actuator design, many sauces will require a specially designed actuator button to produce desired dispensing characteristics. When this is required, a valve manufacturer should be consulted.

(For Customer Research Use Only)

[fol. 1133] Because of the pulpy nature and discrete spice particles found in most barbecue sauces, we believe the minimum valve orifice size should be .040", and there will be occasions when this size will require passing the product through .020" screen or homogenizing it. Two valves that have been most promising in our laboratory work with barbecue sauce are a Clayton foam type valve and a Precision dip tube type valve. There are undoubtedly others that will perform just as satisfactorily.

Dispensing Procedure:

The dispensing procedure employed for barbecue sauce will depend on the valve used and the dispensing characteristics desired. Where a soluble gas has been employed for obtaining foamy stream or spray dispensing, the can should be shaken prior to opening valve, and shaking is required after every 5 to 10 seconds of use. If an insoluble gas is used to give a non-aerated stream, no shaking is required prior to dispensing or during dispensing of product. Product delivery should range from 90 to 98% of contents by weight depending on product viscosity.

Remarks:

Many questions concerning a product such as this can only be resolved after knowing the properties of the specific product involved and the customer's requirements. Therefore, Metal R & D should be consulted whenever any questions arise concerning a specific customer's product.

Metal Research & Development, Continental Can Company, Inc.

PBG:jo'h
12/26/57

(For Customer Research Use Only)

[fol. 1134] GOVERNMENT'S EXHIBIT 424

Packaging Guide For Pressure Dispensed Foods

Chocolate Syrup

Product No. I

Description: Chocolate syrup, or more commonly, chocolate flavored syrup is a formulated free flowing sugar base product flavored with chocolate and/or cocoa, salt and vanillin. It consists essentially of 55 to 75% sugar and 25 to 40% water. It is used mainly as a sundae topping or as a flavoring agent for milk beverages.

Suggested Packing Procedure:

1. After rinsing the cans, the product is filled into them at a temperature of 190 to 200°F. A fill of 9 to 10 fluid ounces is suggested for 12 ounce containers and 12 to 13 fluid ounces for 16 ounce containers.
2. The cans are closed immediately by crimping the valve in place and are then inverted to allow hot product to sterilize the headspace area of the can.
   Note: This procedure should provide sufficient sterilization for most chocolate syrup formulations. However, this factor requires checking for each product encountered.
3. Cans are cooled to 85°F in cold water or by another suitable cooling method.
4. Cooled product is gassed through valve. Charging with Nitrogen gas at 75 to 95 psig pressure with no shaking is suggested to obtain a non-aerated stream and greatest product delivery.* The exact pressure employed is dependent on the viscosity of the product. More soluble gases such as Nitrous Oxide or Carbon Dioxide will produce an aerated product of lighter color.

* Use of Nitrogen for this purpose is covered in U.S. Patent #2,723,200.

Containers: As with all formulated products, shelflife studies must be conducted before a specific container recom-

mendation can be offered. Suggested container variables that are expected to give the best performance with the formulation may be obtained from Metal R & D. Any available knowledge of product's composition would be helpful for this purpose.

Valves: Several of the existing valves could be used to dispense chocolate syrup satisfactorily. We have experimented primarily with a Clayton foam type valve and a Precision dip tube type valve with a beverage actuator in the laboratory. There are undoubtedly others that will perform just as satisfactorily.

Dispensing Procedure: No shaking is required prior to dispensing the product. Cans with dip tube valves are dispensed in upright position. Those with foam type valves are dispensed in inverted position. Product delivery should range from 90 to 98% of contents by weight depending on product viscosity.

Remarks: This information will not be entirely applicable to all chocolate syrup formulations that will be encountered. Therefore, Metal R & D should be consulted whenever any questions arise concerning a specific customer's product.

Metal Research & Development, Continental Can Company, Inc.

PBG:jo'h
12/26/57

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[fol. 1135] GOVERNMENT'S EXHIBIT 425

Packaging Guide for Pressure Dispensed Foods

Salad Dressings

Product No. III

Description: Salad dressings are formulated liquid to semiliquid products that are used to savor vegetable or fruit salads. Their formulations are varied and are generally considered as a trade secret by the manufacturer. Some

of the more common types are mayonnaise, French dressing and Russian dressing. All are highly acid and have a pH range of 3.0 to 4.5. Most salad dressings contain vegetable oils, water, salt and spices as their main ingredients. Analyses of several salad dressings showed water content to range from 10 to 70%, fat to range from 6 to 83%, and salt to range from 1.3 to 1.6%.

Mayonnaise is the only salad dressing included in the Food and Drug Administration Standards at this time. They describe the product as follows:

"The semisolid emulsion of edible vegetable oil, egg yolk, or whole egg, a vinegar, and/or lemon juice with one or more of the following: salt, flavoring, sugar, and/or dextrose. The finished product contains not less than 50% of edible vegetable oil."

Suggested Packing Procedure:

The packing procedure employed for salad dressings will vary depending on the specific product formulation and the dispensing characteristics desired. The following are suggested packing procedures for several of the variations in salad dressings that might be encountered:

1. The cans should be rinsed with a stream of warm, clean water prior to filling any salad dressing product into them.
2. The product should be filled at as high a temperature as practical to obtain maximum sterilizing advantage from the heat. With some dressings that are not adversely affected by heat, this can be at 190 to 200°F while other less stable products such as mayonnaise will require a filling temperature of 40 to 70°F.

   A fill of 7 to 10 fluid ounces is employed for 12-ounce containers and 10 to 13-fluid ounces for 16-ounce containers dependent on the formulation and the dispensing characteristics desired. In general, the prescribed fill is inversely proportional to the solubility of the gas propellant used.
3. The filled cans are closed immediately by crimping the valve in place and hot filled cans are then in-

verted to allow hot product to sterilize the headspace area of the can.* Vacuum crimping is preferred, particularly for cold filled products, to reduce the headspace oxygen in the container. The same objective might be accomplished by purging the filled cans with an inert gas prior to seating the valve cup.

*This procedure should provide sufficient sterilization for most salad dressing formulations. However, this factor requires checking for each product encountered. There are other sterilization procedures under study.

[fol. 1136] 4. Cans of hot filled products are cooled to 85°F in cold water baths or sprays.**

** Studies in progress at Metal R & D indicate that gas charging of hot products might be employed, if desired, particularly when propellants of low solubility are to be used. The hot product must be charged with the gas at an appreciably higher charging pressure to obtain an equivalent equilibrium pressure at 70°F. The charging pressure required with gases having high solubility for hot products may prove to be too high to be practical.

5. Cooled product is gassed through the valve with the required gas at required pressures. To obtain a liquid stream of product having minimum aeration, nitrogen gas*** charged at 75 to 95 psig pressure is suggested. To obtain a foamy stream or spray; more soluable gases such as nitrous oxide or carbon dioxide are used at a pressure range of 85 to 100 psig. Shaking is employed for 10 to 20 seconds while charging these latter gases to hasten solution and bring container to equilibrium pressure. The exact pressure employed depends primarily on the product formulation and controls to a high degree the percent product delivery and overrun obtained.

***Use of Nitrogen covered in U.S. Patent #2,723,200.

Containers:

As with all formulated products, shelflife studies with salad dressings must be conducted before a specific container recommendation can be offered. Suggested container variables that should be tested with the product may be obtained from Metal R & D. Knowledge of product's composition and chemical properties is necessary to Metal R & D in making this decision.

Valves:

Several of the existing valves could be used to dispense many salad dressings satisfactorily. Because the dispensing characteristics are dependent to a great degree on the actuator design, many dressings may require a specially designed actuator button to produce desired dispensing forms. When this is required, a valve manufacturer should be consulted.

Two valves that have been most promising in Metal R & D work with salad dressing are a Clayton foam type valve and a Precision dip tube type valve. There are undoubtedly others that will perform just as satisfactorily.

As a word of caution, most salad dressings are considered as highly corrosive products, particularly in the headspace area of the can. Therefore a well coated valve cup is required with a low metal exposure enameled dome to avoid perforations in this area.

[fol. 1137] Dispensing Procedure:

The dispensing procedure employed for salad dressings will depend on the valve used and the dispensing characteristics desired. Where a soluble gas has been employed for obtaining foamy stream or spray dispensing, the can should be shaken prior to opening valve, and shaking is required after every 5 to 10 seconds of use. If an insoluble gas is used to give a non-aerated stream, no shaking is required prior to dispensing or during dispensing of product. Product delivery should range from 90 to 98% of contents by weight depending on product viscosity. If the product is intended to be refrigerated prior to consumer use, the effect of the lower temperature on can pressure and result-

ing dispensing characteristics must be considered when developing the packing specifications.

Remarks:

Many questions concerning a product such as this can only be resolved after knowing the properties of the specific product involved and the customer's requirements. Whenever Metal R & D is consulted concerning a specific customer's product, as much information as possible relating to the pressure dispensed product should be made available.

Metal Research & Development, Continental Can Company, Inc.

PBG/efh
4/8/58

(For Customer Research Use Only)

[fol. 1138] GOVERNMENT'S EXHIBIT 426

Rev. 1

Packaging Guide for Pressure Dispensed Foods

Dressings for Salad

Product No. III

Description: Dressings for salad are formulated liquid to semisolid products that are used to savor vegetable or fruit salads. Their formulations are varied and are generally considered as a trade secret by the manufacturer. Some of the more common types are mayonnaise, French dressing and Russian dressing. All are highly acid and have a pH range of 3.0 to 4.5. Most dressings contain vegetable oils, vinegar, salt and spices as their main ingredients. Three types of dressing: mayonnaise, French dressing, and salad dressing are included in Food and Drug Administration Standards at this time. Their general definitions are given at the end of this write-up. Dressings included in these definitions must contain 30 to 65% by weight vegetable oil depending on the dressing. For any dressings that are to be moved in Interstate Commerce and do not fall under the

three defined products, it is suggested the Food and Drug Administration be consulted concerning labeling requirements.

Suggested Packing Procedure:

The packing procedure employed for salad dressings will vary depending on the specific product formulation and the dispensing characteristics desired. The following are suggested packing procedures for several of the variations in salad dressings that might be encountered:

1. The cans should be rinsed with a stream of warm, clean water prior to filling any salad dressing product into them.

2. The product should be filled at as high a temperature as practical to obtain maximum sterilizing advantage from the heat. With some dressings that are not adversely affected by heat, this can be at 190° to 200°F. while other less stable products such as mayonnaise will require a filling temperature of 40° to 70°F. The latter cold-filled products usually must be marketed and consumed under refrigerated storage conditions.

   A fill of 7 to 10 fluid ounces is employed for 12-ounce containers and 10 to 13 fluid ounces for 16-ounce containers dependent on the formulation and the dispensing characteristics desired. In general, the prescribed fill is inversely proportional to the solubility of the gas propellant used.

3. The filled cans are closed immediately by crimping the valve in place and hot filled cans are then inverted to allow hot product to sterilize the headspace area of the can.* Vacuum crimping is preferred, particularly for cold filled products, to reduce the headspace oxygen in the container. The same objective might be accomplished by purging the filled cans with an inert gas prior to seating the valve cup.

* This procedure should provide sufficient sterilization for most salad dressing formulations. However, this factor requires checking for each product encountered. There are other sterilization procedures under study.

[fol. 1139] 4. Cans of hot filled products are cooled to 85°F. in cold water baths or sprays.**

**Studies in progress at Metal R & D indicate that gas charging of hot products might be employed, if desired, particularly when propellants of low solubility are to be used. The hot product must be charged with the gas at an appreciably higher charging pressure to obtain an equivalent equilibrium pressure at 70°F. The charging pressure required with gases having high solubility for hot products may prove to be too high to be practical.

5. Cooled product is gassed through the valve with the required gas at required pressures. To obtain a liquid stream of product having minimum aeration, nitrogen gas*** charged at 75 to 95 psig pressure is suggested. To obtain a foamy stream or spray, more soluble gases such as nitrous oxide or carbon dioxide are used at a pressure range of 85 to 100 psig. Shaking is employed for 10 to 20 seconds while charging these latter gases to hasten solution and bring container to equilibrium pressure. The exact pressure employed depends primarily on the product formulation and controls to a high degree the percent product delivery and overrun obtained.

***Use of Nitrogen covered in U. S. Patent No. 2,723,200

Containers:

As with all formulated products, shelf-life studies with salad dressings must be conducted before a specific container recommendation can be offered. Suggested container variables that should be tested with the product may be obtained from Metal R & D. Knowledge of product's composition and chemical properties is necessary to Metal R & D in making this decision.

Valves:

Several of the existing valves could be used to dispense many salad dressings satisfactorily. Because the dispens-

ing characteristics are dependent to a great degree on the actuator design, many dressings may require a specially designed actuator button to produce desired dispensing forms. When this is required, a valve manufacturer should be consulted.

Two valves that have been most promising in Metal R & D work with salad dressing are a Clayton foam type valve and a Precision dip tube type valve. There are undoubtedly others that will perform just as satisfactorily.

As a word of caution, most salad dressings are considered as highly corrosive products, particularly in the headspace area of the can. Therefore, a well coated valve cup is required with a low metal exposure enameled dome to avoid perforations in this area.

[fol. 1140] Dispensing Procedure:

The dispensing procedure employed for salad dressings will depend on the valve used and the dispensing characteristics desired. Where a soluble gas has been employed for obtaining foamy stream or spray dispensing, the can should be shaken prior to opening valve, and shaking is required after every 5 to 10 seconds of use. If an insoluble gas is used to give a non-aerated stream, no shaking is required prior to dispensing or during dispensing of product. Product delivery should range from 90 to 98% of contents by weight depending on product viscosity. If the product is intended to be refrigerated prior to consumer use, the effect of the lower temperature on can pressure and resulting dispensing characteristics must be considered when developing the packing specifications.

Remarks:

Many questions concerning a product such as this can only be resolved after knowing the properties of the specific product involved and the customer's requirements. Whenever Metal R & D is consulted concerning a specific customer's product, as much information as possible relating to the pressure dispensed product should be made available.

Regulations:

Certain dressings for food moving in Interstate Commerce are regulated by a Standard of Identity and Label

Statement of Optimal Ingredients promulgated August 8, 1950 under the Federal Food, Drug, and Cosmetic Act. They are covered specifically as "Mayonnaise", "French Dressing", and "Salad Dressings".

In general, mayonnaise is defined as an emulsified semisolid food prepared from edible vegetable oil, acidifying ingredients of vinegars, lemon juice or lime juice, and certain egg-yolk-containing ingredients. It may be seasoned with salt, certain sweetening ingredients, spices other than turmeric or saffron, monosodium glutamate, or any suitable, harmless food seasoning or flavoring (other than imitations), provided it does not impart to the mayonnaise a color simulating the color imparted by egg yolk. Mayonnaise contains not less than 65 percent by weight of vegetable oil.

French dressing may be defined as a separable liquid food or an emulsified viscous fluid food prepared from edible vegetable oil and acidifying ingredients of vinegar, lemon juice or lime juice. It may be seasoned with salt, certain sweetening ingredients, spices, monosodium glutamate, any suitable harmless food seasoning or flavoring (other than imitations), tomato paste or puree, catsup, or sherry wine. It may be emulsified with any of several allowable emulsifying ingredients providing these ingredients do not exceed 0.75 percent by weight of the finished product. French dressing contains not less than 35 percent by weight of vegetable oil.

Salad dressing is the emulsified semisolid food prepared from edible vegetable oil, acidifying ingredients of vinegars, lemon juice or lime juice, certain egg-yolk-containing ingredients, and a cooked or partly cooked starchy paste prepared from food starch, wheat flour, rye flour, tapioca flour or any mixture of these. It may be seasoned or flavored with salt, certain sweetening agents, spices other than turmeric or saff-on, monosodium glutamate, or any suitable, harmless food seasoning or flavoring (other than imitations), provided it does not impart to the salad dressing a color simulating the color imparted by egg yolk. It may [fol. 1141] contain any of several allowable emulsifying ingredients, provided the quantity of these ingredients do not exceed 0.75 percent by weight of the finished product. Salad dressing contains not less than 30 percent by weight

of vegetable oil and no less egg-yolk-containing ingredient than is equivalent in egg-yolk solids content to 4 percent by weight of liquid egg yolks.

Metal Division R & D, Continental Can Company, Inc.

PBG:bw
5-9-58

[fol. 1142] GOVERNMENT'S EXHIBIT 427

Packaging Guide For Pressure Dispensed Food

Whipped Toppings

Product No. IV

Description: Whipped toppings are frothy formulated food products used to top other foods, generally desserts, to make them more appetizing. The first pressurized food product was a whipped topping, whipped cream, which reached the market in 1948. Since that time, many different pressurized whipped creams have been marketed and more recently, several synthetic whipped creams where butterfat is partially or completely replaced with vegetable fats have become popular. The latter are classified as whipped toppings and can be obtained in several flavors. Other whipped topping possibilities are cake icings, marshmallow, and egg meringue.

A typical whipped cream type topping might consist of 25 to 30% fat, 5 to 10% sugar, 2 to 3% stabilizer (skim milk powder, gelatin, dry egg albumin or yolk, or sodium caseinate), 55 to 68% water and a flavoring agent such as vanilla.

Suggested Packing Procedure:

Since most whipped toppings can be considered somewhat similar with respect to their foamy dispensing characteristics, pH, heat stability properties and viscosity, packing and handling procedures employed for the majority of them are fairly well standardized. Most of them must be marketed and used under refrigerated storage

conditions, and have a shelf life of less than three months at 40°F. The following is the suggested packing procedure for the general line of whipped toppings.

1. The empty cans should be rinsed with a stream of warm, clean water prior to filling with product. The valves are generally dipped in a mild chlorine solution (2-3 ppm residual chlorine) prior to affixing to filled cans.
2. Products of this nature are usually filled cold at 40° to 60°F. under as sanitary conditions as possible or those regulated by law.
   A fill of 6 to 7 fluid ounces of liquid product is generally employed for 12-ounce (211 x 413) containers and 9 to 10 fluid ounces for 16-ounce (211 x 604) containers. The ratio of product volume to headspace volume is purposely lower for this type product to allow for a greater charge of gas which serves to dispense the product and also aerate it. Increasing this ratio by increasing the product fill results in lower overrun [1] of dispensed product and less product delivery for same initial equilibrium pressure.

[fol. 1143] 3. The filled cans are closed immediately by crimping the valve in place. Vacuum crimping is preferred for these cold-filled products to reduce the headspace oxygen in the container. The same objective might be accomplished by purging the headspace of the filled cans with an inert gas prior to seating the valve.

4. The sealed cans of product are gassed through the valve with the required gas at required pressures. The more soluble gases such as nitrous oxide, carbon dioxide or some mixture of these are employed to produce a whipped product. Charging pressures generally range from 90 to 130 psig. The cans are shaken violently for 10 to 30 seconds during product gassing to hasten absorption of gas in product. When the proper gassing and shaking cycle is employed, the cans will be within 3 to 5 pounds of

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[1] Overrun is the percent volume increase between the dispensed product and the filled product.

equilibrium pressure after this operation. Equilibrium pressures range from 85 to 100 psig at 70°F.

5. Charged containers can be passed through a water bath to detect any leakers through evolution of bubbles. A mild cleansing agent might be desired in the water during this operation to clean spilled product from the outside of the containers. The water should be treated with chlorine (2-3 ppm residual chlorine) to keep the bacteria count minimized.

Containers:

As with all formulated products, shelf life studies with whipped toppings must be conducted before a specific container recommendation can be offered. Suggested container variables that should be tested with the product may be obtained from Metal R & D. Knowledge of product's composition and chemical properties is necessary to Metal R & D in making this decision.

Valves:

The most popular valve employed for whipped toppings is the foam type valve which has no dip tube and requires inversion of the container for dispensing. Because of its simpler construction and less material requirements, this style valve is less costly than the spray type valves. It is supplied by several valve manufacturers. Among these are: Clayton Pressure Products of St. Louis, Super Whip, Inc. of Chicago, Dairy Whipt, Inc. of Chicago, and Pressure Dispensers, Inc. of Hollywood, California.

There are spray type valves that may be used successfully with some whipped toppings and permit upright dispensing of product. These would cost more and our experience with them for this purpose is limited. They are available from such concerns as Precision Valve Corp. of Yonkers, N. Y. and Clayton Pressure Products of St. Louis.

Dispensing Procedure:

In order to assure the most effective dispensing of whipped toppings, the containers should be shaken prior to each use and after every 5 to 10 seconds of use. Also

with foam type valves which require container inversion for use, the container should be held a few seconds in the inverted position prior to operating valve to allow product [fol. 1144] to flow to the valve area. Following this procedure will minimize product splattering and result in greatest obtainable product delivery and overrun. For most whipped toppings, product delivery is expected to average 90% of filled contents and overrun should range from 175 to 225%.

Remarks:

Many questions concerning a product such as this can only be resolved after knowing the properties of the specific product involved and the customer's requirements. Whenever Metal R & D is consulted concerning a specific customer's product, as much information as possible relating to the pressure dispensed product should be made available.

Metal Division R & D, Continental Can Company, Inc.

PBG:efz
7/9/58

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[fol. 1145] GOVERNMENT'S EXHIBIT 429

Liquid Detergents

Analysis of the Potential Market for Metal Cans
Commercial Research Department

January 1954

[fol. 1146] Continental Can Company, Inc.

100 East 42nd Street
New York 17, N. Y.

January 19, 1954.

To: Mr. L. C. Mackelden

Subject: Liquid Detergents—Analysis of the Potential Market

The accompanying report summarizes the results of our investigation of the new liquid synthetic detergents as a potential market for metal cans, and Continental's prospects in this field. The findings and conclusions, which precede the main part of the report, are self-explanatory, but I would like to emphasize the following key points:

1. There is a real opportunity for Continental to enter a new and rapidly growing market. There is a definite trend toward the use of cans in place of the glass packages now used by most producers. The non-breakability feature is particularly important, to consumers, for liquid detergents and Continental should expedite its development work in order to enter this market, *as soon as possible.*
2. Although 12 ounces is not yet established as a standard size, it will apparently be a leading size and appears to be one best suited for metal cans. Total industry requirements for 1955 are estimated at about 130 million containers (12 ounce equivalent). A market for 260 million—with liquids at 10% of the total synthetics market—is within sight in a few years.

Because the experience on which to base growth projections is extremely limited, and because only a few companies could supply any helpful information, these estimates should be treated as very rough approximations. The only thing that is clear is that growth has been extremely rapid and is still continuing. We hope, as additional experience is gained during this year in the marketing of liquids, to be able to refine these estimates for you.

We trust this report will be helpful. Additional copies are available for further distribution if you wish them.

D. H. Walker.

DHW/mla

cc: Messrs: P. P. Wojtul—#43,
R. G. Fisher—#43,
W. K. Neuman—#43.

[fol. 1147] Table of Contents

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Commercial Research Department,
January 1954.

[fol. 1148] Summary and Conclusions

Liquid Synthetics in Metal Cans

The packaging of liquid synthetic detergents is rapidly developing into an important new market for metal cans. Liquids, the most recently developed form of synthetic detergents, are the brand new answer to dishwashing problems. They are already established as one of the leading dishwashing products even though they've been on the market only four years and have been strongly promoted for only two. At present, most of these liquids are packaged in glass. But metal is also in the field and there appears to be a definite trend toward *increased use of cans* as opposed to glass. With expanding demand and growing acceptance of the metal container, Continental has the opportunity to enter a new area of packaging.

The Market

Percentagewise, the liquid product is the fastest growing portion of the synthetic detergent market. And so far there are no signs of a let-up. In 1949, liquids made up only .3% of all packaged synthetics sold. (See Table II, Section I.) By the end of 1953, they constituted a full 3% of total volume.

The basic reason for this tremendous increase is the growing consumer preference for synthetics—both solid and liquid—over soap. The figures are really impressive. In only five years, from 1948 to 1953, the synthetics' share of the 3.3 billion pound market for cleansers rose from 20% to 75%. What made consumers so readily accept this new product? First, the shortages of soap products during and immediately following World War II forced consumer to try substitutes. Then it was found that synthetics had many natural advantages over soap—quick and more thorough [fol. 1149] washing, faster suds formation, no dulling of washable materials and speedy rinsing. The move to synthetics was on! At all three levels of distribution—the manufacturer, the retailer and the consumer—synthetics proved, for most uses, to be superior to soap and more economical in terms of time and/or money.

The advantages of synthetics over soap apply equally

well to both solids and liquids. But liquids have even more to be said in their favor for light washing. They are generally milder, easier to pour and more readily soluble. They are not "dusty" and cannot abrase washable materials.

Existing Brands

There are five liquid brands currently competing for the housewives' favor. They are "Joy", "Lux", "Glim", "Chat", and "Rol". Of the five, only "Joy" a Procter and Gamble product, has complete national distribution, at present. Since its introduction on a countrywide scale in mid-1951, the name "Joy" has become almost synonymous with liquid detergent. Heavy promotions, millions of advertising dollars and concentrated merchandising and selling campaigns have paid off and "Joy" captured a hefty 80 to 85% of the liquid market.

After Procter and Gamble educated the public to the use of liquid synthetics via "Joy", Lever Brothers introduced liquid "Lux" in July of 1953. Consumer acceptance of this product exceeded Lever's most optimistic hopes. Their original sales forecast has recently been revised upward and they are thinking about expanding production facilities.

Despite competition from "Lux", sales of "Joy" have steadily increased. With both companies promoting their products with huge advertising budgets and concentrated merchandising campaigns, consumers are using *more liquids* rather than just switching from one liquid brand to another and total demand is growing rapidly.

[fol. 1150] The Future of Liquids

Based on the sales performance of the existing products, liquids are expected to take over more than 5% of the packaged synthetic detergent market by 1955, compared with 3% in 1953. The five products already on the market should do the job and if the manufacturers of these products decide to market more than one brand, or if new manufacturers enter the field, liquids could probably exceed 10% of the packaged synthetic market. It's hard to say when the 10% level will be reached but it should be within a few years.

Although 10% could not be called a lion's share of the total synthetic market, it still represents a very important

packaging market—approaching *260 million packages* annually.

The liquid variety is used almost exclusively for dishwashing and is heavily promoted by the manufacturers for that purpose. On the other hand, synthetics as a whole are used for both laundry and dishwashing. There is no breakdown available for the amount of synthetics used for dishwashing versus laundry but assuming the total was split 50-50, a 10% penetration of the *total* market by liquids, would mean a 20% penetration of the *dishwashing* market.

The Outlook for Cans

Before the introduction of "Lux", the package material for liquids was glass. But now, although the predominant package is still glass, it looks like there is a definite trend toward the metal container. "Lux" is being marketed in 12- and 22-ounce (capacity) cans developed by American. In addition, Procter and Gamble is willing to modify their formulation of "Joy" so that it could be put up in cans. The consumers prefer metal too. According to a recent consumer survey conducted by Lever Brothers, the metal can was definitely preferred over glass for this type of product.

[fol. 1151] If we can assume a complete changeover to metal cans by 1955, the industry would need the equivalent of *130 million 12-ounce containers* to package the *12.5 million gallons* of liquid expected to be sold. (The number of containers would be more if more containers were smaller than 12-ounce, but this size appears to be emerging as the standard size for a canned product.) When liquids capture 10% of the market, the can demand will top *260 million*. This represents *total* demand for liquid detergent cans.

To participate in this rapidly growing demand, Continental should expedite its development work on cans and can linings and enter this market *as soon as possible*. Table V (Section 1) illustrates the probable can demands on Continental at various degrees of participation in the market. At 25%, Continental would probably be called on to supply approximately 30-35 million 12-ounce cans, while at 50%, the demand would approach 70 million. At a reasonable 40% level—the level we now enjoy in beer, oil, meat, etc.—

we would be supplying more than 50 *million cans* by 1955—and probably close to 100 million within a few years.

It would also appear desirable that the Research Department investigate the possibilities of using a metal container similiar to the liquid detergent can for such glass-packed products as molasses, syrups, salad oil, floor and furniture polishes, cleansers, etc.

Commercial Research Department.

Prepared by: Jack Carter.

[fol. 1152] I. The Market for Liquid Synthetic Detergents

A. History of Synthetic Detergents

Development of synthetic detergents began in Germany during World War I, when shortages of fats and oils made soap substitutes necessary for industry.

The introduction of synthetic detergents in this country, in the late 1920's, met with wide industrial acceptance. Prior to World War I, industrial cleaning was done mostly with raw chemicals and with soap. The parts to be cleaned were either dipped into a bath or washed and scrubbed thoroughly. After the cleaning process the surfaces had to be absolutely free from dirt or foreign substances which might interfere with the application of subsequent finishes or with the further processing of the article. The careful and time-consuming rinsing action, necessary to free the cleansing agent from the product, materially reduced production speeds and indirectly increased costs. Thus, the requirements for a new synthetic industrial cleaning compound were: fast action, efficiency and ease in rinsing. Synthetic detergents have not only satisfied these requirements, but could also be "tailor made" to the job.

In the mid-1930's, synthetics for consumer use were marketed, but without great success. Procter and Gamble Company was a pioneer in this field with "Drene" shampoo and "Dreft" washing powders. Colgate-Palmolive Company followed shortly thereafter with "Halo" shampoo and "Vel" washing powder and both companies introduced liquid dentifrices using synthetic detergents as the cleansing agent (i.e., "Teel"). "Spic and Span", a non-sudsing syn-

thetic for use on walls and floors was brought out by Procter and Gamble shortly before World War II.

Shortages of household soap products in the War and post-War period immediately increased consumer interest in synthetic detergents. In late 1947, synthetics for consumer use emerged as a definite competitor to soap.

[fol. 1153] B. The Detergent Market—Synthetics vs. Soap

The revolution of the detergent industry, from soap to synthetics, is shown in Table I and graphically in Chart I. In 1948, synthetics had only 12% of all detergent sales (400 million pounds out of 3.4 billion); but by 1952, four years later, it had captured 47% of the 3.3 billion pound market. As of the middle of 1953, synthetics had surpassed soap, accounting for about 55% of total detergent sales.

Even overshadowing the rapid rise of synthetics has been the spectacular growth (percentagewise) of the liquid portion. Sales were a trifling $7,900 in 1948; by 1952 they were over $22 million (from 89,000 gallons to 6.2 million gallons). In the first 6 months of this year, dollar sales reached $19.7 million (5.1 million gallons). A reasonable estimate for the full year should be $45-50 million (12.5 million gallons).

C. The Packaged Market

The packaged market is the household (consumer) portion of detergent sales. As shown in Chart II, synthetics in this market are estimated to outsell packaged soaps by about 3:1, capturing an estimated 75% of total sales by the end of 1953. Five years earlier, in 1948, packaged synthetics ran a poor second having a penetration of only 20% (Table II A).

As for liquids, about half of all sales reach the consumer, the other half going to industry. In its first year of introduction to the housewife, 1949, liquid synthetic sales amounted to one-quarter of a million gallons (2 million pounds), only three-tenths of one percent of all consumer synthetic detergent purchases. By 1952, the liquid portion rose to 1.7%, 3.1 million gallons (25 million pounds), more than an 11-fold increase. Sales in the first half of 1953 show liquids at a 2.4% penetration, having a sales volume of 2.5 million gallons (20 million pounds).

[fol. 1154]

Table I

Total Detergent Sales
for Dishwashing and Laundry
(Packaged and Bulk)

	Total Synthetics*		Soap**		Total Detergent Sales
	(MM #)	% of Total	(MM #)	% of Total	(MM #)
1948	400	12	3030	88	3430
1949	710	20	2850	80	3560
1950	1090	28	2860	72	3950
1951	1260	34	2410	66	3670
1952	1530	47	1760	53	3290
1953 (6 mos.) ..	900	55	750	45	1650
1953 (Est.)	1900	57	1450	43	3350

*—Solid and Liquid.

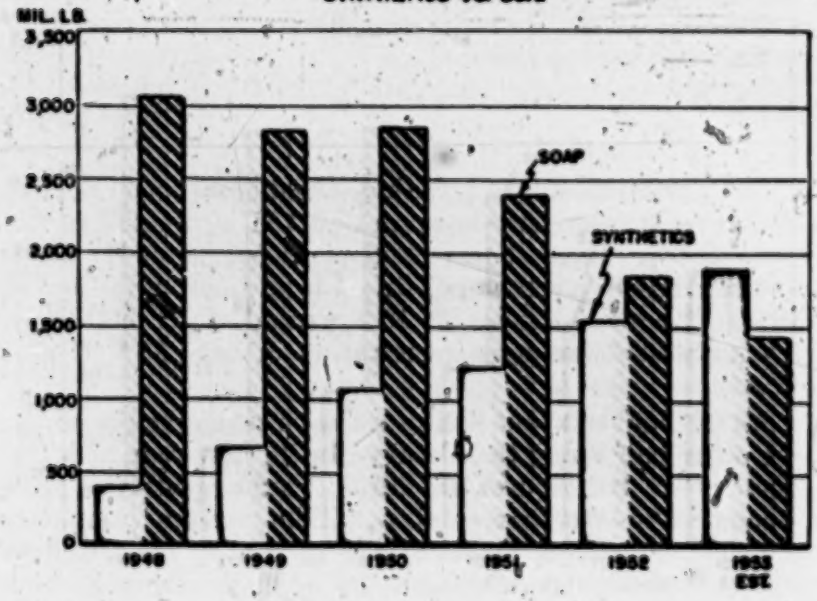
**—Includes: Bars (Toilet, Yellow and White), Granulated, Flakes and Chips, and Powders.

Source: Sales Census, Assoc. of American Soap & Glycerine Producers, Inc. Chemical and Engineering News, 9/1/52.

CHART I

TOTAL DETERGENT SALES

SYNTHETICS VS. SOAP



[fol. 1155]

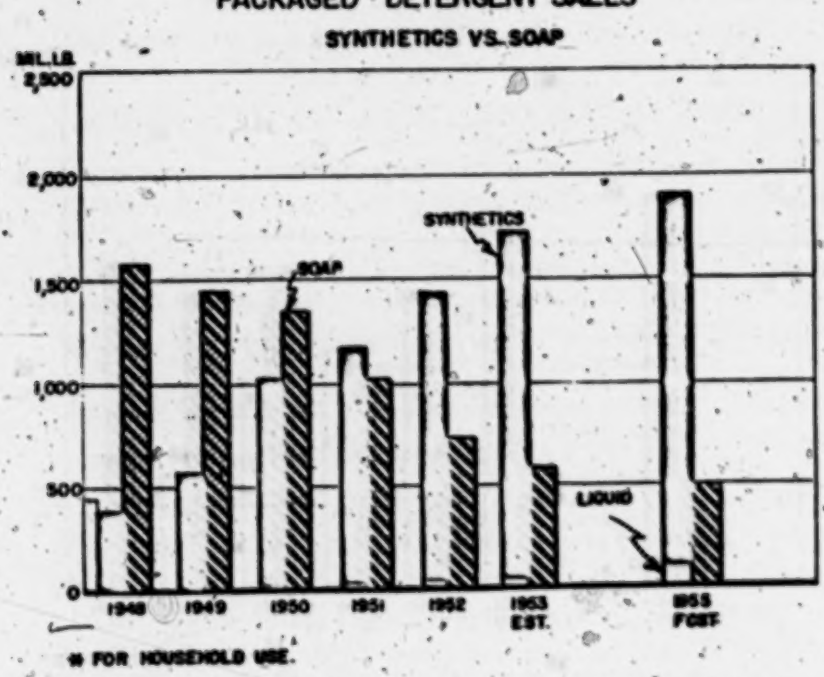
Table II A

Total Packaged Detergent Sales*
(Laundry and Dishwashing)

	Total Synthetic Detergents (MM #)	% of Total	Soap (MM #)	% of Total	Total Packaged Detergent Sales (MM #)
1948	380	20	1570	80	1950
1949	670	31	1460	69	2130
1950	1030	43	1350	57	2380
1951	1180	54	1020	46	2200
1952	1440	66	740 (Est)	34	2180 (Est)
1953 (6 mos.)	840	71	340 (Est)	29	1180 (Est)
1953 (Est.)	1730	75	570	25	2300

*—Packaged Sales denotes household use.

CHART II



[fol. 1156] In other words, retail sales of liquid synthetics in the first 6 months of this year equalled 80% of the total liquid synthetic retail sales in all of 1952. This performance does not include any sales activity of "Lux" since the Lever Brothers' product did not start national distribution until July.

These figures are reported by the Sales Census of the Association of American Soap and Glycerine Producers Inc. (a trade organization whose membership exceeds 80% of the entire industry) and are shown in Table II B.

Table II B

Breakdown of Packaged Synthetic Detergent Sales

	Liquid Synthetics* (MM #)	% of Total	Solid Synthetics (MM #)	% of Total	Total Sales of Synthetic Detergents (MM #)
1948	—	—	380	100.0	380
1949	2	.3	668	99.7	670
1950	10	1.0	1020	99.0	1030
1951	23	1.9	1157	98.1	1180
1952	25	1.7	1415	98.3	1440
1953 (6 mos.)	20	2.4	820	97.6	840
1953 (Est.)	50	2.9	1680	97.1	1730

*—Liquids converted to pounds on a basis of 8 pounds (16 fluid ounces per pound) to the gallon.

[fol. 1157] D. Brand Competition—Liquid Synthetics

Currently competing for the consumer's favor are five liquids whose product specifications are shown below:

Brand Name	Manufacturing Co. (Filling Loc.)	Class and Formula	% Concentrated	Type
"Joy"	Procter & Gamble (Cincinnati)	Not disclosed	Not disclosed	Not disclosed
"Glim"	B. T. Babbitt (not disclosed)	Ethylene oxide condensation of an alkyl phenol	83%	Nonionic
"Rol"	Fels & Company (not disclosed)	Not disclosed	Not disclosed	Anionic
"Lux"	Lever Brothers (contract fillers)	Not disclosed	Not disclosed	Anionic
"Chat"	Antara Chemicals Div. General Aniline (not disclosed)	Compounded for mechanical dishwashing	Not disclosed	Anionic

The lion's share of this market is held by "Joy", 80-85%, while "Glim" held second place prior to the introduction of Lever's "Lux". Both Lever and Fels seem to be pretesting their products market by market.

"Lux" is apparently making great strides. According to recent information, the original sales goal, approximating 18 million 12-ounce cans and 6 million 22-ounce cans, in the first 12 months after introduction, is being greatly exceeded.

Available information suggests a 60:40 sales ratio favoring the 12-ounce versus the 22-ounce can. While it is yet too early to determine national consumer acceptance of the "Lux" product, the company (Lever Brothers) is filling the national pipeline and has plans under consideration for expanding capacity to meet expected demand.

At present, their product is being manufactured and packed in the East by Fluid Chemical Co. (Newark, N.J.) and in the Midwest by Stepan Chemical Co. (Chicago). The reason for employing outside manufacturers and packagers is the lack of producing and filling equipment by Lever Brothers.

[fol. 1158] The only canned product on the market "Lux" sells 12 fluid ounces for 39¢. The price is claimed to allow dealers a large mark-up, yet still enable them to sell at prices lower than competitors ("Joy" is 7 ounces for 29¢; "Glim," 6 ounces for 27¢).

Colgate-Palmolive, not an entrant as yet, is sitting back and watching. They admit having a product in readiness, one which can compete with "Joy" and "Lux", but they are awaiting the results of the "Joy-Lux" battle. If the results indicate an over-all increase in the use of liquids rather than a competitive realignment, Colgate and other manufacturers will probably enter the liquid market. Apparently, they are following the line of least resistance, letting Procter and Gamble and Lever educate the public to the use of liquid synthetics for dishwashing.

E. Prospects for Growth of Liquid Synthetics

The outlook for liquid synthetics is especially bright. Most of the companies have high hopes but because of the newness of the liquid product (it has been out since 1949, but only heavily promoted since mid-1951), they are treading cautiously.

One fact is certain. The consumer has taken to liquid synthetics, at least for the dishes. A recent Consumer Analysis (1953) of 17 markets across the country, presents the consumer preference picture for the use of cleansing agents for dishwashing. The results of this survey are shown in Table III following:

[fol. 1159] **Table III**

Consumer Brand Preference for the Five Ranking Dishwashing Product Brands
(Rank)

Market	(1) Tide	(2) Joy	(3) Dreft	(4) Vel	(5) Ivory Bar
Portland, Me.	3	5	11	—	1
Washington, D.C.	1	2	5	6	3
Columbus, O.	1	2	4	8	6
Cincinnati, O.	1	2	3	6	15
Indianapolis, Ind.	1	3	2	5	—
Milwaukee, Wisc.	2	1	4	3	10
St. Paul, Minn.	2	3	1	5	7
Duluth-Superior, Minn.	1	4	8	6	3
Omaha, Neb.	2	1	4	3	—
Salt Lake City, Utah	1	3	4	2	11
Seattle, Wash.	3	4	7	9	1
Long Beach, Calif.	1	2	4	3	9
Sacramento, Calif.	1	2	4	3	5
Fresno, Calif.	1	4	3	2	10
Modesto, Calif.	1	3	4	2	6
San Jose, Calif.	1	3	4	2	—
Honolulu, Hawaii	1	3	9	8	2

The table is interesting in many respects. Notice that of the five leading products used for dishwashing, the first four are synthetic detergents. Also interesting is the fact that "Joy", the newest product of the five (national distribution started in mid-1951), has reached second place in consumer preferences. It almost certainly indicates that the consumer is educated to the use of liquids, and now that another national brand has hit the market, increased usage will probably result.

One industry official has estimated that liquids could ultimately reach as high as 6% of the packaged synthetics market (liquids now have 2.4% of all poundage sold), but that was prior to any evaluation of the national introduction of "Lux" liquid by Lever Brothers. Taking into account the acceptance of "Lux" and the extent of promotion and expansion programs scheduled for the product, this figure could easily exceed 5% by 1955 and continue to 10% with the entrance of new products and likely conversion of some present solid form synthetics to a liquid state.

[fol. 1160] This share of the market indicates a volume level of about 100 million pounds (12.5 million gallons computed at the rate of 128 fluid ounces to the gallon) in 1955, as shown in Table IV and Chart III. *When the 10% level*

is reached, the volume should approximate 200 million pounds (25 million gallons).

Table V indicates the can requirements necessary to package these forecasted liquid production figures, together with Continental's requirements at various levels of participation in the market.

Originally, three factors were believed to be limiting influences to the growth of liquid synthetics. They were:

(1) the limited use for liquids; i.e., for dishes and fine fabrics,

(2) the original sales appeal of liquids for use in hard-water areas,

(3) the extent to which the manufacturers would be willing to promote the liquid so soon after the consumer's acceptance of powdered synthetics.

Point by point, in light of the recent developments in the liquid field, the importance of these factors was found to have been greatly overstated. Undouhtedly, the manufacturing companies would not have invested further in expensive manufacturing facilities and promotions if they felt that the liquid market was not a profitable one, or one of short-lived growth. Although "Joy" is estimated to have 80-85% of the market, "Lux" and "Rol" have become growing competitors, and Colgate has a product ready for introduction.

Because of its water-softening properties, liquids originally met with great success in the hard-water areas. Recent reports, however, indicate that the soft-water areas have also accepted liquids, a fact confirmed by data based on monthly grocery inventory surveys conducted by 12 newspapers in Boston, Winston-Salem, Cincinnati and Indianapolis. The sales in soft-water areas have been quite notable, suggesting that detergents sell equally well in both soft- and hard-water areas, given equal merchandising attention.

[fol. 1161]

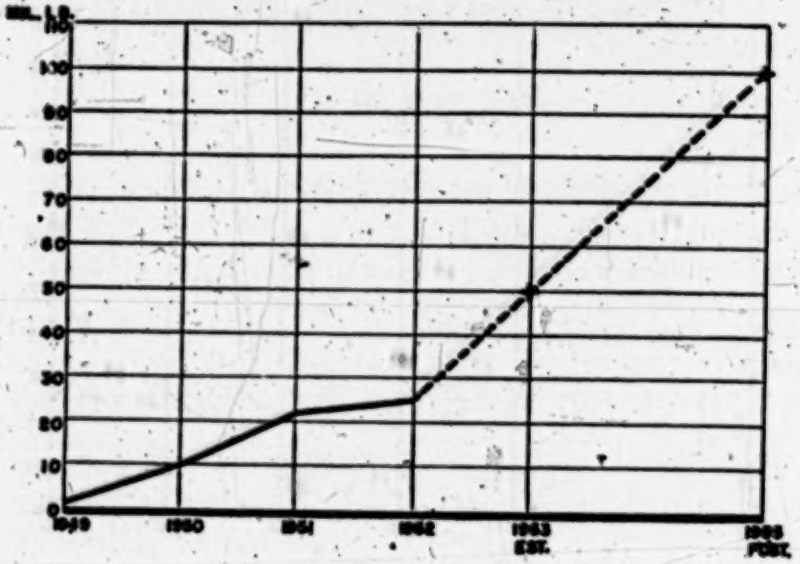
Derivation of the Packaged Liquid Synthetic Detergent Demand

	Population (Excluding Armed Forces Overseas)	Per Capita Packaged Detergent* Consumption	Packaged Detergent Market	Synthetic Detergent Portion	Total Synthetic Market	Liquid Share	Liquids as % of Tot.
1952	(MM) 153	(lbs.) 14.2	(MM lbs.) 2180	(%) 66	(MM lbs.) 1440	(MM lbs.) 25 (3.1 mm gals.)	Synthetics 1.7
1953 (Est.)	155	14.8	2300	75	1730	50 (6.5 mm gals.)	2.9
1955 (Est.)	160	15.0	2400	80	1900	100 (12.5 mm gals.)	5.3

*—Includes soap and synthetic detergents.

CHART III

PACKAGED LIQUID SYNTHETIC DETERGENT SALES



[fol. 1162]

Table V

Can Requirements for Liquid Synthetic Detergents

	Liquids as % of Packaged Syndet Market	Total Number of Gallons* (millions)	Equivalent Number of 12 oz. Cans (millions)	Continental Requirements at Percent Participation 25%	40% (millions)	50%
1953	3	6.5	69	17	28	35
1955	5	12.5	133	33	53	67
?	10	25.0	267	67	107	134

* Liquids converted to gallons on a basis of 8 pounds (128 fl. ounces) to the gallon.

[fol. 1163] Liquids are being pushed by heavy advertising campaigns. Procter and Gamble spent almost $2 million on "Joy" in 1952, securing 80-85% of the *$17 million packaged liquid market*, or about 14¢ per sales dollar. In the first 5 months of this year, the expenditure has exceeded $1.3 million. Lever Brothers, attempting to capture 25% of this market, has appropriated over $1 million for this year. "Glim", the B. T. Babbitt product, has increased its expenditure from $70,000 in 1952 to $93,000 in the first 5 months of 1953. Thus, it appears that in addition to a fierce com-

petitive battle developing, leading manufacturers such as Procter and Gamble and Lever are quite willing to promote this new entry, liquid synthetics, and to develop this market in direct competition with their established brands of powdered detergents.

[fol. 1164] II. The Metal Package

A. Technical Specifications of the Can

Until "Lux" was introduced in a metal can liquid synthetics were marketed in glass containers because at liquid's inception no satisfactory can lining had been found which would resist the chemically-active liquid synthetic detergents. Extensive and elaborate tests were conducted to determine the best packaging material and glass won out, probably by default.

With its metal-packed detergent, Lever can radically alter liquid detergent selling. The units containing the fluid, when submitted to our Research Department last July, were found to have the following specifications:

Can size: 211 x 508 over the double seams
Capacity: 15-16 fluid ounces
Blackplate can with cemented side seam
Base Coat (Body & Bottom)—Phenolic
Top Coat (Body & Bottom)—Vinyl
Can size: 316 x 650 over the double seams
Capacity: 1 pint 6 fluid ounces
Blackplate can with cemented side seam
Base Coat (Body & Bottom)—Phenolic
Top Coat (Body & Bottom)—Vinyl

The cans have a dripless metal spout crimped to a slightly domed top.

Despite the fact that the can had been developed through the joint efforts of American Can and Lever Brothers, neither company is entirely satisfied with it, and both companies are working on improvements. Reportedly Lever accepted the can only to facilitate getting their product on the market.

[fol. 1165] B. Glass versus Metal

Of the two materials, glass and metal, the can appears to offer numerous advantages. For the manufacturer, the all-around lithography results in a brilliantly colored display package while the can itself acts as the primary package. The glass container, on the other hand, is further packaged in a cardboard folding carton for additional protection. Non-breakability of the can reduces loss and waste at the filling machines, and while in transit. In the stores, it can be stocked compactly and securely, offering a colorful counter or shelf display. The retailer derives additional benefit through elimination of loss due to breakage.

Non-breakability is a vital consideration for the housewife who must frequently handle the package with wet, slippery hands. The dripless spout prevents the liquid from dripping down the sides of the can when being poured, eliminating, in some measure, one of the causes of slipperiness. Also, of course, the can will not become wet and buckle, as do cardboard packaged flakes and powders, and it occupies relatively little shelf space.

The disadvantages of the can are apparent, but are generally not of critical importance compared with the breakability problem with glass. When wet, the can is almost as slippery as the glass container; the liquid product is not immediately visible; the base of the can is prone to rust when in contact with wet surfaces (aluminum or aluminum coated bottoms should eliminate the rust ring); and prolonged shelf life will probably result in corrosion particles through interreaction of the detergent and metal.

C. Prospects for the Metal Can

At this time, the outlook for metal packed liquid synthetic detergents appears to be promising. As stated earlier, glass became the first container material because can linings were found to be unsatisfactory. Research has solved this problem, however, and a canned product is now already on the market.

[fol. 1166] Lever Brothers has conducted a consumer survey designed to measure the consumer preferences of container materials for their liquid product. The results indicated *a significant preference for metal.* Couple this with

the report that Procter and Gamble is willing to modify the formulation of "Joy" so as to be a more compatible product and it becomes conceivable (and probable) that virtually all liquid synthetics will be packed in metal cans. The fact that Colgate (who now is taking the "wait-and-see" attitude) had been discussing their product with several can companies gives added impetus to the trend toward metal cans.

The market for synth ic detergents, both solid and liquid, has been captured by the large soap companies because they already possessed the marketing machinery and promotional know-how for the distribution of such products and because synthetics would have eventually forced these soap companies to relinquish the major portion of their sales—soap for household use—to this new product. Historically, these three companies, Procter and Gamble, Lever and Colgate, have captured over 90% of the sales of household synthetic detergents. Because of this dominance the merchandising plans of the rest of the industry would follow the "Big Three".

D. Competition

American Can is out in front as the supplier of liquid detergent cans. Their can is being used by Lever Brothers. But the fact that they already have a can on the market does not necessarily make them the established leaders in the field. Each liquid brand, with separate and specific formulations requires special enamels and poses numerous problems. In a sense, every new manufacturer requires the redesigning, retesting and redeveloping of a liquid detergent [fol. 1167] can. For this reason, among others, no one can company could hold the entire market. The opportunities are excellent for Continental despite the initiative that American Can has gained, but no time should be lost in making a strong bid for a share of this rapidly developing market.

[fol. 1168] III. Technical Notes on the Nature of Liquid Synthetic Detergents

A detergent is any chemical material which has cleansing properties—the oldest being soap, the newest, synthetics! Synthetic detergents have been defined by the U. S. Bureau

of Standards as non-soap cleansing agents produced by organic synthesis. They take the usual forms of soap—bar, granule, flake, powder and liquid.

Although the number of synthetic detergents is legion, retail sales of household detergents are restricted almost 100% to two basic types, the alkyl aryl sodium sulfonates and the alcohol, or alkyl, sulfates.

Alkyl aryl sodium sulfonate is derived from either coal tar or petroleum sources, with benzene being the most important raw material from an economic viewpoint. The manufacture involves three steps:

(1) the chlorination of a kersene fraction;
(2) the condensation of alkyl chloride with benzene or toluene, and
(3) the sulfonation of the alkyl aryl compound. (The third step may be carried out either by the manufacturer of the alkyl aryl or by the soap companies that complete and distribute the product.) At the final step, alkyl aryl sulfonate is mixed with builders to give the degree of detergency desired.

Alcohol sulfate (technical nomenclature, "alkyl sulfate") is a sulfated derivation of a fatty alcohol. Its manufacture depends on:

(1) High pressure hydrogenation of fatty acids (stearic, oleic, palmitic and lauric) to form fatty alcohols, with chromium oxide or copper oxide acting as the catalyst; or
(2) Sodium reduction.

The alcohol is sulfated by either a batch or continuous process. The finished product for retail distribution is usually manufactured as a 30-35% active base, with sodium sulfate added as a builder, or as a 20% active base with sodium sulfate and sodium tripolyphosphate plus other materials as builders.

[fol. 1169] Synthetic detergents constitute three classes depending on whether the active ingredient is electrically charged positively, negatively, or is neutral. The three classes are technically designated as cationic, anionic and nonionic, respectively. The anionics, constitute by far the

largest volume. They contain practically all the important retail products and the major portion of the industrial products.

Because synthetics have special built-in properties and are made of different ingredients and by different processes, they do not have the natural drawbacks of soap. Syndets (synthetic detergents) have one property that make them highly desirable for use with hard water. Their calcium and magnesium salts are soluble, therefore, their use will not form scum or curds, leaving a grease ring around the dishpan, nor will any dulling films adhere to the material being washed. Synthetics also have the greater quality of reducing surface tension, thus allowing water to penetrate fabrics more quickly and thoroughly. They disperse and suspend dirt particles, and emulsify oil and grease, thus requiring less rinsing.

They are individually formulated to clean textiles, metals, and many other industrial materials; other "specially tailored" syndets are available for home use solely in washing machines or as wall and floor cleansers.

To the housewife, synthetics have three advantages over soap; time-saving in washing and rinsing, no soap film means no dulling of washable colors; and the sudsing action is built into the synthetic, the rate of which is dependent upon the desires of the manufacturer and the consumer.

The above qualities and advantages apply equally well to both solid and liquid synthetics; but liquids have certain advantages over the solids:

[fol. 1170] (1) there are no granules which can tear or injure the fabric,

(2) they do not contain strong alkalies, hence are milder and more readily applicable to fine laundering,

(3) they are more readily soluble,

(4) they are not "dusty", and

(5) they are easy to use.

But all is not milk and honey with synthetic detergents. Most synthetics have a much stronger defatting effect than does soap. These synthetics deplete the natural oils of the skin, causing in some some instances, "dishpan hands". They also extract the lubricating oils from washing machine bearings which come in contact with them.

These disadvantages in one way may, of course, become advantages in other ways. To some extent, correction of disadvantages lies in selecting the appropriate type of detergent for each use. To date, the advantages of synthetic detergents outweight the disadvantages, enough to increase the market for synthetics at a rapid rate, whereas the soap market has been steadily declining.

From the manufacturer's point of view, the relative stability of raw material prices gives added impetus to the promotion of synthetics. Tallow, the basic raw material for soap, has fluctuated between 5 and 18 cents per pound for the past few years. In the meantime, sodium alkyl aryl sulfonate, the principal raw material for synthetics, has been consistently between 13 and 15 cents per pound. Such price stability is a real advantage, and one that is in addition to the natural chemical edge which synthetics have over soap.

[fol. 1171] GOVERNMENT'S EXHIBIT 434

June 4, 1947

Comparative Costs

Single Trip Versus Returnable Beer Containers
Year 1943

Reprinted From "American Brewer"

The "American Brewer" magazine recently completed a series of articles which compared packaging and delivery costs between various types of beer containers. The articles were based on a report dated June 20, 1944 prepared by Stevenson, Jordan and Harrison, Inc. for the Glass Container Association and covered data assembled during the year 1943.

The report endeavored to establish the variation in packaging and delivery costs or the cost differentials for a number of different styles of beer containers. It did not attempt to calculate the complete cost of a case of beer. No selling or administrative cost or profit figures were included. Neither were any tax allowances made.

The cost data included an arbitrary figure for the beer in each package, plus the cost of the cans or bottles, labels,

crowns, cases, direct and indirect labor, overhead, and wholesaler or distributor and retail delivery costs.

The survey included six breweries, two in the East, three in the Middle West and one in the West. It also included nine distributors, three in the East, three in the Middle West, and three in the West. Large and small breweries and distributors were included.

Actual cost and time studies were made on 12 and 32 ounce export and steinie bottles; one-trip bottle costs were estimated by adjusting the army overseas pack costs; can costs were estimated based on available records from past can operations.

Returnable bottles were estimated to make 18.3 trips, wood cases—25 trips and returnable cartons—10 trips.

Drivers' wholesale and retail delivery times were determined by time studies.

[fol. 1172] The beer cost was fixed for all 12 ounce and 32 ounce containers and was calculated on a beer cost of $2.75 per barrel less 2 percent loss and one barrel was estimated to yield 13.50 cases of 12 ounce containers to cost $.2037 per case and 10.13 cases of 32 ounce containers to cost $.2715 per case. These figures were employed throughout the study for the beer cost regardless of type of container.

The following prices for bottles and cans were used for all breweries:

	Per Gross	Per Thousand	Per Case
12 oz. Export Bottles	$2.90	$20.14	$.4834
12 oz. Steinie Bottles	2.60	18.06	.4334
12 oz. Single-trip Bottles and Cartons	2.35	16.32	.3917
12 oz. Cone-top Cans and Cartons	3.49	24.24	.5818
12 oz. Flat-top Cans and Cartons	3.43	23.85	.5724
32 oz. Returnable Bottles	4.65	32.29	.3875

Hourly labor rates in the breweries ranged from $.92½ to $1.27 per hour plus payroll taxes. In warehouses they ranged from $.67 to $1.04 per hour. On delivery trucks drivers ranged from $.72 to $1.70 and helpers $.57 to $1.21 per hour.

Below we are summarizing briefly the information appearing in the articles:

(1) The high original cost of the single-trip package is emphasized—both for the cans and the one-trip bottle—as against the returnable bottle.

(2) The articles indicate the extent to which the economies derived through use of single-trip packages tend to offset a portion of their higher original cost.

(3) Labor man hours required in the brewery packaging operations were estimated as being reduced by 1/3 when 12 ounce flat top cans were used as against an equal quantity of returnable or single-trip bottles.

(4) Higher overhead costs per case were indicated for the returnable bottle as against either the one-trip bottle or the flat top can.

[fol. 1173] (5) The following summary was made of the cost per case of beer packaged in various packages.

Cost Per Case of Beer at the Brewery When Packed in the Following Style of Packages

	Average Cost per Case
12 oz. Steinie—Wood Case	$.4402
12 oz. Steinie—Returnable Carton	.4342
12 oz. Export—Wood Case	.4593
12 oz. Export—Returnable Carton	.4577
12 oz. Single-Trip Bottle—Carton	.7647
12 oz. Flat Top Can—Carton	.8812
12 oz. Cone Top Can—Carton	.9068
32 oz.—Wood Case	.5055
32 oz.—Returnable Carton	.5050

(6) The articles indicate that the use of cans makes possible a 33 to 39 percent reduction in delivery time when making wholesale truck deliveries as compared to the returnable bottle.

(7) A 22 to 27 percent time saving in retail delivery time is effected through use of the can over the returnable bottle.

The average saving in wholesale and retail deliveries in cents per case through use of the non-returnable packages over returnable packages was estimated at 4.66 cents per case.

(8) It was estimated it costs a retail store from 2.9 to 6.4 cents to handle each case of empties.

(9) The articles indicated that the increased 12 ounce flat top and 12 ounce cone top can cost differentials

over the 12 ounce single-trip bottle; the 12 ounce steinie bottle in a returnable carton; the 12 ounce steinie bottle in a returnable wood case or the 12 ounce export bottle in a returnable wood case, delivered at the following shipping destinations, were as follows:

Increased Delivered Cost Differentials of the 12 Oz. Flat Top Can Over Competing Beer Packages

Type of Beer Package	New York City to: Local Del. by Brewery	Hartford 108 Mi.	Boston 229 Mi.	Buffalo 396 Mi.	Cleveland 580 Mi.	Chicago 907 Mi.
Single-Trip Bottle	.117	.104	.100	.096	.092	.084
Steinie Bottle Returnable Carton. Export Bottle Wood Case	.416	.349	.333	.317	.302	.271
	.391	.292	.265	.239	.216	.166

[fol. 1174] Increased Delivered Cost Differentials of the 12 Oz. Cone Top Can Over Competing Beer Packages

Type of Beer Package	New York City to: Local Del. by Brewery	Hartford 108 Mi.	Boston 229 Mi.	Buffalo 396 Mi.	Cleveland 580 Mi.	Chicago 907 Mi.
Single-Trip Bottle	.142	.131	.128	.124	.121	.115
Steinie Bottle Returnable Carton. Export Bottle Wood Case	.442	.376	.361	.345	.331	.302
	.417	.319	.293	.268	.245	.196

(10) The articles point out that all the savings which might accrue through use of single-trip containers have not as yet been determined. It emphasizes their popularity and expresses the opinion that a cost differential of approximately 25 cents per case against the cans could be absorbed due to savings incurred through use of a single-trip container.

In abstracting and preparing the series of articles from the original report they were greatly expanded. This did

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Note: The figures shown are based on the 1943 survey. Since that time freight, labor, package and other costs have increased. The differential against the can has increased due to a greater proportionate increase in can prices.

not make for brevity and to a degree makes it difficult to absorb their contents.

In order to save time we have grouped the various articles according to the subject covered and if they are read in the order indicated, we believe you will be able to secure a good knowledge of the operations involved and also the cost, by operation, of packaging beer.

Subject and Articles

Beer, Container, Label, Crown and Case Costs at Brewery

See Article—"How Crowns, Labels and Cases Affect Total Packaging Costs"

Packaging Labor Costs and Labor Man Hours per Case of Beer at Brewery

See Articles—"Why and Where Packaging Costs Vary"
—"How Man Hours Affects Packaging Costs"
—"Man Power—The Key to Bottling Costs"
—"The Effect of Wages on Brewery Packaging Costs"

[fol. 1175] Packaging Overhead Expense

See Article—"Overhead—How It Affects the Cost of Beer"

Summary of Packaging Cost at Brewery

See Article—"Why Beer Packaging Costs Can Be Further Lowered"

Warehousing and Delivery Costs for Each Style Container

While there are many variations in methods employed to deliver beer from the brewery three principal ones are used.

(1) Retail deliveries direct from brewery
(2) Wholesale deliveries to local branches, with empties returned to brewery by the retail delivery trucks.
(3) Wholesale deliveries to branches or distributors where full cases or empty cases must be warehoused.

These costs are analyzed in the three following articles:

(1) "Transportation Costs in the Wholesale Distribution of Beer" (or from Brewer to Wholesale Distributor)
(2) "Transportation Costs in the Retail Distribution of Beer" (or from Wholesale Distributor to Retailer)
(3) "How Delivery and Warehousing Affect Total Cost of Beer Distribution."

Effect of Shipping Distance on Cost of Delivering Beer in Various Styles of Packages

A comparison was made in three articles of the shipping and delivery problem and costs as presented (1) by the varying shipping weights of the different style containers and (2) by container returns.

The articles also indicated the difference in cost between the various packages, when shipped to destinations at varying distances from the brewery.

The three articles are as follow:

"Effect of Package on Competitive Position of Large Brewing Centers"
"Analysis of Delivery Costs Shows Wide Variation in Distribution Methods"
"How Costs Were Determined in Analysis of Beer Packaging and Delivery"

[fol. 1176] Savings in Retail Stores Through Use of Non-Returnable Containers

See Article—"Analyzing the Advantages of the Single-trip Container"

As stated before the figures represent conditions in 1943 and in order to have a more up-to-date comparison, we will endeavor to adjust the figures for the increased container costs, labor expense and added freight charges and send you this data at a later date. Any figures sent would only be approximate as this is the best we will be able to do with the data available.

The articles represent a rather interesting packaging study and while they indicate the cans cost more than other

styles of containers, the differentials are not as large as are frequently reported. The articles also emphasize where the can saves money.

In view of the fact the information is not current, discretion will have to be exercised in its use.

G. H. Muth

GHM:em

[fol. 1177] GOVERNMENT'S EXHIBIT 435

#43—Head Office
Mr. T. C. Fogarty June 10, 1947.

Comparative Cost Differentials for Beer Packages
Glass Bottles vs. Metal Cans

We have reviewed the Stevenson, Jordan & Harrison survey on beer packaging dated June 20, 1944. This was prepared for the Glass Container Association and reported certain beer packaging and distribution costs for the year 1943. The figures as shown in the report indicated the extra cost differential incurred through the use of cans as against various styles of bottles, when both were employed for local delivery and to points up to 907 miles from a brewery, using New York as the point of origin.

The report also endeavored to establish the variation in packaging and delivery costs or the cost differentials for a number of different styles of beer containers. It did not attempt to calculate the complete cost of a case of beer. No selling or administrative cost or profit figures were included. Neither were any tax allowances made.

The cost data included an arbitrary figure for the beer in each package, plus the cost of the cans or bottles, labels, crowns, cases, direct and indirect labor, overhead, and wholesaler or distributor and retail delivery costs.

The survey included six breweries, two in the East, three in the Middle West and one in the West. It also included nine distributors, three in the East, three in the Middle West, and three in the West. Large and small breweries and distributors were included.

The entire report is covered in a special abstract dated June 4 compiled by this department. We have, in addition, prepared the following data from the report and which we believe will give you the most important comparative figures between cans and bottles.

Table No. 1

This table indicates the cost of beer in the various styles of packages when delivered either locally by the brewer or distributor or as far as Chicago—907 miles from New York.

On this table we show the 1943 reported cost and have added figures to adjust for estimated 1947 increased package cost, labor (plus 30%) and freight cost.

Table No. 2

This table indicates the cost advantage of one style of bottle over other styles of bottles also over metal cans.

[fol. 1178] Table No. 3

This table indicates the increased cost differential of the 12 ounce flat top and 12 ounce cone top cans over the various types of bottles, when both style containers are used either for local delivery or for delivery 907 miles from New York.

Table No. 4

Miss Lynch has also prepared a chart which gives a visual picture of the delivered cost spreads between the various styles of containers.

It must be kept in mind all figures indicate only approximate packaging differentials.

Bottle and Can Cost Per Case and Per Trip

Below is a comparison of the per case and per trip cost of bottles and cans as between 1943 and 1947. Returnable bottles are estimated to make 18.3 trips and returnable cartons—10 trips.

	1943		1947		
	Per Case	Per Trip	Per Case	Per Trip	
12 oz. Export Bottle—	.4834	.0267	.6715	.0367	
Add—Returnable Cartons	.2250	.0225	.2250	.0225	
		.0492		.0591	(.0792)
12 oz. Steinie Bottle—	.4334	.0237	.6031	.0330	
Add—Returnable Cartons	.2530	.0253	.2530	.0253	
		.0490		.0583	(.0783)
12 oz. Single Trip Bottle and Cartons	.3917	.3917	.4560	.4560	
	.....	.....	.4320	.4320	
12 oz. Cone Top Can and Cartons	.5818	.5818	.68948	.68948	
12 oz. Flat Top Can and Cartons	.5724	.5724	.66148	.66148	

[fol. 1179] Note: Bottle costs are delivered; can costs shown are f.o.b. can factory and we have added 3 cents per case freight to build up delivered prices in other tables in this report.

Two prices are shown for single trip bottles—one for the 7 3/8 ounce and the other for the new 6½ ounce.

1947—returnable carton prices are low and we have estimated the per trip cost should be increased by approximately 2 cents.

Cost For Case of Filled Beer at the Brewery

The cost of a filled case of beer at the brewery—using only the packaging costs, plus labor and overhead, and adding an arbitrary beer cost figure of 20.37 cents for each case of 24/12 ounce and 27.15 cents for each case of 12/32 ounce containers was estimated to be as shown below. The 1943 figures are from the report and the 1947 figures were estimated.

Type of Package	1943 Cost per Case	1947 Estimated Cost per Case
12 oz. Steinie—wood case	.4402	.4827
12 oz. Steinie—returnable carton	.4342	.4749
12 oz. Export—wood case	.4593	.5071
12 oz. Export—returnable carton	.4577	.5067
32 oz. Quart—wood case	.5055	.5554
32 oz. Quart—returnable carton	.5050	.5541
12 oz. Single Trip Bottle—carton	.7647	.83412
12 oz. Flat Top Can—carton	.8812	1.0227
12 oz. Cone Top Can—carton	.9068	1.0614

The can cost differential increased during 1947 over 1943, due to the greater proportional can and can carton price rise. Due to the 16.3 trippage estimated for bottles any increase in returnable bottle cost shows up only as a very small added amount. The same applies to returnable wood cases which are estimated to make 25 trips and returnable cartons—estimated to make 10 trips. In comparing the figures we believe approximately 2 cents per case should be added to the 1947 returnable bottle case costs, as our costs are low.

[fol. 1180] The can and can carton costs were increased over the 1943 report figures by approximately 10.532 cents per case of 24/12 ounce cone top cans and 8.908 cents per

case of 12 ounce flat top cans. Three cents per case was added for freight on cans from factories to brewery as this figure was omitted in the original report. Other figures which we have indicate can and can carton cost increases per case from 1941 to 1947 for the 12 ounce cone top can were 10.154 cents and for the flat top can—9.754 cents per case.

* * * * * * * * *

We do not believe that, up to the present time, the cost savings and conveniences which result from use of a one trip can have been fully determined. We do know there is a decided demand for non-returnable packages and this situation may influence the industry to accept smaller profit margins in order to meet consumer preferences.

The ultimate consumer, we believe, may possibly pay 1 cent more for a 12 ounce can than for the 12 ounce bottle of beer. However, we question if they will pay a larger amount. Any further difference will probably have to be contributed by the brewer, distributor or retailer.

This article gives a reasonably complete picture of the cost of packaging beer in cans and bottles and indicates the form of procedure that might be followed if up-to-date and more accurate data is desired.

G. H. Muth.

GHM:em

cc: Messrs. F. W. Rosenbauer—#43
P. P. Wojtul—#43

P.S. We suggest the abstract dated June 4 be also read, as it is a more inclusive report.

G.H.M.

[fol. 1181] GOVERNMENT'S EXHIBIT 436

August 7, 1947.

Comparative Delivered Costs

12 Oz. Non-Returnable Beer Bottle

vs.

12 Oz. Flat Top and Cap Sealed Beer Cans

Estimated Delivered Cost to Brewer in Eastern Area of 12 Ounce Light Weight Non-Returnable Bottles vs. 12 Ounce Cans—Flat Top and Cap Sealed—Case of 24 each.

12 Ounce—Non-Returnable Bottle—Light Weight—6½ Oz.—Cost per Case

Delivered Cost to Brewer (Eastern Area) including Cartons $2.60 per Gross

Cost per case of 24, including carton	$.4320
Add—cost of labels	.0113
Add—cost of applying labels	.0044
	.4477
Add—cost of spotted crowns	.0366
Total Cost per Case—24 Bottles	$.4843

12 Ounce Cans—Cost per Case

Jersey City Basis

Cans—Flat Top and Cap Sealed	Flat Top at $24.09 per M	Cap Sealed at $24.84 per M
Cost per case of [illegible] cans—no cartons	$.57816	$.59616
Cartons at $80.25+6.50 setup charge	.08675	.....
Cartons at $84.25+6.50 setup charge	.....	.09075
Cost per case of cans f.o.b. our factory	.66491	.68691
Est. Dlv'd Freight—Case 24 cans—.50 per cwt.	.02550	.02550
Est. Delivered Cost of Cans—Case	.69041	.71241
Est. Delivered Cost of Bottles—Case	.48430	.44770
Extra Cost per Case—Cans over Bottles	.20611	.26471

Note.—Cost of crowns has been added to bottle cost when compared to Flat Top cans and omitted when compared to Cap Sealed cans as cap cost would be the same on cap sealed cans and bottles.

[fol. 1182]

—The freight charge added to make up the delivered can cost would vary, in any comparison made, with the shipping distance. The 50 cent per cwt. figure shown represents the current freight rate from Jersey City to Boston or approximately 229 miles. This charge of .0255 cents per case, could be adjusted for shorter distance deliveries.

Estimated Shipping Weights per Case

	Empty	Filled
24—12 Oz. Flat Top—Cans	5.09#	24.50#
24—12 Oz. Cap Sealed—Cans	5.09	25.00
24—12 Oz. Non-Returnable—Bottles	11.66	29.66

G. H. Muth, Commercial Research Dept.

GHM:em

[fol. 1183] GOVERNMENT'S EXHIBIT 438

Continental Can Company, Inc.
100 East 42nd Street
New York 17, N. Y.

June 30, 1949.

To: All District Sales Managers

Subject: One-Way Single Trip Beer Bottle Prices
GB-6-Style—6½ oz. weight
GB-8-Style—8 oz. weight

The attached subject information compares the new one-way beer bottle prices with those previously in effect for both the GB-6 and GB-8 style containers. We have also indicated descriptive information concerning the various types of carriers, and have given an example showing the cost to the brewer of each bottle style packed in Alpak Carriers.

Concerning these price reductions, the glass company claims their volume on one-way beer bottles is picking up, and the increased activity justifies doing all that is possible to create an even larger demand for this package. With this regard, glass container salesmen are requested to urge their customers to apply at least a portion of these savings from lower packaged prices towards advertising and merchandising the one-way glass beer bottle.

Actually, non-returnable beer bottle shipments during the first four months of this year are lagging approximately 1.5 million units or 1.2% behind the same period last year. This price reduction may, therefore, be regarded as a further attempt on the part of the glass manufacturers to maintain their position in the one-way package field.

Commercial Research Department.

ALW:MGG

cc: Messrs. T. C. Fogarty, R. L. Perin, P. P. Wojtul, G. H. Muth, P. E. Fagan, W. M. Cameron, W. P. Murray, O. G. Jakob, J. F. Fenn, P. B. Nold, R. S. Hatfield, G. C. Schepp.

[fol. 1184] GOVERNMENT'S EXHIBIT 439

Continental Can Company, Inc.
100 East 42nd Street
New York 17, N. Y.

July 11, 1949.

To: All District Sales Managers

Subject: Comparative Cost—12 Oz. Non-Returnable Bottles vs. 12 Oz. Cans

The attached sheets of comparative cost data should be helpful to your salesmen who are actually contacting Breweries, and is based on information gathered by this Department and assembled by the Commercial Research Department.

/s./ M. M. Dukehart, Jr.

MMD:aws

CC: Messrs. T. C. Fogarty, F. A. Whittall, H. A. Rapelye, R. L. Perin, F. H. Dillingham, P. P. Wojtul, G. H. Muth, P. E. Fagan, W. M. Cameron, W. P. Murray, O. G. Jakob, J. F. Fenn, P. B. Nold, R. S. Hatfield

7/18—as requested by G. H. Muth

CC: W. M. Tomkins #78, P. E. Pearson #42, A. M. Cameron #6, R. V. Wilson #85, W. J. Mutschler #85, J. S. Snelham #43, Greg Barry #43, S. McKewen.

[fol. 1485] Comparative Cost Data—Cans Over Bottles

12 Oz. Flat Top Beer Cans
12 Oz. Cap Sealed Beer Cans
12 Oz. GB-6 Non-Returnable Bottles
12 Oz. GB-8 Non-Returnable Bottles

(Cases of 24 and per M)

(1)

Comparative Cost per M

	12 Oz. Flat Top	12 Oz. GB-6	12 Oz. GB-8	Cans over Bottles GB-6	GB-8
Chicago	$33.128	$24.125	$26.208	$ 9.003	$ 6.920
Jersey City	33.228	24.125	26.208	9.103	7.020
	12 Oz. Cone Top	12 Oz. GB-6	12 Oz. GB-8	GB-6	GB-8
Chicago	$35.771	$24.125	$26.208	$11.646	9.563
Jersey City	36.171	24.125	26.208	12.046	9.963

(2)

Comparative Cost per Case of 24's

	12 Oz. Flat Top	12 Oz. GB-6	12 Oz. GB-8	Cans over Bottles GB-6	GB-8
Chicago	$0.7951	$0.5790	$0.629	$0.2161	$0.1661
Jersey City	.7975	.5790	.629	.2185	.1685
	12 Oz. Cone Top	12 Oz. GB-6	12 Oz. GB-8	GB-6	GB-8
Chicago	$0.8585	$0.5790	$0.629	$0.2795	$0.2295
Jersey City	.8681	.5790	.629	.2891	.2391

[fol. 1186]

Comparative Cost Data Including—Containers
—Labels
—Crowns
—Freight

12 Oz. Non-Ret. Bottles—24 per case	Cost Per Case of 24: 12 oz. Style GB-6 $3.15 Per Gr.	Cost Per Case of 24: 12 oz. Style GB-8 $3.45 Per Gr.	Cost Per 1000 per case cost x 41.6667: Style GB-6 $3.15 Per Gr.	Cost Per 1000 per case cost x 41.6667: Style GB-8 $3.45 Per Gr.
Cost—case of 24—includes carton	.5250	.5750		
Add—cost of labels	.0113	.0113		
Add—cost of applying labels	.0044	.0044		
	.5407	.5907		
Add—cost of spotted crowns at 24¢ gr.	.0383	.0883		
Total—cost per case of 24	.5790	.6290	24.125 per M	26.208 per M

12 Oz. Cans—24 per case—Chicago	12 oz. Flat Top at 28.67 per M	12 oz. Cap Sealed at 28.55 per M	12 oz. Flat Top $28.67 per M	12 oz. Cap Sealed $29.55 per M
Cost—case of 24—no carton	.68808	.70920		
Cartons—$75 per M—$6.50 set up charge	.08150	.....		
Cartons—$79 per M—$6.50 set up charge	.....	.08550		
	.76958	.79470		
Add—cost of spotted crowns at 23¢ gross	.....	.03830		
(1) Freight at 50¢ cwt to Brewery	.02550	.02550		
Total—cost per case of 24	.79508	.85850	33.128 per M	35.771 per M

12 oz. Cans—24 per case—Jersey City	12 oz. Flat Top at $28.77 per M	12 oz. Cap Sealed at $29.95 per M	12 oz. Flat Top $28.77 per M	12 oz. Cap Sealed $29.95 per M
Cost—case of 24—no carton	.69048	.71880		
Cartons—$75 per M—$6.50 set up charge	.08150	.....		
Cartons—$79 per M—$6.50 set up charge	.....	.08550		
	.77198	.80430		
Add—cost of spotted crowns at 23¢ gr.	.....	.03830		
(1) Freight at 50¢ cwt. to Brewery	.02550	.02550		
Total—cost per case of 24	.79748	.86810	33.228 per M	36.171 per M

(1) Average figure—rates vary by location of brewery.

Commercial Research Dept. June 23, 1949.

[fol. 1187] Comparative Costs

12 Oz. GB-6 Non-Returnable Bottles
12 Oz. GB-8 Non-Returnable Bottles
12 Oz. Flat Top Beer Cans
12 Oz. Cap Sealed Beer Cans

(Cases of 24 and per M)

Summary

Type of Container	Total Cost to Brewery (Including average freight, cartons, crowns, etc.) Case of 24's	Per 1000
12 oz. Style GB-6 Non. Ret. Bottle	.5790	24.125
12 oz. Style GB-8 Non R[illegible] Bottle	.6290	26.208
12 oz. Flat Top Cans—C[illegible]go Basis	.79508	33.128
12 oz. Flat Top Cans—Jersey City Basis	.79748	33.228
12 oz. Cap Sealed Cans—Chicago Basis	.85850	35.771
12 oz. Cap Sealed Cans—Jersey City Basis	.86810	36.171

Non-Returnable Bottle Prices:

	Style GB-6	Style GB-8
Prices effective August, 1948	$3.20 per Gr.	$3.70 per Gr.
Prices effective June 1, 1949	$3.15 per Gr.	$3.45 per Gr.
Price Reduction	.05 per Gr.	.25 per Gr.

Commercial Research Dept. June 23, 1949.

[fol. 1188] Government's Exhibit 440

Continental Can Company, Inc.
Inter-Company Memorandum

To: Location #43—Head Office
Attention: Mr. M. M. Dukehart
From: Location #43—Head Office
Date: October 31, 1952
Subject: Beer Packages Smaller Than 12 Ounces

The attached report, "Current and Prospective Markets for Beer Packages Smaller Than 12 Ounces" summarizes current usage of American Can Company's 211 x 306 8 ounce beer can, discusses the market for less-than-12 ounce beer packages in general, and evaluates the request by Storz of Omaha that Continental produce a redesigned 8 ounce can.

American Can supplies three brewers with 8 ounce cans from Chicago, and is now reported to have installed a second 8 ounce line to meet its demands. Two of these three brewers, Goetz of St. Joseph, Missouri, and Goebel of Detroit, have had significant success with this can, but in both cases this success has been with products *not* packaged in 12 ounce cans or 12 ounce export bottles. In the two instances where the same brand of beer has been marketed in both 8 and 12 ounce cans, sales of the 8 ounce package have been so small as to make any comparison of limited value.

The market for beer in less-than-12 ounce units (bottles and cans) as a whole requires further study but it is apparent that the pressure of inflation, tax rises and the trend toward smaller beer packages provide a sound basis for expecting a substantial, if minor, portion of the total packaged beer market to be sold in "small" units. While bottles may have a slight advantage cost-wise over cans in this size range, the can will undoubtedly share in this market segment.

Although the 211 x 306 size now produced by American Can is the least expensive 8 ounce can for a producer of 211 x 413 beer cans to manufacture, it is possible that a design more nearly proportional to a 7 ounce bottle will be desired by the brewing industry.

One brewer, Storz of Omaha, has already requested such a design for its proposed beer for women, knowledge of which, incidentally, is held in strict confidence by Continental.

This report concludes that the market for small beer packages is worthy of continued study and recommends that research be conducted on a new design for a 7 or 8 ounce can and that a consumer survey of beer container design be made in 1953. Furthermore, it is recommended that Continental offer to supply both Goetz and Storz with 211 x 306 8 ounce cans, pending the outcome of such research.

GB/ml D. H. Walker.

cc: Messrs: T. C. Fogarty—#43, P. P. Wojtul—#43, R. L. Perin—#98, W. M. Cameron—#42, S. McKewen—#44.

[fol. 1189] Current and Prospective Markets for Beer Packages Smaller Than 12 Ounces

Attention has again been focused on the market for small beer packages and, particularly, for an 8 ounce can. Calls were made at the end of September, 1952 on several brewers currently using, or considering the use of, the 8 ounce can, and an analysis of the information thus obtained is presented.

The long-term trend in beer containers toward smaller sizes has generally stabilized, for the time being, at least, on the 12 ounce unit, although the size range presently extends from the 7 ounce "split" to the 32 ounce quart. The 8 ounce can is apparently about two years old and has been produced solely by American Can in Chicago. This current, and only, style is a "sawed off" 12 ounce flat top beer can, with dimensions of 211 x 306.

Only three brewers are known to have made use of this 8 ounce can, although the 7 ounce bottle is not uncommon among a number of brands. These three brewers, and the products packed, are:

1. M. K. Goetz Brewing Company, St. Joseph, Missouri

Goetz produces essentially two products, its Country Club Beer and its Country Club Malt Liquor. The beer is a popular priced brand and is marketed in the area surrounding Kansas City in 12 ounce bottles (export and one-way) and cans, and in 8 ounce cans. The malt liquor is a stronger, stout-like brew, selling at a premium price in 12 ounce one-way bottles and 8-ounce cans. The malt liquor, however while available locally, is distributed primarily in the Southwest and California, and not in the same distribution areas as their beer.

Goetz is very well pleased with the acceptance of its malt liquor, a major portion of which is being packaged in 8 ounce cans. (Goetz estimates that 80% of its California malt liquor sales is in cans.) On the other hand, sales of Goetz' *standard beer* in 8 ounce cans are negligible, although this package has not been aggressively promoted. This small can for Goetz' Country Club Beer was well received by the trade but consumer sales have been so small as to render meaningless any at-

tempt to measure its effect on sales of Country Club Beer in other containers, 12 ounce cans in particular.

Typical retail price comparisons among Goetz products in Kansas City, Missouri are as follows:

	Goetz Country Club Beer	Goetz Country Club Malt Liquor
6 12 oz. export bottles	$.85 plus dep.	—
6 12 oz. cans	.96- .98	—
6 12 oz. one-way bottles	.96- .98	$1.15
6 8 oz. cans	.72- .90	.95- .99

[fol. 1190] This year is Goetz' first full test of its malt liquor and of the 8 ounce package. It is now filling 8 ounce malt liquor cans at the rate of 1½ million units per week and expects to be up 2½ million by next spring. This translates into annual 8 ounce can requirements of about 36 million for 1952 and perhaps 50—60 million for 1953, almost all of which should be for *malt liquor*. Goetz states that its requirements are now taking 75% of American Can Company's total 8 ounce can output (or 36 out of 50 million annually), but American is reportedly starting production on a second 8 ounce line in Chicago this month.

Mr. Byron Means, Assistant Secretary and Comptroller of Goetz, indicates that his firm is not particularly pushing *smaller packages* (no smaller-than-12 ounce bottles are filled), nor has any thought been given to a 16 ounce package to complement the 8 ounce can. The malt liquor is a premium product (distributed through liquor distributors on the West Coast) and the small can not only reduces the apparent price but also provides a smaller consumption unit of a product which is considerably stronger (6% alcohol by weight) than standard beer.

2. Goebel Brewing Company, Detroit, Michigan

The Goebel Brewing Company, with two plants in Detroit, one in Muskegon, Michigan (draught only), and one in Oakland, California, is something of a hybrid between a regional brewer and a national brewer. Although its market penetration is probably strongest in the Lower Lakes area, it does sell its products from coast to coast in a wide scattering of states. Goebel

brews only one beer but markets this same beer under two ostensibly different brand names, Goebel Private Stock 22 Beer, and Bantam Beer by Goebel. Private Stock 22 sells at competitive popular prices in 12 ounce export and one-way bottles and cans, while Goebel Bantam is available only in 8 ounce cans and 7 ounce bottles. Since the term "bantam" means "small" or "diminutive", the name is a merchandising natural as applied solely to the 7 and 8 ounce packages. However, in spite of the fact that a "Private Stock 22" insigne appears on the Bantam container, it is apparent that a substantial portion of the public considers the Bantam Beer to be a separate, distinct and possibly superior brew as contrasted to the same beer sold in the 12 ounce package.

According to Mr. Robert Shiffer, Assistant General Sales Manager of Goebel, the 7 ounce bottle was first introduced by Goebel in Michigan as an attempt to place a "good" 5¢ packaged beer on the market. However, the resistance by Michigan tavernkeepers was so great that it was withdrawn and remarketed out-of-state at 10¢ where it met with substantial success. Goebel then began experimenting with a small can, but found that a 7 ounce can was too squat in appearance and settled on the 8 ounce size now obtained from American Can in Chicago. Goebel is completely satisfied with the size and proportions of this 211 x 306 beer can.

[fol. 1191] Sample prices for Goebel beer in the Detroit, Michigan market are:

	Goebel Private Stock 22 Beer	Goebel Bantam Beer
6 12 oz. export bottles	$.74–.78 plus dep.	–
6 12 oz. cans	.95–1.00	–
6 12 oz. one-way bottles	.87	–
6 8 oz. cans	–	$.75–.76
6 7 oz. export bottles*	–	.54 plus dep.

* It is believed but not confirmed that 7 ounce one-way bottles are also used.

Goebel appears to follow a distribution policy of least resistance, particularly with regard to its Bantam Beer, in that it adapts its emphasis to the particular container that seems to take hold. The 7 ounce bottle is marketed in the Northeast, the Midwest and on the West Coast,

with the 8 ounce can fitting in where it will sell. The Bantam can is not available in the Far West, perhaps because of the lack of suitable filling equipment in Oakland, even though the can can easily be run on a 12 ounce line with height change parts. In Ohio, Goebel Bantam Ale, but not Bantam Beer, is sold in 8 ounce cans due to a legal restriction on *beer* in small containers.

Mr. Ted Goebel, Purchasing Agent of the Goebel firm, estimates his current 8 ounce can requirements to be 30 million units annually, which coupled with the needs of Goetz, would certainly seem to overtax American's single line capacity and would aid in explaining the addition of a second line in Chicago. While possibly on the optimistic side, cross-checking with other data obtained from Goebel and outside sources indicates that this figure could fit satisfactorily into the following estimated construction of Goebel's package distribution pattern, which is based on the ratios existing in July, 1952 and probably does not include the California operation.

Total Goebel Sales	100%		
Draught	15%		
Packaged	85%	100%	
Bottles as % of Total Packaged		83%	100%
12 oz. export & one-way		58%	70%
7 oz. Bantam bottles		25%	30%
Cans as % of Total Packaged		13%	100%
12 oz. flat top cans		8%	60%
8 oz. Bantam cans		5%	40%

If these ratios are indicative, Goebel Bantam Beer accounts for nearly one-third of total Packaged sales, and Bantam cans, for almost one-half of the total Goebel can requirements. Even if somewhat overstated, these proportions are significantly high. One-way bottles have not been a singularly successful package except where they have been promoted *and* where the price differential has been passed on to the consumer. Goebel considers that 90% of its 8 ounce can volume is additional business and, particularly with the separate label, has little effect on its 12 ounce can sales. Importantly, the 7 ounce Bantam bottle has does well in on-premise con-

sumption only, while the 8 ounce Bantam can is primarily an off-premise item.

[fol. 1192] The firm believes that the appeal of the small package to women is a significant factor. Mr. Shiffer considers the 12 ounce size the standard package for most beer in general and doubts that the smaller containers will make serious inroads on the 12 ounce. No thought has been given to a 16 ounce size to accompany the Bantam and the one-way glass bottle is believed to have a limited future relative to the can.

3. Pittsburgh Brewing Company, Pittsburgh, Pennsylvania

Pittsburgh Brewing, with two plants in Pittsburgh, is a large volume brewer in its area, marketing two primary brands of beer at the same popular price. These are: Iron City Beer, packaged in 12 ounce export and one-way bottles and cone top cans, and Tech Beer, available in 12 ounce export bottles, 8 ounce "Gem Size" cans (from American Can), and 7 ounce select bottles. A third brand, Dutch Club Beer, is apparently of minor consequence and may well be dropped.

Tech "Premium" Beer (called premium although sold at popular prices) was originally marketed in 12 ounce export bottles, the Gem Size 8 ounce can having been added in 1950. This brewer was not interviewed directly but it is understood through Continental's Pittsburgh office that the sale of the Tech Gem has been somewhat disappointing. Estimated usage of 8 ounce cans is about 3 million annually, which is considerably less than Pittsburgh's cone top requirements and a decimal of the volume of small cans reportedly used by both Goetz and Goebel. Nevertheless, there are no known indications that abandonment of the Gem Size is contemplated at the present time.

In addition to these three firms currently packaging beer in the 8 ounce flat top can made by American, part of the management of a fourth, Storz Brewing Company of

Omaha, Nebraska, is seriously interested in the use of a small can for the marketing of a new beer to be tailored especially for women. Their ideas is as follows:

Storz Brewing Company, Omaha, Nebraska

Although Storz is not so large a brewer as Goetz, Goebel or Pittsburgh, this firm has an enviable dominance of the Omaha beer market. Furthermore, this leadership has been achieved not so much through the sale of Storz Triumph Beer, a popularly priced product, but rather through the sale of Storz Premium Dry Select Beer, which retails at prices between those of the popular beers and those of the national premium brands. Storz appears to be aggressively promotion-minded and utilizes export and one-way bottles and flat top cans.

Mr. Robert Storz, Vice-President, Secretary, and Sales and Advertising Manager of the firm, is desirous of persuading the rest of his management to market a special beer, brewed and packaged solely for women. He and his staff have conducted some intensive research on beer consumption habits and have concluded that, while some 62% of the populace drinks beer, over half of all male beer drinkers, and well over three-fourths of all female beer drinkers, drink beer only occasionally (one to three 12 ounce units per week). Among consumer objections to beer, its tendency to be too filling and its bitter taste were the most important. Mr. Storz furthermore pointed to the general association of beer as a man's drink, despite the recent tendency toward "pale dry" beers noted in so many markets, and to the historic trend among beer containers toward smaller packages.

[fol. 1193] Mr. Storz is convinced that the market is ripe for the introduction of a beer so brewed as to suit the female taste and so packaged in a feministically decorated container as to suggest its purpose on sight. He believes that a major way to increase beer sales is to increase the per capita consumption of female beer drinkers who are overwhelmingly in the

"occasional" class. Consequently he and his associates, who have been counseled by a Mr. Richard R. Fowler, a marketing consultant, who is also merchandising director for the National Beer Wholesalers Association, have applied for trade marks on the names "Storzette" and "Beerette" and intend to use the former in particular for their new feminine brew. Their thought is to employ a small package (the 7 ounce one-way clear glass bottle and an 8 ounce can) in order to provide a unit of consumption more desirable to women. Both label and container design would be unmistakably based on an appeal to women, so much so as almost to resemble cosmetic products, for example. While certain states, including Nebraska, have statutory minimum size limits for beer containers, thus posing certain but not insurmountable problems to Storz, the 7 and 8 ounce packages are favored because of the apparent incidence of beverage tax rises, the mass market appeal to occasional and non-beer drinkers, the novelty of a small package, and the long-term trend to smaller containers. Mr. Storz proposes to price his new product on the basis of Storzette Beer in 8 ounce cans, so that the 7 ounce bottle sales would be the more profitable item, since the container cost is less and a smaller quantity of beer is involved. The can, however, would as much as halve the cost per package of 6 unit paper-board pack carriers, in that a 6 can carrier costs roughly .4¢ per can, whereas a 6 bottle carrier would cost closer to .8¢.

Storz currently calculates that its cost of putting the 8 ounce Storzette can on the market is close to that of its 12 ounce can of beer, as shown:

Dock cost (and price), 24 12 oz. cans (288 oz.) $2.69

Estimated dock cost, 24 8 oz. Storzette cans (192 oz.) $2.36

Anticipated dock price 24 8 oz Storzette cans (192 oz.) $2.55

(7 ounce one-way Storzette bottle would presumably sell for close to this 8 ounce can price)

Of major significance is the fact that Storzette would not be sold in any of Storz' regular beer distributing areas, but would be exported to California and the West Coast where a more urban and possibly more sophisticated market might be found. While recognizing that the project could be a complete failure, Mr. Storz believes that by the middle of next year, the Storzette potential *could* well be 75,000 barrels annually. This translates into some 35 to 40 million 7 and 8 ounce units. The West Coast not only is viewed as a probably more receptive market for such a product, but it is believed that Storzette would be a most effective entrant in creating acceptance of Storz products in general in such a new marketing area.

[fol. 1194] Having developed the essence of a new product marketing program as they have, this Storz group is primarily concerned with the container and its design. While there does exist division of opinion as to whether the can or the bottle is the preferable package for such a product, there is no doubt in the group's mind that the American Can 211 x 306 8 ounce can is too squat for their satisfaction. Consequently, they wish Continental to consider the manufacture of an 8 ounce beer can of a smaller diameter and larger height than the current American Can model. It is their belief that such a can would be a much more graceful and appealing Storzette container companion to the slender 7 ounce bottle.

Conclusion

The subject at hand is divisible into three main and interrelated categories:

1. The market for "small" beer packages.
2. The competitive position of the "small" beer can in this market segment.
3. The most desirable can style and dimensions in the "small" beer can field.

1. The market for "small" beer packages.

A period of inflation, despite its reduction of purchasing power, gives an impetus to smaller packages of all sorts in order to reduce the apparent effect of product price rises. This, coupled with concurrent tax increases and the admitted trend from larger to smaller beer packages, is sufficient to explain the observed increase in the number of 7 and 8 ounce beer containers being filled. There is obviously a physical and economical limit to which such container size reduction can go, and the test of the permanence and size of such a container demand will occur after the readjustment of the consumer to his new effective income and to the new packages from the point of actual cost per unit of beer, and convenience and appeal of the smaller units. If the smaller packages can increase beer consumption in the "occasional" drinker category, and cause some non-drinkers at least to enter the "occasional" class, then, even though there may be a compensatory switch of 12 ounce unit drinkers to smaller containers, the small package will become a permanent factor which few competitive brewers will be able to ignore. If such events should come to pass, it would be logical to expect the development of a 14 to 16 ounce "economy" size to offset the competing effects of the small sizes on the sale of beer in 12 ounce units. There is no indication of such a trend at the present time. In some states, the 12 ounce container is protected, for the time, at least, by minimum container size laws.

2. The competitive position of the "small" beer can.

The market position of the beer can relative to bottles is certainly not improved by the introduction of smaller packages. Since the value per unit of beer is greater than that of soft drinks, the can does not meet the [fol. 1195] same obstacles it does in that field. However, since an 8 ounce can is presently in effect being compared with a 7 ounce bottle, the unit price advantage lies even more than normally with the bottle. Such present size standardization is perhaps unfortunate for the can, but it exists. Nevertheless, any suc-

cessful use of small bottles in large quantities will most likely be accompanied by similar use of cans because of their strong acceptance in the 12 ounce size. Of the three brewers currently using the 211 x 306 8 ounce beer cans made by American Can Company, two have had very little success with it for a standard beer which was and is packed in other containers. However, one of these two, plus the third, have enjoyed substantial sales in 8 ounce cans of *unique* beer products, namely a malt liquor selling at a premium price, and a standard beer so marketed as to identify the product solely with small containers. Furthermore, a fourth firm, contemplating the use of an 8 ounce can, would use it only for a uniquely premium brew—a beer for women. There has been so far no clear-cut test of the 8 ounce can as a container for standard beers in general. Evidences for this purpose which do exist are generally negative. However, future use of this can for premium products and by brewers wishing to differentiate their standard beers is not unlikely. The introduction of a second 8 ounce line by American Can is quiet indication that there is a definite market for such a size.

3. The most desirable can style and dimensions.

This problem can be decided only in the market or by competent consumer interrogation. While the users of the 211 x 306 beer can are apparently satisfied with it, they would probably accept one that is less stubby. One brewer contemplating the use of an 8 ounce container, however, is strong in his objections to the wide diameter of the current can and wishes one that is more nearly proportional to a 7 ounce bottle in comparison.

This brewer, Storz of Omaha, is contemplating the introduction of a novel product, a women's beer, and it seems logical that the firm might do all it can to minimize its investment in this risk venture, at least until public acceptance has been established for Storzette (its women's brew). In this connection, the use

by Storz of a 7 ounce bottle for its initial market test purposes would be most economical, with the development and use of a suitable small can following if the product itself is a success and the market seems receptive to a can as well as the bottle. If a can is considered desirable, a test of the acceptance of Storzette in cans could most economically be conducted through the use, either concurrently with the introduction of Storzette in bottles or after product acceptance has been determined, of a "standard" 211 x 306 8 ounce can.

In general, the market for small beer packages is still nebulous and, for the small beer can, it is even more so. In spite of the observations that no small beer package, and particularly no small can, are making outstanding inroads as containers in the beer market, there appears to be enough interest in the subject to suggest that there exists a strong possibility that the small package will in time command a minor but nevertheless significant share of this market. Since this situation could develop with surprising rapidity in the event that one or more of the [fol. 1196] major brewers places emphasis on a small package, it seems desirable that Continental begin research on a 7 or 8 ounce beer can of more appropriate dimensions than, but costwise competitive with, the 211 x 306 beer can, in order that the Company not lose ground in its competitive position in the total beer container market because of its failure to anticipate new product developments. In the interim, the supplying of a portion of Goetz' 8 ounce can requirements through the use of change parts on a 211 x 413 beer can line would not only assure the brewing industry that Continental is desirous of satisfying its varying needs but would also provide the Company with desirable experience in the field of small beer containers.

Recommendations

1. That Continental continue to keep very close watch on the small beer package market (both bottles and cans) and also keep informed on any tendency toward larger containers up to 16 ounces.

2. That Continental institute research on a 7 or 8 ounce beer can of appropriate dimensions, design and cost so as to be fully prepared for the possibility that the brewing industry will desire such a container in substantial quantities in the next few years.

3. That Continental suggest to Storz that

a. Storz initially market its projected beer for women, Storzette, in 7 ounce bottles only, in order to test its acceptance at minimal cost;

b. If the product, Storzette, is itself successful, Continental will provide Storz with 211 x 306 8 ounce cans for market testing of Storzette in small cans and at the same time will work with Storz on the design of a more proportional can;

c. Continental will, if Storz is particularly desirous of marketing Storzette initially in *both* cans and bottles, provide Storz with 211 x 306 8 ounce cans made with height change parts on a standard beer can line, at the same time cooperating in the research on a more proportional can.

4. That Continental offer to produce 211 x 306 8 ounce beer cans for Goetz.

5. That Continental plan a survey in 1953 on consumer preferences for various types of beer containers.

Commercial Research Department,
October 31, 1952.

[fol. 1197] GOVERNMENT'S EXHIBIT 440A

Continental Can Company, Inc.

Inter-Company Memorandum

To: Location, #43—New York
Attention: Mr. M. M. Dukehart, Jr.
From: Location, #43—New York
Date: January 29, 1952
Subject: The Future of Canned Beer

At Mr. Dake's request I am submitting a summary of the discussions we have had concerning the future of canned beer, and our views concerning the outlook under conditions foreseeable at the present time.

The real question today is what impact the restrictions on use of beer cans—and the resulting inroads which the non-returnable bottle has made, and will continue to hold, as long as restrictions are in effect—will ultimately have on future demand for beer cans when they again become freely obtainable. On the basis of our experience to date and our analysis of the economic and market factors involved, we might summarize our conclusions as follows:

1. There is no good evidence to date to suggest that cans have reached a saturation level in consumer demand, and that when freely available, they will not *continue* to make inroads on the returnable bottle.

2. It is becoming apparent that the new excise tax increase and the new O.P.S. allowed price increase on packaged beer are not likely to reverse or even halt the downward trend in draught beer sales and the upward trend in packaged beer sales.

3. There is no reason to believe that under the same conditions which prevailed before M-25 restrictions the one-way bottle will fare any better *in the long run* than it did when cans were freely available.

With metal cans under restrictions again this year (and likely to remain restricted through at least the 3rd quar-

ter) the one-way bottle will have a chance to further strengthen its foothold in the market. How serious this might be to the future of canned beer cannot, of course, be fully determined until cans are again freely available and all market forces are at work under free market conditions. In this connection, following the suggestions of Mr. Heusner (of Pabst) and Mr. Goodwin (of Falstaff), I have discussed with Mr. A. J. Wood, of the research organization bearing his name, the kind of survey his organization might conduct which would help us to determine the answer to that question. It was concluded at that time (December 1951) that an objective test could be made only at such time as consumers could exercise a free choice among available containers. I plan to discuss this subject again with Mr. Wood around April or May to see if conditions have changed sufficiently to warrant undertaking a market study of some kind.

[fol. 1198] Until conditions are right for testing the preferences of consumers (and of distributors) we can surmise that, barring major changes not yet apparent, the one-way bottle will have an up-hill and probably losing fight with the can once cans have again become freely available. The key factor, in our estimation, is *pricing*. And up to now the one-way bottle has been unable to realize effectively its claimed advantage in price. In a few local situations where a price differential, (approximately 20¢ per case) has been maintained all the way to the consumer, the one-way bottle, was able to make some inroads prior to the can shortage. However, in many instances where the brewers' platform price is lower, the difference has been absorbed in distribution channels so that the retail price is usually about equal to that of the can. In a recent spot check in New York City, New Jersey and Connecticut, it was found that among the popular brands, the 12 oz. unit sold for the same retail price, whether in one-way bottles, returnable bottles or cans; typically 15¢ or 16¢, with the price of the returnable bottle including a 2¢ deposit.

A rather significant test of the real acceptance of one-way bottles was gained during the late months of 1951, when temporarily cans were available in fairly adequate

supply. Statistics show that sales of one-way bottles to brewers dropped off very sharply, while can shipments for September through November were running at a level exceeding the inflated figures of the comparable months in 1950. This heavy volume of beer can shipments apparently moved quickly through the trade and into ultimate consumption, indicating that consumers were quick to return to the preferred can when they were able to exercise a choice. Interviews with retailers during December indicated that retailers were very quick to drop the one-way bottle as soon as they could get canned beer and were opposed to carrying both the one-way bottle and the can in the same brand. The typical attitude was that if the consumer preferred glass, he could buy the returnable bottle (and throw it away) for the same price as the one-way bottle. Recalling their experiences of last summer when cans were in short supply, the retailers interviewed indicated that most consumers who asked for canned beer would switch brands rather than take bottle beer.

The basic advantages of the can have not as yet been disturbed significantly by M-25 restrictions. The can is still accepted as the most convenient package and there still remains the old trade antagonism to the one-way bottle because of breakage, poor stacking features, and the reluctance to stock a third kind of package for each brand carried. Although more people have purchased and temporarily accepted the one-way bottle as a result of can restrictions, we do not believe that the one-way bottle has gained a real consumer franchise which can hold for the *long run*. Further, in a period of rising income, as we have experienced since 1949, consumer price consciousness to the extent of any small price advantage which the one-way bottle might be able to achieve, tends to be minimized. If in the future a business recession were to develop, which led to wide spread unemployment and curtailed buying power, price consciousness would naturally increase. However, during such a period (probably of no more than one to two years duration) price consciousness would be likely to result in a temporary increase in the proportion of packaged beer sold in *returnable* bottles and perhaps some shift to the more economical quart size. For the long run, how-

ever, the beer can has achieved a solid consumer acceptance, which was still growing at the time restrictions were applied.

[fol. 1199] Looking at the shorter range picture, and particularly toward the first full year in which cans will be freely available, it appears likely that the can may suffer a temporary set back. One-way bottles will be available in greater volume next summer, and will be pushed in greater volume until cans are available. Brewers are undoubtedly weary of allocations and restrictions and will turn to the one-way bottle to fill a vacuum in the supply of throw-way packages. This factor plus the more wide-spread experience of consumers with the one-way bottle during 1951 and 1952 will make it quite unlikely that beer can shipments in 1953 (assuming that cans will be freely available by then) will reach the level that would have been reached without the set back caused by M-25 restrictions. However, there is still good reason to believe that the factors which made for a high and rising consumer demand for beer cans before restrictions will again come into play when cans are freely available. Brewers will be quick to change back *to meet the demands of the trade and of consumers,* once they feel assured of a free supply of cans, provided that they are not tied up with long-term contracts for one-way bottles.

Thus if restrictions are removed by 1953, it is probable that by 1954 demand for beer cans should be returning to the trend level which would have been reached—approximately 7 billion units per year—if there had been no restrictions in 1951 or 1952. In order to help assure this future it would seem important that during the current period of restrictions we conduct a *missionary campaign* among our brewer customers, advising them against selling their future short by tying themselves too closely to one-way bottles as a *substitute* for metal cans.

D. H. Walker.

DHW/ml

cc: Messrs: L. E. Dake—#43, W. K. Neuman—#43, W. M. Cameron—#42, F. I. Gill—#42, J. F. Fenn—#42, C. L. Westerbeck—#144

[fol. 1200] GOVERNMENT'S EXHIBIT 441

Continental Can Company, Inc.

Internal Memorandum

To: Location, #43—New York
Attention: Mr. M. M. Dukehart
From: Location, #43—New York
Date: December 31, 1952
Subject: Beer Containers in the Baltimore Market

In the course of keeping in touch with the current situation in the various important beer markets in the country, this Department has recently made a brief investigation of the Baltimore market as a *case study*. This was a follow-up on a similar investigation made in 1949, examining the unusual competitive situation between cans and one-way bottles. While the basic situation was found to be fairly similar, the information obtained may be of interest to you.

Baltimore is *unique* both as a cut-price beer market and as one where the one-way bottle has made strong inroads. The former situation has not only given prominence to the normal cost differentials among containers but has also, in conjunction with a strong promotional campaign by the glass industry and the Baltimore brewers, aided the one-way bottle in establishing a fairly strong market position.

Price competition is unusually keen in Baltimore for two main reasons: (1) Licensing arrangements permit a wide variety of outlets to sell packaged beer, and (2) Although the two leading local brewers, Gunther and National, dominate the scene, Baltimore is not a captive market and a variety of national, regional and local brands is available. It is the wide extent of retail distribution, however, which is the more important factor. Licenses may be obtained for beer only, beer and wine, and beer, wine and liquor; and establishments licensed for on-premise consumption may also sell packaged beer for off-premise consumption. Retail outlets for beer fall into four main categories:

1. Package Stores: Beer, wine and liquor, off-premise
2. Taverns: Beer, wine and liquor, on-and off-premise

3. Drug Stores: Beer, wine and, sometimes, liquor, off-premise
4. Food Stores: Beer, wine and, sometimes, liquor, off-premise

A few "carry-out" type of retail beer distributors also exist, but have not carried their specialty to the merchandising level found in and around Cincinnati, for instance.

Of major significance in the Baltimore beer market is the legal restriction against food and drug chains in regard to selling alcholic beverages. Only *one* store of a chain can possess a license to sell beer, wine and liquor. Consequently, super markets, which are mainly a chain operation (even if only a few units in number), are very unimportant in the Baltimore beer picture. This in turn tends to protect the small local food store which may then sell beer at a discount to attract food business. These stores, however, are similarly vulnerable to price competition from the neighborhood package store (which carries beer but *sells* liquor). The result is a relative surplus of retail beer outlets which inevitably leads to price cutting and demands for price-fixing.

[fol. 1201] Against this background, Baltimore was a market that was ripe for a promotional campaign by the glass manufacturers and the Baltimore brewers, in which a significant price differential between cans and one-way bottles would be passed on to the consumer. This campaign, aided by the limitations on metal can usage imposed by the Korean War, has been successful in making Baltimoreans aware of the price differential, in establishing the differential as part of the general price pattern, and in enabling one-way bottles to outsell cans.

The increase in one-way bottles sales has been largely at the expense of cans, with the combined total of cans and one-way bottles remaining fairly well in line with the national average—about 30 to 35% of total packaged beer sales this year.

National Brewing Co. indicated that its ratios of cans and one-ways were approximately as follows. These ratios would not, of course, be representative of nationally adver-

tized brands, which are typically sold for the same retail price in cans as in one-way bottles.

	% of Total Packaged Beer Sales National Brewing Co.			
	1949	1950	1951	1952
Cans	17%	22%	16%	16%
One-Way Bottles	8%	10%	17%	20%

Indications have been given that in Baltimore proper the one-way bottle has been outselling the metal can by as much as 2 to 1 for *local brands*. Obviously, such a situation is a matter of concern to can manufacturers. The American Can Company has been sufficiently interested to have commissioned a research agency to conduct a pilot survey in Baltimore (copies of which have been presented to Baltimore brewers) seeking to determine factors influencing consumer preference for cans or one-way bottles for beer.

The survey found what was already fairly clear—that *price was a critical factor*—and observed that a 17-19¢ per case price differential (one-ways below cans) was passed on to the consumer in 2/3 of the stores included in the sample. However, even in outlets where the full price differential was not passed on, the one-way bottle was selling fairly well, presumably as a result of the intensive promotional campaign which began in 1949.

The consumer sample of the Amreican Can study indicated that women were not clear in their container preference but that men readily chose the one-way bottle because of the lower price. In their most recent purchases, interviewees named the one-way bottle over the can by a 2 to 1 ratio. However, under conditions of *equal price*, the consumer preference ratio reversed to nearly 2 to 1 in favor of cans. (For the U. S. as a whole the ratio, in favor of cans, is better than 4 to 1.)

[fol. 1202] Examples of the price structure in Baltimore in the early Fall of this year are as follows:

Typical Price Per Case of 24	Popular Brands (Gunther, National Bohemian, etc.)	Premium Brands (Schlitz, Budweiser, etc.)
Export Bottles		
Brewery	$1.85+dep.	
Wholesale	2.35+dep.	$3.45+dep.
Retail	2.69–2.79+dep.	4.01+dep.
Margin	.34–.44	.56
Margin as % of Retail	12.6%–15.8%	14.0%
Cans		
Brewery	2.44	3.04
Wholesale	2.87	3.69
Retail	3.28–3.40	4.16–4.40
Margin	.41–.53	.47–.71
Margin as % of Retail	12.5%–15.6%	11.3%–16.1%
One-Way Bottles		
Brewery	2.22	3.07
Wholesale	2.68	3.69
Retail	3.13–3.25	4.16–4.40
Margin	.45–.57	.47
Margin as % of Retail	14.4%–17.5%	11.3%

Note.—Wholesale prices include tax.

Retail prices, it will be noted, vary considerably according to the type of outlet and are not entirely comparable in the above table. Wholesale prices provide a more direct comparison and are a guide to the typical differentials according to package. For local, popular-priced brands one-way bottles are priced at 19¢ per case below cans, which would make the typical unit price at retail nearly 1¢ less. Returnable bottles including deposit of 48¢ are only 3¢ per case less than cans, which would make them sell typically at the same unit price in retail stores including 2¢ per bottle deposit. One-ways, therefore sell at a price advantage over cans and are only 1¢ per bottle more than the net price of returnables. For nationally advertized (premium) brands, the situation is, however, quite different. One-ways and cans are priced to sell at the *same price*, and both are 24¢ per case, or 1¢ per unit, *less* than the returnable bottle including deposit.

Although one-way bottles have not succeeded in gaining a comparable market position in any other important city or region, the Baltimore situation illustrates the kind of penetration possible where the following circumstances are uniquely favorable to one-way bottles:

[fol. 1203] (1) Local brewers, by their pricing, assure a price differential in favor of the one-way bottle of nearly 1¢ per package below the price of canned beer.

(2) Local brewers actively advertize and promote the one-way bottle—including advertising the lower price *at retail*, thus forcing the differential to be passed along.

(3) Cut-rate pricing is common in retail outlets.

(4) Consumers frequently purchase by the case.

(5) Sales in super-markets are a relatively unimportant part of total retail sales of packaged beer.

Of all the above factors, *price* is the most important, of course. Although total actual costs to the brewers, and to the trade, cannot be accurately determined, the 19¢ per case differential in favor of one-ways for local brands in Baltimore is an *artificial* one, judging by estimated container costs, and by the pricing patterns in other areas. Without allowing for savings in cans, resulting from higher filling speeds, lack of breakage, larger delivery loads and lower handling and storage costs; which would reduce the true cost differential between one-way bottles and cans, it is estimated that the actual difference in cost during the past season was only about 10 to 12¢ per case, as indicated below. Prices of containers, cartons, etc. will vary according to locality and according to types of cartons, labels, etc. actually used, but those below are fairly typical.

Comparison of Typical Prices to Brewers
Cans vs. One-Way Bottles
August 1952

	12 oz. GB-8 Bottle		Lithographed Can 12 oz., F.T., 4 Color	
	Price Per M	Price per Case	Price per M	Price per Case
Containers	.....	.....	$29.51	$.7082
Containers	$25.70	$.6170	.....	.....
Cartons			3.75	.0900
Lables	1.30	.0312	.....	.....
Crowns	1.81	.0433	.....	.....
Total	$28.81	$.6915	$33.26	$.7982
Difference, without 6-packs			4.45	.1067
Less: Estimated saving on 6-pack cartons*			3.33	.0800
Difference, if 6-packs are used			1.12	.0267

* Comparative prices for 6-pack cartons are $48 per M cartons for bottes, and $28 per M cartons for cans.

[fol. 1204] Since last summer, beer can prices have been increased slightly (nearly 3¢ per case) and a new one-way bottle, the G B-7, has been introduced, at a price of 10¢ per case below the old G B-8. The following table shows the comparative costs at the present time.

Comparative Prices of Cans vs. One-Way Bottles
January 1953

	12 oz. GB-7 Bottle		Lithographed Can 12 oz., F.T., 4 Color	
	Per M	Per Case	Per M	Per Case
Containers & Cartons	$21.50	$.5160	$34.43	$.8263
Labels	1.30	.0312	.....	.....
Crowns	1.91	.0458	.....	.....
Total	$24.71	$.5930	$34.43	$.8263
Difference, without 6-packs			9.72	.2333
Less: saving on 6-pack cartons			3.33	.0800
Difference, if 6-packs are used			6.39	.1533

The new G B-7's lower price is not expected to be passed along by Baltimore brewers, in which case the typical wholesale price differential of 19¢ per case for beer in one-way bottles versus beer in cans will be more nearly realistic in terms of costs to the brewer, and there is no longer the expectation that competitive pressures might in time substantially reduce the artificial differential which has been in effect. Thus, it is not to be expected that the competitive position of the can—for local brewers—will improve very significantly, as long as the local brewers continue active promotion of the one-way bottles.

This study has, however, proved to be enlightening as an indication of the significance of price as a factor in the package preference of consumers. In this regard the new G B-7 bottle becomes a potential threat to the beer can which cannot be lightly dismissed, since it reduces the cost of a bottle of beer by nearly ½ cent (10¢ per case). If this differential is passed along in market areas (New York Metropolitan Area, for example) where the one-way bottle has failed to catch on, it might well bolster the competitive position of the one-way bottle enough to cut significantly into potential can volume. For this reason, we plan considerably more study on the future competitive position of the can as a package for beer, particularly as affected by prices and pricing structures in various markets.

[fol. 1205] It may well be that a new promotional effort will be needed to help offset the lower cost of one-way bottles, but that remains to be considered after the possibilities of the new G B-7 have been adequately tested.

D. H. Walker.

DHW/ml

cc: Messrs: T. C. Fogarty—#43, P. P. Wojtul—#43, W. K. Neuman—#43, R. G. Fisher—#43, W. P. Murray—#98, L. G. Cannella—#98, W. B. Larkin—#42, J. F. Fenn—#42, H. M. Blinn—#44, G. Bollinger—#124.

[fol. 1206] GOVERNMENT'S EXHIBIT 442

A Comprehensive National Study of Consumer Preferences for Different Types of Beer Containers

prepared for Continental Can Company, Incorporated, by A. J. Wood & Company

Philadelphia-New York-Chicago-Los Angeles
January, 1954

[fol. 1207] Table of Contents

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[fol. 1208] A Comprehensive National Study of Consumer Preferences for Different Types of Beer Containers

Purpose and Method

The purpose of this study was to provide a complete and detailed analysis of consumer preferences for different types of beer containers with the aim of developing information in two basic categories:

1. To attempt to uncover information which will aid Continental Can Company to show Brewers that the use of cans is advantageous in the merchandising of beer.
2. To compile a mass of descriptive and explanatory information covering the general market picture for the various beer containers: the extent of use, drinking and buying habits, and consumers attitudes and reactions towards cans versus bottles for beer.

To achieve these dual objectives, the study was necessarily comprehensive in nature going into all of the ramifications of the use of and the preferences for the various beer containers.

The study was conducted among a cross-section of beer drinkers on the basis of a national sample representing all cities and towns of 1,000 population and over. All results are based on personal interviews conducted in the respondents' homes.

In total 4166 adults were interviewed throughout the [fol. 1209] country, of which 1823 were found to be beer drinkers in accordance with the definition established—"those who drank some packaged beer within the last two weeks preceding the interview." This definition was established to eliminate the sporadic or very occasional drinker whose views on the subject would not be sufficiently crystallized.

In addition to developing the picture for the country as a whole it was desired to have some of the basic information broken down separately for the four major geographic areas of the country—East, South, Mid-West, and Far

West. To insure a sample of sufficient size for these area breakdowns it was necessary to assign approximately twice as many interviews in the Far West as would have been necessary for proper representation. In order to maintain a correctly proportionate sample for the country as a whole, in all tabulations shown for the total country the interviews in the East, South, and Mid-West were given double weight in tabulation. In this manner the proportion geographic balance was established while utilizing all interviews actually conducted. Naturally, these weights were removed for tabulations broken down separately for each area. The table below shows for each geographic area, the actual number of interviews conducted including drinkers and non-drinkers, the number after weighting, and the actual percentage distribution of the population.

	Actual number of interviews conducted		Number of interviews after weighting		Actual percentage distribution of the population
	No.	%	No.	%	%
East	1258	30	2516	34	34
South	729	18	1458	20	22
Mid-West	1159	28	2318	32	30
Far West	1020	24	1020	14	14
Total	4166	100	7312	100	100

[fol. 1210] GOVERNMENT'S EXHIBIT 445

Retail Level Study of New Quart Beer Can Acceptance in Chicago

Commercial Research Department
February 21, 1956

[fol. 1211] #43—Head Office

Mr. C. H. Buckley

February 21, 1956.

Retail Level Study of New Quart Beer Can Acceptance in Chicago

As you know, Mr. Walter Way spent a week recently in Chicago to study the movement of this new container at the retail level. Chicago was picked because this market was the first in which the new American quart can achieved widespread distribution under the Pabst label. Working with Mr. Way in contacting a large representative group of beer outlets were two Central Division sales trainees. Among them they covered about 250 outlets in all parts of the City.

Mr. Way found that generally, although distribution secured by Pabst has been widespread in Chicago, their label is not an extremely heavy mover in quarts and inasmuch as a great deal of the volume movement has replaced Pabst glass quarts, the over-all level of sales for the new container is not high. However, the impression was gained that this new container, when attractively priced about equal to the throw away bottles, met with consumer acceptance and should brands having large shares of particular markets be sold in such a container, heavy movement could be expected.

Further copies of this report are available.

Dana Hill.

DH:eor

cc: Messrs. P. P. Wojtul, R. G. Fisher, W. K. Neuman, R. S. Hatfield, L. A. Carey.

[fol. 1212] Retail Level Study of New Quart Beer Can Acceptance in Chicago

During the week of January 23-27, a survey was conducted in Chicago to determine how well the new Pabst quart beer can was moving, and to measure consumer and dealer reaction to the new package.

Conclusions

Several conclusions were reached as a result of the information obtained from the survey. Although the quart can has not yet done too well in Chicago, there were strong indications that the consumer would eventually accept the package—especially in the summer. Thus far, in those areas where the can has moved well, it has been at the expense of quart bottles rather than smaller sized packages. The can will be unable to make inroads with price conscious consumers, as they generally buy local beers in returnable bottles because of the cost savings. The retailer generally favors the quart can, but as a replacement for quart bottles. There will be resistance to stocking any more packages. For the most part, brand loyalty was found to be significant, and only a few consumers switched brands to get the quart can. Most retailers wanted to see other brands in the quart can, and felt that the package would move faster with brands more popular with their customers. The can itself was quite acceptable, although many consumers didn't like the pouring feature. Some found that the beer went flat when recapped, and some difficulty in opening was encountered, although reaction to the opening feature was favorable. The stacking feature was unimportant, both because of the widespread use of the paper [fol. 1213] two-pak and also the lack of mass displays.

Method of Conducting Survey

In order to set up the survey, a complete listing of the nearly 9,000 liquor outlets in the City of Chicago was obtained, complete with addresses. Taverns and night clubs selling for on-premise consumption only were eliminated, along with most miscellaneous package stores, including drug and grocery stores. Of the more than 2,000 outlets remaining, about 140 were package liquor stores, while the rest were combination tavern and package stores. These outlets formed the basis of the survey. The city was divided into more than fifty small areas, in order to obtain a fairly reliable cross section of the City of Chicago. Some outlets in each of as many of these areas as possible were chosen for the survey, with the result that the sample obtained precludes the possibility of being heavily weighted

by any single section. More than 200 completed questionnaires were obtained, with several others omitted because of lack of information.

Detailed Findings

There is little question as to the fact that Pabst has obtained good distribution with their quart can. Only about one in every ten outlets was not carrying the package, and some of those had had it, and dropped it. In several places where the can had been stocked, the dealer had dropped the Pabst quart bottle because he did not wish to carry additional packages for one brand in a single size.

[fol. 1214] There was great variation in the price of Pabst's quart can, although it was generally priced at 45¢-47¢. In some places it sold for as much as 50¢, while one store was still working on a "deal", and was selling it for 39¢. For the most part, the price was virtually the same as premium one-way quart bottles, and from 2¢ to 5¢ above the cost of the premium returnable bottle without deposit. About two out of every five outlets carried only returnable or one-way premium quart bottles, but not both. Very few stores carried the same brand in both the one-way and returnable bottles. In several instances, all three quart packages were selling at the same price, with the returnable bottle having an extra nickel added on for deposit. In these cases, the can was moving quite well, but the dealer complained that with such a price structure, he made less profit on the can than on the other packages.

In some areas price has had a definite influence on the poor showing of the new can, although in those areas where it made a real difference, premium beers made no headway against the low priced local brands. For the most part, local brands in returnable bottles sold for 10¢ below the premium beer in the same container, although the differential was as high as 14¢ in some places, and as low as 7¢ in others. There was one local brand (Prima) which was selling well below the other Chicago beers—occasionally as low as 23¢.

[fol. 1215] Several dealers felt that this was a bad time to introduce a new convenience package, as their beer business was at a seasonal low. Many expressed the opinion

that when hot weather came, it would move very well. Dealers also expressed the opinion that one reason the package was not moving was the low popularity of Pabst with their customers. They felt that brand loyalty was strong in their area, and that more popular brands would move well in a quart can. The dealers themselves were generally in favor of the quart can. However, they would want to see it replace the quart bottles entirely, and they don't want to take on additional packages. On the other hand, several dealers wanted no part of cans, as they felt that the returnable bottles brought their customers back.

The can utilized by Pabst drew several comments during the course of the survey. Nearly all the advantages inherent in any can were mentioned frequently, i.e., easier to handle, eliminates deposits, chills easier, stays cold longer, no breakage, takes less storage space, etc. In addition, the snap cap and the opening feature drew quite a lot of favorable comment, although there were a few instances where the dealer said that his customers complained that the can didn't open as advertised. The largest complaint against the can was the pouring feature. It was stated that when you poured slowly, the beer dribbled down the side of the can, and when you poured fast, you either completely overshot the glass or else got so much foam that you couldn't get at the beer. Metallic taste was brought [fol. 1216] up a few times, and in some cases the taste was reported as just being different than that of bottled beer. Several dealers reported their customers as saying that the snap cap was fine, but that the beer went flat when the cap was replaced. A few voiced complaints about leakers, but these came from only a very small percentage of the outlets carrying the can. The stacking feature came in for only a small amount of comment, as most of the outlets visited kept their beer refrigerated, and didn't have room to make displays. When mass displays were built, the two can cartons were used, thus minimizing the advantage of a stacking feature, since any can will stack in cartons.

In those areas where the quart can was moving quite well, it seemed to be almost entirely at the expense of quart bottles, and for the most part, Pabst quart bottles. In these

areas, repeat business was reported, but generally from old Pabst drinkers from way back. Several dealers expressed the belief that a more popular brand (Schlitz was mentioned several times) would move much better, and probably at the expense of other brands.

[fol. 1217] GOVERNMENT'S EXHIBIT 446

Carbonyl Compounds in Schlitz Beer (Test Pack C659)

To Determine the Volatile Carbonyl Content of Schlitz Beer

Report

3202-015-57
3202-010-57

Introduction

The problem of beer stability in cans was presented to the Packaging Engineering and Container Research groups in May, 1957 [1]. It was stated that beer in cans had about half the shelf life of beer in bottles. Container Research was charged with the responsibility of making fundamental studies of beer in the hope of isolating the causative agents of these flavor changes; it was anticipated that once these flavor changing factors were known, it would be possible to relate them to specific components of the beer can, thereby making it possible to make corrective changes in the beer can if such were necessary.

On the basis of a literature survey and trips to Milwaukee [2] and Madison [3] to consult with workers in the field of beer chemistry, it was decided that changes occurring in the volatile carbonyl compounds of beer on storage represented a logical area of investigation.

A test pack of Schlitz beer was made in Milwaukee at the Joseph Schlitz brewery on July 16, 1957. Beer from the same government cellar was used in both bottles and cans, and 25 cases of each variable were packed in this fashion. These cans were stored at 40°F., 70°F., and 100°F. This beer was used for this investigation.

Conclusions

The carbonyl content of the volatile fractions of Schlitz Beer packed in bottles and cans and stored for three months at 40°F. was practically identical. This determination was made by preparing the dinitrophenylhydrazones of these carbonyl compounds and weighing them.

The weight of the dinitrophenylhydrazone derivatives obtained from bottles and cans stored at 100°F. was also practically identical. However, the level at 100°F. was slightly lower (by about 8 mg.) than that at 40°F., indicating that at the higher storage temperature there was some loss of volatile carbonyl content.

An analytical determination of the acetaldehyde content of this beer and a conversion of this value to dinitrophenylhydrazone derivative showed the calculated value to be very close to the gravimetrically derived value. This suggests strongly that the major constituent of the volatile fraction is acetaldehyde.

Acetaldehyde and dinitrophenylhydrazone determinations on Blatz beer stored for two years at 70°F. yielded only trace amount of these materials, suggesting that volatile carbonyl components tend to diminish on storage.

The Beverage Section flavor test panel was able to detect a flavor difference between cans and bottles at the three month storage level (40°F.) but as indicated from the volatile carbonyl content described above, it was not possible to establish any correlation between flavor changes and carbonyl content.

Recommendations

Since the data collected in this experiment suggest that volatile carbonyl compounds are not involved in flavor changes occurring in bottled and canned beer, it is recommended that additional investigations be directed to other [fol. 1218] fractions of the beer.

For example, it may be possible to separate whole beer into several fractions by column chromatography, using such adsorbents as carboxymethylcellulose. An attempt can then be made to characterize these fractions by paper electrophoresis. Beer from the same government cellar packed in bottles and cans should be used for these investigations.

Lyophilization (freeze drying) is another investigative

technique that may be followed. Beer can be lyophilized, and the volatile fractions can be separated and identified by various chromatographic techniques. The non-volatile fraction of lyophilized beer containing the nitrogenous components can then be investigated by paper electrophoresis techniques.

It is also recommended that further investigations along organoleptic lines be considered. For example, the volatile fractions of canned and bottled beer can be collected and concentrated; small portions of this concentrate can then be added to distilled water and to fresh beer to see if the original flavor can be detected again. The same procedure can be applied to the non-volatile fraction. If the sources of "canned" and "bottled" beer flavor can be isolated by this technique, then the originating fractions can be intensively investigated via chromatography, electrophoresis, infrared, or other modern investigative techniques in an attempt to isolate and identify the flavor causing agents.

Procedure

Complete details of the investigation made on the volatile carbonyl fraction of Schlitz beer pack C659 can be found in data book pages L604-17 and L640-46 appended to this report.[8] These details can be summarized briefly as follows: an attempt to separate the volatile carbonyl fraction via vacuum distillation at room temperature into acidified 2,4 dinitrophenylhydrazine was unsuccessful as no dinitrophenylhydrazone precipitate appeared in the distillate; the immersion of the distilling flask into a water bath at 130-140°F. also yielded negative results. Air was used to sweep the volatile fraction over into the distillate. Some contamination of the distillate resulted due to bumping and frothing of the product during the distillation.

A crystalline dinitrophenylhydrazone precipitate was formed when beer was distilled at 180-212°F. and atmospheric pressure, but when vacuum distillation was attempted in order to lower the temperature of distillation, there was excessive carryover of beer into the distillate caused by bumping and frothing and, hence, this procedure was abandoned.

It was finally decided to use distillation at atmospheric pressure and 180-212°F. temperatures; nitrogen gas was

used to sweep the volatiles into the acidified 2,4 dinitrophenylhydrazine in the receiving flask. Three bottles and three cans at 40°F. storage and 100°F. storage were treated in this fashion and the dinitrophenylhydrazones from each group of three variables were concentrated in one receiver. These receiving flasks were put away for several weeks in the dark at room temperature while efforts were concentrated on the determination of acetaldehyde and acrolein.

Emphasis on the determination of these two aldehydes was made when uncertainties arose as to the further treatment of the dinitrophenylhydrazones collected as described above. It was originally intended that a simple gravimetric determination of dinitrophenylhydrazone would be [fol. 1219] made of beer at various storage levels in bottles and cans to see if the dinitrophenylhydrazone content would be related to storage temperature and container variable. However, Dr. R. E. Henry indicated that a chromatographic separation of dinitrophenylhydrazones would be necessary in order to identify them and that this would be a long and tedious procedure. Other literature sources [5] indicated that the acetaldehyde and acrolein were important volatile substances contributing to odor and flavor; simple colorimetric procedures for their identification were described. Consequently, it was decided to make these identifications in this Schlitz beer pack, and from the results obtained, decide whether or not the more elaborate chromatographic procedures would be warranted.

The investigations of the acetaldehyde and acrolein content of Schlitz beer pack C659 are described in pages L618-39 appended to this report.[7] It can be seen that no acrolein was found, and the acetaldehyde found was approximately the same in both bottles and cans at 40°F. and at 100°F. For example, after three months storage at 40°F., the acetaldehyde level was approximately 6 ppm in both bottles and cans; at 100°F. it was approximately 5 ppm. Thus, there was a 1 ppm difference between the two storage levels but no difference in the bottles and cans at each temperature, and thus the acetaldehyde content was independent of the container variable employed.

The acetaldehyde content was also determined in several other beers. For example, in Braumeister beer pack C755 where beer from the same government cellar was packed into both bottles and cans in a fashion similar to

Schlitz pack C659, the acetaldehyde level in both bottles and cans after two months storage at 70°F. was approximatel 4.5 ppm. Again there was no difference which could be traced to an effect due to the container variable employed.

Since no further matched bottle versus can packs were available for acetaldehyde determinations, several other packs were used to develop further information on acetaldehyde content. For instance, Blatz beer in bottles stored for three months at 40°F. yielded a value of 6.7 ppm. Two year old Blatz beer stored in cans at 70°F. had an acetaldehyde content of 2.6 ppm. This seems to indicate that the acetaldehyde level decreases with storage.

It was now decided to go back and make gravimetric determinations on the dinitrophenylhydrazone precipitates obtained from Schlitz beer C659. In this connection, an article in the literature [6] indicated that from 95 to 100% of aldehydes in an aqueous solution could be recovered by precipitating them as dinitrophenylhydrazones. These gravimetric determinations were then made, and when the acetaldehyde values were converted to their theoretical dinitrophenylhydrazones and the values were compared to the gravimetric figures, there was very close agreement between the two sets of data, indicating that the volatile carbonyl fraction of Schlitz beer consisted for the most part of acetaldehyde. The figures are summarized below. (See pp. L644-45 for further details)

		Gravimetric	Theoretical
Schlitz bottles	—3 months at 40° F.	33.2 mg.	32.0 mg.
Schlitz cans	—3 months at 40° F.	31.5 mg.	32.1 mg.
Schlitz bottles	—3 months at 100° F.	26.5 mg.	25.8 mg.
Schlitz cans	—3 months at 100° F.	25.7 mg.	25.8 mg.

The flavor panel in the Beverage Section had been able to detect a flavor difference between these bottles and cans [fol. 1220] stored at 40°F. At 100°F., the beer had deteriorated badly after three months in both bottles and cans, making it impossible to make this differentiation. However, it can be seen at the 40°F. level that the acetaldehyde determination yielded no clue as to the flavor difference found.

S. W. Drigot
12/5/57

[fol. 1221] References Cited

[1] Stability of Beer in Cans. S. W. Drigot, 5/14/57.

[2] Report on the Information Obtained from the Study of the Works by Drs. R. Bock and H. Reich on Constituents of Beer. A. Ravve, 6/10/57.

[3] Report on the Visit with Drs. H. Reich and R. Bock to Discuss the Chemistry of Beer Stability. A. Ravve, 7/16/-57.

[4] Schlitz Beer Pack C659. Letter from S. W. Drigot to J. C. Brichta, Jr., 9/14/57.

[5] Burger, M., Glenister, P. R., and Becker, K., *Proc. Am. Soc. Brg. Chem.* 1954, 98, "Acrolein and Other Aldehydes in Beer".

[6] Iddles, H. A. and Jackson, C. E., *Ind. Eng. Chem. Anal. Ed. 6* 454-56 (1934) "Determination of Carbonyl Compounds by Means of 2,4 Dinitrophenylhydrazine".

[7] *Acrolein and Other Aldehydes in Beer.* S. W. Drigot Container Research Data Book No. 3, pp. L618-39, 3202-015-57.

[8] *Carbonyl Compounds in Schlitz Beer C659.* S. W. Drigot Container Research Data Book No. 3, pp. 604-17, 640-46, 3202-010-57.

[fol. 1222] Government's Exhibit 448

Sales Control Department

August 25, 1958.

Packaged Beer Trends

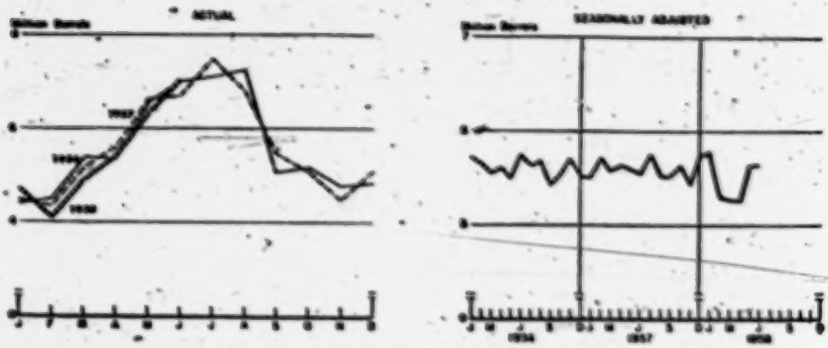
Continental Can Company

June Packaged Sales Soar

After four poor monthly showings in a row, packaged beer sales of 7 million barrels in June were more than 350,000 barrels or 5.3% above June, 1957. Total beer withdrawals enjoyed a 4% increase. The good monthly showing reflected the number of brewers which set company records for the month. For the first half, packaged sales were down .9%. Total beer sales were down slightly more —1%—as the draught variety slipped 1.7%.

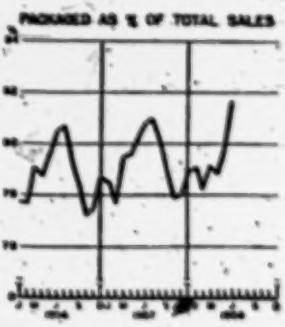
Packaged beer as a percent of total beer set a new high in June. The 81.7% level was one full point better than June, 1957. This brought the six month ratio up to 79.6% for a gain of .1 of a point.

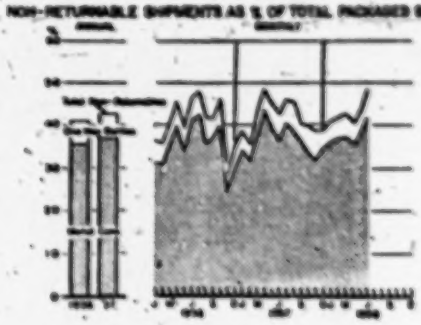
SALES OF PACKAGED BEER



One-way containers (up 20.2%) enjoyed all of the monthly growth as the returnable bottle continued to decline (down 5.0%). Can shipments alone rose 21.8% with part of this big gain being artificial as last-year's goal was abnormally low in the wake of forward buying. One-way bottle shipments moved up 10.0%. Cans represented 42.1% of all packaged and one-way bottles 6.3% for gains of 5.7 points and .3 of a point respectively.

To date, can shipments were up 1.2% with one-way bottles registering a .9% plus. Returnable bottles declined 2.4%. Cans increased their share of the packaged market by .8 of a point to 38.1% and one-way bottles gained .1 of a point to 5.5%.





	Total Beer Sales Mil. Bbls.	Pkgd. Beer Sales Units Mil. Bbls.	Pkgd. Beer Sales % of Total	Estimated Packaged Beer Sales by Type of Container: Metal Cans Mil. Units	Metal Cans %	One Way Bottles Mil. Units	One Way Bottles %	Returnable Bottles Mil. Units	Returnable Bottles %	Total Mil. Units
1957										
July	9.2	7.4	81.0	985	40.0	144	5.8	1,332	54.1	2,461
August	8.5	6.8	80.0	858	38.3	161	7.2	1,224	54.6	2,244
September	6.9	5.4	78.9	652	36.3	66	3.7	1,077	60.0	1,795
October	6.5	5.1	78.0	569	33.9	99	5.9	1,012	60.2	1,680
November	5.7	4.5	78.0	471	31.9	97	6.6	908	61.5	1,476
December	6.4	5.1	78.9	582	34.8	67	4.0	1,026	61.2	1,675
1958										
January	5.9	4.7	79.1	559	36.0	75	4.8	918	59.2	1,552
February	5.2	4.1	78.2	505	37.3	67	4.9	782	57.8	1,354
March	6.3	4.9	79.2	613	37.4	90	5.5	934	57.1	1,637
April	6.7	5.3	78.9	630	35.2	97	5.4	1,064	59.4	1,791
May	8.0	6.4	79.9	802	38.2	120	5.7	1,181	56.2	2,103
→June	8.6	7.0	81.7	974	42.1	146	6.3	1,197	51.7	2,317
June, 1957	8.2	6.7	80.7	800	36.4	132	6.0	1,269	57.7	2,201
% Change	+4.0%	+5.3%	....	+21.8%	....	+10.6%	....	−5.6%	....	+5.3%
Year-to-Date										
→1958	40.7	32.4	79.6	4,084	38.1	594	5.5	6,044	56.4	10,722
1957	41.1	32.7	79.5	4,035	37.3	589	5.4	6,191	57.3	10,815
1956	41.8	33.0	79.0	3,909	35.8	585	5.4	6,431	58.9	10,925
% Change										
from 1957	−1.0	−0.9	....	+1.2	....	+0.9	....	−2.4	....	−0.9
from 1956	−2.7	−1.9	....	+4.5	....	+1.6	....	−6.0	....	−1.9

* Based on shipments of Cans and One-Way Bottles from manufacturers. Beer can figures converted from metal consumed into 12 oz. units; bottled shipments assumed to be 12 ounce units.

Source: U.S. Brewers Foundation, U.S. Department of Commerce, Bureau of the Census, U.S. Treasury Department, Bureau of Internal Revenue.

Continental Can Company, Inc.
Sales Control Dept.
August 25, 1958.

[fol. 1224] GOVERNMENT'S EXHIBIT 543

Confidential

March 25, 1952.

Beer Can Shipments

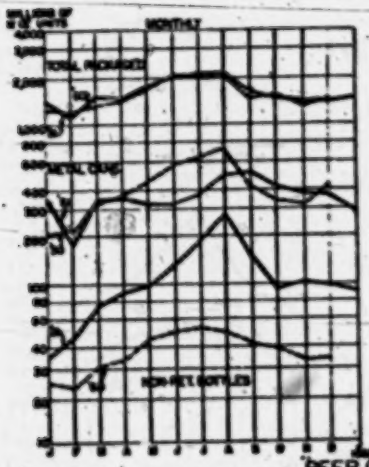
Sales Analysis Department

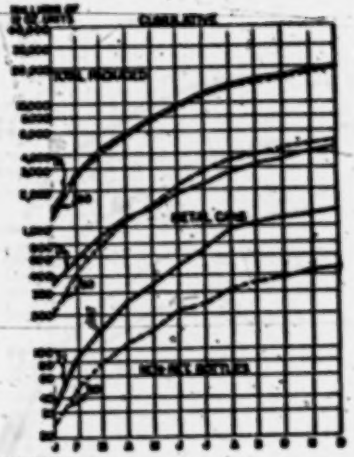
Packaged beer sales during January were 12.5% above January 1951 while total sales showed only a 9.3% increase.

Industry beer can shipments during January totaled approximately 281 million units which was 20.4% or 72 million units below the activity level of January 1951. In contrast to the decline in can shipments which resulted from Government restrictions, January non-returnable bottle shipments increased 162.9% or approximately 58 million units over January last year.

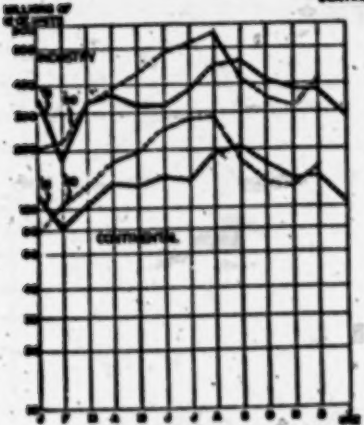
Continental's beer can shipments during January totaled 113 million units which was 10.5% below January 1951 shipments. Continental's share of total beer can sales was 40.3% during January as compared with 35.9% during the same month last year.

PACKAGED BEER SALES

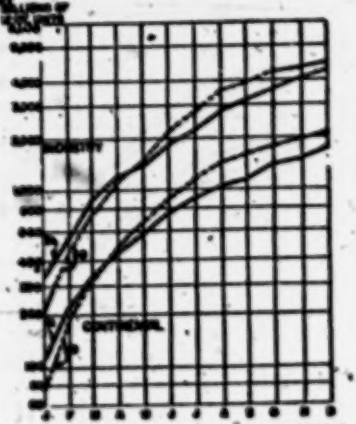




BEER CAN SHIPMENTS



NOTE: TOTAL PACKAGED SALES REPRESENT ACTUAL SALES OF BEER IN ALL TYPES OF PACKAGES.



METAL CANS AND NON-RET. BOTTLES REPRESENT SHIPMENT OF THESE CONTAINERS TO BREWERIES.

[fol. 1225]

Beer Can Shipments

Non-Returnable Packaged Beer vs. Total Packaged Sales

Period	Total Packaged Beer (Taxpaid Withdrawals) 12 Oz. Units (000 Omitted)	% of Total Sales	Non-Ret. Bottles Shipments (1) (000 Omitted)	% of Pkgd. Beer	Total Beer Cans Shipments (2) (000 Omitted)	% of Pkgd. Beer	CCC Beer Cans Shipments (2) (000 Omitted)	% of Total Beer Cans
1952								
January	1,585,928	74.9	92,936	5.9	281,437	17.7	113,475	40.3
1951								
January	1,410,218	72.8	35,348	2.5	353,431	25.1	126,765	35.9
February	1,218,751	70.8	45,327	3.7	193,588	15.9	82,445	42.6
March	1,604,582	73.1	75,796	4.7	326,777	20.4	109,834	33.6
April	1,533,260	72.3	88,240	5.8	357,270	23.3	139,659	39.1
May	1,856,044	73.3	99,123	5.3	333,092	17.9	137,126	41.2
June	2,004,676	74.5	148,697	7.4	331,751	16.5	153,167	46.2
July	2,078,080	74.5	189,005	9.1	386,063	18.6	147,523	38.2
August	2,192,323	75.0	273,636	12.5	492,474	22.5	193,045	39.2
September	1,711,669	74.4	164,686	9.6	501,765	29.3	202,323	40.4
October	1,605,931	72.6	92,846	5.8	422,836	26.3	172,414	40.8
November	1,556,438	73.8	102,293	6.6	376,815	24.2	152,057	40.4
December	1,488,469	74.5	98,557	6.6	370,625	24.9	154,103	41.6
Total 12 Mos.	20,260,440	73.6	1,413,556	7.0	4,446,489	21.9	1,770,461	39.8

Beer Sales and Production (BBL.)

Beer Production		Total Sales		Packaged Sales		Draught Sales	
Jan. 1952	6,966,616	Jan. 1952	6,441,519	Jan. 1952	4,823,383	Jan. 1952	1,618,136
Jan. 1951	6,872,438	Jan. 1951	5,894,396	Jan. 1951	4,288,984	Jan. 1951	1,605,412
Jan. 1952+1.4% or	94,178	Jan. 1952+9.3% or	547,123	Jan. 1952+12.5% or	534,399	Jan. 1952+.8% or	12,724

(1) Non-returnable beer bottle shipments assumed to be in 12 oz. units.
(2) Beer can figures converted from metal consumed into 12 oz. units.

Sales Analysis Dept.,
March 1952.

2753

[fol. 1226] GOVERNMENT'S EXHIBIT 588

Beer Trends July 9, 1948.

Commercial Research Department

The Overall Outlook—Both beer production and taxpaid sales experienced a setback during the month of May, failing to equal comparative last month and year ago figures. Unseasonal weather has been the major contributing factor, but rumors of overstocking of some distributors and retailers, as distribution pipelines gave evidence of being filled, provided some indication that current consumption ceilings were being approached.

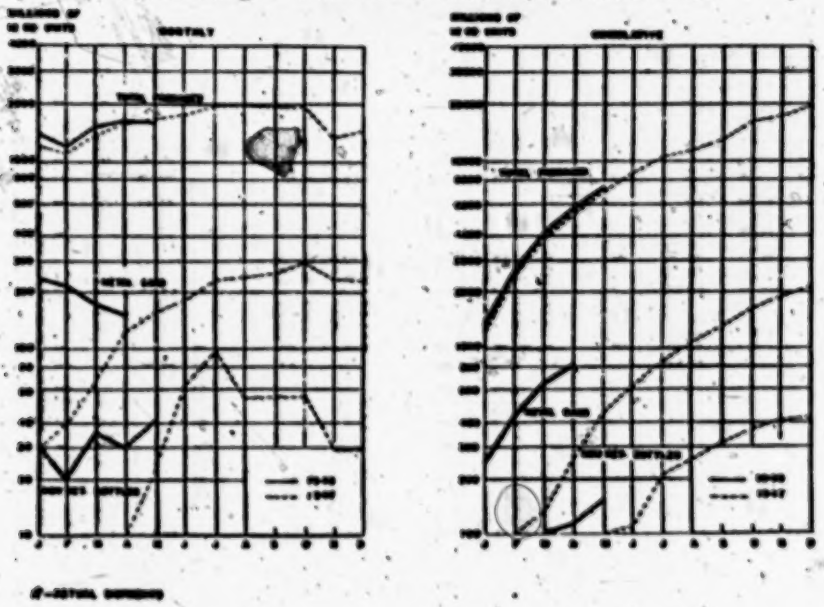
Packaged Beer Sales Total packaged withdrawals during May were 8.6% below the same month last year. However, for the 5 months to date packaged sales are 1.5% better than they were in 1947.

Non-returnable bottle shipments in May hit their peak month for this year and with a similar anticipated increase in can shipments the returnable bottle has been the package most affected by this month's sales lag.

PACKAGED BEER SALES

1948 vs. 1947

Total Packages—Metal Cans—Non-Returnable Bottles

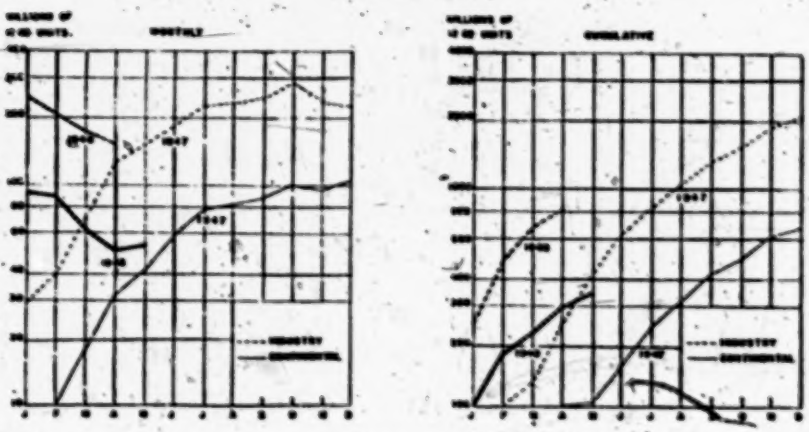


[fol. 1227] *Beer Can Shipments* Indications from Continental's May figures (Industry not yet available) are that the steady decline of beer can shipments since the first of the year has been reversed. Heavy off-season purchasing of cans in anticipation of allocations has been brought to an end, and shipments should now follow a more normal seasonal pattern.

BEER CAN SHIPMENTS

Continental vs. Industry

1947 and 1948



Beer Sales & Production (Bbls.)

Beer Production		Packaged Sales	
May 1948	7,264,472	May 1948	4,563,445
May 1947	7,982,847	May 1947	4,992,110
May 1948 −9.0% or	718,375	May 1948 −8.6% or	428,665
Total 5 mos. 1948	34,283,013	Total 5 mos. 1948	21,712,931
Total 5 mos. 1947	34,905,090	Total 5 mos. 1947	21,383,650
Total 5 mos. 1948 −1.8% or	622,077	Total 5 mos. 1948 +1.5% or	329,281

Total Sales		Draught Sales	
May 1948	6,751,930	May 1948	2,188,485
May 1947	7,510,628	May 1947	2,518,518
May 1948 −10.1% or	758,698	May 1948 −13.1% or	330,033
Total 5 mos. 1948	31,857,166	Total 5 mos. 1948	10,144,235
Total 5 mos. 1947	32,324,057	Total 5 mos. 1947	10,940,407
Total 5 mos. 1948 −1.4% or	466,891	Total 5 mos. 1948 −7.3% or	796,172

Percent of Draught and Packaged Taxpaid Beer to Total Sales

	Packaged	Draught
May 1948	67.6%	32.4%
May 1947	66.5%	33.5%
Total 5 mos. 1948	68.2%	31.8%
Total 5 mos. 1947	66.2%	33.8%

Commercial Research Dept.

[fol. 1228]

Reported Total Packaged Beer Sales

vs.

Can Industry and Continental Beer Can Shipments

Month	Total Packaged Beer Taxpaid Withdrawals 12 Ounce Units	Total Beer Can Shipments (1) 12 Ounce Units	% of Pkg'd Beer	CCC Beer Can Shipments (1) 12 Ounce Units	% of Total Canned Beer
Total					
4 mos. 1947	5,389,538,352	269,767,300	5.0	63,366,500	23.5
May—1947	1,641,405,768			42,934,000	
1948					
January	1,370,903,981	250,784,400	18.3	91,223,000	36.4
February	1,211,910,439	219,070,700	18.1	88,939,000	40.6
March	1,498,982,760	183,649,000	12.3	61,435,500	33.5
April	1,556,953,817	164,068,700	10.5	53,983,500	32.9
To-date Total					
4 mos. 1948	5,638,750,997	817,572,800	14.5	295,581,000	36.2
May	1,500,460,716	(2)		58,247,000	
To-date Total					
5 mos. 1948	7,139,211,713			353,828,000	

Glass Container Industry Beer Bottle Shipments

Month	New Returnable Beer Bottles (No. of Units)	New Non-Ret. Beer Bottles (No. of Units)
Total 5 mos. 1947	787,669,056	49,681,152
1948		
January	88,812,864	32,030,928
February	79,891,920	21,492,576
March	115,771,536	36,169,632
April	56,819,088	30,262,464
To-date Total 4 mos. 1948	341,295,408	119,955,600
May 1948	55,811,088	43,873,632
To-date Total 5 mos. 1948	397,106,496	163,829,232

Source: U.S. Brewers Foundation, U.S. Dept. of Commerce Facts for Industry Repts.—"Metal Cans" and "Glass Containers."

Note: (1) Beer can shipment figures secured by converting tons of metal in beer cans reported shipped, into base boxes using 20.6 BB per ton of steel and 2.0 BB per 1000 cans.

(2) Steel Tonnage of metal consumed in shipments of beer cans by the entire industry for the month of May has not been released.

Returnable bottles reported include all sizes and are estimated to make 18.3 trips each.

Commercial Research Dept.

[fol. 1229] GOVERNMENT'S EXHIBIT 589

June 9, 1948.

Messrs. H. A. Eggerss, T. C. Fogarty, P. E. Pearson, A. M. Cameron, Sherlock McKewen, J.S. Snelham, D.C. Witzke, P. P. Wojtul, P. B. Nold, G. H. Muth, P. E. Fagan, W. P. Murray, R. L. Perin, J. F. Fenn, A. P. Jacobs, H. W. Miller, R. L. Carlton, G. P. Edmonds, G. C. Schepp, D. A. Johnson, O. G. Jakob.

Messrs. A. J. Robertson, C. M. Towne, R. S. Hatfield, R. M. Schrader, J. E. Niederhauser, W. A. Lacke, G. J. Barry, S. L. Smith, J. G. Murray, L. C. Van Hoeven, W. M. Tomkins, J. F. Price, E. R. Van Meter, R. D. Post, L. E. Hall, S. W. Hanson, S. A. Huge, B. D. Bloser, J. L. Heinlein, M. O. Roberts, J. N. Carty, F. H. Dillingham.

Beer Sales and Production

Monthly and To-Date—April 30, 1948

The following are the latest Treasury Department releases covering beer production and taxpaid beer sales for the month of April 1948 as compared with the same month of 1947, also four months to date comparisons 1948 vs. 1947.

April production was 7,380,653 barrels, which was .7 percent less than April 1947 and 5.6 percent more than March 1948. Taxpaid sales for April were 6,976,591 barrels which was .7 percent less than April 1947 and 4.1 percent more than March 1948.

Taxpaid packaged sales for April 1948 were 4,735,261 barrels or .5 percent more than April 1947 and 3.9 percent more than March 1948. For the four month period ending April 30, 1948 packaged sales were 17,149,486 barrels, or 4.6 percent more than the same period 1947.

While beer production and taxpaid sales for the month of April were lower than for the same month last year, the decrease was slight and does not materially affect the yearly trend. Both continue on approximately the same high level as during 1947.

L. E. Dake.

Allen L. Whittier:MGG

cc: District Sales Managers, District Credit Managers, Product Sales Managers.

[fol. 1230] Beer Production (in barrels) April 1948

April 1948	7,380,653	5.6% more than March 1948.
April 1947	7,434,861	
	54,208	.7% less than April 1947.
Total 4 months 1948	27,018,541	
Total 4 months 1947	26,922,243	
	96,298	.4% more than same period 1947.

Taxpaid Beer Sales (in barrels) April 1948 Packaged

April 1948	4,735,261	
April 1947	4,713,375	
	21,886	.5% more than April 1947.
Total 4 months 1948	17,149,486	
Total 4 months 1947	16,391,540	
	757,946	4.6% more than same period 1947.

Draught

April 1948	2,241,330	
April 1947	2,315,472	
	74,142	3.2% less than April 1947.
Total 4 months 1948	7,955,75	
Total 4 months 1947	8,421,889	
	466,139	5.5% less than same period 1947.

Total Sales

April 1948	6,976,591	4.1% more than March 1948.
April 1947	7,028,847	
	52,256	.7% less than April 1947.
Total 4 months 1948	25,105,236	
Total 4 months 1947	24,813,429	
	291,807	1.2% more than same period 1947.

Percent of Draught and Packaged Taxpaid Beer to Total Sales

	Packaged	Draught
April 1948	67.9%	32.1%
April 1947	67.1%	32.9%
Total 4 mos. 1948	68.3%	31.7%
Total 4 mos. 1947	66.1%	33.9%

[fol. 1231]

Reported Total Packaged Beer Sales

vs.

Can Industry and Continental Beer Can Shipments

Month	Total Packaged Beer Taxpaid Withdrawals 12 Ounce Units	Total Beer Can Shipments 12 Ounce Units	% of Pkg'd Beer	CCC Beer Can Shipments 12 Ounce Units	% of Total Canned Beer
3 mos. 1947	3,839,780,652	140,183,000	3.7	30,051,000	21.4
April—1947	1,549,757,700			33,315,500	
1948					
January	1,370,903,981	250,784,400	18.3	91,223,000	36.4
February	1,211,910,439	219,070,700	18.1	88,939,000	40.6
March	1,498,982,760	183,649,000	12.3	61,435,500	33.5
To-date Total					
3 mos. 1948	4,081,797,180	653,504,100	16.0	241,597,500	37.0
April	1,556,953,817			53,983,500	
To-date Total					
4 mos. 1948	5,638,750,997			295,581,000	

Glass Container Industry Beer Bottle Shipments

Month	New Returnable Beer Bottles (No. of Units)	New Non-Ret. Beer Bottles (No. of Units)
Total 4 mos. 1947	567,749,664	25,284,384
1948		
January	88,812,864	32,030,923
February	79,891,920	21,492,576
March	115,771,536	36,169,632
To-date Total 3 mos. 1948	284,476,320	89,693,136
April 1948	57,232,224	30,262,464
To-date Total 4 mos. 1948	341,708,544	119,955,600

Source: U.S. Brewers Foundation, U.S. Dept. of Commerce Facts for Industry—"Metal Cans" and "Glass Containers."

Note: (1) Beer can shipment figures secured by converting tons of metal in beet cans reported shipped, into base boxes using 20.6BB per ton of steel and 2.0 BB per 1000 cans.

(2) Steel Tonnage of metal consumed in shipments of beer cans by the entire industry for the month of April has not been released.

Returnable bottles reported include all sizes and aer estimated to make 18.3 trips each.

canning

CONTINENTAL CAN COMPANY

[fol. 1233] 2762

Continental Can Company
District Sales Offices

409 Grant Building
44 Broad Street, N. W.
P. O. Box 2030
Atlanta 1, Ga.

2700 Mathieson Building
Baltimore 2, Md.

200 Berkeley Street
Boston 16, Mass.

135 So. LaSalle Street
Chicago 3, Ill.

2510 Highland Avenue
Norwood Station
Cincinnati 12, Ohio

1721 NBC Building
Cleveland 14, Ohio

325 Oil & Gas Building
Houston 2, Texas

1120 Wilshire Boulevard
P. O. Box 17577
Los Angeles 17, Calif.

110 East Wisconsin Avenue
Milwaukee 2, Wisc.

810 Roanoke Building
Minneapolis 2, Minn.

1310 Richards Building
New Orleans 12, La.

100 East 42nd Street
New York 17, N. Y.

Room 629
First National Bank Building
16th & Farnum Streets
Omaha 2, Neb.

Getty Avenue and Thomas Street
Paterson 3, N. J.

12 South 12th Street
Philadelphia 7, Pa.

2615 Grant Building
Pittsburgh 19, Pa.

Yeon Building
Portland, Oregon

Russ Building
San Francisco 4, Calif.

818 Olive Street
St. Louis 1, Mo.

1016 East Water Street
Syracuse 3, N. Y.

510 Lake Howard Blvd., N. W.
P. O. Box 840
Winter Haven, Fla.

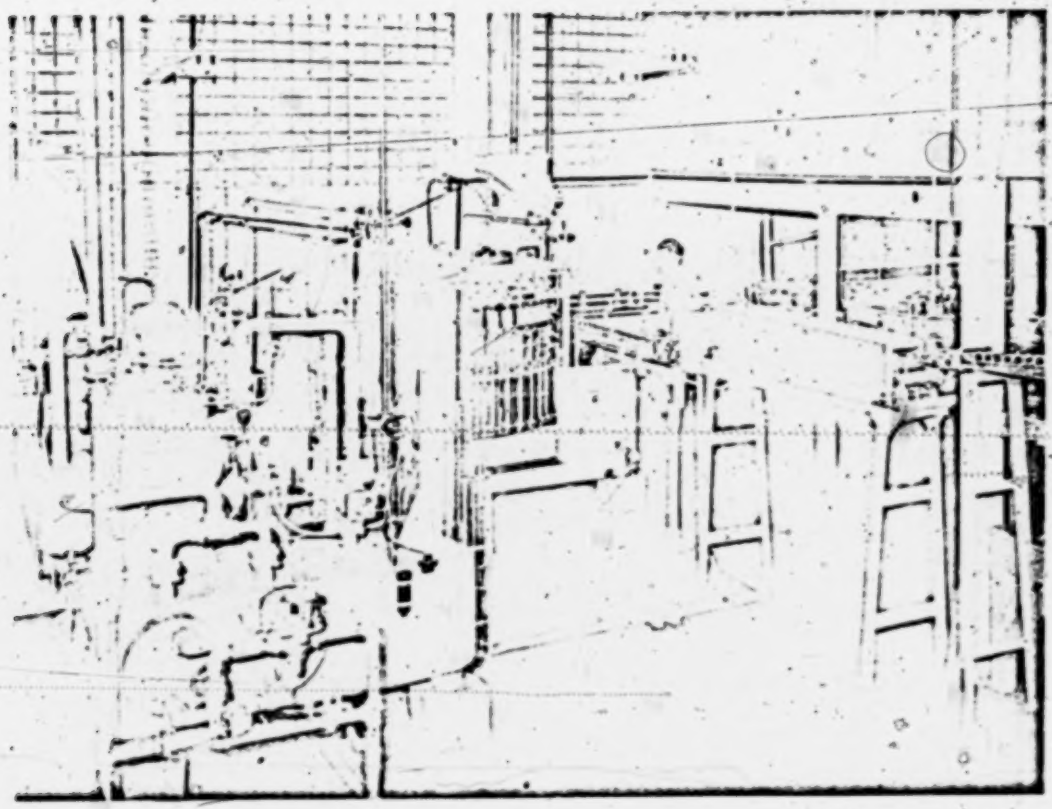
The ABC's of canning soft drinks

"Soft drinks in cans—what does this new development mean to me?" That question has been asked of Continental by many people in the soft drink industry.

There is no one answer that applies to every soft drink packer. Cans, as a package for soft drinks, have gained acceptance in many markets because of the convenience they offer to packer, retailers, and consumers. On the other hand, certain technical and economic problems must be considered before adopting the new package.

We hope that this booklet will answer some of your questions, and help you to decide where cans belong in your operation. If you wish to explore the subject further, there is a Continental representative near you. He will be happy to discuss your particular problems with you at any time.

One of the original soft drink canning plants.



Development of the soft drink can

The soft drink can has been generally available for only a short time, but the idea of a can for this group of products is not new.

In 1935, Continental Can Company started development work on a metal container especially designed for soft drinks. Some years later, an attempt was made to package carbonated beverages in cans. This project ran up against the first big hurdle in the path of canned soft drinks – it proved impossible with materials and techniques then known, to provide a can with adequate "shelf life" for soft drinks.

Another attempt was made in 1950. This time a much improved can showed promise of providing adequate shelf life, and was marketed with some success. However, restrictions of the Korean war and economic conditions made it hard for any disposable package to compete with returnable bottles. This situation curtailed plans for expansion; only one soft drink canning plant remained in operation.

By 1953, the circumstances had changed. Consumers were accustomed to products packaged for convenience in handling and use. Supermarkets, much expanded since World War II, were selling more and more soft drinks; the problem of handling deposits and empties was proving a costly one for them.

Recognizing this opportunity, one enterprising concern reintroduced soft drinks in cap sealed cans. Others followed in the flat top style. Canned soft drinks were given a good reception by consumers, and aroused much interest throughout the bottling industry. This year, of course, as more cans have become available and market demand has increased, many soft drink brands have entered the canning field.

What are the chances of continued, and increasing, success for canned soft drinks? We think that they are favourable. Public demand among the take-home trade for the convenience features of the can is established. Many retail outlets are enthusiastic about handling soft drinks in cans. Cans themselves are available in adequate quantities. Technical improvements have been made in can structure, linings, and manufacturing methods. Continuing research promises further progress along these lines.

Container requirements

A package for soft drinks must meet certain specific requirements. The container should be made of materials capable of holding the product under considerable pressure. Yet these materials must not affect the wholesomeness or flavor of the beverage. The container should be light in weight, but able to withstand comparatively rough handling during packaging and shipment. It must be a sanitary container that can be filled easily and sealed faultlessly at a high rate of speed. It should be an economical method of packaging soft drinks.

Types and sizes of soft drink cans

Two types of cans are presently being used for packaging soft drinks: cap sealed and flat top cans. The cap sealed can with a cone top and crown closure is somewhat similar to the soft drink bottle; the flat top can is much like the present beer can.

Cap sealed cans for soft drinks are made in 6-, 12-, and 32-ounce sizes. The flat top style is available in the 12-ounce size for carbonated products, and in several sizes for still drinks.

Can-making materials

To produce a container which will protect the quality of soft drink products, the can manufacturer must make judicious selection and use of can-making materials. The soft drink can is made of the best tin-coated steel plate available.

The cans and ends are lined on the inside with two or more coats of can-lining materials to guard the taste, appearance and wholesomeness of the contents. The first coat is usually applied in the flat before the can body is formed. The second coat is applied after the can has been fabricated. These materials are carefully selected to make sure that they do not impart any off-flavor to the particular beverage being packaged in the can.

A decorative label (in the design and colors selected by the packer) is lithographed on the outside of the can by the can manufacturer, thus eliminating the labeling operation in the packer's plant. The exterior of the can and ends are further protected by one or more applications of a protective material.

Can structure

Carbonated beverage cans must withstand the maximum internal pressure developed by the product during storage. This internal pressure may be as high as 140 pounds per square inch, corresponding to five volumes of carbonation at 110°F.

To meet these requirements, the side seam and ends of the can must perform satisfactorily under the maximum pressure conditions anticipated. Side seams having outside soldered tabs were designed specifically for use on carbonated beverage cans. Types of side seams used increase the overall strength of the container and prevent the seam from opening, even under critical storage conditions.

Sealing the container

Another major requirement of a container for soft drinks is that it must be able to be filled easily and sealed faultlessly at a high rate of speed.

The cap sealed can and the bottle are crowned in a similar manner, on the same kind of machinery, and with approximately equal efficiency.

The flat top can is closed in an entirely different manner; a closing machine is employed to attach the covers to the cans. This is done by means of a double seam made air-tight by the use of a sealing material.

Other qualities of the soft drink can

In addition to meeting specific requirements, the metal container possesses many qualities considered advantageous for a package for soft drinks.

Soft drink cans stack easily and may be stored in a minimum amount of space — whether it be in the packer's warehouse, in transit, on the retailer's shelves or in the consumer's refrigerator.

The cans are also light in weight, effecting a considerable saving in distribution costs.

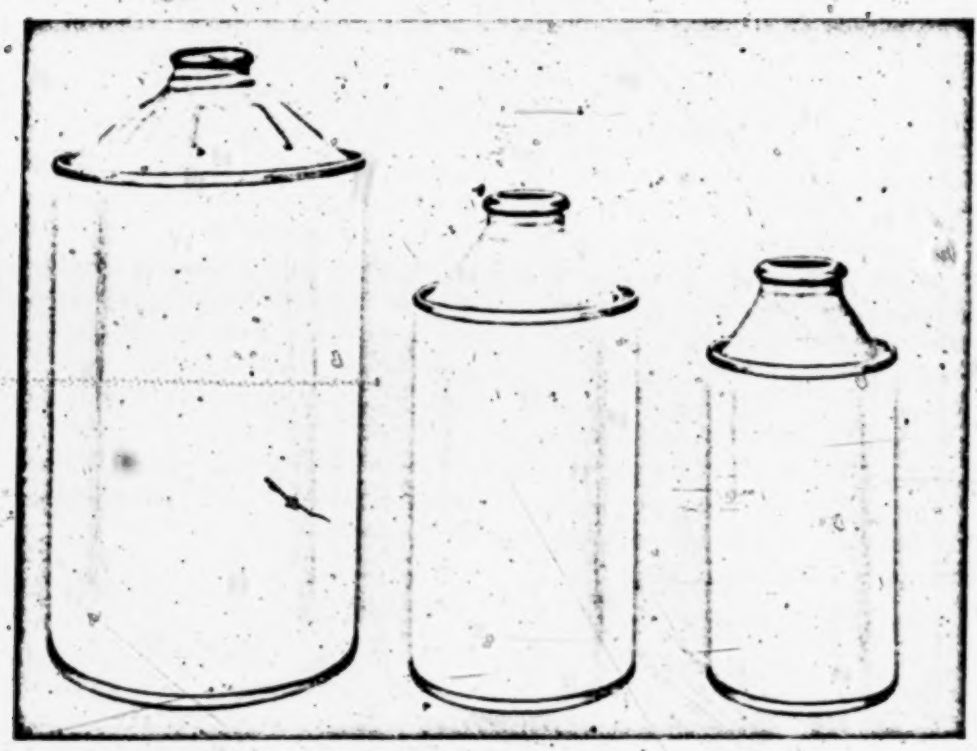
The lithographed can is colorful and lends itself to the most attractive shelf display.

Sturdy and easy to handle, it will not break even under extremely rough handling.

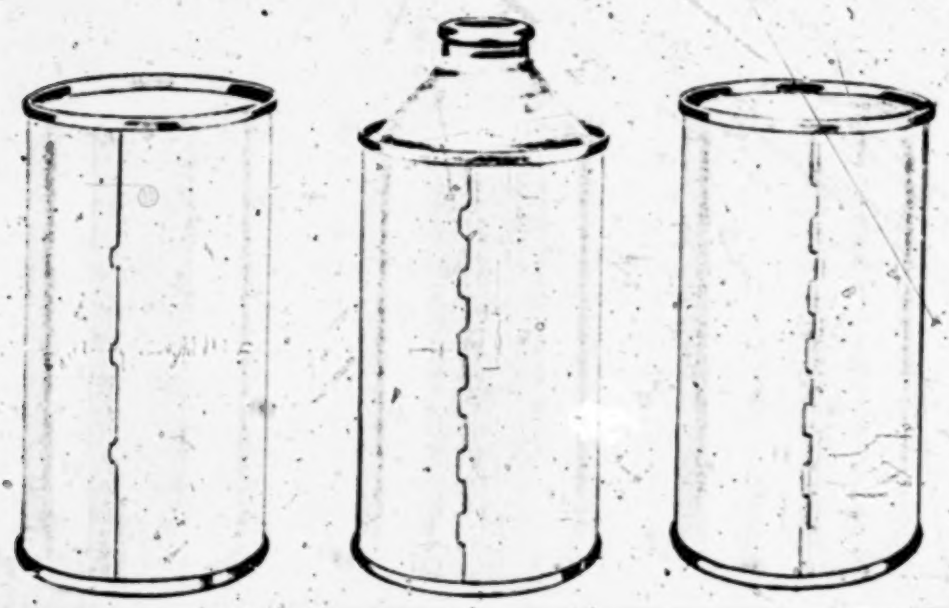
There are no deposits or handling of "empties" by the retailer. The soft drink can is used once and then thrown away.

In addition, the can offers the consumer many convenience factors. It chills rapidly in the refrigerator, eliminates storage and subsequent return of "empties" to the retailer.

Three sizes of Cap Sealed cans — 32, 12, and 6 ounce.



Side seams for carbonated beverage cans must be specially designed to resist internal pressures.



[fol. 1240]

Economics of soft drinks in cans

The consumer advantages of the can for soft drinks command a premium retail price in most markets, offsetting the slightly higher costs of this package. Prospective canners should investigate all cost factors to evaluate profitable use of the metal package in their market.

Costs will vary in every case, and "typical" comparisons are often misleading. The following factors should be considered in each individual cost analysis.

Containers – While returnable bottles are less expensive than cans or throw-away bottles, care should be taken to include an adequate allowance for replacement and obsolescence. Cans normally cost about 3¼ cents each for either style, compared to 2¾ to 3 cents each for one-way 12 ounce bottles.

Crowns – All packages except flat top cans use crown closures.

Labels – Labels must be included in analyzing bottle costs when color-applied labels are not used. Cans are lithographed and do not require labels.

Cases – Cost of cases will vary with style used. Returnable wooden cases are normally used with returnable containers. These cases are expensive initially, and require maintenance; however, being returnable, the cost can be spread over several trips.

One-way reshipping cartons are usually used to deliver cans and one-way bottles to the packer, and to carry the filled containers to the retailer.

Contents – There is no significant difference between the cost of ingredients for 12 ounces of a canned product and the same quantity packed in other types of containers.

Filling and packaging – Filling and packaging costs will depend upon the speed of each filling line, the number of people employed, and prevailing wage rates. In this respect, cans usually cost less. Sorting, washing, and inspection of returned empties is avoided. Can lines often operate at considerably higher speeds, allowing more output per employee.

Storage and handling – Empty and filled, cans are lighter and take less space. Thus, handling and warehousing costs will favor cans. Cans may be ordered as needed. There is no necessity to store large quantities of "empties" during the off-season.

Distribution – When store-door deliveries are made, cans normally prove easier (and therefore less costly) to

handle, since they are lighter and take less space. More cans may be placed on a single truck.

There is no need to sort, pick-up, or refund deposits for empties. Thus, each stop takes the driver less time.

The no-return feature of cans permits the central warehouse deliveries desired by many grocery chains. This method of distribution is low in cost, as many cases are delivered at a single point.

When shipping long distances, the weight and space-saving features of cans reduce the freight bill considerably.

Retailing – Cans require less shelf space and may be stacked more easily. Thus, they prove easier for the retailer to store and handle.

Cans need not be re-handled as empties.

To achieve an equal net profit, most large retailers state that a smaller gross markup is acceptable when selling soft drinks in cans.

Investment required – Syrup room, water treating equipment, and many other facilities of a normal bottling plant are equally suitable for canning. Filling and closing equipment, however, must be replaced or converted if cans are to be substituted for or alternated with bottles.

Approximate costs for typical installations are about as follows:

	New Filling Line	Conversion from Bottle Line
Glass Bottle line	$160,000	—
Flat Top Can line	130,000	$90,000
Cap Sealed Can line	100,000	20,000

Exact costs will of course depend upon equipment at hand, plant layout, and other factors. The above figures are intended only to be a general indication of outlay involved.

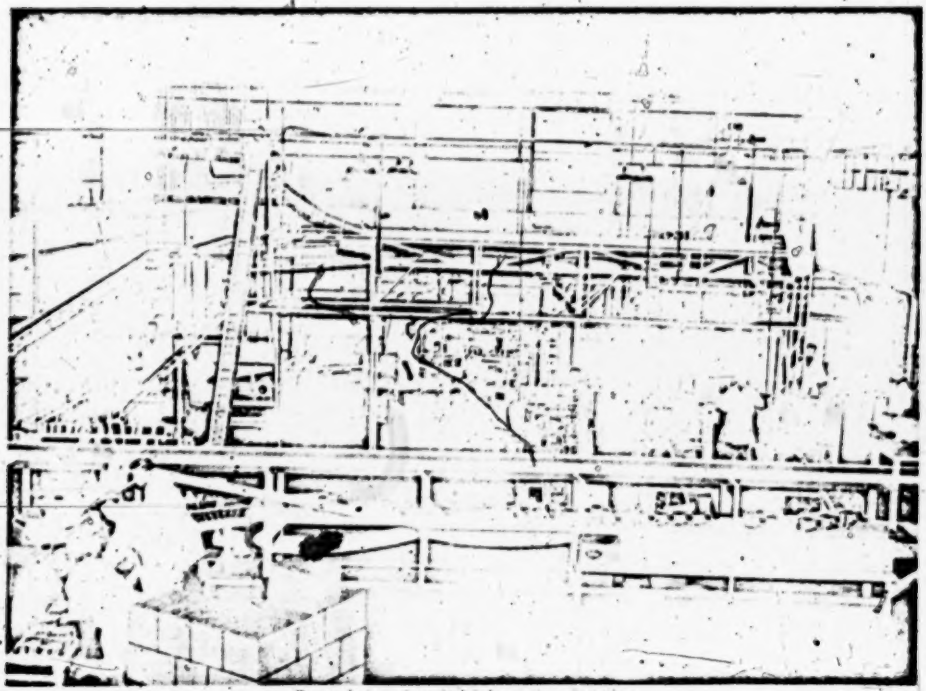
Amortization of the investment made is properly figured as a cost in analyzing various packages.

Total cost, retail price, and market – Each of the above factors contributes to the total cost chargeable to each type of package. Together with an allowance for overhead and profit for packer and distributor, these costs establish a logical retail price at which the product should be sold.

Canning procedures

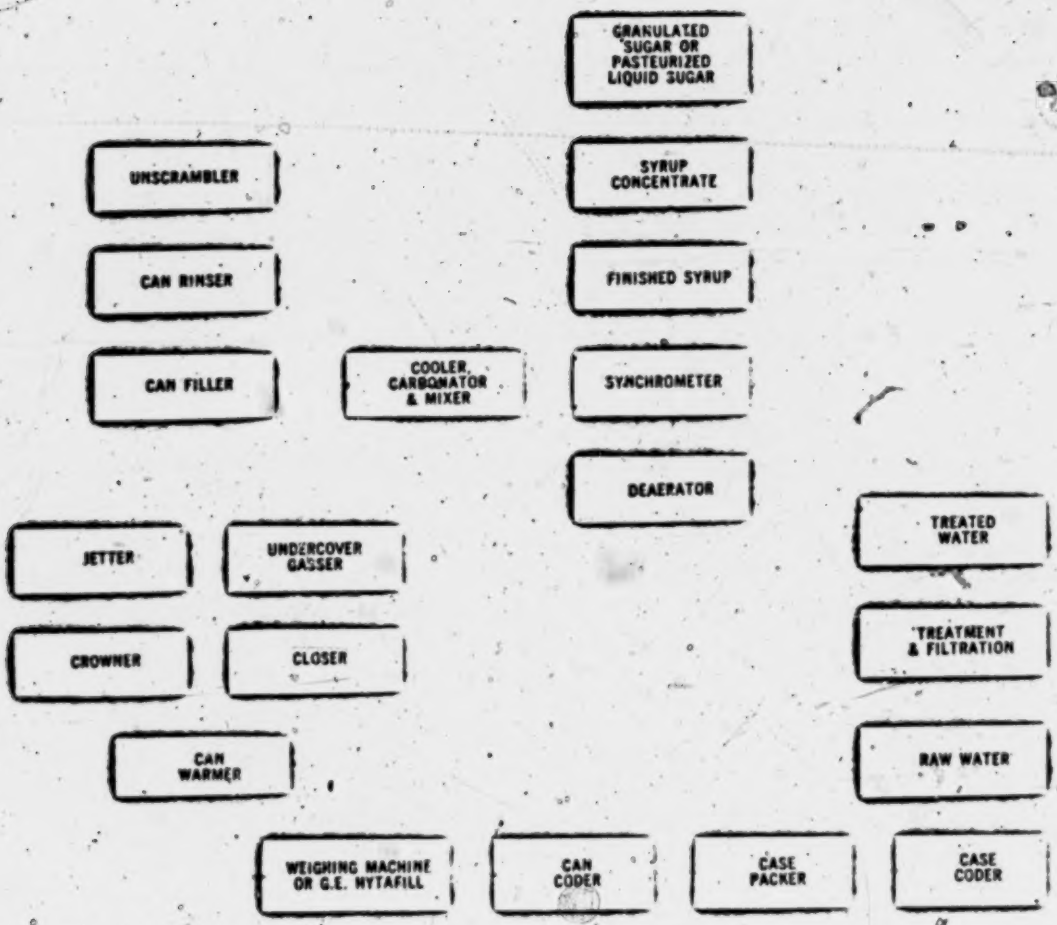
The techniques of canning and bottling soft drinks are quite similar. Therefore, the adoption of cans by the beverage industry presents few new problems as far as preparation and handling of the product are concerned.

The product for canning may be pre-mixed, or made by syruping and then adding carbonated water – the way most soft drinks are prepared today. The equipment used in the pre-mix or syruping systems of product preparation for bottling can also be used in canning. Thus, it is possible for a bottler – converting to cans or packing alternately in cans and bottles – to use his present water-treating, syrup-making, cooling and carbonating equip-



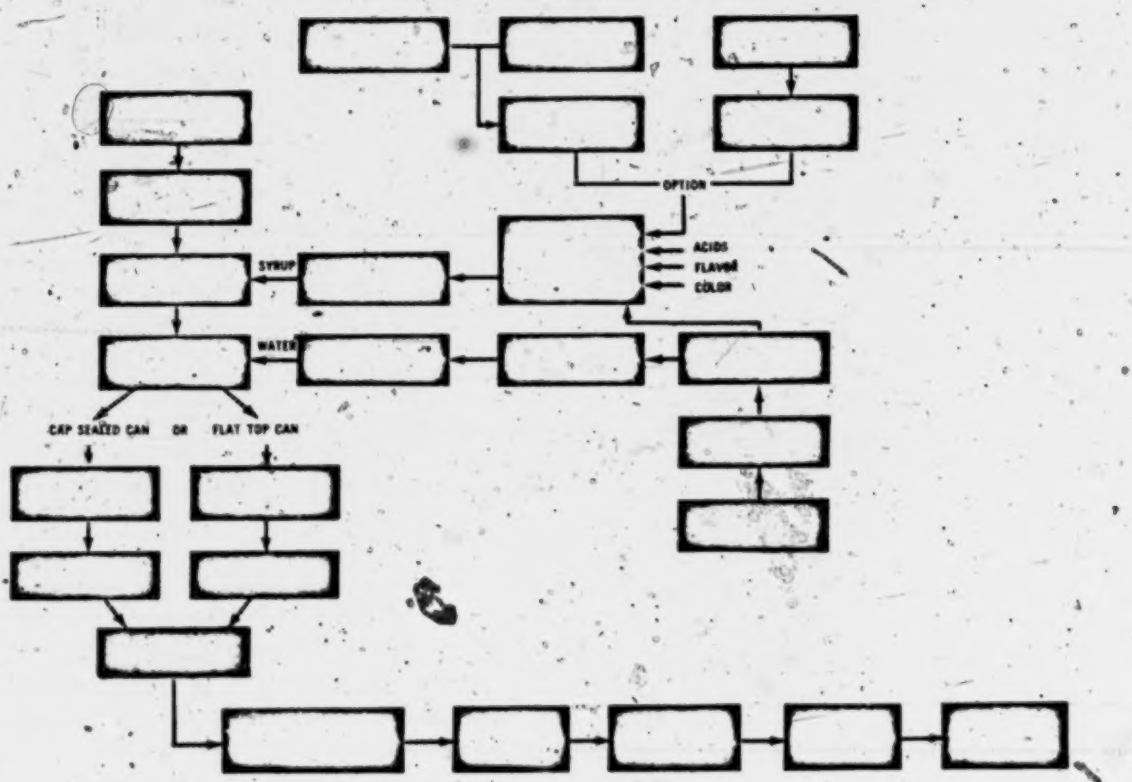
General view of a soft drink canning operation.

[fol. 1243] 2772



[fol. 1244]

Typical beverage canning line – syruping system



ment. When packaging the beverage in the cap sealed can, the bottler can even use the same filling and crowning machinery.

The principal differences between the bottling and canning operations lie in the handling of the containers before and after filling. Cans for carbonated beverages are usually received in re-shipper cases. Cans go first to the can unscrambler which orients the cans for conveying through the rest of the equipment. (Empty cases are belt-conveyed to the case packer.)

Since cans are not re-used, bottle soakers, washers, etc. are not required. However, prior to filling, the cans are spray rinsed. While being conveyed to the filler, the washed cans then make a series of twists and turns to facilitate drainage of wash water.

Syruping equipment and fillers are essentially the same for both bottles and cans, although special modifications may be necessary to adapt existing equipment to handle flat top cans. As in bottling operations, a specific amount of syrup is placed in the can and carbonated water is added on top of the syrup, by the filler.

Precautions must be taken to minimize the amount of air dissolved in the product. Excessive air content may have a harmful effect on the product and may also lead to reduced shelf life. On the cap sealed line, as the cans leave the filler a "jetter" injects a small amount of CO_2 or product into the top of the beverage in the filled can. The foaming action produced removes the air from the headspace. On the flat top line, air is removed from the headspace by displacement with CO_2 gas from an undercover gasser on the closing machine.

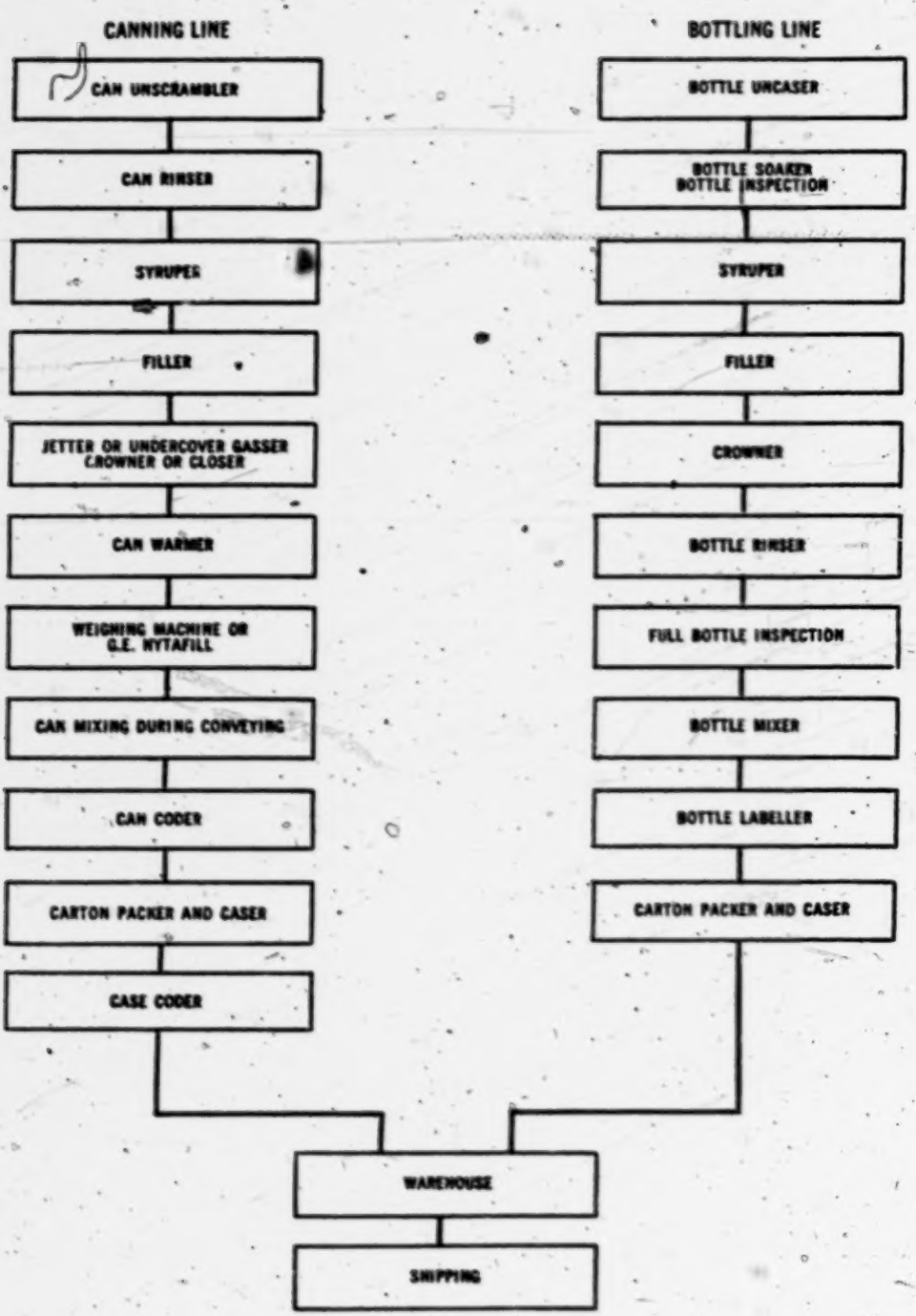
The filled cans then move directly to a machine for closing. With minor modifications, the same equipment used for crowning bottles can usually be used for crowning cap sealed cans. However, crowning adjustments must be made carefully when cans are run to be sure that the crowning operation will produce an efficient seal without deforming the nozzle.

Filled flat top cans move directly into the closing machine or double seamer which attaches the cover to the filled can. These closing machines are engineered to operate at high speed—300-500 cans per minute—and are designed to accommodate cans of various diameters and heights.

The closed cans—cap sealed or flat top—are passed through a can warmer which raises the temperature of the can and product a few degrees above room temperature. This is done to prevent condensation of moisture on the otherwise cold surfaces of the cans and provides enough heat to dry the cans.

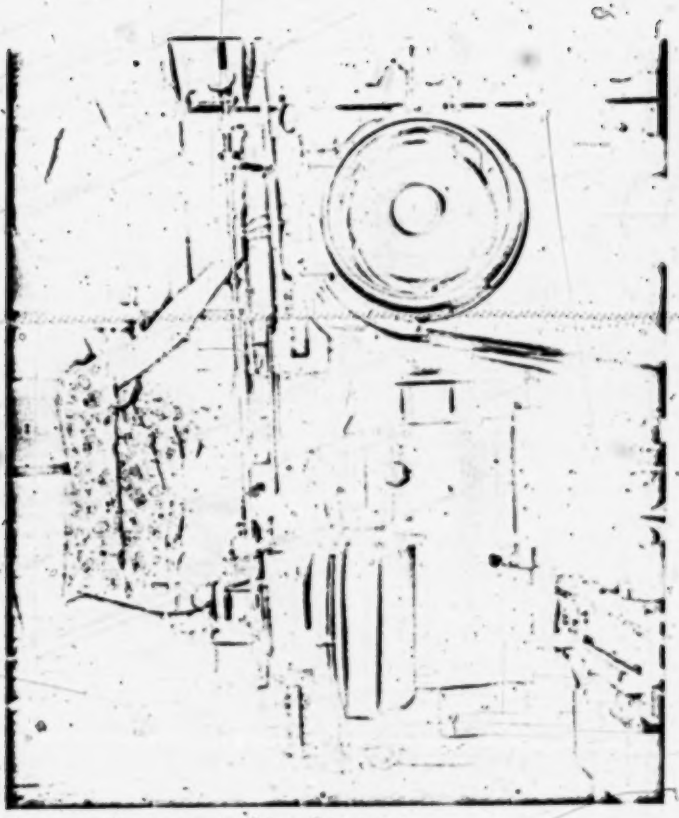
When the syruping system of packing is used, the cans must be subjected to a mixing treatment to insure thorough blending of the syrup and carbonated water in the container. In the bottling line this is accomplished in the bottle mixer, whereas, in canning it is usually accomplished by passing the filled cans through a series of twists and turns in the conveyor system.

The cans are conveyed through a weigher or fill checker which automatically rejects underfilled cans. In a canning line, a labeller is not required as the cans are lithographed. However, a coder is used to provide identification for each can before casing. Coded cans travel to the casing unit where they are packed, and the cases glued and sealed automatically. Filled cases are coded, again placed on pallets and are now ready for warehousing or shipment. Coding the case enables the canner to market the canned soft drinks in chronological order, thus eliminating unduly long storage for any particular lot.

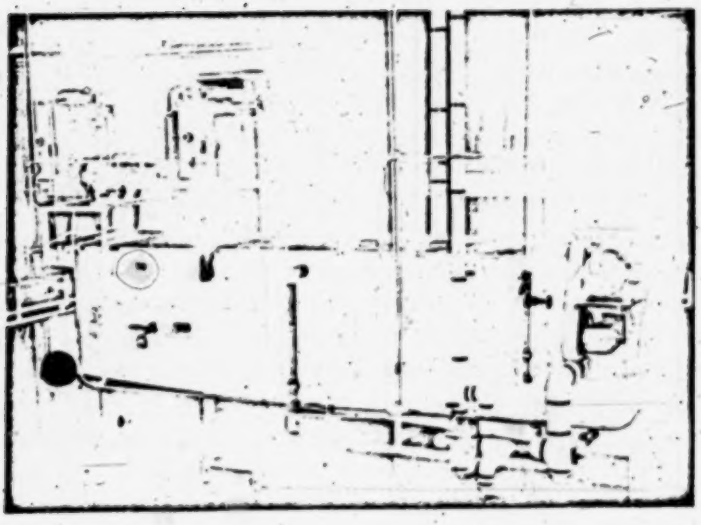


Comparison of Canning and Bottling Carbonated Beverage Lines, Syruping System.

[fol. 1247]



Closing machine for seaming lids on flat top cans.



A typical can warming device

Questions about canned soft drinks

Question. Cans have had some success to date. However, distribution has been limited. Does this mean that cans are only a "fad"?

Answer. General industry opinion is that cans are here to stay. We believe that the advantages of metal cans as a package for soft drinks will gain increasing acceptance in the soft drink market. In evaluating this year's results it must be remembered that cans are a new package to soft drink packers, retailers, and consumers. Many well-known brands are not yet available in cans. Promotion and distribution methods are not firmly established. These limitations are not necessarily permanent, but they do restrict can sales at this time.

Question. What features of the can command the premium at which canned soft drinks are often retailed?

Answer. The can is a "convenience" package—light in weight, unbreakable, easy to carry and store. Cans chill quickly. It is not necessary to return "empties". These features appeal to today's busy housewife.

Question. What share of the soft drink market will canned soft drinks eventually garner, in your opinion?

Answer. It is difficult to estimate the ultimate share of the market that the can will hold. This year about 33% of *packaged* beer is in cans. The soft drink and brewing industries are not exactly comparable, however. We would expect a lesser use of cans for soft drinks for some years to come.

Question. How many of the present soft drink canners use the can as their sole package; how many of them also produce glass-packaged soft drinks? What do you see as the future pattern in this respect?

Answer. Some soft drink canners today use only the metal package. Perhaps a greater number are also active and successful bottlers. Most concerns now considering use of the can are already established in the soft drink industry. Interest on the part of "outside" companies is at present very limited.

Question. Has any interest been shown in soft drink canning by the large canned food producers?

Answer. There has been some general interest in canned soft drinks among some packers of other canned foods. A few have done contract packing for others. This interest has, to our knowledge, not matured to a point where a food packer is producing soft drinks under his own label, however. Despite the apparent parallel between the canning of soft drinks and of perishable food products, food canning equipment is generally unsuitable for carbonated beverages. In addition, technical people trained for food operations are not necessarily expert soft drink producers. Marketing of canned foods entails a different sales and distribution set-up from canned soft drinks. Perhaps most important, the peak production seasons of most perishable crops coincide with the period of heaviest soft drink consumption.

Question. Do you believe that canned soft drinks will ever be competitive, price-wise, with bottled merchandise?

Answer. The economies of a *returnable* package will maintain the deposit

bottle's price edge for some time. However, because of its many advantages, we believe the can will compete effectively, even at a slightly higher price.

Question. For the picnic users or the casual buyer will not the "No Return Bottle" serve as well as cans?

Answer. The two packages do not possess the same advantages. The can is unbreakable, light in weight, takes less space, and chills quickly. Some consumers are accustomed to discarding cans but to saving and returning bottles even if no deposit is due. The experience of the brewing industry has been that cans will outsell non-returnable bottles by a large margin when both are priced to reflect actual costs.

Question. Which can style, Cap Sealed or Flat Top, is preferred?

Answer. At present the brands are about equally divided between Flat Top and Cap Sealed (cone top) cans. Until recently cap sealed cans have been in short supply. Briefly, the advantages of each style are as follows:

Cap Sealed	Flat Top
Easier to open (especially for children)	Less costly
Easier to drink from	Easier to stack
Less costly to convert bottling line to cans	Take less space
Withstand greater internal pressure	

The above factors have resulted in an apparent consumer preference for the cap sealed can, to some extent offset by a retailer preference for the flat top.

Cost-wise, the two cans alone are about the same. However, use of the cap sealed can is more expensive by the value of the crown closures, approximately 4½¢ per case.

Question. A year ago, when canned beverages first appeared, there was a limited supply of cans for those producers who wished to enter the field. If there was a "scarcity", it seems to have disappeared. Are there more can manufacturing lines in existence today?

Answer. The shortage of cans for soft drinks has eased because there are more manufacturing lines in production today. We and other can makers will have still more equipment available prior to the next peak season.

Question. To the bottler, what additional costs are involved in setting up a canning operation?

Answer. The most significant costs in setting up a canning operation are those necessary to equip to fill and close cans. A bottling line may be equipped to handle cap sealed cans part time or full time for about $20,000. A complete new canning line for either can style will cost around $100,000-$130,000. New can lines can run at 400 or more cans per minute.

Existing syrup room, water treating system, and other facilities may be used with either cans or bottles.

Personnel of the bottling line can be trained quite readily to handle cans.

Question. Is it possible to develop can liners for every soft drink flavor? If not, please explain.

Answer. Our engineers believe that research now in progress will lead to improved liners suitable for those products which are now most difficult to pack in cans.

Question. How much carbonation can be safely used in canned beverage products today?

Answer. This depends on the size and style of can. In general, the cone top can may be used for higher carbonation than the flat top and in the 12-oz. size may carry up to 5.0 volumes of CO_2 at normal peak storage temperatures.

Question. Is the "shelf life" now possible with cans too limited?

Answer. The shelf life possible with each product to be canned is determined, prior to packing, by careful tests.

Cans are sold by Continental only for products which can be held in good condition for the normal maximum interval between filling and consumption.

Question. Would you suggest that distribution of canned soft drinks be handled through food brokers or the packer's own delivery force?

Answer. The individual canner must select his own method of distribution. Packers using only cans, and without established sales organizations, have used brokers. Established bottlers, adding a line of canned soft drinks, have usually relied on their own distribution set-up, because of the coverage and "push" it affords at the retail level.

Question. Will the big canner be able to ship canned soft drinks economically from central plants to all parts of the country?

Answer. Despite the expanded markets possible with the lightweight can, large central canneries may have difficulty shipping great distances and retailing their products at a price competitive with local operators. The nature of the beverage industry differs somewhat from beer in this regard, and while canners may tend to have more centralized operations than bottlers they are likely to find it hard to absorb heavy freight costs, or to merchandise their product without local sales and promotion effort.

Question. It has been reported that dealers, while preferring the "convenience" of the can, are beginning to resent the smaller profit margins this item allows them. How can this be met?

Answer. We have not noticed any widespread resistance to "smaller profit margins" by retailing organizations who have measured costs carefully.

Such organizations seem to feel that a package that is easier to handle, such as the can, requires a lesser mark-up to yield the same net profit.

They therefore judge each package on its contribution to net profit per unit sold, not on the percentage margin possible. So judged, we have heard little criticism of the can at present price levels.

Soft Drink canners can sell their product by emphasizing these "facts of business life".

Question. Is there any great saving either for the packer or the grocer in using non-returnable containers, that is in the cost of handling?

Answer. Studies have placed the cost of handling returnable bottles in supermarkets at as high as 25¢ per case, although these costs are difficult to measure. Judging from the enthusiasm of most chains for non-returnable packages, it is apparent that they foresee considerable savings in their use. Each bottler's cost must be calculated individually, but obviously there is some expense in the collection, storage, and washing of returned containers.

Question. What are the principal tenets of establishing and operating a successful soft drink canning enterprise?

Answer. Soft drink canning is basically no different from any other business. A can is no magic guarantee of success. A good quality product must be produced at reasonable cost, and merchandised aggressively if the canner is to be successful.

[fol. 1251] GOVERNMENT'S EXHIBIT 600B

Continental Can Company, Inc.

Internal Memorandum

To: Location #43—Head Office
Attention Mr. M. M. Dukehart, Jr.
From: Location #43—Head Office
Date: May 26, 1953
Subject: Potential Market for Soft Drinks in Metal Cans

The forthcoming introduction of soft drinks in metal cans in the New York area by Cantrell & Cochrane again raises the question as to the potential place for metal cans in the very large soft drinks field. Two prior market tests (the Canada Dry test and the Pepsi-Cola promotion of 1950) provided little conclusive evidence as to whether the metal can will ultimately capture a significant place in packaging soft drinks. There are, however, enough significant new elements in the C&C promotion that the prospects for a successful invasion of the soft drinks field now appear very hopeful.

Total bottled soft drink (carbonated beverage) consumption in the United States is about *23 to 25 billion bottles* (all sizes). This is slightly larger than the packaged beer total of around 21 billion packages. Although growth since pre-World War II has been very substantial, in recent years increases have been little more than in proportion to population growth. Per capita annual consumption runs about 150 to 160 bottles, or about 525 to 550 bottles per household.

The extent to which metal cans could penetrate this tremendous market is, of course, not predictable at the present time—the big unknown being the untested acceptance of consumers. Other unpredictable factors will also influence the relative success of the forthcoming C&C venture (and other future similar attempts) but experience with the Pepsi Cola experiment, and even more, the brewing industry's experience with selling packaged beer in cans, offer some useful clues as to the potential metal can volume we may expect in soft drinks.

Assuming that the merchandising factors are favorable

and that the product quality is well received, the upper limit on market acceptance will then be determined by *price*. Detailed analysis of the market for canned beer presently indicates that about a 30% share of the market can be captured by cans where the competing bottled package retails in the vicinity of 15¢. In this price range the net cost of the can to the consumer is, under favorable conditions, about 2¢, or only about 13% of the price. This is after allowing for some production, shipping, and handling cost savings in relation to the bottled product. However, the realizable penetration which theoretically could be gained by cans—which in effect are a premium package—appears to go down geometrically as the retail price decreases. Where the retail price of the packaged product is around 10¢, the sales potential for cans would be very much lower, possibly about 10% of the total sales volume. As the retail price goes below 10¢, the potential for cans is probably even further reduced because the net cost of the can to the purchaser approaches 40% of the retail selling price of the bottled package, where the latter sells at a price of around 5¢. In the Pepsi-Cola test it appeared, for example, that a minimum level of 2% could be maintained for cans. Under the more favorable conditions foreseen for the 6 oz. can to be used by C&C, a penetration of 5% appears more likely.

On a *conservative basis*, therefore, the potential for cans in the soft drinks field can be approximated—on a very rough basis—as indicated in the following table. Also underlying these estimates is the assumption that product quality and merchandising effectiveness are sufficient to gain and sustain a level of consumer acceptance.

[fol. 1252] **Estimated Minimum Penetration for Metal Cans for Packaged Soft Drinks**

(assuming national distribution)

	Total	Small Size (Mainly 6&7 oz.)	Medium Size (Mainly 12 oz.)	Large Size (Mainly 28 oz.)
Est. 1953 Soft Drink Sales (Billions of Bottles)	24.0	18.0	3.5	2.5
Coca-Cola	12.0	12.0	...	...
Other Soft Drinks	12.0	6.0	3.5	2.5
Est. Can Penetration		2-5%	10%	...
Est. Can Requirements (Millions of Cans)	700-1,250	350-900	350	...

The Cantrell & Cochrane Venture

There are certain plus factors present in the C&C program which add substantially to the likelihood of success as compared with earlier unsuccessful ventures.

1. Since there does not already exist a bottled product of the same company against which the cans must compete, there is a natural fundamental incentive to push the C&C product *in cans*, and not to treat it as a secondary package as would be the case with an established bottling company.
2. There are potential economies of production possible with a central canning plant which would not be possible with smaller, decentralized local bottlers.
3. The distribution channels selected should be much more effective for the canned C&C product than was the case in earlier ventures. Almost all chain food store operators in the New York-Metropolitan area have been sold and are reportedly enthusiastic about the possibilities of this product. Furthermore, food wholesalers—a new channel for soft drinks—will be used to effect distribution. This is a plus item for food wholesalers and they will have an incentive to push it. Their usual margins are less than those obtained by beverage wholesalers but will be more favorable than for most other products handled by food wholesalers.
4. There is a special appeal for children (largest consumers of soft drinks) with these two new packages, and in our opinion this should be particularly true of the 6-ounce size. Not only is the package itself very attractive and convenient, but the nonbreakable feature should provide an advantage with parents of younger children.
5. The C&C line of products in cans will not compete with the same brand—especially an economy brand—in bottles. Thus there will be less tendency on the part of consumers to compare the price in one kind of package versus another.
6. Since 1950, when an adverse price relationship more than any other one factor killed the Pepsi-Cola-in-cans experiment, prices of soft drinks have risen

enough that a canned soft drink will be less at a disadvantage in terms of price.

[fol. 1253] There are also, however, some limiting factors which must also be considered.

1. The C&C brand is unknown and will have to be *sold*, regardless of the packaging feature. This should not be a serious obstacle, however, because it is doubtful that brand preference is very strong in soft drinks (except for Coca-Cola), and the disposable can—a new package—offers a natural merchandising feature to stimulate trial purchases.
2. The C&C soft drinks in cans will be generally at a price disadvantage which is bound to limit sales wherever potential consumers are economy minded. Since this is a critical factor, it is discussed in more detail in the attached call report.
3. The shelf life of the product, to our knowledge, has not as yet been completely tested. If technical difficulties on this score should arise, the C&C venture may run into some temporary setbacks, although it is expected that ultimately such technical problems can be satisfactorily overcome.

Actually the big *if* in this forthcoming test is the element of consumer acceptance on a *sustaining* basis. It will, of course, be observed carefully by other companies in the soft drinks field, and even a reasonable success this season is likely to bring other companies into the field before the 1954 season. The merchandising, advertising, and promotion program of C&C appears to be sound, and a budgeted advertising expenditure at an annual rate of $600,000 (equivalent to about $5,000,000 on a nationwide basis) is bound to generate a substantial volume of sales, at least in the earlier part of the season when the promotional effort is at its peak.

In order that we may be adequately informed as quickly as possible about the extent and development of consumer acceptance for the C&C product, we have arranged to obtain the results of a series of surveys which will be conducted for the Cantrell & Cochrane organization. The details of this program are covered in the attached call report.

As information becomes available, we will provide you with further reports which we hope will prove helpful in preparing to meet future can requirements.

The equipment program of three new lines for each size, as outlined in your letter of May 19th, appears at this time to represent about the minimum which should be committed by Continental in preparation to meet 1954 requirements. There is some question as to whether production will be needed at St. Louis in 1954, but we believe that the lines should be available in 1954, with ultimate location to be decided later. Top priority should be given for the cone and bottom dies, waxing equipment, and side seam tools for the 6 oz. lines in order that existing 202 diameter lines at other locations could be used for 1954, since the new lines may not be available in time for the peak season.

If the C&C venture is only moderately successful in the New York area (about 10% of the U.S. market) this year, it is still likely to draw other companies into the field, and 1954 will probably see C&C and other companies extending the use of cans toward nationwide distribution. Thus, 1954 could be a critical year for Continental to make the most of what shows promise of being a sizeable new market for metal cans.

D. H. Walker.

DHW:KF

Copies: Messrs. P. P. Wojtul—#43, R. G. Fisher—#43, W. K. Neuman—#43, R. L. Perin—#98, W. P. Murray—#98, J. I. Donahue—#122.

[fol. 1254] GOVERNMENT'S EXHIBIT 601

August 7, 1953.

#43—Head Office
Mr. C. H. Buckley

Market Survey Data for Soft Drinks in Metal Cans

Re: Cantrell & Cochrane

Yesterday, the writer called on the Ted Bates Advertising Agency in order to secure and discuss the latest statistical data from the market surveys being conducted by that

agency in conjunction with the introduction of Cantrell & Cochrane soft drinks in the metropolitan New York market.

Briefly, the results to date can be described in total as very favorable, and the survey data are now beginning to be somewhat indicative of what the actual results at the end of the summer season seem likely to be. Specifically, the two continuing tests now being conducted indicate the following thus far:

Sample Survey of Market Penetration

Starting with June 2 and each two weeks thereafter, a sample telephone survey has been conducted, to determine the approximate percentage of total soft drink purchass in the preceding seven days represented by C & C beverages. These telephone checks were made in the five boroughs of New York and were based, in each case, on about 800 to 900 interviews. The results through August 3 are shown in the following table (which must be treated as confidential).

Trend in C & C Share of Purchases

	June 2	July 7	July 20	August 3
Interviews	855	877	789	840
Purchasers*	472	501	446	456
Total Units Purchased	5,747	6,308	6,081	4,949
% of Total Purchases				
Canada Dry	9.2	5.8	6.4	
Hoffman	9.4	11.8	11.4	
Pepsi	21.1	18.5	18.8	
Coca-Cola	25.2	25.9	23.6	
Miscellaneous	32.5	34.7	36.5	
C & C	2.6	3.3	3.3	6.9
% Repeat	1.7	1.4	1.3	2.7
# Cans	150	208	203	342

*Purchased soft drinks in the preceding 7 days.
Note: No further checks are now scheduled until August 31.

[fol. 1255] I would like to caution that the rather spectacular results in the August 3rd check are subject to question, and the penetration percentage (6.9) should be considered as having a potentially important sampling range of error. It is significant that the trend in C & C share of purchases is up and also that the percent of repeat purchases is up, but the number of cans purchased by respond-

ents in the sample is still relatively very small. Two factors may have contributed to the very sharp rise in the C & C percent in the latest week: (a) total soft drink purchases during the preceding seven days were sharply reduced, partly due to the fact that the weather was generally cool during that period; and (b) during the two weeks preceding August 3rd an intensive drive was conducted to get distribution of C & C beverages into the independent stores. It does appear likely, however, that a consistent C & C percentage share of the market could exceed 5%, although these early returns are by no means conclusive, mainly because the "curiosity" phase has not been passed and it is impossible yet to estimate a sustaining percentage based on repeat purchases.

Store Check Analysis by Flavor and Can Size

Since May 20th a continuing analysis of sales to the stores in the Shopwell Food Chain has been conducted. These stores have been used as a test operation in which store stocks are controlled so that at all times each flavor and each can are fully stocked and displayed. Sales by flavor and by can size in these stores thus reflect, on a sample basis, a quick measure of the popularity of each flavor and of the two can sizes. The latest available figures are shown in the following table:

C & C Soft Drink Sales
Shopwell Food Stores
May 20—July 27

Flavor	12 ounces (cases of 24)	6 ounces (cases of 48)
Coola	850	310
Root Beer	840	310
Ginger Ale	550	255
Grape	550	265
Club Soda	175	.....
Total Cases	3,065	1,140
% of Total	72.9%	27.1%
Total Cans	73,560	54,720
% of Total	57.4%	42.6%

[fol. 1256] Sales of Coola are good, but are not showing the strong lead that was hoped for, and ginger ale and club soda have been very disappointing in proportion to expected results. On the other hand, root beer has been surprisingly strong and grape has sold better than expected.

The 6 ounce size is holding up surprisingly well, sustaining a ratio of better than 2 cans for every 3 12 ounce cans sold, in the test stores. However, this can be very misleading as a representation of the over-all popularity of the 6 ounce size since many stores other than Shopwell (especially large volume super markets) are refusing to stock the 6 ounce size. The results do show that the 6 ounce size will sell where stores are willing to stock it and display it, but we cannot ignore the apparent fact that many large volume, rapid turn-over store not only dislike stocking both sizes but feel that they get a better margin by selling only the 12 ounce size.

Consumer Acceptance Survey

Because survey results to date are very difficult to assess in terms of actual product acceptance by consumers, and also because the ginger ale and club soda in particular are showing up relatively poorly compared with the root beer, the agency is moving up its plans for a consumer acceptance survey. In order to obtain as early as possible detailed information about consumer acceptance of the products, a home interview survey is to be undertaken during August instead of, as formerly planned, in September. These interviews will be conducted in approximately 1,000 homes, and tabulated results should be available late in September.

This survey should provide the kind of information which we urgently need in order to assess the potential for canned soft drinks. I recommend therefore that we wait for results of this study rather than conduct one of our own at this time. If this survey later proves to be inadequate, we will still have the opportunity to conduct our own survey.

It may, for example, indicate how consumers feel about *product quality* and whether (as we suspect) reports of low carbonation of ginger ale and club soda—and perhaps the Coola also—might be limiting the success of this introduction of soft drinks in cans.

D. H. Walker.

DHW/ml

cc: Messrs. T. C. Fogarty, P. P. Wojtul, W. K. Neuman, R. G. Fisher, R. L. Perin, W. P. Murray, J. I. Donahue.

[fol. 1257] GOVERNMENT'S EXHIBIT 612

Continental Can Company, Inc.
100 East 42nd Street
New York 17, N. Y.

December 13, 1954.

Attitude of Grocery Chains Toward Canned Soft Drinks

Since super markets, particularly those affiliated with large chains, appear in theory to be excellent outlets for canned soft drinks, Continental has discussed this subject with marketing executives at the headquarters of several well known chains to determine their attitude towards the metal package.

The opinions expressed by the chain executives were quite uniform, with only limited differences based on geographic location or size of chain.

It is apparent that a non-returnable package, particularly a can, is of great interest to these stores because it will eliminate the costly handling of returned bottles, and because it permits them to accept the deliveries at a central point rather than at each individual retail outlet. The chains are thus enthusiastically behind canned soft drinks.

The opinions they have expressed on various aspects of this situation are outlined below. You may find this information of value in discussing the problem with soft drink packers.

Attitude of Chains

The chains we contacted were universally in favor of increasing the use of cans for soft drinks. In this respect they differ from the smaller retailers, who are less enthusiastic. In some instances, chains have actually eliminated returnable bottles from some or all of their stores, and we feel most would like to see this trend continued as soon as it becomes practical on a wider scale.

Chains report no particular consumer objection to the can as such, although they do point out that the new package is hampered by a higher price, and the fact that few "name" products are available in cans.

Products Packed

Several chain executives pointed out that the prestige of cans for soft drinks would increase greatly if a name brand such as Coca Cola were packed in metal. At present in many areas no well established brand is available in cans, and there is some consumer feeling that the can is suitable only for the lesser known products.

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[fol. 1258] GOVERNMENT'S EXHIBIT 613

Continental Can Company, Inc.
100 East 42nd Street
New York 17, N. Y.

March 4, 1955.

A New Look at Soft Drinks in Cans

The summer of 1954 saw wide acceptance of the metal can as a soft drink package. The merits of the can proved of interest to certain packers as a means for increasing their sale of soft drinks; metal containers demonstrated advantages over other packages in certain distribution channels and with many groups of consumers.

While the introduction of cans was in general received favorably several obstacles to further growth were apparent. These included the following:

(1) Some packers visualized the can as a threat to their established bottling business, while others hesitated to accept it believing that no-return packages were a fad and would be discontinued.

(2) Can specifications available last summer were unable to provide adequate shelf life for some products, or to protect the quality of some others.

(3) Supply of cans was short, especially in the early months. The range of sizes and styles available was restricted.

(4) Because of some of these conditions many con-

sumers gained the impression that top quality soft drinks were not available in cans.

For 1955 Continental has developed a program which we believe answers many of the problems that became evident during the past season.

We now offer containers and services to back them up, to assist the soft drink industry in selling more of its products.

Experience to Date

The convenience of no-return packages is becoming more and more apparent to the purchasers of soft drinks, and to those engaged in producing and distributing them. The growing use of no-return bottles, and more recently of cans, is estimated below:

Year	No. Return bottles (millions)	Cans (millions)
1949	7	–
1950	24	–
1951	26	–
1952	64	–
1953	126	70–80
1954	138	450–500

[fol. 1259] These figures show a dramatic rate of growth, demonstrating the fact that for many consumers the advantages of a no-return package outweigh the few additional pennies per case involved.

Nor is this trend peculiar to the soft drink industry. Almost 40% of packaged beer is already sold in no-return bottles or cans. The deposit milk bottle is fast giving way to the wax paper carton. These shifts are accelerated by the growing use of self-service in stores, the increased cost of labor necessary to handle return packages, and improved consumer living standards which include "convenience" items.

Not only does the busy housewife benefit from elimination of the chore of collecting and returning bottles, but the retailer avoids the nuisance of buying and selling bottles at no profit, the distributor has no collection worries, and the packer has no capital tied up in empty bottles stored in someone's kitchen.

The immediate future is likely to see an increasing demand for no-return packages.

How does the can stand compared to other non-returnables? The figures above answer that question. Although the can has been on the market only a very limited time, estimated soft drink can shipments exceeded shipments of non-returnable bottles by almost 4:1 in 1954.

The can has achieved this position because of advantages inherent in metal containers.

(1) *The can is light in weight.* For instance, a 12-oz. Pepsi Cola bottle weighs 15¾ ozs., a 12-oz. can 2½-ozs. A 10-oz. Dad's Root Beer bottle weighs 14½-ozs., a comparable can less than 1/5 as much. A 6-oz. Coca Cola bottle weighs 14-ozs., a 6-oz. cap sealed can only about 2-ozs. This weight saving means a saving in freight costs.

(2) *The can takes less space.* For instance a 10-oz. flat top can takes 41% less space than a comparable returnable bottle. The 12-oz. cap sealed can takes 35% less space than the 12-oz. Pepsi bottle, and the 6-oz. cap sealed can takes 51% less space than the Coca Cola bottle. These space savings mean that more cases can be placed on a truck, stored in a warehouse, or held in reserve in the supermarket's back room.

(3) *The can is faster to fill.* Production savings are realized by filling cans at up to 400 per minute, compared to much slower speeds typical of glass bottle filling lines. Even when existing equipment is converted to cap sealed cans the speed of the line is often increased because the washer-soaker is no longer needed.

[fol. 1260] (4) *Cans are easier to handle.* Not only are cans lighter, and less space consuming, but they are unbreakable as well. In addition, there are no empties to collect, sort, inspect, and wash prior to use.

(5) *Cans are better to display.* Cans are more readily stacked than bottles. Colorful lithography contributes to impulse buying. Most important, the space saving features of cans result in tremendous

economies in shelf space, very important to supermarket operators.

All of the above advantages work for those who must make a profit from the sale of soft drinks—the packer, distributor, and retailer. The advantages of cans to the consumer—less space in the refrigerator, chill quicker, no returns, unbreakable—are too familiar to require repetition.

It would appear that the growing use of cans for soft drinks is on a sound footing, and can be expected to continue.

Can Specifications for 1955

In the past there has been some criticism of the can as a package for quality soft drinks. Some packers have claimed that the shelf life provided for their products was inadequate. Others have stated that contact with the metal of the can affects the taste or appearance of the soft drinks they pack. Some consumers have held the impression that canned soft drinks were of low quality.

Up until now most of the cans available for soft drinks have been modifications of cans developed primarily for other purposes. This year, however, Continental offers both cap sealed and flat top cans made to specifications developed especially for carbonated soft drinks. These specifications answer many of the criticisms previously raised.

For cap sealed cans we have added the following features:

(1) Compound Lined Nozzle Curl

A layer of E-4 compound has been placed inside of the nozzle curl of the cones of cap sealed cans. This compound seals off the exposed cut edge of metal which occasionally has come in contact with the product and resulted in added iron pick-up.

(2) Filleting Compound

A special compound has been adopted for use in the top and bottom double seams. During double seaming this compound squeezes out into the crevices normally existing between body and end, pre-

venting abrasion of the enamel at this point, and shutting off the double seam area from the product. Ends with this compound can be expected to show zero metal exposure at the double seam, a point at which soft drink cans were occasionally susceptible to failure.

[fol. 1261] (3) New Inside Side Stripe

An improved material has been adopted for the inside side stripe on capsealed cans. This material is less permeable than those previously used; its use reduces metal exposure at this critical area.

These improvements are being adopted on virtually all of our cap sealed lines for this summer. Commercial quantities of cans of the new specification are already available from our Clearing #5 plant.

Our flat top can for soft drinks has also been completely remodeled. Since it was not as resistant to high pressures in 1954 as the cap sealed can, it has been necessary to make a somewhat greater number of modifications.

(1) High Pressure End

The contour of the end has been altered, to withstand pressure equivalent to that developed by 4.0 volumes of carbonation at 110°F.

(2) New Side Seam

A 6 tab interrupted lock and lap side seam (STK-415) has been adopted. This side seam increases resistance to bursting, and gives greater manufacturing latitude in providing a good solder fillet, which is essential if metal exposure is to be held down at the side seam area.

(3) Filleting Compound

This new development is used on the flat top can also.

(4) New Base Enamel

An Epon type base enamel has been adopted. This new material contributes to reduced metal exposure.

(5) New Side Stripe

A new side stripe is being used for the flat top can.

Cans made to these new specifications are especially designed for soft drinks. The improvements permit the packing of a wider range of products and carbonations. In addition, greater shelf life is provided for many of the products already packed, and product quality is more completely protected within the container.

Availability of Cans

In contrast to last year, we have plenty of manufacturing capacity available for most sizes of soft drink cans. Additional lines were installed during 1954, and more are going in this spring. With the exception of the newest sizes, there should be no limit to our ability to meet reasonable demands of the industry.

[fol. 1262] Continental is the only major can company supplying both styles of container. Thus prospective canners have a greater flexibility of choice, and are assured of more objective recommendations, when dealing with us. In addition, we are prepared to furnish a wide variety of sizes, to permit packers to offer the size package most desired in their market, and most adapted to their price structure.

The following cans will be available:

(1) Cone Top

6-oz.—202 x 311 (Body Height)
9-oz.—202 x 503 " "
12-oz.—211 x 407.5 " "
32-oz.—312 x 600 " "

(2) Flat Top

10-oz.—207.5 x 413
12-oz.—211 x 413
16-oz.—211 x 604

The 6-oz., 12-oz., and 32-oz. cap sealed cans and the 12-oz. flat top were used in important quantities last year and are readily available for 1955.

Sufficient equipment has been ordered to make limited quantities of 9-oz. cap sealed cans by early summer. Thus market tests of this size can be made in the near future; if demand warrants it will be possible to equip more lines to make this can.

The 10-oz. flat top can will be made available at locations to be determined after actual users have been identified.

The 16-oz. beverage can will be available from any plant now making 16-oz. beer cans. For immediate delivery we are able to supply cans holding up to about 3.0 volumes of carbonation at 110°F. Given approximately 3 months notice, we can provide tooling to make a can holding up to 4.0 volumes under similar conditions.

This range of styles and sizes, available in substantial quantities, gives Continental's customers a selection unmatched by any other supplier. This can be a particularly good selling point in dealing with larger concerns who have not yet decided upon size, style, or supplier.

Thus our "new look" reveals a favorable market for soft drinks in cans. To help the packer exploit this opportunity Continental can provide:

(1) Top quality cans.
(2) A choice of style and sizes.
(3) Available in quantity.

[fol. 1263] Our technological advances and increased production facilities "load the bases" for our customers.

For the means to "drive home the runs" for them we refer you to the summary of our Soft Drink Can Advertising and Sales Promotion Program.

SBS/m

C. H. Buckley.

[fol. 1264] GOVERNMENT'S EXHIBIT 617

From: C. H. Buckley

March, 1956.

Mr. L. A. Carey
#43 Head Office

The Economics of Cans for Soft Drinks

The greatest obstacle to the progress of the soft drink can is the cost of the package. Admittedly, the can is a convenience package for which the consumer must pay a premium price. When given the opportunity to buy a canned soft drink of established quality in a can, however, the consumer has demonstrated his willingness to pay a price which will allow the packer and the retailer a fair profit.

In order to obtain a clear picture of the economics of adding a can line to an established bottling operation, we have analyzed operations where the can has been added successfully as a supplementary package to a bottle line with good consumer acceptance.

Based on the cost data obtained from these actual operations, we have made a comparison of the relative costs of a case of 24 10-oz. bottles and a carton of 24 10-oz. flat top cans. The attached table shows a typical packer's cost set-up. While these cost figures could not be applied directly to a particular packer's operation, they do provide a factual basis for determining the cost relationship of the can and the bottle.

The costs shown in the attached table have been developed in considerably greater detail and we can discuss them more specifically with any packer who is interested. The attached summary should be fully adequate in most cases, however.

Only two items in the packer's costs should require explanation. The container cost per trip for the returnable bottle is one item which very few, if any, packers really know. The figure we use is a very conservative one. It represents only actual out-of-pocket expenses for bottle and case replacement or repair over a long period, divided

by the number of cases actually shipped during that period. No charge has been made for the large capital sum which is tied up in bottle and case inventory. Our estimate of this cost item could very well be understated by several cents per case.

The cost of distribution is another item which will vary widely from one place to another. In this case we have used the same figure for both returnable bottles and cans. This was done because in some areas delivery crews are paid on a weekly basis and do not receive overtime pay. In most instances, however, time spent picking up empty bottles will add to the delivery cost and the cost of delivering cans will be significantly lower than the cost of delivering bottles and picking up empties.

[fol. 1265] On the basis of this study, then, we arrive at a cost to a bottler-canner of $1.43 per carton of 10-oz. cans compared to a cost of about 80 cents for a case of 10-oz. bottles delivered to the retailer. This leaves a difference of 63 cents between the two packages. Because of our treatment of the container cost and distribution cost items, this difference is probably overstated by as much as five cents.

Thus, a packer could price his canned product at about 60 cents per case above the price of his bottled goods and realize the same profit per case without any capital investment in the containers. What that price would be would depend on the prevailing bottle price in the particular market. However, a price of $1.20 for bottles and $1.80 for cans would represent a very satisfactory level.

If the retailer adds the same per case markup to cans that he does to bottles, the retail price per can will end up at 2.5 cents more than the bottle price, excluding the deposit. Ideally, we would like to see the can price held at a level equal to the price of the bottle plus deposit. This would mean that the retailer would have to accept a markup of half a cent per can, or 12 cents per case, less for canned soft drinks than for returnable bottles.

No retailer will deny that handling deposit containers is a nuisance and involves an additional cost to him. Virtually none, however, have any clear idea as to just what it does cost them to handle empty bottles and deposits. Actually, the cost will vary very widely from store to

store, depending on the volume involved and the method of handling. In the case of the small owner-operated store the cost is probably entirely one of additional time and effort rather than a monetary one. In the case of the chain super-market, however, empty deposit bottles being returned in rush hours, as they usually are, involve both costly labor and a nuisance which cannot be evaluated in terms of pennies.

We have made a survey of a number of large super-markets in an effort to put a dollar-and-cent figure on the cost of handling returnable bottles. Because of the manner in which this problem is handled by the stores, a scientific time study was not practicable. In lieu of this we questioned the store managers regarding the volume of soft drink sales and the hours their employees devote to redeeming and sorting returned bottles. In some instances the cost was quite apparent as most of the work was done by part-time help hired for just that purpose. In other cases the cost was more difficult to arrive at as the job was done intermittently by regular employees.

We could not arrive at any one figure which could be used generally, because no two operations are identical. But we did find this: some store managers estimated their cost of handling return bottles at as much as 20 cents per case; the lowest estimate obtained was ten cents per case. Probably 15 cents per case would be a fair average overall; in any event it is quite certain that most retail stores spend at least twelve cents per case on this task.

This means that any retailer can sell cans at the same price as returnable bottles (including the deposit) and make the same profit per case with less labor and nuisance if the difference in his cost is 60 cents per case. The packer, on the other hand, can sell his canned product at 60 cents per case more than his bottled product and make the same profit per case with no capital investment in returnable packages and a much simpler operation in his plant.

[fol. 1266] Unfortunately, there is a great deal of misconception today regarding the profitability of the can. In some markets the prevailing bottle price is so low that the packer cannot make a fair return. In such areas the

can will not be able to yield a fair return either unless the price differential is greater than the actual difference in cost between the two packages. In other cases retailers use soft drinks as "loss leaders" to build store traffic. If canned beverages are to compete in such markets, they too must be priced at an unprofitable level. In other words, the can cannot develop substantial profitable volume in a market where either the packers or the retailers are maintaining returnable bottle prices at an unprofitable level.

We know that canned soft drinks can develop substantial volume when they are marketed as a supplementary package to a bottle line at a retail price equal to the price of the bottle plus deposit. At this price level, the can will return the same profit per case to the retailer and the packer as the returnable bottle. And it has been proven time and again that the can will produce *extra* volume and *extra* profits for the bottler who adds it to his line.

Such major brands as Nehi, Dr. Pepper, Cott, Mason, Hires and Graf have demonstrated the profitability of the can to their own satisfaction. We have the facts and figures to discuss this with any other bottler who is interested in adding to his sales and profits by opening the door to a new market by adding the can to his product line.

While the figures we have used here are for 10-oz. containers, they can readily be converted into other sizes to fit any particular case. For the most part, a change in container size will affect only the cost of the container itself and the contents.

[fol. 1267]

Comparison of Costs

Bottles vs. Cans for Soft Drinks

Item	Per Case of Bottles (24–10 oz. Bottles in Wooden Case) Description	Cost/Case	Per Carton of Cans (24–10 oz. Flat Top Cans in Carton) Description	Cost/Carton
A. Container Costs	1. 10-oz. Bottles and Cases	.1055	1. 10 oz. Flat Top cans	$ .748
	2. Crowns	.041	2. Carton	.054
		Total $ .146		Total $ .802
B. Beverage Ingredients	Flavor Concentrate, Sugar, Carbonated Water	Total $ .30	Flavor Concentrate, Sugar, Carbonated Water	Total $ .30
C. Receiving Labor	1. Unloading & Storing Sugar, Crowns, Concentrates and Misc. Supplies		1. Unloading & Storing Sugar, Crowns, Concentrates and Misc. Supplies	
	2. Unloading Empty Cases of Bottles from local Delivery Trucks		2. Unloading from Freight Car Cartons of Empty Cans & Placing in Storage	
		Total $ .005		Total $ .004
D. Mixing Room Labor		Total $ .005		Total $ .005
E. Direct Labor	1. Based on Line Speed of 175 Bottles/Minute with Crew of 10 at Rate of $1.25/hour	$ .0324	1. Based on Line Speed of 325 cpm with Crew of 9.5 at Rate of $1.25/hour	$ .0154
	2. Bottle Separation	.0124		
		Total $ .045		Total $ .015
F. General Labor		Total $ .005		Total $ .005
G. Spoilage		Total $ .010		Total $ .011
H. Distribution	Delivery, Sales, Advertising, & Promotion		Delivery, Sales, Advertising, & Promotion	
[fol. 1268]				
I. Depreciation		Tptal $ .200		Total $ .200
J. Overhead & Fixed Costs		Total $ .010		Total $ .010
	1. Administration, Taxes, Insurance, Fuel, Maintenance, etc.	Total $ .075	1. Administration, Taxes, Insurance, Fuel, Maintenance, etc.	Total $ .075
Total Costs		$ .792		$1.427

2801

CANNED FOODS MEET HIGHEST QUALITY STANDARDS

Because of canning, the retail store of today offers its customers a world of products — available in any town, at any time of the year. Pineapple from Hawaii, salmon from Alaska, sardines from Maine, mushrooms from Pennsylvania, pimientos from Georgia — all these and some 500 other canned foods are within arm's reach and at a price everyone can afford.

Yet, consumers are seldom aware of the quality standards set for the canned foods they take for granted.

WHY STANDARDS?

Why do we need canned food standards? To make it easier for everyone to buy exactly the kind of product he wants. For example, each can of fruit cocktail contains the same kinds of fruit. The *Standard of Identity* limits the use of the name "Fruit Cocktail" to that definite mixture of fruits. Of course, one also wants to buy canned foods of reliable quality. The *Standard of Quality* requires that every can meet an established Quality Standard. One expects a can or jar to be full: The *Standard of Fill-of-Container* ensures a properly filled package.

ARRIVING AT STANDARDS

How do we get food standards? Drafting of standards is a joint Government-industry enterprise. The Federal Food law provides that standards may be established whenever they will promote honesty and fair dealing in the interest of consumers.

The first canned food standards were simple definitions of products, established by the U. S. Department of Agriculture before the passage of the first Pure Food Law in 1906. As the canning industry developed, there was desire for more complete standards. In 1930 the canning industry added to the Pure Food Law the McNary-Mapes amendment providing for a minimum standard of quality and fill of container for canned foods. But the establishment of these standards was handicapped by the lack of a precise definition for each canned food. So, into the new Food, Drug, and Cosmetic Act of 1939 there was written a provision for the formulation of mandatory standards for identity, quality, and fill of container not only for canned foods but for most processed foods in package form.

NCA ACTIVITIES

Foremost among the industry groups working for the highest quality standards is the National Canners Association, this year celebrating its 50th anniversary. Through its divisions, NCA is active in research, labeling, home economics, etc.

Its *Raw Products Bureau*, for instance, has helped agricultural specialists redesign many fruits and vegetables to improve their quality. It acquaints canners and growers with the latest findings on useful agricultural and canning procedures. It encourages the development of new machinery and keeps track of work done in pest control, soil fertility, irrigation and plant breeding.

FIRST IN RESEARCH

NCA was the first trade association to establish research laboratories, since it has always been their aim to assure, for the mutual benefit of the industry and the public, the best food that scientific knowledge and human skill can employ.

As far back as 1922, NCA made nutrition news by publishing the first study on the vitamin content of canned foods. During the past fifty years many similar contributions have helped NCA members achieve their goal of better quality. Today NCA laboratories in Washington, Berkeley and Seattle employ more than 50 scientists and technicians to do research on projects dealing with quality improvement in canning, such new techniques of preservation as atomic radiation, and many other technological programs.

LABELING

Clearly written, informative can labels have become a canning industry feature partly because of the work of the National Canners Association's Labeling activities. They help canners prepare label copy that will give shoppers complete information on the product inside the can in easily understood language. Since most people shop in self-service stores, it is the can label that answers their questions about the product. Members of the NCA staff work continuously to find just the right words to describe each canned product precisely and honestly. Information always includes the complete name of the product, the net weight of the contents, and frequently offers suggestions on product preparation.

CONSUMER SERVICE

NCA's *Consumer Service Division* gives its attention to product use and recipe development for both consumers and institutions. This is NCA's closest link with consumers because it gets right to the point — how to make the most of the many canned foods they buy. Editors and broadcasters regularly receive recipe information suggesting new and varied uses for canned foods, and illustrating how such products can be put to work in the kitchen for a maximum of convenience, economy and good flavor. Teachers, home economists and people who run institutional kitchens get educational material giving the latest nutritional facts on canned foods and advice on appealing ways of preparing them for large numbers of people. Canners get recipe ideas for their labels.

These various activities are but a few of the ways NCA is contributing to higher standards for canned foods. They are certainly the reason for the fact that there are now some fifty different canned foods for which standards have been established.

Yet, consumers are seldom aware of the quality standards set for the canned foods they take for granted.

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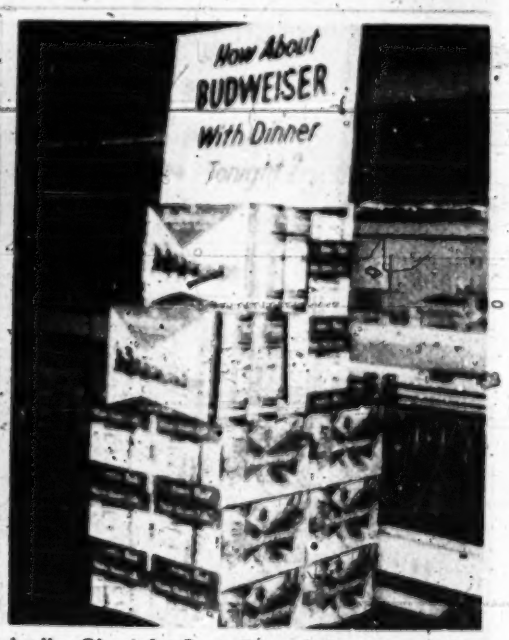
Double Value. What do customers like better than a bargain? Another bargain! That's why this display of pork and beans at Verscharen's Food Market in Pittsburgh goes over so big. The product is multiple-priced and wrapped – eight to a package – in a re-usable polyethylene bag. Shoppers not only save money but take home a serviceable plastic bag free of charge. Owner Henry Verscharen says that many of his customers, who normally buy no more than two or three cans at a time, thought so much of this offer that they took home the eight-unit package. The bags can be used for many jobs around the house – storing fruits and vegetables, holding dampened laundry or for wrapping and protecting silverware. *If you'd like further information about these attractive, useful bags, write the Shellmar-Betner Flexible Packaging Division, Continental Can Company, Mount Vernon, Ohio.*



Ladies Cheer for Beer. Be ready for warm weather with plenty of canned beer displays. But, don't concentrate on just the men. Your women shoppers will buy a lot more beer, too, if you aim some of your promotions at them. For instance, try a display like this "dinner idea" used at an Associated Food Store in Flushing, N. Y. Their simple sign suggestion gets the point across.

28113

Dist. Exhibit GE2 GOVERNMENT'S EXHIBIT GE2

CANNED FOODS
Merchandiser Digest

NUMBER 36 CONTINENTAL CAN COMPANY, 100 E. 42nd ST., NEW YORK 17, N. Y. AUGUST 1957

SELLING MORE CANNED SOFT DRINKS

Story on Page 2

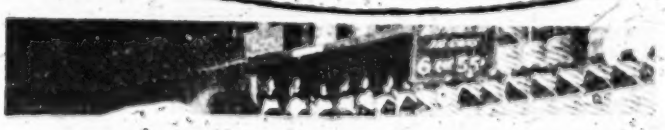
CANNED BEVERAGE SHOWCASE. At Ralph's Market in Downey, California, this middle-aisle display introduces a busy shopper to canned soft drinks and chalks up an impulse sale. Like most of your customers, she takes time to examine special displays because she knows they are a showcase for interesting new products as well as money-saving values.

CANNED SOFT DRINKS MAKING HIT WITH SHOPPERS

Hundreds of millions of canned soft drinks are being sold this year — their popularity is growing fast! However, many of your customers have yet to try this new product. Start cashing in on the extra profits and convenience that canned carbonated beverages offer you by convincing shoppers to buy that important first can. After that, the quality and taste they find inside will keep them buying.

Play up these features in your displays, advertising and point-of-sale material: Canned soft drinks chill quickly; they take up less space in the refrigerator; there are no empties to return and no deposits required. They're safe for the children to handle — can't chip or break. Follow the example of these retailers and start promoting canned soft drinks now!

START CANS MOVING. Since most shoppers go directly to the



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START CANS MOVING. Since most shoppers go directly to the soft drink section for their favorite beverages, this Pennsylvania supermarket makes sure that the new canned variety gets equal shelf space with bottles (photo left). On one shelf, space has been conserved by putting small cans in front of taller bottles and a large area has been set aside for family-size cans on the bottom. Multiple pricing is also used to start cans moving (photo right). Although many canned beverages don't come in multiple packs, shoppers usually buy more than one at a time and appreciate the saving.

22814

BOTTLERS, RETAILERS, SHOPPERS. GETTING ON CANNED SOFT DRINK BANDWAGON

Although a comparative newcomer to the popular, highly profitable canned goods line, canned soft drinks are rapidly outgrowing their baby pants. Their acceptance by bottlers, retailers and consumers continues to increase as each group realizes the benefits of these easy-to-handle, easy-to-serve beverages.

A recent article in "Food Processing" magazine shows just how great an impact canned carbonated beverages are having on overall soft drink volume.

For instance, the magazine states that of the leading soft drink processors, 19 out of 28 are now using cans to some extent. These firms include such well-known names as Coca-Cola, Pepsi-Cola, Canada Dry, 7-Up, Nehi, Dr. Pepper, Coff, Meyers Dry, Hoffman, Chicopee Club, White Rock and Mason.

Nehi Corp., the No. 1 U. S. canner, reports that 1958 can sales exceeded 1957 by 50%. Shasta Water Company, a West Coast bottler, reports that sales for the year preceding their change to cans were 884,000. Present sales are more than 32 million. And, results achieved by a promotion-minded franchisee in South Carolina shows an increase in total can sales of 98% in 56 over 55 in a 49-week period.

Bottlers were not the only ones to benefit from the switch to canned soft drinks. Retailers, too, reported amazing increases. The "Food Processing" article cites an A&P survey of 19 of its outlets in Charlotte, North Carolina, to prove this. The survey reveals that canned soft drink sales increased in 1958 over 1957 while sales of bottled beverages rose only one-half during the same period.

Not only do cans help the retailer improve his soft drink sales, but they also promise to help him solve the serious problem of rising costs in the handling of returnable empty bottles. According to one recent handling costs study, the average retailer gross profit on a case of bottled soft drinks ranges from 20 to 28 cents. But, the average gross profit on a case of canned soft drinks ranges from 32 cents to 41 cents. The per case profit on the bottled drinks is reduced an average of another 12 cents by the handling costs.

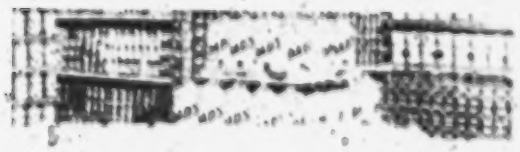
Favorable consumer reaction to canned beverages is based on a number of factors. Foremost among them is the willingness to pay for the convenience represented by "canned beverages." They're easy to use, easy to store, cannot break or chip, they take less space in the refrigerator, chill more quickly, and are safe for the children to handle.

The future of canned beverage sales is extremely bright. Indications are that during 1959 canned carbonated beverages will be more actively promoted than ever before.

During the last few years, home mass-markets have opened for hundreds of canned products. Just as they have become a part of modern living, so too, will canned soft drinks. Retailers can speed the process and their profits by pitching up their canned soft drink line.

Remember, the idea of canned soft drinks is new to many of your customers. Give these beverages more — and better — display space. Feature them prominently in your ads and point-of-sale material. If bottles and cans are given proportional place in the market, cans will bring plus sales.

SUMMER FAVORITE. There's nothing so welcoming as a can cold as the [illegible] pick-me-up of an ice-cold soft drink. Most people enjoy the added convenience that canned beverages offer in coolers, picnics and large refrigerator space. For retailers, sales and more profits go to those who [illegible] variety of flavors and keep wide choice for extra coolers.



SIZING

SAMPLES AID SALES. To introduce canned soft drinks, the Food Land Market in Seattle, Washington, arranged for chain-wide tastings. Bottles of soft drinks were served [illegible] set up [illegible] demonstrators [illegible] shoppers [illegible] to sample.

PLEASE ALL TASTES

For instance, the magazine states that of the leading soft-drink processors, 19 out of 25 are now using cans to some extent. These firms include such well-known names as Coca-Cola, Pepsi-Cola, Canada Dry, 7-Up, Nehi, Hires, Dr. Pepper, Cott, Mission Dry, Hoffman, Chequot Club, White Rock and Mason.

Nehi Corp., the No. 1 U.S. canner, reports that 1956 can sales exceeded 1955 by 50%. Shasta Water Company, a West Coast bottler, reports that sales for the year preceding their change to cans were $543,000. Present sales are more than $2 million. And, results achieved by a promotion-minded franchiser in North Carolina shows an increase in total can sales of 98.8% in '56 over '55 in a 19-city area.

Bottlers were not the only ones to benefit from the switch to canned soft drinks. Retailers, too, reported amazing increases. The "Food Processing" article cites an A&P survey in 19 of its outlets in Charlotte, North Carolina, to prove this. The survey reveals that canned soft drink sales increased 280% in 1956 over 1955 while sales of bottled beverages rose only 66% during the same period.

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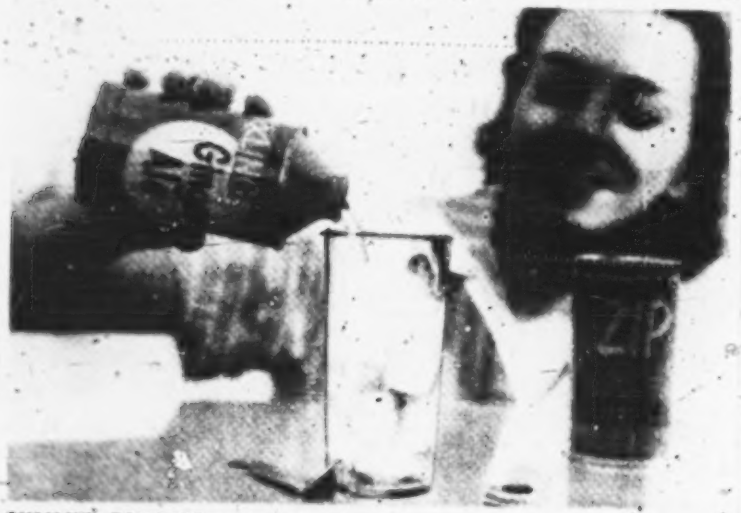


SUMMER FAVORITE. There's nothing so welcome on a sultry day as the refreshing pick-up of an ice-cold soft drink. More people every day are discovering that their favorite flavor in cans chills quickly and takes less refrigerator space. For greater sales — and more profits too — be sure to feature a variety of flavors and keep some chilled for extra customer convenience.

SAMPLES AID SALES. To introduce canned soft drinks, the Foodland Market in Seattle, Washington, arranged for a demonstrator from a local bottler to pass out free samples. The drinks were served cold from an ice bin set up for just this purpose. Notice, too, that a mass display of canned beverages was set up near the demonstrator so that shoppers would be tempted to buy on the spot.

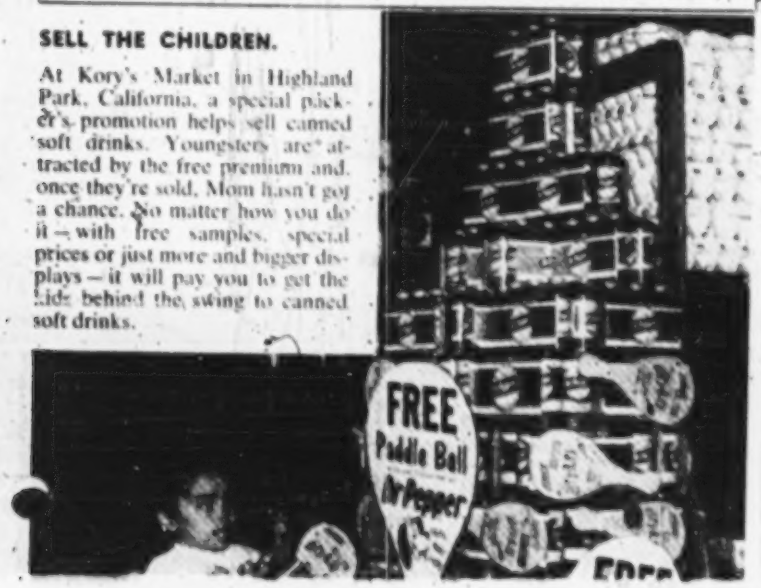
SIZING UP SALES. Here's a sure sign shoppers go for canned soft drinks in a big way. Foodland Markets in Dearborn, Michigan, is pushing full quarts of canned root beer — via stacks of cut-away cases given their own floor space. If consumers go for this large size you can bet they go for soft drinks in cans.

PLEASE ALL TASTES. Variety is the keynote of this 42-case canned soft drink display being restocked by Clerk John Diroff at the Thriftymart Market, Eagle Rock, California. Featured are such flavor favorites as Black Cherry, Orange, Lemon-Lime, Ginger Ale, Root Beer and Cola. There's enough variety here to make it easy for Mrs. Housewife to satisfy the tastes of all members of her family. Cans are priced in units of **six** to encourage multiple purchases.

TEMPTING TIE-INS. Customers are lured into stocking up for outdoor eating and fun by this eye-catching display in the Sentry Store at Thiensville, Wisconsin. Next to the canned beer and potato chips is a display of equipment for cooking and grilling. It's a good idea to make canned beer an integral part of any picnic display you set up.

SELL THE CHILDREN.

At Kory's Market in Highland Park, California, a special pick-er's promotion helps sell canned soft drinks. Youngsters are attracted by the free premium and, once they're sold, Mom hasn't got a chance. No matter how you do it—with free samples, special prices or just more and bigger displays—it will pay you to get the kids behind the swing to canned soft drinks.



PROMOTION POINTERS

This young lady points the way to extra profits for retailers who push canned sauerkraut this summer! To take advantage of the 24% retail profit margin on kraut, tie-in with the "Kraut Salad Season" promotion sponsored by the National Kraut Packers Association. New and appetizing recipes are being presented to your customers through a national publicity program. Set up combination displays of kraut and dressings in your produce section or load up a shopping cart with kraut and tie it in with your cold cut department for a mobile jumble display.

This year's "National Canned Salmon Week" will be promoted from August 23-30 and will coincide with the arrival of new packs of canned salmon from Alaska, Columbia River and Puget Sound canneries. "Summer Salad Specials" is the theme of the 1957 campaign. Food editors of newspapers, television and radio have been alerted to the promotion with timely canned salmon recipe material.

A free page color mat is available to retailers to use for a regular advertising page. "Summer Salad Specials" is the banner headline of the mat which also features an appetite-building canned salmon salad plate in full color. Herald A. O'Neill (left), executive secretary, Association of Pacific Fisheries, Inc., and L. A. Peterson, chairman of the salmon industry committee for "National Canned Salmon Week," are shown as they viewed the layout of the full-color advertising page. For a copy of the mat, write to Association of Pacific Fisheries, 200 Colman Building, Seattle 4, Washington.

REMINDER

You still have a few weeks to plan your display, advertising and merchandising tie-ins with one of the biggest store-wide food promotions to hit the grocery trade. The campaign, starting September 12th and continuing through the 21st, is a joint promotional effort of the National Association of Retail Grocers and "Saturday Evening Post" magazine. Theme of this promotion is

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Participating stores will receive an array of point-of-sale materials to help them fully utilize the impact of the promotion. For details, write to Carl Caldas, Food Merchandising Manager, The Saturday Evening Post, Independence Square, Philadelphia 5, Pennsylvania.

29806

[Vol. 4273]

CANNED Soft Drink ISSUE !

Return Postage Guaranteed

PUBLISHED BY CONTINENTAL CAN COMPANY, 100 E. 42nd ST., NEW YORK 17, N. Y.

CANNED FOODS

Merchandiser Digest

STOCK UP. This display of canned soft drinks at Art's Food Center in Seattle, Washington, is located next to the refrigerated cases. Shoppers, picking up a cold beverage for immediate use, are encouraged to stock up on extra cans. They are so arranged that each of the different flavors can be easily reached. A homemade sign lists the advantages of soft drinks in cans.

MOVES WITH TRAFFIC. At the Grand Central Market, San Francisco, California, they figure that the more shoppers are exposed to canned soft drinks, the quicker they'll try them. By using dump displays in movable wire baskets, they can be moved quickly to where traffic is heaviest. You can use similar baskets and set them up in your picnic department, cold cuts section, regular meat department or at the checkout to encourage last-minute purchases.

KEEP YOUR EYE ON THE THERMOMETER. There's still lots of hot weather ahead, so keep your eye on the thermometer and be ready with plenty of "keep cool" promotions. Include in your displays soft drinks and juices – canned items that lend themselves to summertime merchandising. In your advertising, handbills or store banners, you might invite shoppers to come in and cool off with a free sample of canned soft drinks.

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TOP BILLING. An unusually hot summer in Texas finds Frank Wolfe of Minyard's Store #6 in Dallas, doing a rushing business on canned soft drinks. To make sure customers find the beverages easily, he keeps them prominently displayed at eye-level in his regular soft drink section.

28127

KOSHER DILL PICKLES

SWEET PICKLE STRIPS

CHILI SAUCE

NAIL POLISH

OLIVES

APPLE BUTTER

CHEMICALS

FOOD SEASONING

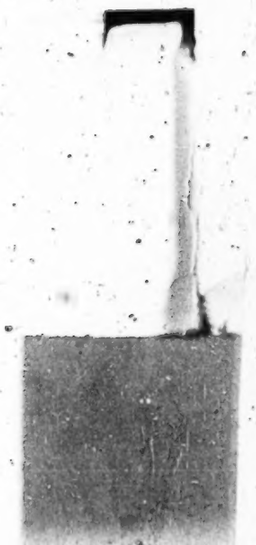
STRAWBERRY PRESERVES

SHAMPOO

WINE

COCKTAIL ONIONS

BAKED BEANS



WAFFLE SYRUP

MARASCHINO CHERRIES

COLD CREAM

BLACKBERRY JELLY

...glamour

HAZEL-A

division of CONTI

[fol. 1274]

GOVERNMENT'S EXHIBIT C49 2808

Foods-in-glass NEWS

a memo to Home Economists

FROM [illegible] CAP COMPANY • CHICAGO
A Subsidiary of Continental Can Company, Inc.

Vol. II, No. 4 June 1957

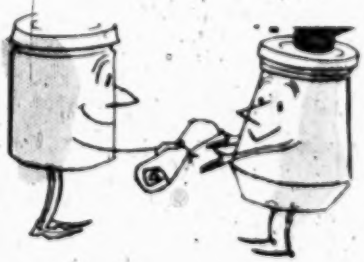
WHAT A YEAR THIS HAS BEEN!

Busy, busy, busy...that's what we've been, but we love it! We've particularly enjoyed telling all of our home economist friends about the new twist-off cap, which has been such a sensation since its introduction to the food industry. Most of you who receive this newsletter regularly are familiar with our two pets, Mr. Twist-Off and Mr. Pry-Off. We know, though, that you've been busy, too, and may have forgotten some of the facts we've been sending to you. So, with your permission, we'd like to repeat a few facts, for your information, covered in previous newsletters.

• • •

COMMENCEMENT EXCERCISES...

This has been the time for them and we thought we'd commence by telling you that Mr. Twist-Off Cap, a real infant prodigy, has been tops in his class and rates right up there in popularity with his older brother, Mr. Pry-Off Cap, as a seal for glass containers.



Just in case we missed giving you all the facts on these two favorites, we gave ourselves a sort of "final examination" and we thought you might like to see it. Perhaps it will come in handy as reference material or even as a quiz for a class next fall.

L POLISH

OLIVES

APPLE BUTTER

IMPULSE! sparks point-of-purchase buying!

IMPROVEMENT! brings you the newest in glass!

Whether you pack food or beverage, your product will benefit from the efforts of the three Hazel-Atlas "Imps"! It will get more sales *impact*, and produce more *impulse* sales in the beautiful H-A containers. 1. New H-A wine bottles are *crystal-ribbed* at shoulder and base to capture light and color... make wine come alive on the shelf. 2. New H-A Permalabel cosmetic bottles and jars made in beautiful flint, amber, blue and opal white glass. New H-A Permalabel cosmetic items have brilliant colors permanently fired into the glass.

For distilled spirits, Hazel-Atlas also offers a full line of standard packages... lightweight, glamour-in-glass bottles of crystal-clear flint and beautiful amber, available in every popular style and size.

For your peanut butter, cheese, and spreads there is a complete H-A line of beautiful decorated and plain re-use tumblers as well as other items for table use. Sparkling flint jars for baby foods, preserves, relish, olives and pickles, honey, vegetables and fruit. Beautiful, crystal-clear bottles for salad dressings, mayonnaise and catsup. Rigid quality-controls keep your H-A containers uniform in size, shape, clarity and color. They perform efficiently on the filling line and display your product at its best. You are sure of fast, dependable delivery during sales peaks and emergencies, served by H-A's nationwide network of glass plants and warehouses. Ask your H-A representative or call your nearest H-A office, today.

SHAMPOO

WINE

COCKTAIL ONIONS

BAKED BEANS

BLACKBERRY JELLY

...glamour in glass!

HAZEL-ATLAS GLASS

division of **CONTINENTAL CAN COMPANY**

WHEELING, WEST VIRGINIA

HERE'S THE CAP TEST...

Q. What is vapor-vacuum sealing?

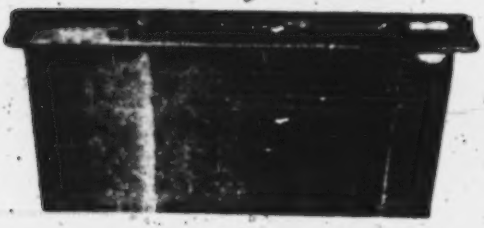
A. A method for sealing glass containers for food to protect the contents from air. During the capping process, air is forced out of the jar or bottle with dry steam. After sealing, the steam condenses, creating a vacuum in the top of the container. The gasket in the cap prevents air from leaking in.

Q. Why is it necessary to protect food from contact with the air?

A. Because of its oxidizing effect, air is the great destroyer of freshness and color in food. Also, many molds which have a contaminating effect upon food are airborne.

Q. What is the pry-off cap?

A. A pry-off cap is a machine-applied metal lid. A flexible gasket on the inside of the lid forced against the side of the container forms an airtight seal, preventing leakage of air. This provides lasting protection for the food.



Q. What is a twist-off cap?

A. The new twist-off cap has a gasket in the top which provides the airtight seal. Lugs on the inside of the cap fit snugly under lugs on the neck or outer rim of the glass container. A quarter-turn of the cap brings the top of the jar or bottle tight against the flexible gasket to create a seal.

Q. Are pry-off and twist-off caps easy to open?

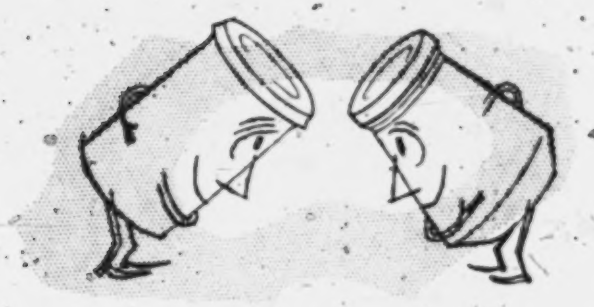
A. Either can be removed easily. A flick of the wrist with a lid flipper, a handy metal key designed for the purpose, will open the pry-off. The twist-off is removed by hand with a quarter turn of the cap.

Q. Can the caps be used to reseal containers?

A. If the contents are not consumed at one sitting, the original cap can be used to reseal the container, airtight. Pressing down on the pry-off with the heels of the hands until a click is heard restores the airtight seal. A twist of the twist-off cap puts it snugly in place protecting the contents from air. For most food products, refrigeration of the unused contents is necessary, as well.

Q. Can each cap be used on all foods packed in glass?

A. Generally speaking, no. Each has its own job to do. The pry-off is recommended for foods which undergo high retorting temperatures (240 degrees or more), including many vegetables, baby food, and various meat products. The twist-off is ideal for products packed at sterile temperatures, cold-filled products, or foods that are pasteurized by open-water bath. Products packed by these various methods include pickles, catsup, vinegar, cherries, syrup, and others. Some foods, such as jams, jellies, preserves, and peanut butter, use both -- the pry-off if packed in tumblers -- the twist-off if packed in jars. Many packers of sterile fruit juices use the pry-off on pints, quarts, and gallons, but prefer the twist-off for decanter-style packages.



Q. Why is glass an ideal container for food?

A. An inert, non-toxic material, glass can not affect the taste, aroma, color, purity, or chemical structure of food. Protected from air, food will keep indefinitely in glass. Glass also affords an opportunity to see the color, consistency, and shape of the products.

Canned Foods Newsletter for Brokers—May 1958

"We at National like canned foods because no other commodity group produces as much dollar income in our stores, and none produces as much gross profit. They account for about one-sixth of our total volume and earn a percentage profit higher than our average.

"Canned foods have built-in advantages which cannot be matched by any other method of processing: finest quality, unequalled flavor, nutritious, convenient, economical, time and work saving, ready for instant use, little or no waste, clean and wholesome, wide variety, easy to buy, store and use, available in all seasons."

Val S. Bauman, Vice President
National Tea Company

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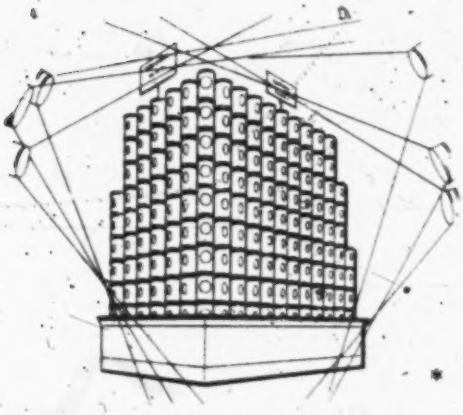


Canned foods benefit most from special promotions — unit sales of canned vegetables went from 4,038 in regular sales to 34,539 in one week from special display. Canned fruits jumped from 3,008 to 24,475.

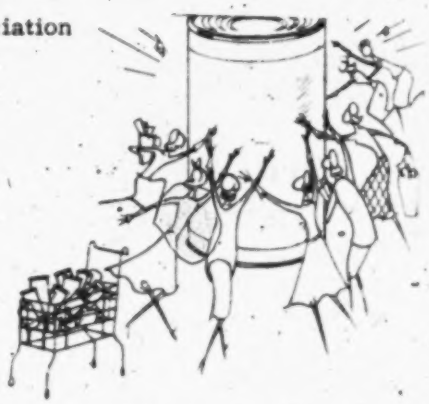
Super Valu Study

* * *

CANNED FOOD FACTS

from the
National Canners Association

Each week some 50 million shoppers purchase about 400 million containers of canned foods in grocery stores and other market outlets in cities, towns and communities of all sizes throughout the United States. About $85 million is spent each week by U. S. consumers for canned foods, of which there are more than 500 different types and styles available.



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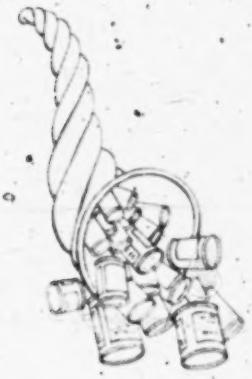
CONTINENTAL CAN COMPANY

Another attribute of canned foods that is important to the consumer is their relatively stable price. The U. S. Bureau of Labor Statistics consumer price index reveals that canned foods have been consistently in the "best buy" group of all food products.

* * *

Canned foods have been in the forefront of many of the new developments in the food marketing operation. Canned foods were the first of the so-called "pre-packaged" foods and the first of the "convenience" foods. As such, they have been the backbone of most retail store operations. Canned foods account for 15 to 20 percent of the total sales in many grocery stores.

* * *



Week after week and year after year the homemaker goes to the store knowing that there she will find a complete assortment of canned foods of unquestioned purity, wholesomeness and palatability. Each year, some new kinds of canned foods are added to the list, so that at all times she has a wide assortment of fruits, vegetables, fish, meats, poultry, soups, juices and specialties. The greater variety of canned entrees, salads, desserts, and foods for special purposes, such as the dietetic, infant, junior age and senior foods, provide all members of the family a pleasing variety with a minimum of time and work expended.

* * *

Production of canned foods has increased 20-fold in the last 50 years, a gain that few American industries can match and an indisputable indication of consumer acceptance of this form of food. The annual production of the canning industry now amounts to more than 22 billion pounds, representing about 8-1/2% of the nation's food supply. This is packed in 700 million cases containing more than 22 billion tin and glass containers.

* * *

ALTHOUGH THE MODERN GROCERY STOCKS ANYWHERE FROM 3,000 to 8,000 ITEMS, ALERT RETAILERS KNOW THAT THE BACKBONE OF THEIR SALES IS STILL THE CANNED FOODS DEPARTMENT WHICH YIELDS A HIGHER NET PROFIT THAN ALMOST ANY OTHER CLASS OF MERCHANDISE.

* * *

CONTINENTAL CAN COMPANY

MARCH 4, 1957—Canner & Freezer, Canning Trade
MARCH—Food Engineering
APRIL—Food Packer, Western Canner & Packer

New Hazel-Atlas research in glass puts three "Imps" to work for you . . .

Whether you pack food or beverage—three Hazel-Atlas "Imps" will produce more sales *impact*, and more *impulse* sales in beautiful new H-A containers like these.

Your foods' appetizing color and shape are salesmen with *silver tongues*, when you let them speak for themselves in a beautiful H-A container. For peanut-butter and cheese spreads—a complete H-A line of brilliantly decorated and plain re-use tumblers. Sparkling flint jars for baby foods, relish, olives and pickles, honey, vegetables and fruit.

Rigid quality-controls keep your H-A containers uniform in size, shape, clarity and color. They perform efficiently on the filling line and display your product at its best. You are sure of fast, dependable delivery during sales peaks and emergencies, served by H-A's nationwide network of glass plants and warehouses. Ask your H-A representative or call your nearest H-A office, today.

...glamour in glass!

HAZEL-ATLAS GLASS

division of CONTINENTAL CAN COMPANY

WHEELING, WEST VIRGINIA

FEBRUARY 1957—Modern Packaging; Glass Packer; MARCH—Packaging Parade; Good Packaging.

New Hazel-Atlas research in glass puts three "Imps'

KOSHER DILL PICKLES

SWEET PICKLE STRIPS

CHILI SAUCE

NAIL POLISH

OLIVES

APPLE BUTTER

CHEMICALS

FOOD SEASONING

STRAWBERRY PRESERVES

SHAMPOO

WINE

COCKTAIL ONIONS

BAKED BEANS

FEBRUARY 1957—Modern Packaging; Glass-Packer; MARCH—Packaging Parade; Good Packaging.

'ch in glass puts three "Imps" to work for you...

NAIL POLISH

OLIVES

APPLE BUTTER

IMPACT! adds sales punch!

IMPULSE! sparks point-of-purchase buying!

IMPROVEMENT! brings you the newest in glass!

SHAMPOO

WINE

COCKTAIL ONIONS

BAKED BEANS

Whether you pack food or beverage, your product will benefit from the efforts of the three Hazel-Atlas "Imps"! It will get more sales *imp*act, and produce more *imp*ulse sales in the beautiful H-A containers. 1. New H-A wine bottles are *crystal-ribbed* at shoulder and base to capture light and color... make wine come alive on the shelf. 2. New H-A Permalabel cosmetic bottles and jars made in beautiful flint, amber, blue and opal white glass. New H-A Perm-label cosmetic items have brilliant colors permanently fired into the glass.

For distilled spirits, Hazel-Atlas also offers a full line of standard packages... lightweight, glamour-in-glass bottles of crystal-clear flint and beautiful amber, available in every popular style and size.

For your peanut butter, cheese, and spreads there is a complete H-A line of beautiful decorated and plain re-use tumblers as well as other items for table use. Sparkling flint jars for baby foods, preserves, relish, olives and pickles, honey, vegetables and fruit. Beautiful, crystal-clear bottles for salad dressings, mayonnaise and catsup. Rigid quality-controls keep your H-A containers uniform in size, shape, clarity and color. They perform efficiently on the filling line and display your product at its best

PROOFS of Your Advertisement in the 1955 Issue

PLEASE OKAY ONE PROOF AND RETURN IMMEDIATELY TO

American Brewer

292 EAST 44th ST., NEW YORK 17, NEW YORK

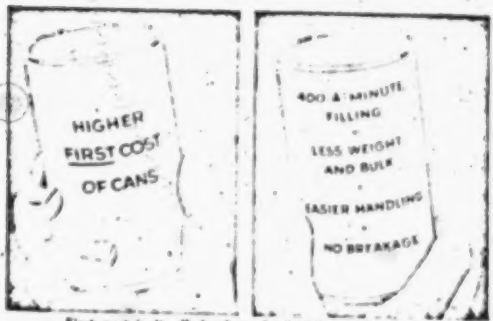
vertisement will be inserted as shown unless corrections are received by MAY 25 1955

American Brewer Directory

What leading brewers know about canned beer

Some of the most successful national brewers now pack almost half their beer in cans. Alert regional brewers are also stepping up their canned beer output.

Modern cost accounting reveals the true economy of cans in both large and local operations. Cans cost far less to fill, deliver and handle than less convenient containers. They take less space. There's no breakage, and no need for expensive packing cases. Sell more of your beer the way modern people like it—in Continental cans.



First cost isn't all. Look at both sides of the packaging picture to appreciate the economy of cans.

CONTINENTAL CAN COMPANY

Eastern Division: 100 E. 42nd St., New York 17
Central Division: 135 So. La Salle St., Chicago 3
Pacific Division: Russ Building, San Francisco 4

FILE: LETTERS TO EXECUTIVES
MERCH. BOOK
J. F. #2623
Release #1113

To Sales List A-2

August 31, 1955

PUBLICITY THAT MAKES CONTINENTAL STAND OUT!

DESIGN 'POP' BOTTLE CAN

NEW YORK, July 7—(AP)—Continental Can Co. announced plans Thursday for production of a streamlined soft drink can that's shaped like a "pop" bottle.

The slender can is approximately the same diameter as the conventional six or seven-ounce soft drink bottle of glass and just about as tall, but it holds more (nine ounces).

The company says it can be used in most automatic vending machines and can be merchandised in the same six-pack carrier now used for returnable bottles.

Milwaukee, Wis.
SENTINEL

Indianapolis, Ind.
NEWS - 7/7/55

'POP' BOTTLE SHAPED CANS ARE PLANNED

NEW YORK (AP)—Continental Can Co. announced plans today for production of a streamlined soft drink can that's shaped like a "pop" bottle.

The slender can is approximately the same diameter as the conventional glass 6 or 7-ounce soft drink bottle and just about as tall, but holds nine ounces. The company says it can be used in most automatic vending machines and can be merchandised in the same six-pack carrier now used for returnable bottles.

Continental To Make New Soft Drink Can

NEW YORK, July 7.—Continental Can Company will start production in July of a new, nine-ounce, cap sealed soft drink can. The nearest thing to a bottle, this slender can is approximately the same diameter as a standard six-ounce or seven-ounce soft drink bottle and closely approximates it in height.

Because of its dimensions, the new can may be run through present bottling equipment with minimum modifications and can be used in most automatic vending machines without any major adjustments to the machine. It also can be merchandised in the same six-pack carrier now used for returnable bottles.

New York, N.Y.
AMERICAN METAL MARKET

New Pop Can Slated

Continental Can Co. will start production this month of a new 9-ounce cap-sealed soft drink can. The can is approximately the same diameter as a standard 6-ounce soft drink bottle and closely approximates it in height.

Los Angeles, Cal.
MIRROR - 7/11/55

Now It's Bottled Cans

NEW YORK (AP)—Continental Can Co. announced plans for production of a streamlined soft drink can that's shaped like a "pop" bottle. The can is approximately the same diameter as the conventional six or seven-ounce soft drink bottle of glass and just about as tall, but it holds more (nine ounces).

Cleveland, Ohio
NEWS - 7/8/55

Cans Taking Shape As 'Pop' Bottles

NEW YORK, July 8 (AP)—Continental Can Co announced plans for production of a streamlined soft drink can that's shaped like a "pop" bottle.

The slender can is approximately the same diameter as the conventional 6 or 7-ounce soft drink bottle of glass and just about as tall, but it holds more (9 ounces). The company says it can be used in most automatic vending machines and can be merchandised in the same 6-pack carrier now used for returnable bottles.

Toledo, Ohio
BLADE

Gleanings

Continental Can Co. is introducing a nine-ounce soft drink can that fits many automatic vending machines.

New York, N.Y.
HERALD TRIBUNE
7/8/55

New Soft Drink Can

Continental Can Co. is bringing out this month a new 9-ounce cap sealed soft drink can of approximately the same diameter as 6-ounce and 7-ounce bottles and about the same height. The correspondence means that it can be run through standard bottling equipment with slight modification and handled in most automatic vending machines without requiring major adjustment. Syracuse Plant No. 1 is not presently scheduled to produce the item but may on market demand.

Syracuse, N.Y.
HERALD-JOURNAL
7/8/55

Latest Can for Soft Drinks

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—Continental Can Co. will start producing soon a nine-ounce soft drink can it says is "the nearest thing to a bottle."

The can reportedly is about the same diameter as a standard, six-ounce or seven-ounce soft drink bottle, and is just about as tall.

The company says it can be used in most automatic vending machines, and can be merchandised in the same kind of six-pack carrier now used for returnable bottles.

New York, N.Y.
MORNING WALL ST. JRNL.
7/8/55

Continental Can Plans New Can

New York, July 8—(AP) — Continental Can Company announced plans for production of a streamlined soft drink can that's shaped like a "pop" bottle.

The slender can is approximately the same diameter as the conventional six or seven-ounce soft drink bottle of glass and just about as tall, but it holds more (nine ounces). The company says it can be used in most automatic vending machines and can be merchandised in the same six-pack carrier now used for returnable bottles.

Baltimore, Md.
NEWS-POST

Continental Lists Plans For New Soft Drink Can

NEW YORK, (AP) — Continental Can Co. announced plans today for production of a streamlined soft drink can that's shaped like a "pop" bottle.

The slender can is approximately the same diameter as the conventional six or seven-ounce drink bottle of glass and just about as tall, but it holds more (nine ounces). The company says it can be used in most automatic vending machines and can be merchandised in the same six-pack carrier now used for returnable bottles.

New Haven, Conn.
REGISTER - 7/10/55

Soft Drink Can Is Streamlined

NEW YORK, July 7 (AP)—Continental Can Co. announced plans today for production of a streamlined soft drink can that's shaped like a "pop" bottle. The slender can is approximately the same diameter as the conventional six or seven-ounce soft drink glass bottle, but it holds more (nine ounces). The company says it can be used in most automatic vending machines.

Chicago, Ill.
HERALD-AMERICAN

Continental Can Co. will start production this month of a new nine-ounce cap-sealed soft

drink can. The slender can is the same diameter as a standard six or seven-ounce soft drink bottle and approximates it in height.

Pittsburgh, Pa.
PRESS - 7/10/55

New Soft Drink Can

NEW YORK, July 8 (AP)—Continental Can Co. has announced plans for production of a streamlined soft drink can that's shaped like a "pop" bottle.

Detroit, Mich.
TIMES

Volume IV

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 367

UNITED STATES, APPELLANT,

vs.

CONTINENTAL CAN COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED AUGUST 13, 1963
JURISDICTION NOTED OCTOBER 28, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 367

UNITED STATES, APPELLANT,

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Volume IV

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[fol. 1284] GOVERNMENT'S EXHIBIT 773

Telephone COmmonwealth 6-2332

E. P. Williams
441 Stuart Street
Boston 16, Mass.

Representing

Hazel-Atlas Glass Company
Glass Ware
Metal Closures

June 2, 1953.

Burnam & Morrill Company
Main Canned Foods

Mr. J. C. Neuhart
Wheeling

Dear Sir:

Mr. B. Thomas Giesey and the writer were in Portland last week calling on Burnham & Morrill and Maine Canned Foods. As you know, Bert has already made a deal with Maine Canned Foods for twenty-five cars of small size bean pots, and approval of the model should come through today or tomorrow.

One thing we learned, however, that may be of interest to you. Mr. Thayer, of Burnham & Morrill told us that Anchor-Hocking and Armstrong Glass did not raise their prices 7¾% April 1st. Burnham & Morrill advised Anchor-Hocking and Armstrong that if the full increase in price was put into effect that it would cut down on the use of glass as it would be too far out of line with the cost of their tin package. As a result, Anchor-Hocking and Armstrong gave them an increase in price that amounted to approximately 2% or around 8¢ per gross. We haven't any of this business at the present time, but I haven't any doubt but what Bert is going to get some in the near future. You will undoubtedly want to meet these prices, and we can get the exact price at any time, but the fact remains that Maine Canned Foods also knows that Burnham & Morrill did not receive the full increase of 7¾%, and this will undoubtedly cause complications.

We have promised Maine Canned Foods that we will

start shipping glass to them in August providing they gave us approval of the new model this week.

This will probably not affect us until that time, but we are splitting this business with Owens-Illinois, and somewhere along the line, an adjustment in price will undoubtedly have to be made. No doubt, Maine Canned Foods will [fol. 1285] take this up with Owens-Illinois before we start shipping them in August, and we can be guided by what they do.

Very truly yours, E. P. Williams.

EPW:amw

[fol. 1286] GOVERNMENT'S EXHIBIT 775

Philadelphia, Pa.

April 5, 1954.

Mr. J. S. Algeo
Subject: Second Quarter Prospects

With reference to your letter of April 1st.

We have found considerable resentment in some quarters over the recent price advance.

One of our fountain topping accounts was particularly incensed and said that any business that could be swung over to tin would be fully explored, and if possible the change would be made. This manufacturer packs marshmallow, chocolate syrup, walnuts in syrup, cherries and pineapple.

Another packer, a pickle concern, although they anticipated the increase with a half dozen truckloads, advised that the increase in the glass price is making their profit margin very slim. This will force them to go to sources who will give a concession in price, people who are getting into the wide mouth business, such as Gaynor, and other suppliers, who in the past have given special figures on volume orders, people such as Knox and Lummus.

A third concern, which packs a seafood in a private mold item, is distressed because the retail ceiling for the item cannot be increased without a corresponding loss in sales. It is a specialty item which can be eliminated from a family budget if the price gets too high. In this case, the packer feels that it is impossible to pass the increase along to the

consumer, and in view of the fact that their profit margin is not great now, they have told us that they may be forced to look for substitute material for their product.

The jobbing trade which we cover, that is bottle and jar jobbers, are not concerned because such increases are automatically passed along to their trade.

As regards the outlook, we have been unable to get any great amount of information as to what packers feel will happen in the coming months. There are so many cross currents in business that most of them are afraid to make any predictions. On the one hand commodities are going up and unemployment is increasing, so the people we have talked to are confused.

[fol. 1287] In Philadelphia there is considerable unemployment, particularly in the heavy industries, and what comments we have been able to develop have brought out this fact, with the feeling that it will affect specialty items, such as pickles, olives, mayonnaise, etc. adversely, as those people who are unemployed feel the increasing pinch of their lack of income.

We cover a considerable number of bar and restaurant jobbing houses. These people have been seriously concerned with business falling off for several months, particularly the bar supply houses. The taprooms in Philadelphia are not doing the business they did last year. This again goes back to the increased unemployment. There have been many attempts to compensate for higher costs in this line by decreasing the capacity of the tumblers used for wine, beer and liquor, but these capacities have now reached such small sizes, that is ½ oz. for whiskey, 3 oz. for wine and 4½ oz. and 5 oz. for beer, that this practice cannot be continued much longer.

One field which shows signs of increased activity, and this usually has happened when business in general is off, is the premium business. We have had a slight, but definite, increase in interest, as well as sale of promotional items, such as Moderntone Sets and other tableware. This has come from department and appliance stores.

The one comment that we can pass on to you is that in this area the people we have contacted are uncertain as to what to expect during the balance of the year.

Yours truly, F. C. Menair.

FCMb

[fol. 1288] GOVERNMENT'S EXHIBIT 776

Philadelphia, Pa.

May 5, 1954.

Mr. J. S. Algeo:—

For what it may concern you, I talked to a lawyer to-day whose firm represented a group of merchants in the food packing line that had grouped together as an association to try to get to the bottom of the recent price advance made by most of the glass companies. This was thoroughly discussed with quite a large clientele of Hazel-Atlas and all were in the food industry. They did not tell me where the meeting was held.

He would not tell me what group they did represent, but at this meeting they came to the conclusion amongst themselves that the increase in prices was not warranted at this time. It seems they checked very carefully all the statements of the larger companies, and while I am not commenting on their findings because I do not think they are accurate, their conclusion was they had been taken advantage of and that they were all working along a certain line to try to get some of the glass companies to rescind this advance or turn to some other kind of packaging.

Do not ask me anymore than this; I cannot divulge who told me, nor who the group was.

I know you are going to censure me for this, but I have been put on my strict word not to tell.

I was told further I could write this letter which I am putting above.

Yours very truly, Robert B. Reinhart.

RBR: fcw

[fol. 1289] GOVERNMENT'S EXHIBIT 781

Wheeling

January 29, 1954.

All Agents,

It was suggested that I send to each of our agencies the remarks which I made at the Canners Convention at Atlantic City. This letter was intended to give a short summary of some of the important matters that have taken place in the last year. I hope it may be of some value to you.

Yours truly, J. S. Algeo, Vice Pres. & General Sales Manager.

JSA/ec

[fol. 1290] Canners Convention—January 25, 1954

A year ago most of the remarks I made to you had to do with handicaps under which we were suffering, and some of the steps that we had in mind toward overcoming those handicaps. I told you we intended building a plant in the Chicago area and another in the New York area and that we expected at that time to have the Chicago plant in operation in 1954. Unfortunately, the building of the Chicago, or Plainfield plant has been deferred due to the fact that the estimated cost was far far greater than we had in mind, and we thought we had a pretty fair idea as to what a plant would cost. The idea of building the Plainfield plant has not been abandoned—it will be built and we are beginning to figure again. In the meantime, we had an opportunity of making a deal for the Gas City plant of the Knox Glass Bottle Company. We took an option on the plant but for several reasons this deal has fallen through. Even had we purchased the Gas City plant, we would not have abandoned the idea of building at Plainfield later on.

In the past year, as a prelimimary to expanding our operations in New York and Chicago, we have rented warehouses at Kearny in the vicinity of New York, at Chester in the vicinity of Philadelphia, and at Rockdale in the vicinity of Chicago. These warehouses have largely served the purpose for which they were intended and, we believe, have

enabled us to retain some business which we otherwise would have lost, and to have picked up some new accounts. These warehouses, however, are stop-gaps and will undoubtedly be abandoned when plants are built in those areas. We have no specific plans for further expansion at the moment except at Plainfield. We have, however, built a new warehouse at Montgomery, a new warehouse at Clarksburg, and expect to soon build another warehouse at Oakland. Our long term plans for expansion of productive facilities have not been abandoned.

We have added to our decorating facilities at Clarksburg and are now in position to decorate as much ware as our capacity for making blanks. There is no need for further expansion of these decorating facilities unless these is a corresponding increase in our capacity for producing. This means that we are now in position to give excellent service on decorated ware at Clarksburg. If any delays are encountered, they probably will be due to lack of blanks rather than lack of ability to decorate. The quality of our decorations at Clarksburg is unsurpassed. We can take care of more business than we now have.

Last year I spoke of our handicap in not having business in certain fields—for instance, in the carbonated beverage field and in the amber field. Last year we wrote you that we would take on some carbonated beverage bottle business, not in a big way but sufficiently to enable us to get our feet wet, so to speak. We have some little progress. The bottles we have furnished have been very satisfactory so we no longer have fear that we may not make good in that field. We want you to solicit this business but on a selective basis. One of our great handicaps is the fact that most returnable beverage bottles are decorated and we don't have decorating facilities at the plants which would make the bottles. On the other hand, the usage of one trip beverage bottles is increasing rapidly. These bottles are not decorated. Therefore, we are not under any handicap so far as decorating is concerned.

I spoke of our handicap with reference to amber business. For years we have been operating one amber tank continuously and the second tank spasmodically. We have been trying hard during the past year to build up sufficient volume to justify two tank operation. We have made pro-

gress but we don't have sufficient business as yet. Before last year we had not been in position to make amber jars. We are trying to develop enough jar business to keep one machine in operation and again we have made progress, but not enough. We want amber jar business.

[fol. 1291] At last year's meeting the matter of quality was discussed and I told you we would make progress. I doubt whether the record would show that progress has been made, but actually we have made progress and I feel confident that the results this year will clearly show the improvement. Last year we had entirely too many avoidable complaints. I am sure a lot of these will be eliminated. On the whole, we make a good quality of merchandise but most of our troubles should never have occurred. I am sure that the steps we have taken and are taking will bring about a correction.

Last year I emphasized the fact that our real trouble was due to the fact that prices on the whole were too low in relationship to costs. We advanced prices April last year by about 7½ percent and I think I told you that that advance would not be sufficient to offset the cost increases which had already taken place and those which we could definitely foresee. This prediction turned out to be true. While our sales last year increased approximately twelve percent, our profit increased only moderately. In other words, our percent of profit on sales was less than it was in 1952. This price situation still confronts us. Costs continue to rise all last year. Labor rates in certain divisions increased in September; fuel increased. Our labor negotiations covering most of our employees begin the middle of February. It is a foregone conclusion that a substantial increase will have to be made. It isn't a question of whether or not to grant an increase, but rather a question of keeping the increase down to the minimum. Our price advance last April didn't quite cover cost increases which had taken place since that time. Since then many substantial increases have taken place and we are faced with a real big increase which will become effective about April first. All this means that we have got to have further prices advances. We must increase our prices April first. How much we can get we don't know of course, but we must get a fair advance. We don't believe you should go out and

voluntarily publicize the fact that we expect to make increases April first, but most certainly if the customer asks you about the possibility of an advance, you should give him the facts and not be hesitant in doing so. There are only two ways to recover cost increases—one is by higher prices and the other is by increased effeciency. Our effeciency is constantly increasing but for years our costs have increased faster than our ability to increase efficiency. It is up to all of us to do his utmost to get the increase when and if it is announced.

It is pretty risky to prophecy as to the future course of business. We are moderately optimistic as to prospects for this year. We see nothing on the horizon which would bring about a pronounced recession. We are fairly well pleased with incoming business so far this year and we see no reason why this year should not be approximately as good as in 1953.

JSA.

[fol. 1292]

Government's Exhibit 785

Question 10

Acquisitions by Continental Can Company, Inc.

1942–1956

Vendor	Date Acquired	Form of Acquisition	Product Line	Consideration		Information Furnished to the Government
*Square Star Can Company St. Louis, Mo.	8/ 1/42	assets	composite containers (paper cans with metal ends)	cash:	$62,072.17	Reported in detail, as requested, to F.T.C. in letter dated April 22, 1946.
Gardner-Richardson Company Middletown, Ohio	8/27/42	assets	composite containers (paper cans with metal ends)	cash:	$158,500.00	Reported in detail, as requested, to F.T.C. in letter dated April 22, 1946.
Boothby Fibre Can Company Boston, Mass.	11/ 6/42	assets	paper containers	cash:	$170,770.50	Reported in detail, as requested, to F.T.C. in letter dated April 22, 1946.
The Container Company Van Wert, Ohio	12/20/42	stock	fibre drums	cash:	$1,762,700.00	Reported in detail, as requested, to F.T.C. in letter dated April 22, 1946.
Fonda Container Company Utica, N. Y.	12/21/42	assets	paper containers	cash:	$39,449.86	Reported in detail, as requested, to F.T.C. in letter dated April 22, 1946.

* In late 1951 Continental's Paper Division discontinued production of composite containers.

[fol. 1293]

Vendor	Date Acquired	Form of Acquisition	Product Line	Consideration		Information Furnished to the Government
Val Vita Food Products Co. Fullerton, Cal.	2/23/43	assets	metal cans	cash:	$1,418,862.18	Reported in detail, as requested, to F.T.C. in letter dated April 22, 1946.
Standard Containers, Inc. Rockaway, N. J.	3/17/43	assets	fibre drums	cash:	$202,922.59	
* Marco Chemicals, Inc. Sewaren, N. J.	7/14/43	minority stock interest	synthetic resins, plastics	cash:	$130,000.00	Reported in detail, as requested, to F.T.C. in letter dated April 22, 1946.
Bond Manufacturing Corporation, Inc. Wilmington, Del.	1/ 5/44	stock	crown caps and cork products	cash:	$4,500,000.00	Reported in detail, as requested, to F.T.C. in letter dated April 22, 1946.
Keystone Drum Company Charleroi, Pa.	5/26/44	stock	fibre drums	cash:	$225,000.00	Reported in detail, as requested, to F.T.C. in letter dated April 22, 1946.
** Reynolds Molded Plastics Division of Reynolds Spring Company Cambridge, Ohio	5/15/44	assets	molded plastics	cash:	$972,920.85	
Cameron Can Machinery Corporation Chicago, Ill.	7/ 7/44	stock	can making and other machinery and equipment	cash:	$4,000,000.00	Reported in detail, as requested, to F.T.C. in letter dated April 22, 1946.

* Interest sold in 1952.

** Molded plastics line discontinued in 1952, and "conolite", which had been added to operations, was continued. Plant was sold when operation was moved to Milwaukee.

[fol. 1294]

Vendor	Date Acquired	Form of Acquisition	Product Line	Consideration	Information Furnished to the Government
Standwood Fibre Tube & Paper Corporation North Bergen, N. J.	5/ 1/44	assets	composite containers	cash: $60,763.66	
Mono-Service Company Newark, N. J.	9/30/44	stock: then assets on liquidation	paper cups and containers	7,334 shares of Mono-Service Co. stock at $300.00 per share and $799,800.00 in cash. Total value paid: $3,000,000.00	Reported in detail, as requested, to F.T.C. in letter dated April 22, 1946.
Owens-Illinois Can Co. Chicago, Ill.	10/31/44	assets	metal cans, steel pails, decorated kitchenware, specialty containers	cash: $7,500,000.00	(a) On information furnished the Department of Justice, Mr. Tom Clark, Assistant Attorney General, granted clearance in letter dated August 28, 1943 (b) Reported in detail, as requested, to the F.T.C. in letter dated April 22, 1946.
* Gould Paper Company Lyons Falls, N. Y.	9/ 5/45	stock	paper specialties, high grade white papers and newsprint	cash: $2,880,000.00	
Bamberger-Kraus Company and Estate of B. F. Kraus Pittsburgh, Pa.	10/ 1/45	stock	crown caps	cash: $500,000.00	

* Continental sold Gould Paper Company on June 21, 1951 to R. W. Luethi.

[fol. 1295]

Vendor	Date Acquired	Form of Acquisition	Product Line	Consideration	Information Furnished to the Government
Fibre Can Machinery Corporation Rutland, Vt.	12/20/45	assets	composite can manufacturing equipment	cash: $425,000.00	
* Filer Fibre Company Filer City, Mich.	1/28/46	stock	sulphate paper	cash: $1,332,650.00	
Hummel-Ross Fibre Corporation Hopewell, Va.	3/20/47	assets	paperboard and specialties	293,780 shares CCC Common Stock at total valuation of $10,576,080.00	On information furnished the Department of Justice Mr. Victor H. Kramer, of the Attorney General's office, granted telephonic clearance on January 30, 1947 to S. W. O'Brien of Willkie Owen Otis Farr and Gallagher.
Dixon Manufacturing Company, Inc. Coffeyville, Kan.	7/27/51	stock	aircraft parts	cash: $1,500,000.00	Letter dated June 13, 1952: H. B. Farr to J. E. Sheehy of F.T.C. setting forth detailed grounds for request that Continental not be compelled to prepare answers to antimonopoly questionnaire.
Benjamin C. Betner Company Devon, Pa.	1/30/53	assets	paper and laminated bags	73,177 shares of CCC Common Stock at total valuation of $3,748,125.94	On information furnished the Department of Justice, Mr. Newell A. Clapp, Acting Assistant Attorney General, granted clearance in letter dated November 24, 1952 to Mr. A. Trumbull of Willkie Owen Farr Gallagher & Walton. Previously Judge George B. Harris, United States District Judge, had signed a stipulation and order on November 21, 1952 clearing the acquisition under the consent decree of 1950 against Continental.

[fol. 1296]

* Continental sold the assets of Filer Fibre Company on July 31, 1947 to the American Pulp and Paper Company.

Vendor	Date Acquired	Form of Acquisition	Product Line	Consideration	Information Furnished to the Government
Bowes Industries, Inc. Three Rivers, Mich.	6/23/53	stock	plastic coated paper plates. (Napkins, plastic knives, forks, spoons and cups purchased from outside suppliers for purpose of resale)	15,000 shares of CCC Common Stock at total valuation of $776,250.00	By letter dated April 18, 1954, furnished information previously requested by Department of Justice.
Flexible Packaging Division of Shellmar Products Corporation Mt. Vernon, Ohio	6/ 1/53	assets	cellophane sheets, rolls and bags; unsupported polyethylene rolls and bags; miscellaneous laminations	cash: $1,079,961.50	By letter dated April 18, 1954, furnished information previously requested by Department of Justice.
Elmer E. Mills Corporation Chicago, Ill.	8/ 1/53	stock	injection moldings, pipe, tubing and fittings, and plastic bottles	cash: $1,600,000.00	By letter dated April 18, 1954, furnished information previously requested by Department of Justice.
[fol. 1297]					
Western Products, Inc. Newark, Ohio	1/27/54	assets	polyethylene materials (extruding)	cash: $370,000.00	
American Paper Goods Company of N. J. Kensington, Conn.	11/ 1/54	assets	paper cups, special envelopes, and bags	37,002 shares of CCC Common Stock at total valuation of $2,775,150.00	

Vendor	Date Acquired	Form of Acquisition	Product Line	Consideration	Information Furnished to the Government
Wallace Container Company Santa Ana, Cal.	10/ 1/54	stock	vynite collapsible tubing	cash: $300,000.00	
Tenco, Inc. Winona, Minn.	12/10/54	assets	plastic pipe fittings	cash: $278,793.00	
Vaporized Metal Coatings, Inc. Roosevelt, N. J.	5/14/55	assets	high-speed coating of metals on cellophane, pliofilm, etc.	cash: $500,000.00	
White Cap Company Chicago, Ill.	1/ 4/56	stock	vacuum type metal closures for bottles and jars	210,000 shares of CCC Common Stock at total valuation of $14,096,250.00	

* Note: Pursuant to a joint venture in the manufacture of aluminum foil containers, Continental acquired on June 29, 1956 50% of the capital stock of Cochran Continental Container Corporation, a newly-formed Delaware Corporation, for $1,000,020 in cash. It had previously been agreed that Cochran Continental Container Corporation would acquire a rigid aluminum foil container plant from Cochran Foil Company of Louisville, Kentucky. Cochran Foil Company owns the other 50% of the capital stock of Cochran Continental Container Corporation.

[fol. 1298] GOVERNMENT'S EXHIBIT 786

Willkie Owen Otis Farr & Gallagher
15 Broad Street
New York

February 20, 1946.

William H. England, Esq.
Director, Division of Accounts,
Statistics & Economic Investigations,
Federal Trade Commission,
Washington, D. C.

Re: Continental Can Company, Inc.

Dear Mr. England:

Continental Can Company, our client, has referred to me your letter of February 11, requesting that it furnish information as to the acquisition of stock or assets of a number of companies over the past years. The Company has every desire to cooperate with the Commission in furnishing so much of the information as is available, but at the outset we should advise you that it will be totally impossible to furnish this information by the end of February, as you request at the end of the letter. Incidentally, your letter, although dated February 11, was not posted until February 18, and received by the Company on the 19th. You will appreciate that the information requested will require exhaustive research through old records, many of which are, if available at all, in dead storage, and that it would be an impossible task to complete the survey even at top speed, in our opinion, in less than three or four months.

I will be glad to confer with you on some reasonable program of supplying the information, but if it is needed by you only if furnished by the end of the month, we cannot [fol. 1299] possibly supply it within that time.

Will you let me hear from you on this subject.

Very truly yours, H. Bartow Farr

HBF:MMC

[fol. 1300] Continental Can Company, Inc.
100 East 42nd Street
New York 17, N. Y.

To the Federal Trade Commission, April 22, 1946.
Washington, D. C.

Attention of William A. England, Esq., Director of Division of Accounts, Statistics and Economic Investigations.

Dear Sirs:

Continental Can Company, Inc. (hereinafter referred to as "Continental") herewith furnishes the information requested by the Commission in its letter of February 11, 1946. In connection with this study, the company was requested as to each acquisition to give a "statement of the circumstances or situation that led up to the acquisition."

In this reply, the company has condensed this statement to set forth the primary factors. However, it should be mentioned that as to all the acquisitions there was the following background, which has not been repeated throughout the answer, but which is nevertheless present in each case to a greater or lesser degree:

At the time that Continental was organized, the American Can Company was well established in the industry as the dominant can-making company. The growth of Continental through natural expansion and through the acquisition of the companies referred to in the questionnaire had the purpose and effect of building up competition in the industry through the strengthening of Continental, which is now the second largest manufacturer of cans in the country.

[fol. 1301] In only a few cases, and then to a minor extent as pointed out hereafter, was there any competition between Continental and the company so acquired. In such instances competition in the industry was never lessened by such acquisition, but was vigorously continued and expanded under the efficient management of Continental. It was recognized in the Federal Courts in the early days that the American Can's domination threatened to create a monopoly. See *U. S.* v. *American Can*, 230 Fed. 859; 231 Fed. 1019; appeal dismissed 256 U. S. 706.

That this situation no longer exists is in great measure due to the important competitive position that Continental has built up in the industry, primarily through the acquisitions hereafter referred to, as has been frequently recognized by the Department of Justice.

It should also be emphasized that as the company's business expanded these additional acquisitions were necessary to meet the competition of others in servicing the national accounts that had thus been acquired.

With this basic explanation, we now furnish below the information requested by the Commission, in so far as it is available.

Organization

Continental is a New York corporation chartered January 17, 1913. It was organized to acquire all the interests of (a) the Continental Can Company, a New Jersey corporation, (b) the Export and Domestic Can Company, a New York corporation, and (c) the Standard Tin Plate Company, a Pennsylvania corporation. These properties [fol. 1302] were acquired on January 24, 1913.

The Continental Can Company (of New Jersey) and the Export and Domestic Can Company had been established in 1904 and 1905, respectively. The companies operated plants at New York City, Syracuse, Baltimore, Canonsburg, Pennsylvania and Chicago. The terms of the acquisition were that Continental Can Company of New Jersey sold to Continental of New York all its property, rights and franchises for $3,341,747.87 of 7% preferred stock, $7,129,062.10 of common stock and $172,164.28 in cash. Export and Domestic Can Company sold to Continental of New York all its property, rights and franchises for $408,252.13 of 7% preferred stock, $870,937.90 of common stock and $21,081.34 in cash. The capital stock of the Standard Tin Plate Company was owned by Continental Can Company of New Jersey and was included in the assets purchased from it.

Continental initially had its principal office and kept its records in Syracuse, New York. Because of a flood in the Company's offices there in the winter of 1919-20 many of the old records of the company were destroyed. Among these were the balance sheets of the above mentioned enterprises at the date of acquisition, and their income state-

ments for the three full years of operation preceding the dates of acquisition. Accordingly they cannot be located. However, there is annexed hereto as Exhibit 1, a consolidated balance sheet showing the position of Continental as of December 2, 1912 after the issuance of its capital stock and the acquisition of the assets and liabilities of the Continental Can Company of New Jersey, the Export and Domestic Can Company of New York and the Stand-[fol. 1303] ard Tin Plate Company of Canonsburg, Pennsylvania, together with a brief description of the operations of these companies, contained in circular dated January 28, 1913.

Apparently the only container manufacturing enterprise acquired thereafter by Continental prior to 1926 was the National Can Company, on August 20, 1923. This company was located at Detroit, Michigan, and was engaged there in the manufacture of metal containers. Terms of the acquisition were that the land, buildings, machinery and equipment were purchased for $350,000 and the inventory purchased for $112,248.17. A balance sheet and income statements of this enterprise are no longer available.

Information requested by the last paragraph of page 1, and the first two paragraphs of page 2 of the Commission's letter is now set forth in the same numerical order as appears therein.

No. 1

Los Angeles Can Company

On December 6, 1926 Continental purchased machinery, equipment and inventories of this Company for $585,000 in cash. The company's only plant was located at Los Angeles, California, and it was engaged in the manufacture of metal containers.

The property of the Los Angeles Can Company was acquired from John Pike Company, who acted as brokers, by the Los Angeles Can Corporation, organized by Continental to operate this plant. The Los Angeles Can Corporation continued as a subsidiary of Continental until October 1, 1930, on which date its personal property was transferred to Continental Can Company, Inc. of California. Because the property of Los Angeles Can Company was

[fol. 1304] acquired from a broker, the balance sheet and income statements are not available.

This property was acquired in order that Continental might enter competition on the Pacific Coast with the American Can Company which was already established there.

No. 2

Seattle Can Company

On January 5, 1927 Continental purchased the capital stock of Seattle Can Company for 3,411 shares of common stock of Continental and $1,586. in cash. The company was a manufacturer of metal containers, located at Seattle, Washington. A balance sheet as of November 30, 1926 is annexed hereto as Exhibit 2. Income statements of the acquired company as of December 31, 1926 and as of December 31, 1925 are annexed hereto as Exhibit 2A. The income statement for December 31, 1924 is not available. The property was operated as Continental Can Company of Washington until this subsidiary was merged with Continental on August 31, 1932. The company was acquired for the same reason as the Los Angeles Can Company.

No. 3

G. N. Easton Can Company

On January 12, 1927 Continental acquired 1,395 shares of the capital stock of G. N. Easton Can Company for 4,185 shares of Continental common stock. The company, located in San Jose, California, was a manufacturer of metal containers. A balance sheet as of December 31, 1926 is annexed hereto as Exhibit 3. The only available income statement as of December 31, 1926 is annexed hereto as Exhibit 3A.

[fol. 1305] The property was operated as a subsidiary under the name of Continental Can Company, Inc. of California until May 31, 1932 upon which date it was merged with Continental. This company was also acquired because its location on the Pacific Coast enabled Continental to

enter an area theretofore dominated by the American Can Company.

No. 4

Passaic Metal Ware Company

On January 10, 1928 Continental acquired all of the outstanding common stock of Passaic Metal Ware Company, a New Jersey corporation, consisting of 17,889 shares of Passaic in exchange for 11,926 shares of Continental common stock, without par value. The company's only plant was located at Passaic, New Jersey. A balance sheet as of October 31, 1927 is annexed hereto as Exhibit 4. The only available income statement as of October 31, 1927 is also annexed hereto as Exhibit 4A.

The purpose of this acquisition was to engage in the manufacture and sale of general line cans which Continental did not then produce, consisting of smaller sized highly decorated cans for talcum powder, tooth powder, cereal, etc. At the time of acquisition, Continental did not duplicate any type of can made by the Passaic Company, with the exception of a can for varnish and insecticide, which constituted approximately 5% of the business of the Passaic Company.

No. 5

Seattle-Astoria Iron Works

On January 31, 1928, Continental acquired all of the outstanding stock of the Seattle-Astoria Iron Works, a Washington corporation, consisting of 5,000 shares, in ex-
[fol. 1306] change for 16,250 shares of Continental common stock, without par value. This company sold no cans, but manufactured machinery for making and closing cans and canning house machinery. Its only plant was located at Seattle, Washington. A balance sheet as of June 30, 1927 is annexed hereto as Exhibit 5. Income statements for the years ending June 30, 1925, 1926 and 1927 are also annexed hereto as Exhibit 5A.

The purpose of this acquisition was to enable Continental to supply machinery for making cans at its three Pacific coast factories, as well as certain machinery for its eastern plants and also to supply closing machines to its Pacific coast customers.

No. 6

United States Can Company

This company was acquired by Continental on February 6, 1928. The company was a manufacturer of metal containers and its plants were located at Cincinnati, Ohio, St. Louis, Missouri, Chicago, Illinois, Baltimore, Maryland, and Roanoke, Virginia. The plan of acquisition called for the sale of the entire assets of the U. S. Can Co. to Continental and the dissolution of the U. S. Can Co. The consideration was as follows:

1. The assumption of all of the debts of the U. S. Can Company, including a bond issue in the principal amount of $1,200,000, dated March 1, 1927, to the Chase National Bank of New York, as Trustee, secured by a first mortgage on the properties of the U. S. Can Company.

2. Payment of $2,000,000 in cash which was paid to the preferred stockholders of the U. S. Can Company on its dissolution.

[fol. 1307] 3. 50,000 shares of the common stock of Continental Can Company were delivered to the U. S. Can Company to be distributed in liquidation to its common stockholders.

A consolidated balance sheet as of November 30, 1927 of the U. S. Can Co. is annexed hereto as Exhibit 6. Income statements of the U. S. Can Co. as of December 31, 1924, 1925 and 1926 are annexed hereto as Exhibit 6A.

The purpose of Continental in this acquisition was to place it in a position to compete more strongly with American Can Co. and others in localities in which theretofore there had been no such competition, and also to broaden its field of sales in localities in which theretofore Continental was not represented and had not been able to compete. Continental was faced with the alternative either of building new factories in those localities or of acquiring existing factories. In taking over the plants of the U. S. Can Co., it adopted the latter alternative as the more economical measure.

At the time of this acquisition, Continental had no plants

in Cincinnati, Roanoke or St. Louis. U. S. Can Co. had no sales of general line cans in the Chicago district and Continental had no sales of general line cans in the Baltimore district. The only existing competition between Continental and U. S. Can Co. was in sales of packers open top cans in the Baltimore and Chicago districts. In the Chicago district packers cans sold by the U. S. Can Co. constituted 10½% of the number sold by Continental. In the Baltimore district packers cans sales of the U. S. Can Co. constituted 5½% of the sales by Continental. In the Baltimore district the U. S. Can Co. sold 3% of the total production of all packers cans and 5% in the Chicago district. The packers cans sold by U. S. Can Co. in the Chicago and Baltimore districts constituted less than 1¼% [fol. 1308] of the total annual production in this country.

No. 7

Southern Can Company

On May 2, 1928, the Southern Can Company sold its entire assets to Continental. The consideration was:

1. The assumption of all the debts of the Southern Can Company.
2. The redemption of its outstanding preferred stock of $1,250,000 at $107.50 and accrued dividends.
3. Delivery of 11,500 shares of Continental common stock which was distributed in liquidation to the Class A and Class B common stockholders of the Southern Can Company.

The Southern Can Company was located at Baltimore, Maryland and was engaged in the manufacture of metal containers and other metal ware products. A balance sheet as of May 2, 1928 is annexed hereto as Exhibit 7. Income statements as of December 31, 1925, 1926 and 1927 are annexed hereto as Exhibit 7A.

The packers can production of the Southern Can Company in the Baltimore district was approximately 8% of the total production, so that competition was not curtailed substantially by its acquisition.

The property was acquired to utilize its modern buildings and to enable Continental to manufacture its cans in

this factory rather than shipping them in from Syracuse and other factories at considerable expense.

No. 8

New Orleans Can Company

On June 26, 1928, Continental purchased the capital stock of the New Orleans Can Company for $187,500. The company was located at New Orleans, Louisiana, and was a manufacturer of metal containers. A balance sheet as of [fol. 1309] May 31, 1928 is annexed hereto as Exhibit 8. Income statements are not available, but it is known that the company had made profits in 1925 of $13,653.35, in 1926 of $9,139.41 and in 1927 of $28,929.29.

The Company was acquired to enable Continental to supply its customers located in the Gulf Coast area.

No. 9

The R. Hardesty Manufacturing Company

On October 31, 1928, Continental purchased from the R. Hardesty Manufacturing Company the portion of its assets devoted to can manufacturing and distributing. No liabilities of the company were assumed, and it continued as a going corporation in the operation of all of its business other than its can business. Fixed assets were purchased at a valuation of $125,000, payment being made in the common stock of Continental on the basis of its closing market value on the day of transfer. Inventory was purchased at net cost or market, whichever was lower, less a 2% discount for cash.

The R. Hardesty Manufacturing Company was a Colorado corporation, with its plant and place of business at Denver, Colorado. A balance sheet as of October 31, 1928 is annexed hereto as Exhibit 9. Income statements as of December 31, 1926, 1927 and as of October 31, 1928 are annexed hereto as Exhibit 9A.

The total sales of the R. Hardesty Manufacturing Company's can manufacturing department were approximately $300,000 per year. Its sales were confined to the district in the neighborhood of Denver, Colorado, and in that district Continental had no existing plant and was not in competi-

[fol. 1310] tion at the date of the acquisition. Its nearest plants were in Chicago and East St. Louis and no sales were made from them in the Denver district. On the other had, the nearest plant of the American Can Company at the date of acquisition was located at Kansas City and sales from that plant were being made in the Denver district by American prior to this entrance of Continental into competition there.

No. 10

Wheeling Can Company

Wheeling Can Company, a West Virginia corporation, was a wholly owned subsidiary of Wheeling Steel Corporation, having a plant and place of business at Wheeling, West Virginia, and a plant at Warwood, West Virginia. On December 3, 1928, Continental purchased all the assets of Wheeling Can Company, including its machinery and equipment, for 27,000 shares of Continental common stock. In addition, the inventory of tin plate, together with goods in process and finished products, was purchased at its cost of $685,363.02. A balance sheet as of October 31, 1928 is annexed hereto as Exhibit 10. Income statements as of December 31, 1926, December 31, 1927 and as of October 31, 1928 are annexed hereto as Exhibit 10A.

At the time of acquisition total annual sales of Wheeling Can Company were approximately 1/11th of those of Continental and 1/32nd of those of American Can Company. In Wheeling, West Virginia, Continental had no plant whatsoever and was not in competition with the Wheeling Company at the time of acquisition.

[fol. 1311] No. 11

Bedford Can Company, Inc.

Bedford Can Company, Inc. was a Virginia corporation with a plant and place of business at Bedford, Virginia. On December 5, 1928, Continental acquired the land, buildings, machinery and equipment of Bedford for 4,576 shares of common stock of Continental. In addition, its inventory of tin plate and other supplies were taken over at an agreed valuation by payment in shares of common stock of Contin-

ental on the basis of $59. per share. A balance sheet as of November 30, 1928 is annexed hereto as Exhibit 11. Income statements as of December 31, 1926, December 31, 1927 and November 30, 1928 are annexed hereto as Exhibit 11A.

Total sales of Bedford were approximately $700,000 annually and these sales were largely confined to the Bedford district. Prior to its acquisition of the company, Continental had no plant in that district, its nearest plants being at Roanoke, Virginia and Baltimore, Maryland. Sales of packers cans by Bedford in the Baltimore district were less than 3% of total annual sales there.

No. 12

Manhattan Can Company

Manhattan Can Company was a New York corporation operating a small plant in the Bush Terminal Building, Brooklyn, New York. On December 31, 1928, Continental acquired all the assets of Manhattan, including its machinery and equipment, contracts and inventory of materials and supplies for $171,864.00, paid by 2,738 shares of Con- [fol. 1312] tinental common stock and $54.50 in cash. A balance sheet as of December 31, 1928 is annexed hereto as Exhibit 12. Income statements as of December 31, 1926, 1927 and 1928 are annexed hereto as Exhibit 12A.

The total annual sales of Manhattan were around $350,000. It was subjected to an annual rent charge of $24,000 and for this reason did not find it profitable to operate and accordingly decided to sell its equipment. Continental had no Brooklyn plant, and as the business of Manhattan was of a highly local nature, there was little, if any, competition theretofore existing between them, its annual sales having constituted less than 1% of the annual sales of Continental.

No. 13

McDonald Machine Company

On April 30, 1929, Continental exchanged 17,123 shares of its common stock for the total outstanding stock of McDonald. McDonald was not engaged in the manufacture

and sale of cans but only of can-making machinery. Its plant was located at Chicago, Illinois. A balance sheet as of March 31, 1929 is annexed hereto as Exhibit 13. Income statements as of December 31, 1926, 1927 and 1928 are annexed hereto as Exhibit 13A.

Prior to this acquisition, Continental's plants for manufacturing can-making machinery were located only in Syracuse, New York and Seattle, Washington. The acquisition was made in order to manufacture its machinery more economically in the North Central or Middle West district.

[fol. 1313] No. 14

Federal Can Company

On June 25, 1929, Continental purchased the business and assets of Federal for 4,652 shares of Continental common stock. The company was a manufacturer of metal containers, and its plant was located at Nashville, Tennessee. A balance sheet as of March 30, 1929 is annexed hereto as Exhibit 14. Income statements as of December 31, 1926, 1927 and 1928 are annexed hereto as Exhibit 14A.

The gross sales of Federal Can Company in 1928 were about $600,000 and of this amount over $425,000 were made in Tennessee. Prior to the acquisition of this company, Continental had no plant in Nashville, Tennessee.

No. 15

Eastern Shore Can Company

On July 2, 1929, Continental purchased all the assets of the Eastern Shore Can Company for $94,142.00 in cash, plus an amount equal to the accrued dividend of the outstanding preferred stock of Eastern and 8,750 shares of Continental common stock. All liabilities were assumed by Continental on the date of acquisition.

The Eastern Shore Can Company was a Maryland corporation engaged in the manufacture of metal containers, having its principal place of business at Hurlock, Maryland. A balance sheet as of July 2, 1929 is annexed hereto as Exhibit 15. Income statements as of December 31, 1926, 1927 and 1928 are annexed hereto as Exhibit 15A.

The property was acquired to facilitate the serving by Continental of its customers along the eastern shore of Maryland and of Virginia. In order to supply these custom-
[fol. 1314] ers prior to this acquisition it had been necessary for Continental to ship from Baltimore by way of Elkton, Maryland, and the acquisition resulted in the elimination of this circuitous route.

No. 16

Gille Manufacturing Company

On August 13, 1929, Continental purchased all the assets of the Gille Manufacturing Company for 15,980 shares of Continental common stock. All outstanding liabilities were assumed by Continental on the date of the acquisition. The Gille Manufacturing Company was engaged in the business of manufacturing metal containers and was located at Kansas City, Missouri. A balance sheet as of August 2, 1929 is annexed hereto as Exhibit 16. Income statements as of December 31, 1926, 1927 and 1928 are annexed hereto as Exhibit 16A.

Prior to this acquisition, American Can Company had a plant at Kansas City, Missouri, and this purchase was made to enable Continental to enter into immediate competition in that district.

No. 17

Sociedad Industrial de Cuba

On September 24, 1929, the capital stock of Sociedad Industrial de Cuba, consisting of 1,400 shares, was purchased by Continental for 6,907 shares of its common stock and $586 in cash. The company was engaged in the manufacture of metal containers and bottle caps and was located in Havana, Cuba. The property was operated under its own name as a subsidiary of Continental until July 1, 1945, on which date its name was changed to Continental Can Corporation which is a Western Hemisphere corporation. A balance sheet as of August 31, 1929 is annexed hereto as [fol. 1315] Exhibit 17. Income statements as of December 31, 1926, 1927 and 1928 are annexed hereto as Exhibit 17A.

The company was acquired by Continental in order to supply Cuban canners and enter the field in that country.

No. 18

Nashville Corrugated Box Company

On October 10, 1929, Continental purchased the business and assets of J. D. Goodpasture, trading as Nashville Corrugated Box Company, for 3,687 shares of Continental common stock and $42.08 in cash. The company was engaged in the manufacture of corrugated cartons and was located in Nashville, Tennessee. A balance sheet as at September 30, 1929 is annexed hereto as Exhibit 18. As assets only were purchased, income statements were apparently not required by Continental and hence, are not available. The business was incorporated shortly after its acquisition and is presently operated as a subsidiary of Continental.

The company was acquired in order that Continental might enter into the corrugated box field, a product which it had not theretofore manufactured.

No. 19

Penick & Ford, Ltd., Inc.

On December 10, 1929, Continental purchased the can business of Penick & Ford, a corporation engaged in the manufacture and distribution of molasses and allied corn products. The properties acquired by Continental were located at Harvey, Louisiana and Cedar Rapids, Iowa. The land, buildings and machinery at Harvey, Louisiana, and the [fol. 1316] machinery and equipment at Cedar Rapids, Iowa, were purchased for $339,798.90 in cash. The inventory was purchased for $148,100.32 in cash. Because only a part of the company's assets were purchased, a balance sheet or income statements are not available.

Penick & Ford sold its can business to Continental because it felt that Continental could effect large scale economies in its operations, and thus supply cans at a lower cost than Penick & Ford had been able to realize. In this way, Continental acquired an important customer.

No. 20

Gordon Can Company

On November 2, 1931, Continental purchased land, buildings, machinery and equipment and inventories of Gordon Can Company for $155,676.37 in cash. The company was located in Omaha, Nebraska, and was engaged in the manufacture of metal cans. A balance sheet as of June 30, 1931 is annexed hereto as Exhibit 19. As assets were purchased, full income statements covering the operation of the company are not available. However, sales and profit figures for 1928, 1929, 1930 and for the first six months of 1931 are annexed hereto as Exhibit 19A.

The company was acquired to facilitate serving Continental customers in Nebraska and to avoid the necessity of making shipments from more distant plants.

No. 21

Chase Bag Company

On December 14, 1932, Continental purchased for $78,528.74 land and buildings only, at Memphis, Tennessee, from Chase Bag Company and Riverside Land Company. As this acquisition was not of the business or equipment of the [fol. 1317] Chase Bag Company, neither income statements nor a balance sheet are available.

This building was merely purchased as a site for a Memphis plant subsequently put into operation by Continental.

No. 22

Manion Steel Barrel Company

On July 27, 1933, Continental Can Company of Pennsylvania, a wholly owned subsidiary of Continental, purchased from Rouseville Cooperage Company, trading in part as Manion Steel Barrel Company, machinery and equipment for $43,500 and inventories for $17,727.44 in cash. Manion Steel Barrel Company was engaged in the manufacture of metal containers and was located at Rouseville, Pennsylvania. As the purchase was one of assets of a portion of

the entire business, neither income statements nor a balance sheet are available.

The business was acquired in order that Continental might enter into the manufacture of steel barrels for oil products in the Pennsylvania area.

No. 23

Columbia Can Company

On February 28, 1935, Continental purchased the land, buildings, machinery and equipment and inventories of Columbia for $380,236.76. The company was engaged in the manufacture and sale of general line cans for eggs, sweeping compounds, ice creams, coffee, shoe polish, lard, ether and chemicals, and its plant was located at St. Louis, Missouri. A balance sheet as of February 28, 1935 is annexed hereto as Exhibit 20. Income statements as of De- [fol. 1318] cember 31, 1932, 1933 and 1934 are annexed hereto as Exhibit 20A.

Practically all of the business of Columbia Can Company was with customers located in the immediate vicinity of St. Louis, Missouri, and about 63% of their total sales for 1934 consisted of cans of a type not manufactured by the East St. Louis plant of Continental Can Company, Inc. These items included cans and drums for sweeping compounds, ice cream, ether and drugs, steel jacketed cans, coffee, shoe polish and 5 gallon square cans. About 24% of Columbia Can Company's sales for 1934 represented cans of a type not manufactured at any of the plants of Continental. The products of the Columbia Can Company were in competition with similar products of the Kansas City and St. Louis plants of American Can Company. Its controlling stockholders had recently died with the result that the heirs were desirous of disposing of this property. The sales volume of Columbia Can Company was considerably less than 1% of Continental sales volume in 1934.

No. 24

Janssen-Ostertag Manufacturing Company

On February 4, 1935, Continental purchased all of the assets of this company (except cash, life insurance, accounts and notes receivable) for cash in the amount of $40,682.09. The company was engaged in the manufacture and sale of general line cans, consisting of axle grease pails and miscellaneous grease cans, and was located at Kansas City, Missouri. A balance sheet as of December 31, 1934 is annexed hereto as Exhibit 21. Sales and earnings figures as of December 31, 1932, 1933 and 1934 are annexed hereto as Exhibit 21A.

[fol. 1319] The business of Janssen-Ostertag Manufacturing Company consisted almost exclusively of the manufacture and sale of axle grease pails and grease cans of a type not manufactured by either the Kansas City or East St. Louis plants of Continental. The products of this company were in competition with similar products of the Kansas City and St. Louis plants of American Can Company. The controlling stockholders of this company also had recently died with the result that the heirs were desirous of disposing of this property. The sales volume of this company was considerably less than 1% of Continental sales volume in 1934.

No. 25

Wilkes Barre Can Company

On August 9, 1936, Continental Can Company of Pennsylvania acquired the business and fixed assets of Wilkes Barre for $450,000, and its inventory, at cost or market, for approximately $204,000. The company was engaged in the manufacture of metal containers and household lines of a type not theretofore manufactured by Continental, and was located at Wilkes Barre, Pennsylvania. A balance sheet as of August 8, 1936 is annexed hereto as Exhibit 22 and sales and profit figures as of December 31, 1933, 1934 and 1935 are annexed hereto as Exhibit 22A.

The assets of this company were transferred to Continental in 1941.

The company was acquired to enable Continental to enter into a line of metalware specialties not theretofore manufactured by it.

[fol. 1320] No. 26

Canonsburg Coal Company

In 1933, Continental purchased the Hazel Mine of the Chartiers Creek Coal Company of Canonsburg, Pennsylvania at a cost of $147,500 cash, together with mining rights covering about 500 acres of coal, and coal mining equipment formerly owned by this company. In January, 1934, Continental organized the Canonsburg Coal Company as a subsidiary of Standard Tin Plate Company to operate this property and it was disposed of in 1941. As this was a purchase of property, a balance sheet and income statements are not available.

The coal mine was adjacent to property then owned by Continental and was acquired as a source of supply to it.

No. 27

Metal Box and Printing Industries, Ltd.

On April 16, 1930, Continental acquired 50,000 shares out of 754,695 shares outstanding in Metal Box and Printing Industries, Ltd., which in 1931 acquired control of the British Can Company. The name of Metal Box and Printing Industries, Ltd. was subsequently changed to Metal Box Company, Ltd. As of April 1, 1946, Continental held approximately 9.75% of the stock of Metal Box Company and at no time since April 16, 1930 has Continental held a controlling interest in this company.

The Metal Box Company is engaged in the manufacture of metal containers in the United Kingdom. A consolidated balance sheet as of March 31, 1929, with additional capital transactions carried through to March 31, 1930 and giving effect to the acquisition by Continental of 50,000 ordinary shares on April 16, 1930, is annexed hereto as Exhibit 23. [fol. 1321] Income statements are not available but it appears from Moody's Manual of Investments, Industrial's Volume 1932, page 3265, that consolidated net profits for

the years ending March 31 (after depreciation but before income tax or debiting or crediting interest) were: 1928 £212,413; 1929 £236,896; 1930 £235,217.

The acquisition of stock on April 16, 1930 was made to extend financial aid to the British company at a period of serious depression in England, and Continental has subsequently maintained a roughly proportionate interest in this company as an investment. It also has made a license agreement with Metal Box under which that company manufactures and uses machinery of Continental design in the British Isles and elsewhere in the Empire.

Other acquisitions by Continental of container manufacturing enterprises during the period 1926 through 1936, covered by questions relating to the above 27 acquisitions, were Manufacturers Can Company, Inc. and Southwestern Can Company, which we have numbered 28 and 29.

No. 28

Manufacturers Can Company, Inc.

On January 3, 1922, Manufacturers Can Company sold to Continental its machinery, office supplies and contracts for $200,000 in cash and its inventory of materials and supplies as of December 31, 1928 at cost, less 2% discount on all materials except tin plate in original packages. The land and buildings owned by the company were not included in the sale nor were its liabilities assumed as part of the transfer. The company operated a plant at Harrison, New Jersey, where it made specialties such as cans for oil, grease, paints, varnish, etc. As the purchase was one of assets, a balance sheet and income statements are not available. [fol. 1322] The business of the company was of a local nature and as its operations had not been successful during the four or five years preceding its acquisition by Continental, it had decided to sell its equipment and go out of business. The total sales of the company were less than 1½% of those of Continental.

No. 29

Southwestern Can Company

On June 19, 1935, Continental acquired from the liquidating trustees of Southwestern Can Company its land, building and equipment for $111,202.30 in cash. The company had previously been engaged in the manufacture of metal containers at Houston, Texas. As the purchase was one of assets, a balance sheet and income statements are not available.

These assets of Southwestern were acquired by Continental after a decision on the part of its management to liquidate and go out of business.

We again take up the companies next enumerated in the Commission's letter, and we have numbered them consecutively for convenience, beginning with 30.

No. 30

Continental Can Company, Inc. of Washington

This wholly owned subsidiary was formerly known as the Seattle Can Company as to which see discussion under No. 2, *supra*. Continental Can Company, Inc. of Washington did not acquire stock control of any other company. This subsidiary company was merged with Continental on August 31, 1932.

[fol. 1323]

No. 31

Continental Can Company, Inc. of California

This wholly owned subsidiary was known, prior to June 20, 1927, as the G. N. Easton Can Company as to which see discussion under No. 3, *supra*. On November 8, 1930, Continental of California acquired stock control of Gardner Manufacturing Company, Limited, of Sunnyvale, California. A balance sheet as of October 18, 1930 is annexed hereto as Exhibit 24. Income statements of the company are not available.

No. 32

Whittall Can Company, Limited

Between September 19, 1935 and December 31, 1935, Continental acquired 127,874 shares of common stock of Whittall Can Company, Limited, out of a total of 130,000 shares outstanding or 98.4% of its voting stock at a cost of $1,078,043. Between December 31, 1935 and March 31, 1936, additional shares of common stock were issued by Whittall, and Continental increased its interest in this company by acquiring 30,853 shares of common stock at a cost of $261,676. A balance sheet as of February 29, 1936 is annexed hereto as Exhibit 25. Income statements for the years ending February 28, 1934 and 1935 and February 29, 1936 are annexed hereto as Exhibit 25A.

On October 19, 1935, Continental organized Continental Can Company of Canada, Ltd. and on June 30, 1936, this company purchased all assets and assumed all liabilities, except indebtedness to Continental, of Whittall for a consideration of $1,858,635.16. A balance sheet as of June 30, 1936 is annexed hereto as Exhibit 25B.

[fol. 1324] The Whittall Company was incorporated in Canada and was engaged in the manufacture of metal packages, sanitary food containers, and paint cans. Its plant was located at Montreal, Quebec, Canada. The company was acquired to facilitate the supply of items of this type by Continental to customers in Canada and enter the can manufacturing industry in that country.

No. 33

Colonial Canners, Limited

On February 3, 1940, Continental formed this subsidiary in Ontario to take over canning plants and equipment formerly owned by the Empire Foods Corporation, Limited. These properties were located at Brighton, Ontario, Ste. Martine, Quebec, Hamilton, Ontario (2 plants), Cottom, Ontario, McGregor, Ontario, Harrow, Ontario, Essex, Ontario, Trenton, Ontario, Belleville and Desoronto, Ontario. The depreciated valuation of the properties on the books of the vendor at the date of acquisition is unknown. The con-

sideration for the acquisition was Continental's bid of $701,000 face value in bonds at the foreclosure sale arising from a secured loan of one million dollars by Continental to this company. As the enterprises were in default under the mortgage, they cannot be considered to be operating enterprises, and income statements are, therefore, not available.

The properties were thus acquired as a result of the foreclosure sale, and as they consisted of canning plants. Continental has been in the process of selling or leasing these plants.

[fol. 1325] No. 34

Gardner-Richardson Company

On August 27, 1942, Continental purchased certain patents and machinery for the manufacture of paper cans from the Gardner-Richardson Company for $162,500. The depreciated valuation of the acquired assets on the books of the vendor at this time is unknown. The company was located at Middletown, Ohio. The machinery was acquired to improve Continental's ability to produce spiral wound paper cans.

No. 35

Boothby Fibre Can Company

On November 6, 1942, Continental purchased the machinery and equipment of Boothby for $122,500 and its inventory at a cost of approximately $48,000. In addition, it leased the building in which Boothby was operating for a period of five years, at an annual rental of $7,000. As this purchase was one of assets, no balance sheet nor income statements are available nor is the depreciated valuation of the leased assets on the books of the lessor at the time of the lease known, there being no subsequent agreement to purchase them. The company was located at Roxbury, Massachusetts.

The assets were acquired to enable Continental to manufacture a type of all-paper container not theretofore manufactured by it.

No. 36

Square Star Can Company

On August 1, 1942, Continental purchased the name and certain of the assets of the Square Star Can Company, of St. Louis, Missouri, for $65,000 in cash. For a brief period [fol. 1326] thereafter, Continental also leased the building in which Square Star previously operated on a month to month basis at an annual rental of $1,320. This property has since been vacated. As the purchase was one of assets, income statements and a balance sheet are not available nor is the depreciated valuation of the leased assets on the books of the lessor known, there being no agreement to purchase the leased assets.

The Square Star Can Company manufactured paper cans with metal ends. Continental purchased some of its machinery for making such cans in order to be able to manufacture them in an area in which theretofore it had not competed. Another purpose of this acquisition was to secure capable management for this type of operation.

No. 37

Fonda Container Company

On December 21, 1942, Continental purchased machinery and equipment of Fonda for $37,500 and its inventory at cost. In addition, it leased the building in which Fonda was then operating on a year to year basis at an annual rental of $3,300 per year. As this acquisition was one of assets, no balance sheet nor income statements are available nor is the depreciated valuation of the leased assets on the books of the lessor known, there being no agreement to purchase them. The company was located at Utica, New York, and was engaged in the manufacture of paper packages.

It was acquired for the purpose of expanding the operations of Continental in the paper container field.

[fol. 1327] No. 38

Val Vita Food Products

On February 23, 1943, Continental purchased the can-making machinery and equipment of this company for $500,000 and its inventories at cost. In addition, the plant in which such machinery and equipment was previously housed was leased on a three-year basis at an annual rental of $30,000, subject to adjustments. As this acquisition was one of assets, no balance sheet nor income statements are available nor is the depreciated valuation of the leased assets on the books of the lessor known, there being no agreement to purchase same. The business was located at Fullerton, California.

Continental did not acquire the canning business of this company but only the can-making machinery, as it was thought that Continental could effect large scale economies as a supplier for the canning business of the Val Vita Company and thus reduce that company's cost of cans.

No. 39

The Container Company

On December 20, 1942, Continental acquired all the outstanding class "A" and "B" common stock of The Container Company for $1,650,000, and its preferred stock for $112,700. A balance sheet as of November 28, 1942 is annexed hereto as Exhibit 26. Income statements for 1940, 1941 and 1942 are annexed as Exhibit 26A. The company was located at Van Wert, Ohio, and was engaged in the manufacture of fibre drums, a product which Continental did not previously manufacture. The company is presently being operated as a subsidiary of Continental and in this way Continental has been able to enter the field of manufacturing fibre drums.

[fol. 1328] No. 40

Marco Chemicals, Inc.

On July 14, 1943, Continental acquired 200 shares of Marco common stock out of a total of 1,000 shares outstanding, and $50,000 in 4% debentures out of a total of $170,000 outstanding. The company is engaged in the production of resin, plastic products and chemicals, and is located in Sewaren, New Jersey. This company was organized immediately prior to Continental's acquisition of 20% of its shares, and consequently there were no balance sheet nor income statements prior to the date of acquisition.

Continental acquired a 20% stock interest in this company in order that it might receive information regarding developments in the field of plastic products, and as a first step in entering the plastic field.

No. 41

Bond Manufacturing Corporation, Inc.

On January 5, 1944, Continental acquired 88% of the capital stock of Bond and shortly thereafter acquired the remaining shares outstanding for a cash consideration of $4,500,000 for all outstanding shares. The company was located at Wilmington, Delaware, and also had a plant at Los Angeles, California. It was engaged in the manufacture of crown bottle caps and cork products. A balance sheet as of December 31, 1943 is annexed hereto as Exhibit 27. Income statements for the years ending 1941, 1942 and 1943 are annexed hereto as Exhibit 27A. In March, 1944, the name of this company was changed to Bond Crown and Cork Company.

At the time of acquisition, Bond had four wholly owned subsidiaries, to wit: Bond Equipment Company; Cork-Tex [fol. 1329] Products Co.; Brandywine Warehouse Company; and Bond Crown Company of California. Bond Crown and Cork Company is presently operated as a subsidiary of Continental. The company was acquired to secure capable and efficient management and to expand crown operations of Continental, and in order that Continental might enter into the related cork business.

Other Subsidiaries Acquired by Stock Control during 1942, 1943 and 1944

No. 42

Keystone Drum Company

On May 26, 1944, Continental acquired the entire outstanding stock of the Keystone Drum Company for a cash consideration of $225,000. The company was engaged in the manufacture of fibre drums and had plants at Charleroi, Pennsylvania; Elizabeth, New Jersey; Independence, Kansas and Pensacola, Florida. A balance sheet as at February 29, 1944 is annexed hereto as Exhibit 28. Income statements are not available. The company was operated as a subsidiary and is now in the process of dissolution.

The company was acquired because there were definite advantages in adopting the form of drum it manufactured for the packaging of resin solids, poured hot and allowed to cool. Asphalt, tar, pitch and waxes also fell into this category. The purchase was made to round out the line of fibre drum developments of The Container Company. (No. 39 above)

No. 43

Cameron Can Machinery Corporation

On July 7, 1944, Continental acquired all the capital stock of this company for $4,000,000 in cash. The company was [fol. 1330] engaged in the manufacture of can-making machinery and other machine parts and had its plant at Chicago, Illinois. A balance sheet as of December 31, 1943 is annexed hereto as Exhibit 29. Income statements as of December 31, 1941, 1942 and 1943 are annexed hereto as Exhibit 29A.

The company was acquired to secure exceptionally capable engineering talent for the design of can-making machinery and to enable Continental to manufacture and secure the advantages of the most efficient type of can-making and other machinery.

No. 44

Mono, Ltd. of Canada

In April, 1945, Continental sold to Colonial Canners, Ltd., its subsidiary discussed as No. 33 above, 507 shares of the stock of Mono, Ltd. of Canada, which Continental acquired as part of the assets received from Mono Service Company, discussed as No. 46 hereafter. These 507 shares were set up on Continental's books at the time of acquisition at the figure of $50,700, which was the same figure at which they were carried on Mono Service's books, and they were sold to Colonial Canners, Ltd. for $56,277 Canadian currency, which was the equivalent in American dollars of the $50,700 figure. In April and May, 1945, Colonial Canners, Ltd. offered to purchase the balance of the outstanding stock of Mono, Ltd. of Canada, 987 shares, for a total price of $197,400 Canadian currency. All of such stock except 2 shares has been acquired.

Mono Ltd. of Canada was engaged in the manufacture of paper containers and paper cups and its plant was located at New Toronto, Ontario, Canada. A balance sheet as of April 30, 1945 is annexed hereto as Exhibit 30. Income statements for the years ending September 30, 1942, 1943 and 1944 are annexed hereto as Exhibit 30A. The company was acquired to enable Continental's Canadian subsidiary to enter into the manufacture of a type of paper containers and paper cups not theretofore manufactured by it in Canada.

[fol. 1331] Other Acquisitions of Container Manufacturing or Distributing Enterprises

No. 45.

General Steel Wares, Ltd., McDonald Division

On April 15, 1944, Continental Can Company of Canada, Ltd., a wholly owned subsidiary of Continental, acquired the land, buildings, machinery and equipment, supplies and other inventory items, of the Toronto plant and the machinery and equipment of the Montreal plant of this division of General Steel Wares, Ltd. for $1,450,000 in cash. Be-

cause this acquisition was only of a portion of the entire business of General Steel Wares, Ltd., a balance sheet and income statements are not available.

Continental purchased the assets of this business in order that its Canadian subsidiary would be in a position to furnish practically every type of general line cans, including kit pails. Had the business been bought by American Can, as otherwise might have occurred, it would have placed that company so far ahead in the general line business that Continental could not have effectively thereafter competed with it in that field in Canada. In acquiring this business, Continental secured the trade of many important customers who prior thereto had purchased a portion of their requirements from the American Can.

No. 46

Mono-Service Company

On September 21, 1944, Continental purchased 7,230 shares of common stock out of the total outstanding issue of 10,000 shares of Mono-Service Company, a New Jersey corporation, at the price of $300 per share, or $2,169,000 in cash. Between September 22nd and 29th, inclusive, Con- [fol. 1332] tinental purchased an additional 104 shares of the stock at this price for a total of $31,200. Mono-Service Company was dissolved on September 30, 1944. In liquidation, Continental purchased their interest in the balance of tangible personalty from the remaining stockholders for $799,800 on October 1, 1944. The company was engaged in the manufacture of hot drink cups and paper containers and its plant was located at Newark, New Jersey. A balance sheet as of September 30, 1944 is annexed hereto as Exhibit 31. Income statements for the years ending September 30, 1942, 1943 and 1944 are annexed hereto as Exhibit 31A.

At the time of this acquisition, Continental was not manufacturing hot drink cups nor was it manufacturing the type of paper containers made by Mono-Service Company. The acquisition was made to secure excellent engineering talent, an important trade-name and an economical operating plant, as well as to enter the paper cup field.

No. 47

Owens-Illinois Can Company

On October 31, 1944, Continental acquired all of the business, property and assets of the Owens-Illinois Can Company, a subsidiary of the Owens-Illinois Glass Company for $7,500,000. Continental also agreed to assume all liabilities except a note of $7,750,000 from Owens-Illinois Can to Owens-Illinois Glass. Owens-Illinois Can Company had at the time of acquisition plants at Chicago, Illinois; McKees Rocks, Pennsylvania and Baltimore, Maryland. It also owned property at St. Louis, Missouri, though no enterprise was in operation there. A balance sheet as of September 30, 1944 is annexed hereto as Exhibit 32. Income statements as of December 31, 1942 and 1943 and as of September 30, 1944 are annexed hereto as Exhibit 32A. [fol. 1333] At the time of the acquisition, Owens-Illinois had decided to dispose of its can-manufacturing business and thereafter confine its operations to the glass business. Of the general line sales of Owen-Illinois Can Company, approximately 50% was of a different type than that manufactured by Continental, such as steel pails, tobacco containers and containers for cosmetics, in which fields Continental did not have substantial participation. The balance of its general line volume covered an infinite variety of containers made by a large number of manufacturers in a highly specialized and competitive field. Packers' can production of Owens-Illinois Can Company was a minor portion of their business and a small part of total business of this type, its annual sales constituting only $2,600,000 as against an estimated total production of $200,000,000.

This proposed acquisition was consummated after it had been fully presented to the Department of Justice.

It is believed that the foregoing should constitute the information requested by the Commission.

Respectfully submitted, Continental Can Company, Ins. By Sherlock McKewen, Secretary and Treasurer.

[fol. 1334] GOVERNMENT'S EXHIBIT 788

Certified copy of a Portion of Minutes of a Meeting of the Board of Directors of Continental Can Company, Inc., Held May 16, 1956, at 100 East 42nd Street, New York, N. Y.

"The Chairman indicated to the Board that he had been in negotiation with two of the leading glass companies, and that if his negotiations could be successfully completed, Continental would acquire one or both of these companies.

After a general discussion, it was moved and seconded, that the Board approve the action of the Chairman in entering into these negotiations and the possible acquisition of the glass container companies."

I, L. R. Dodson, Secretary of Continental Can Company, Inc., have compared the foregoing excerpt with the original thereof, as recorded in the minute book of said Company, and do certify that the same is a correct and true transcript therefrom. I do further certify that there was at all times a quorum present at the meeting and that the foregoing resolutions have not been revoked or amended.

Dated:—

L. R. Dodson, Secretary

The charts that follow, in several instances, include the term "All Others." The use of this term, in each instance, finds its basis in the title section of each chart.

The phrase "Total Industry" or the word "Industry" is used in several charts. The use of the word or phrase has, in each instance, its basis in the title section of each chart.

The source information serving as the basis for each chart comes primarily from data published in the regular course of business by statistical gathering institutes or associations of industry, by private publications, by agencies of Government, by defendant Companies and other firms as producers or users of containers.

[fol. 1335]
2866

I GLASS CONTAINER SHIPMENTS IN THE UNITED STATES

[fol. 1336]

2867

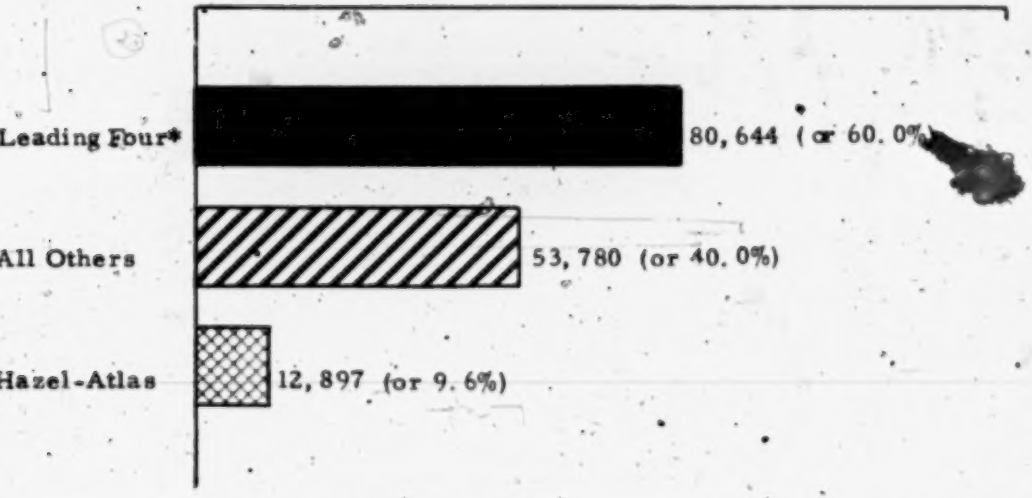
GLASS CONTAINER SHIPMENTS

1955

TOTAL DOMESTIC
LEADING FOUR COMPANIES AND ALL OTHERS
HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 134,424



* 1. Owens-Illinois Company 34.2
2. Anchor-Hocking Glass Corp. 11.4
3. Hazel-Atlas 9.6
4. Knox Glass Inc. 4.5

Source: Company Totals from Glass Container Manufacturers Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

2868

[fol. 1337]

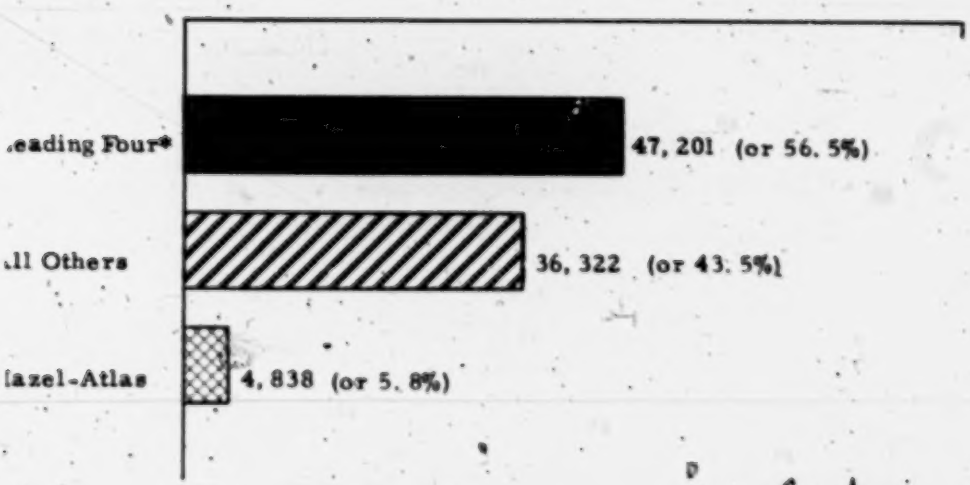
GLASS CONTAINER SHIPMENTS

1955

TOTAL NARROW NECK
LEADING FOUR COMPANIES AND ALL OTHERS
HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 83,523



* 1. Owens-Illinois Company 38.2 Brockway 4.7
2. Anchor-Hocking Glass Corp. 7.8
3. Hazel-Atlas 5.8
4. Knox Glass Inc. 4.6

Source: Company Totals from Glass Container Manufacturer's Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

[fol. 1338]

28(69)

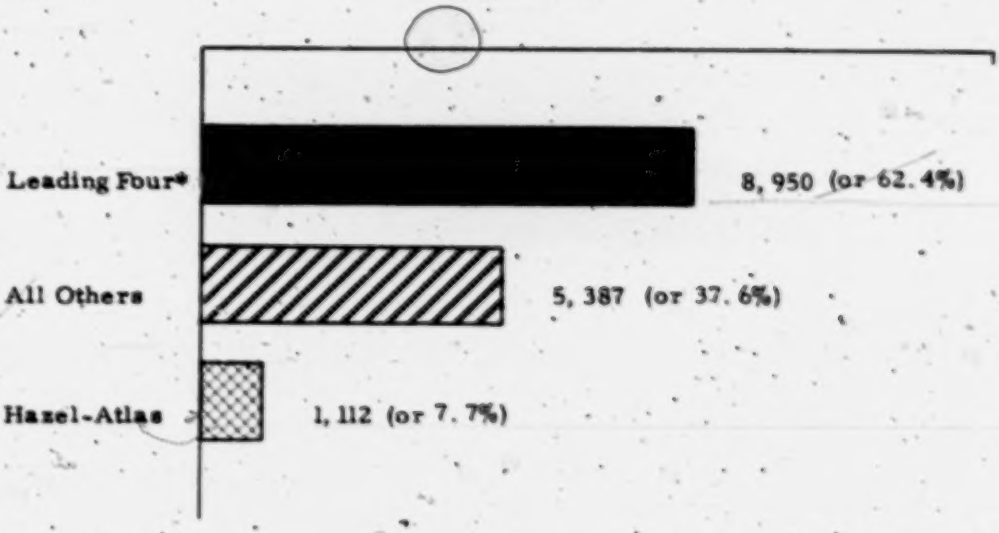
GLASS CONTAINER SHIPMENTS

1955

FOOD - NARROW NECK
LEADING FOUR COMPANIES AND ALL OTHERS
HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 14, 337



* 1. Owens-Illinois Company 43.3 Hatch. 5.6
2. Anchor-Hocking Glass Corp. 5.6
3. Hazel-Atlas 1.8
4. Knox Glass Inc. 5.8

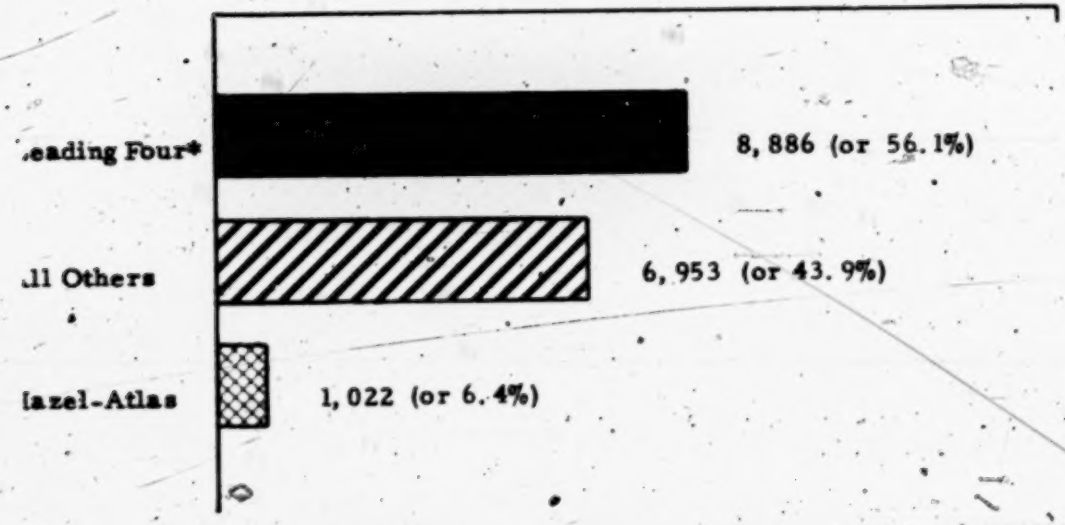
Source: Company Totals from Glass Container Manufacturers Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

1955

MEDICINAL AND HEALTH SUPPLIES - NARROW NECK
LEADING FOUR COMPANIES AND ALL OTHERS
HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 15,839



* 1. Owens-Illinois Company 45.2 15 Brockway
2. Anchor-Hocking Glass Corp. 2.2
3. Hazel-Atlas 6.5
4. Knox Glass Inc. 2.3 6.4

Source: Company Totals from Glass Container Manufacturers Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

[fol. 1340]

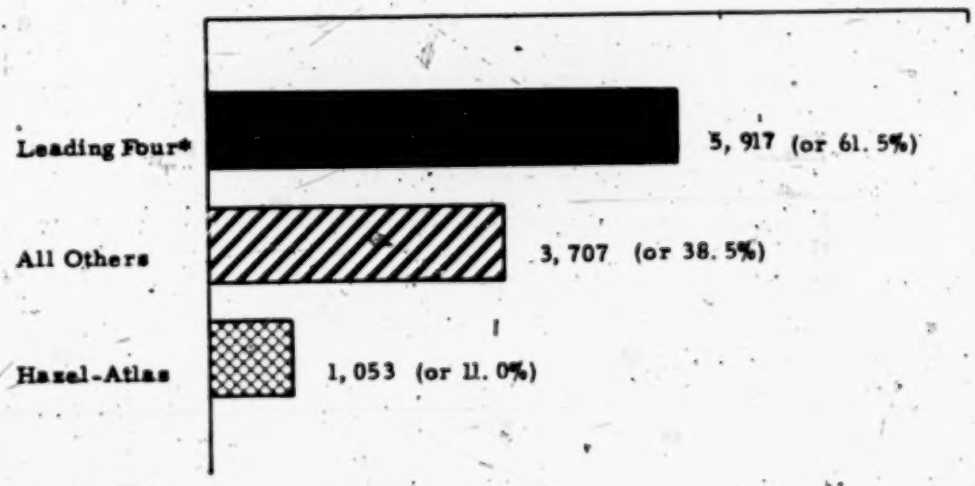
GLASS CONTAINER SHIPMENTS

1955

CHEMICAL, HOUSEHOLD AND INDUSTRIAL - NARROW NECK
LEADING FOUR COMPANIES AND ALL OTHERS
HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 9, 624



* 1. Owens-Illinois Company 37.2 Pierce 5.6
2. Anchor-Hocking Glass Corp. 2.9
3. Hazel-Atlas 10.9
4. Knox Glass Inc. 10.4

Source: Company Totals from Glass Container Manufacturers Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

[fol. 1341] 28772

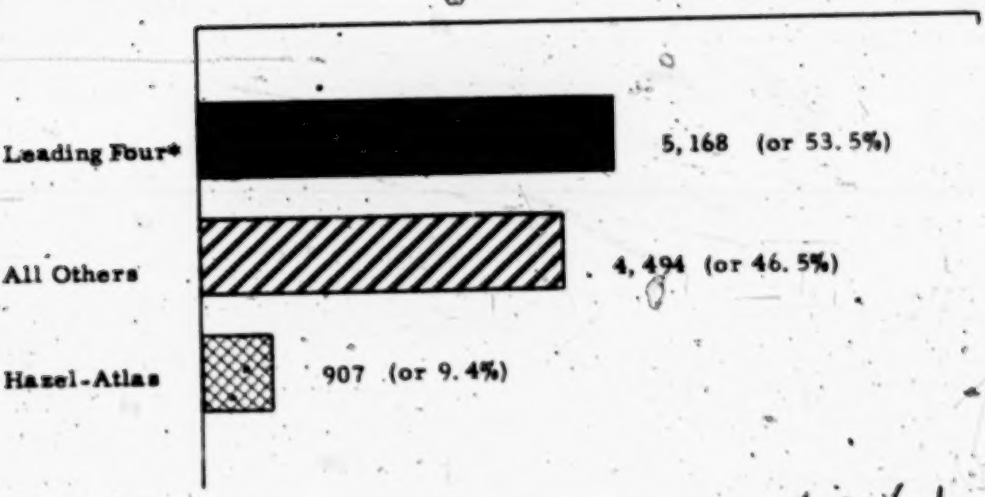
GLASS CONTAINER SHIPMENTS

1955

TOILETRIES AND COSMETICS - NARROW NECK
LEADING FOUR COMPANIES AND ALL OTHERS
HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 9, 662



* 1. Owens-Illinois Company 18.1 Foster Forbes 4.0
2. Anchor-Hocking Glass Corp. 24.0
3. Hazel-Atlas 9.4
4. Knox Glass Inc. 1.9

Source: Company Totals from Glass Container Manufacturers Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

[fol. 1342]

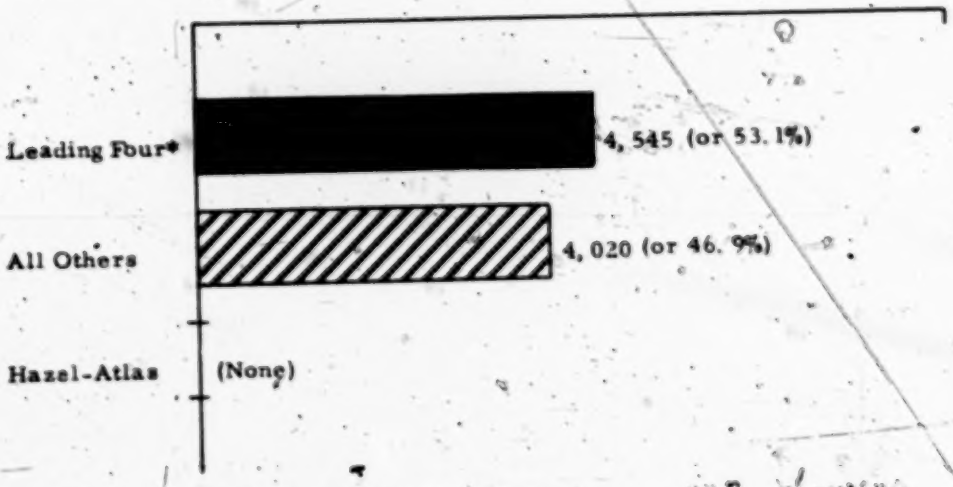
GLASS CONTAINER SHIPMENTS

1955

BEVERAGES - RETURNABLE
LEADING FOUR COMPANIES AND ALL OTHERS
HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 8, 565



* 1. Owens-Illinois Company 44.7 Lawrence 10.3
2. Anchor-Hocking Glass Corp. 4.7 Chattanooga 9.9
3. Hazel-Atlas ~~3.7~~
4. Knox Glass Inc.

Source: Company Totals from Glass Container Manufacturers Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

[fol. 1343]

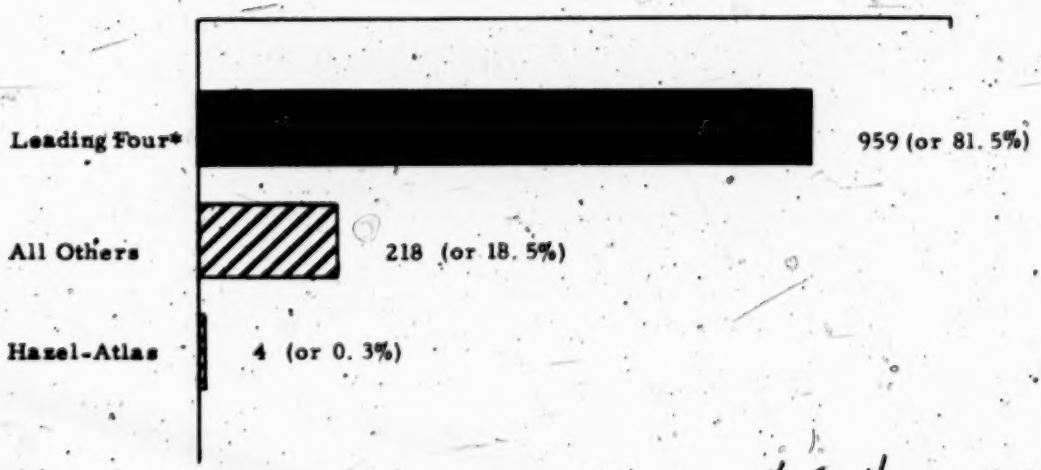
GLASS CONTAINER SHIPMENTS

1955

BEVERAGES - NONRETURNABLE
LEADING FOUR COMPANIES AND ALL OTHERS
HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 1,177



* 1. Owens-Illinois Company 70.8 Foster-Forbes 2.8
2. Anchor-Hocking Glass Corp. 9.6
3. Hazel-Atlas 0.3
4. Knox Glass Inc. 0.8

Source: Company Totals from Glass Container Manufacturers Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

[fol. 1344]

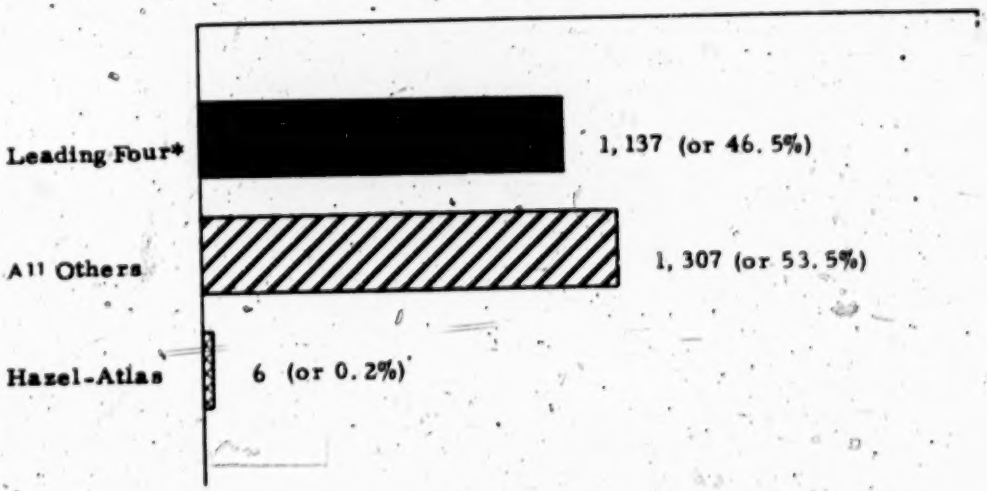
GLASS CONTAINER SHIPMENTS

1955

BEER - RETURNABLE
LEADING FOUR COMPANIES AND ALL OTHERS
HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 2, 444



* 1. Owens-Illinois Company
2. Anchor-Hocking Glass Corp.
3. Hazel-Atlas
4. Knox Glass Inc.

Source: Company Totals from Glass Container Manufacturers Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

2876

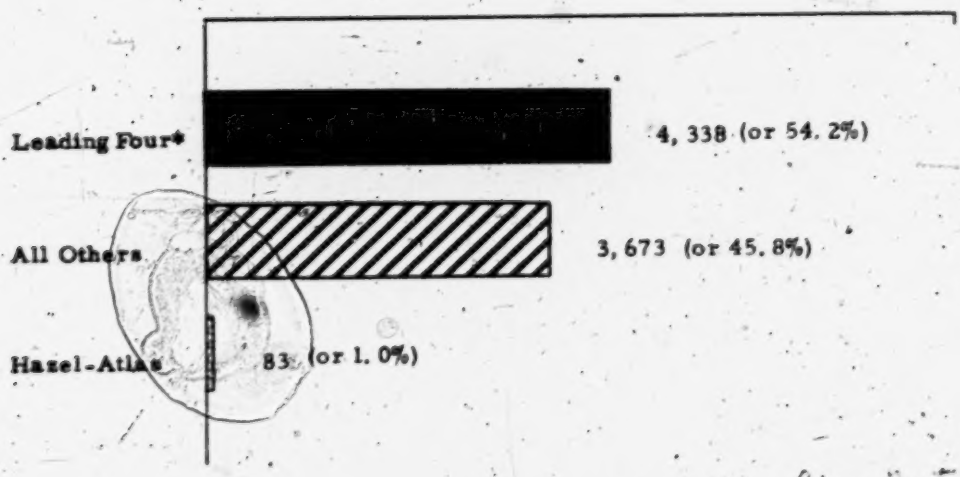
[fol. 1345] GLASS CONTAINER SHIPMENTS

1955

BEER - NONRETURNABLE
LEADING FOUR COMPANIES AND ALL OTHERS
HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 8,011



* 1. Owens-Illinois Company 34.8 Celanese-Hoechst 9.6
2. Anchor-Hocking Glass Corp. 15.2 Thatcher 9.1
3. Hazel-Atlas 1.0
4. Knox Glass Inc. 3.2

Source: Company Totals from Glass Container Manufacturers Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

[fol. 1346]

2877

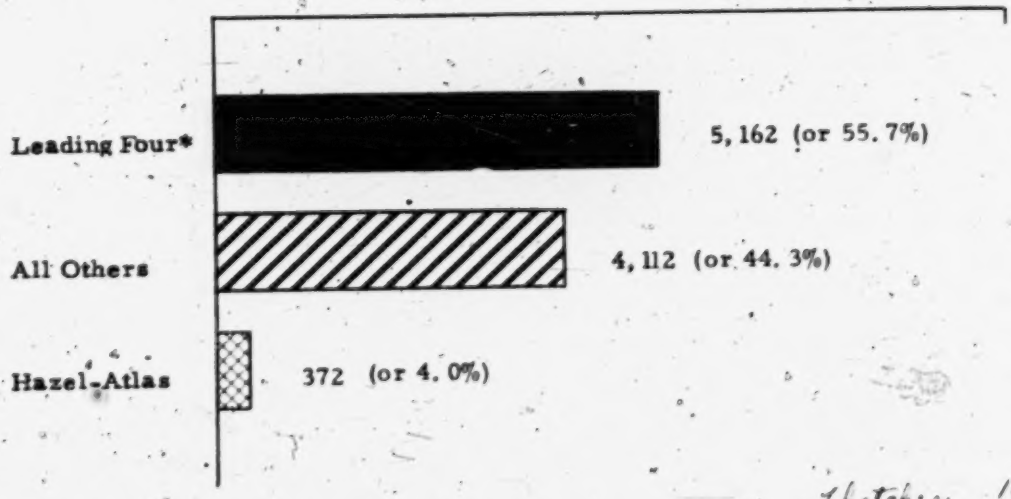
GLASS CONTAINER SHIPMENTS

1955

LIQUOR
LEADING FOUR COMPANIES AND ALL OTHERS
HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 9, 274



* 1. Owens-Illinois Company 43.0 Thatcher 10.2%
2. Anchor-Hocking Glass Corp. 7.0 Ball Bros 7.1%
3. Hazel-Atlas 4.0
4. Knox Glass Inc. 1.6

Source: Company Totals from Glass Container Manufacturers Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

2878

[fol. 1347]

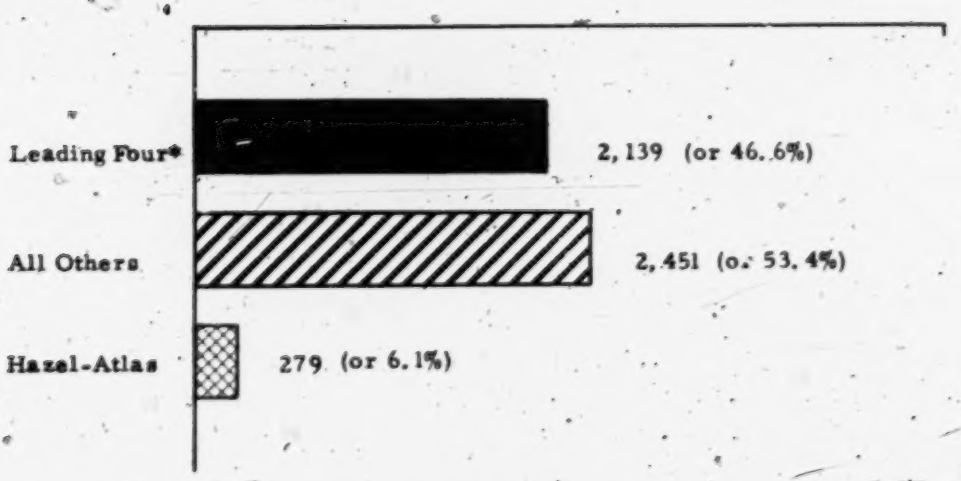
GLASS CONTAINER SHIPMENTS

1955

WINE
LEADING FOUR COMPANIES AND ALL OTHERS
HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 4,590



* 1. Owens-Illinois Company 20.3
2. Anchor-Hocking Glass Corp. 4.8
3. Hazel-Atlas 6.1
4. Knox Glass Inc. 15.4

Glass Containers Ref. 12.4
Metric 4.9

Source: Company Totals from Glass Container Manufacturers Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

2879

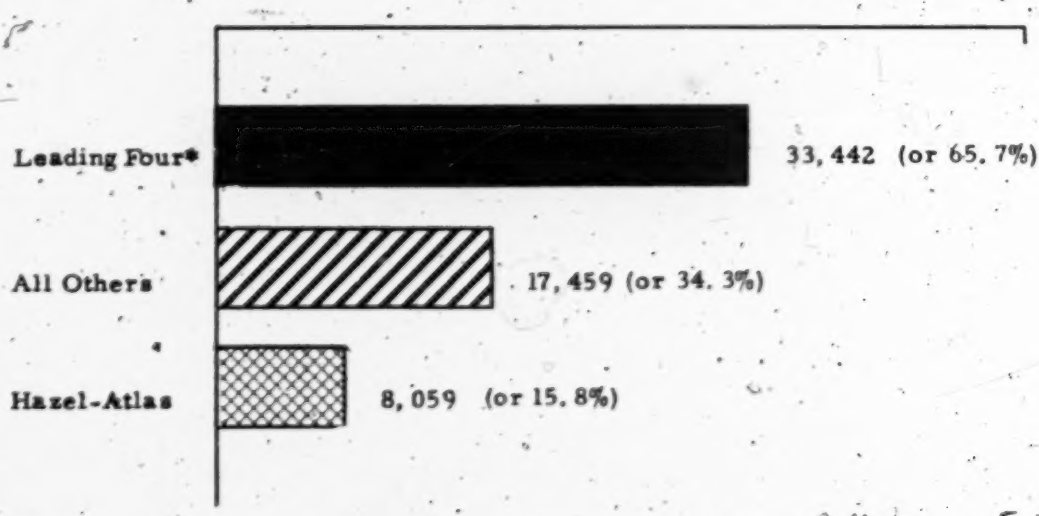
[fol. 1348] GLASS CONTAINER SHIPMENTS

1955

TOTAL WIDE MOUTH
LEADING FOUR COMPANIES AND ALL OTHERS
HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 50, 901



* 1. Owens-Illinois Company 27.7
2. Anchor-Hocking Glass Corp. 17.8
3. Hazel-Atlas 15.8
4. Knox Glass Inc. 4.4

Ball Bros 5.2
Tygart Valley 2.9
Metro 2.9

Source: Company Totals from Glass Container Manufacturers Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

[fol. 1349] 2880

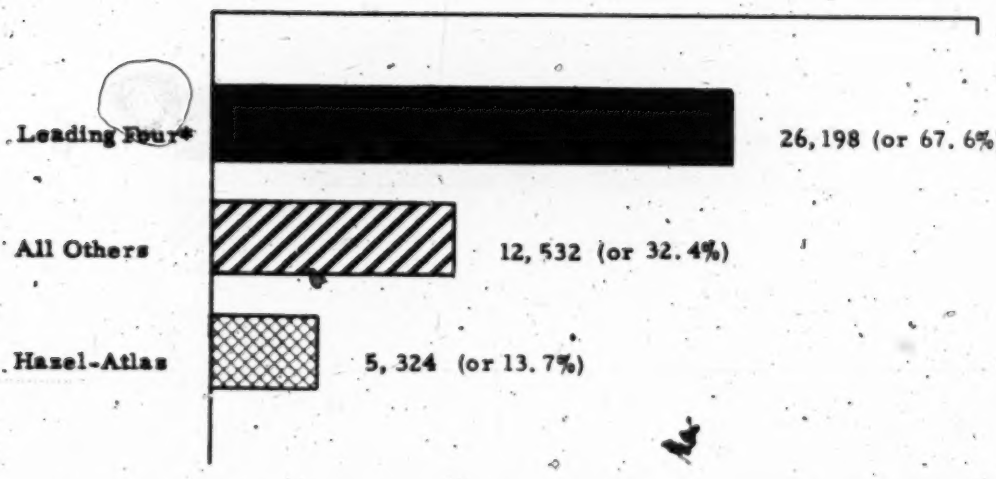
GLASS CONTAINER SHIPMENTS

1955

FOOD - WIDE MOUTH (PACKERS TUMBLERS INCLUDED) LEADING FOUR COMPANIES AND ALL OTHERS HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 38,730



* 1. Owens-Illinois Company 27.8
2. Anchor-Hocking Glass Corp. 21.2
3. Hazel-Atlas 13.7
4. Knox Glass Inc. 4.9

Ball Bros 6.8
metro 3.6

Source: Company Totals from Glass Container Manufacturers Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

[fol. 1350]

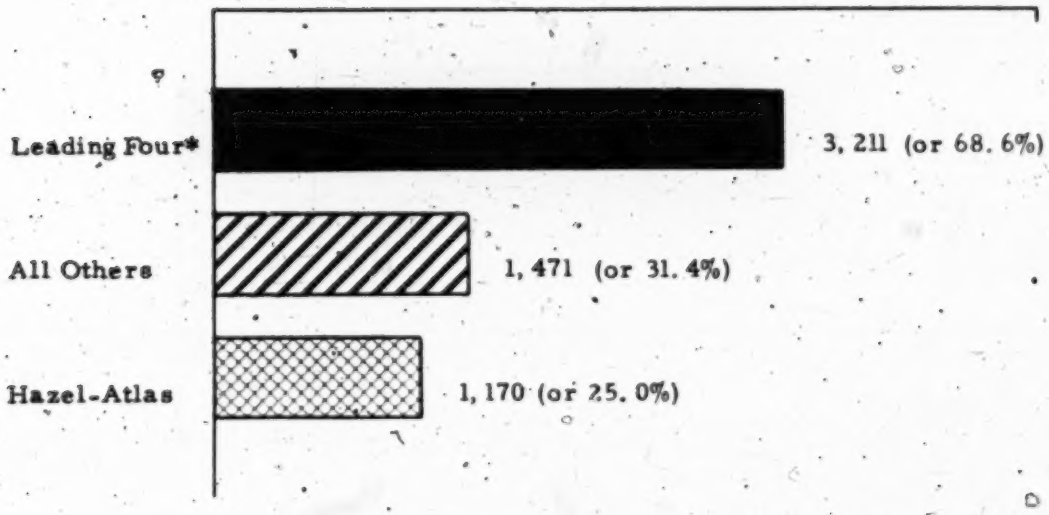
GLASS CONTAINER SHIPMENTS

1955

MEDICINAL AND HEALTH SUPPLIES - WIDE MOUTH
LEADING FOUR COMPANIES AND ALL OTHERS
HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 4, 682



* 1. Owens-Illinois Company
2. Anchor-Hocking Glass Corp.
3. Hazel-Atlas
4. Knox Glass Inc.

Source: Company Totals from Glass Container Manufacturers Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

[fol. 1351] 2882

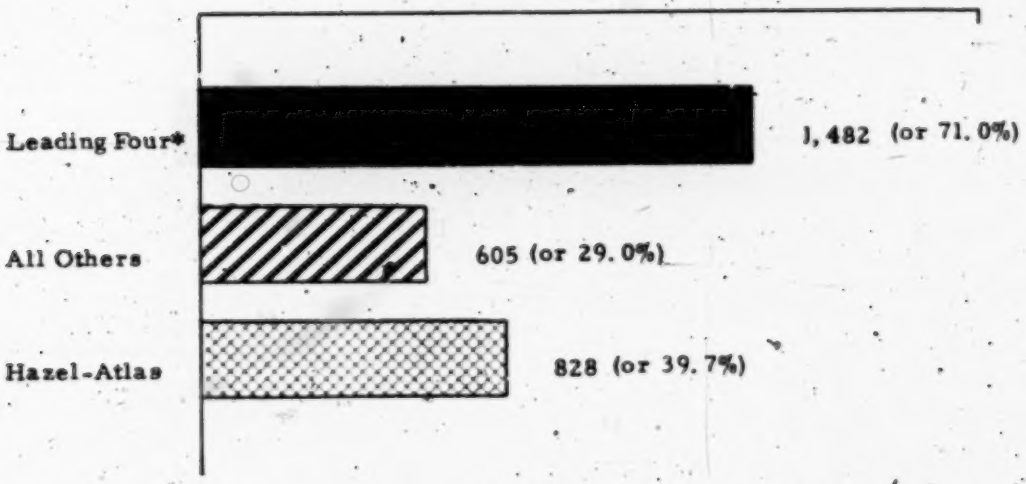
GLASS CONTAINER SHIPMENTS

1955

CHEMICAL, HOUSEHOLD AND INDUSTRIAL - WIDE MOUTH
LEADING FOUR COMPANIES AND ALL OTHERS
HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 2, 087



* 1. Owens-Illinois Company 16.3 Foster-Forbes 6.5
2. Anchor-Hocking Glass Corp. 8.1 Fairmont 11.9
3. Hazel-Atlas 39.7
4. Knox Glass Inc. 6.9

Source: Company Totals from Glass Container Manufacturers Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

[fol. 1352]

2883

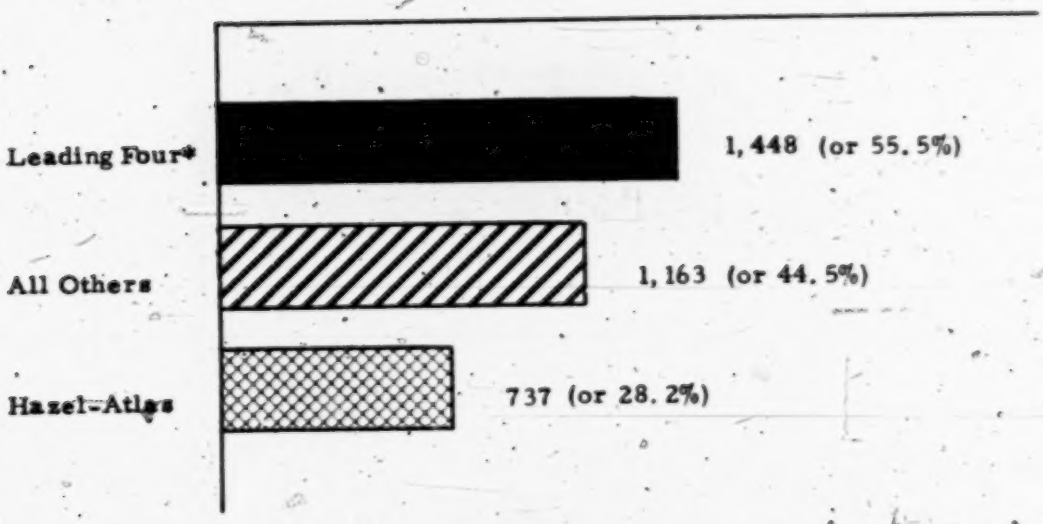
GLASS CONTAINER SHIPMENTS

1955

TOILETRIES AND COSMETICS - WIDE MOUTH
LEADING FOUR COMPANIES AND ALL OTHERS
HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 2,611



* 1. Owens-Illinois Company 6.8 Duraglas 3.1
2. Anchor-Hocking Glass Corp. 20.2 Knox 1.2
3. Hazel-Atlas 28.2
4. Knox Glass Inc. .3

Source: Glass Container Manufacturers Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

[fol. 1353]
2884

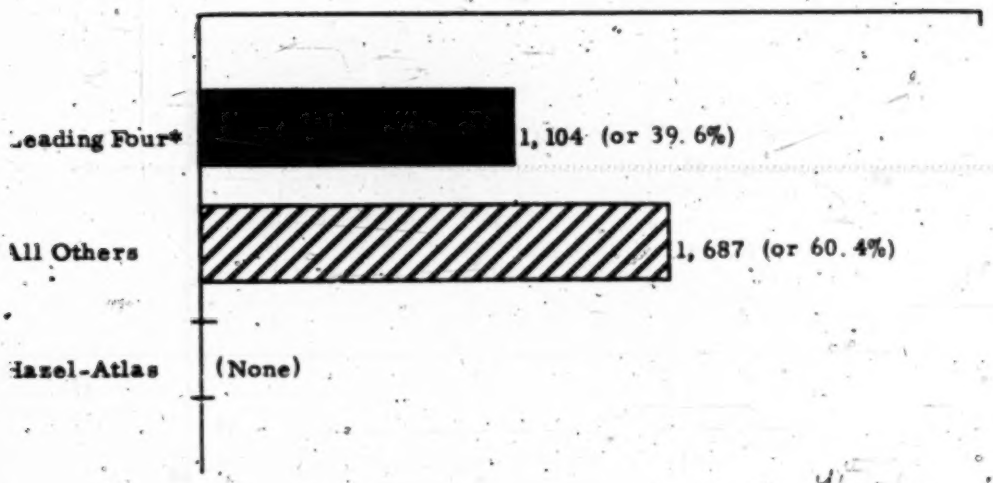
GLASS CONTAINER SHIPMENTS

1955

DAIRY PRODUCTS
LEADING FOUR COMPANIES AND ALL OTHERS
HAZEL-ATLAS SHARE

(Thousands of Gross)

TOTAL 2, 791



* 1. Owens-Illinois Company
2. Anchor-Hocking Glass Corp.
3. Hazel-Atlas
4. Knox Glass Inc.

Source: Glass Container Manufacturers Institute. United States Total from Bureau of the Census, Facts For Industry, Glass Containers Summary 1956, Series M77C.

[fol. 1354]

METAL CONTAINER SHIPMENTS
IN THE UNITED STATES

The data for American Can, Continental Can and National Can Company, named in each of the charts of Group II, was secured individually from the above-named firms.

[fol. 1356]

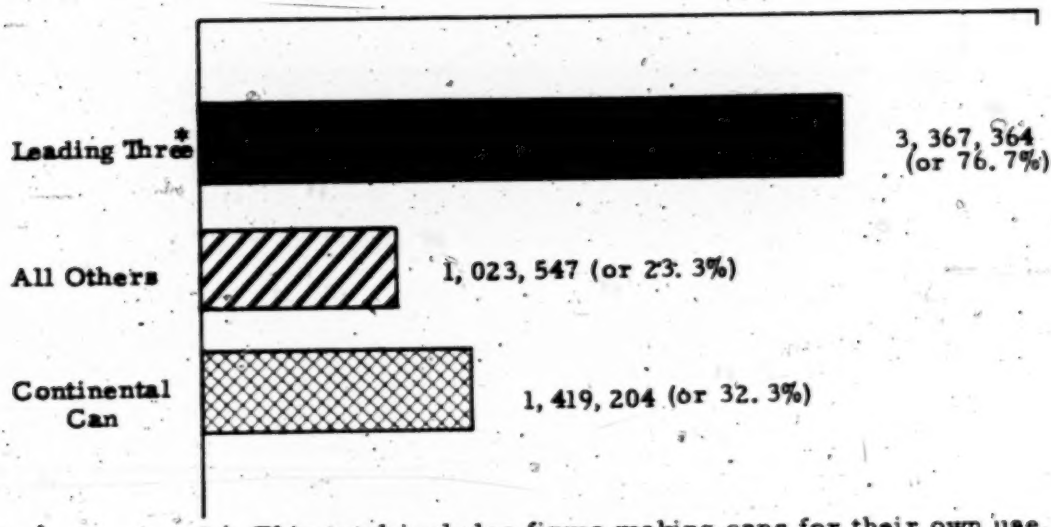
METAL CAN SHIPMENTS

1955

TOTAL INDUSTRY
LEADING THREE COMPANIES AND ALL OTHERS
CONTINENTAL CAN SHARE

(Short Tons)

TOTAL 4, 390, 911 1/



1/ This total includes firms making cans for their own use.

* 1. American Can
2. Continental Can
3. National Can Co.

Source: Can Manufacturers Institute, Inc. United States Total from Facts For Industry, Metal Cans Summary, 1956, Series M75D, Bureau of the Census, Industry Division.

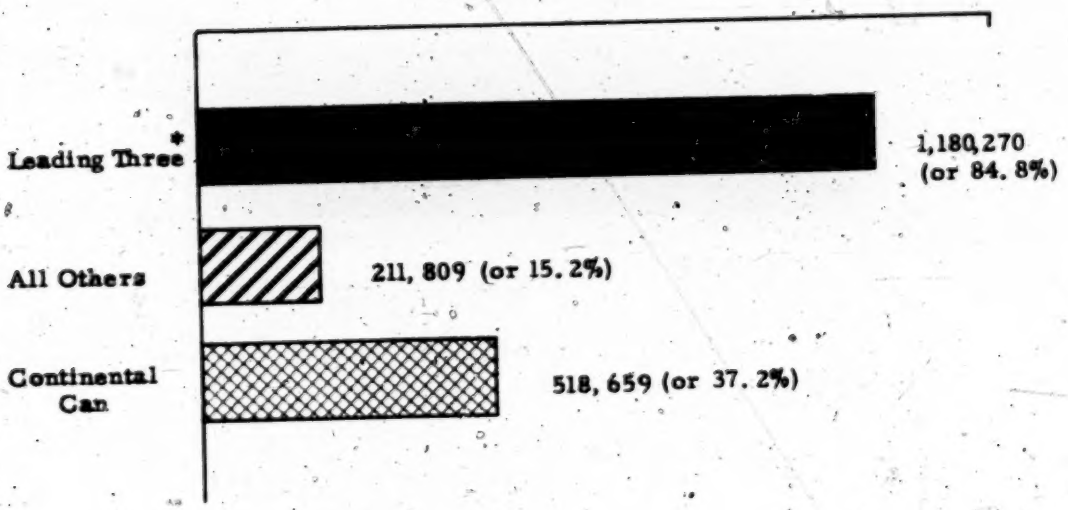
METAL CAN SHIPMENTS

1955

FRUIT AND VEGETABLE (INCLUDING JUICE) LEADING THREE COMPANIES AND ALL OTHERS CONTINENTAL CAN SHARE

(Short Tons).

TOTAL 1, 392, 079



* 1. American Can
2. Continental Can
3. National Can Co.

Source: Can Manufacturers Institute, Inc. United States Total from Facts For Industry, Metal Cans Summary, 1956, Series M75D, Bureau of the Census, Industry Division.

[fol. 1358]

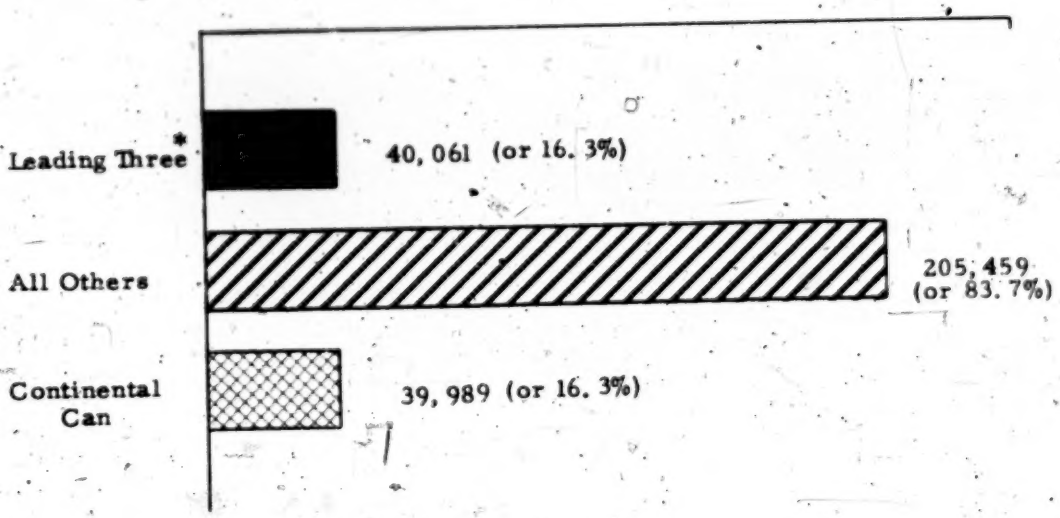
METAL CAN SHIPMENTS

1955

EVAPORATED AND CONDENSED MILK
LEADING THREE COMPANIES AND ALL OTHERS
CONTINENTAL CAN SHARE

(Short Tons)

TOTAL 245, 520



* 1. American Can
2. Continental Can
3. National Can Co.

Source: Can Manufacturers Institute, Inc. United States Total from Facts For Industry, Metal Cans Summary, 1956, Series M75D, Bureau of the Census, Industry Division.

[fol. 1359] 2890

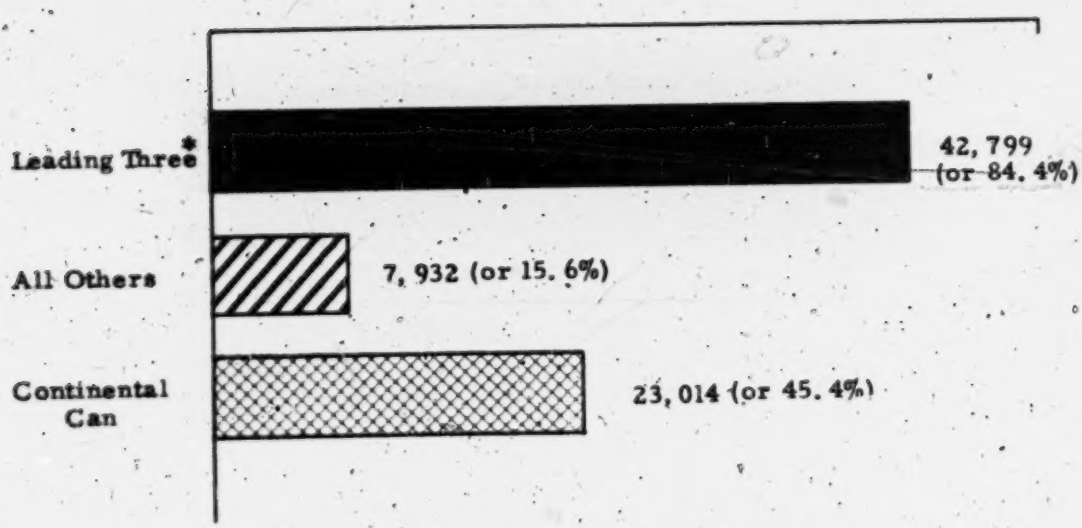
METAL CAN SHIPMENTS

1955

OTHER DAIRY PRODUCTS
LEADING THREE COMPANIES AND ALL OTHERS
CONTINENTAL CAN SHARE

(Short Tons)

TOTAL 50,731



* 1. American Can
2. Continental Can
3. National Can Co.

Source: Can Manufacturers Institute, Inc. United States Total from Facts For Industry, Metal Cans Summary, 1956, Series M75D, Bureau of the Census, Industry Division.

[fol. 1360]

2891

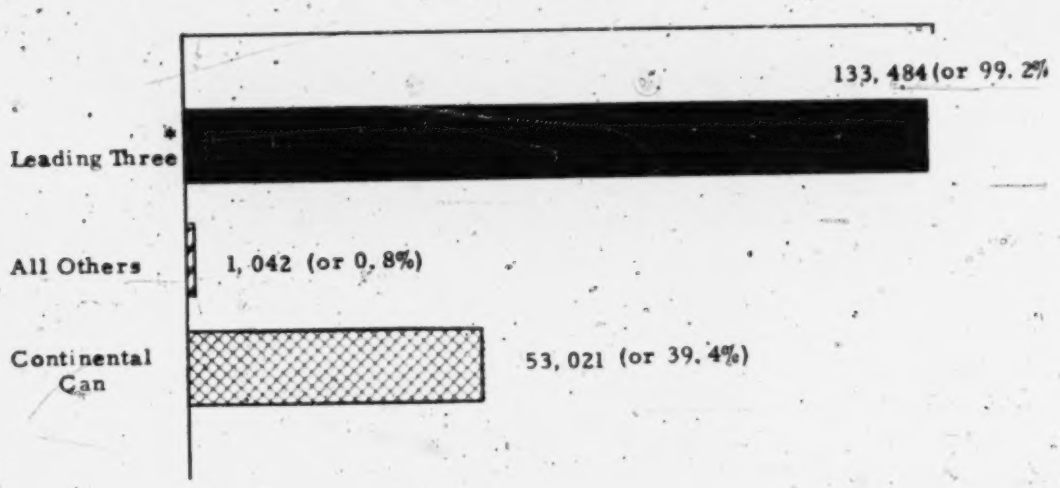
METAL CAN SHIPMENTS

1955

MEAT (INCLUDING POULTRY)
LEADING THREE COMPANIES AND ALL OTHERS
CONTINENTAL CAN SHARE

(Short Tons)

TOTAL 134,526



* 1. American Can
2. Continental Can
3. National Can Co.

Source: Can Manufacturers Institute, Inc. United States Total from Facts For Industry, Metal Cans Summary, 1956, Series M75D, Bureau of the Census, Industry Division.

[fol. 1361] 28992

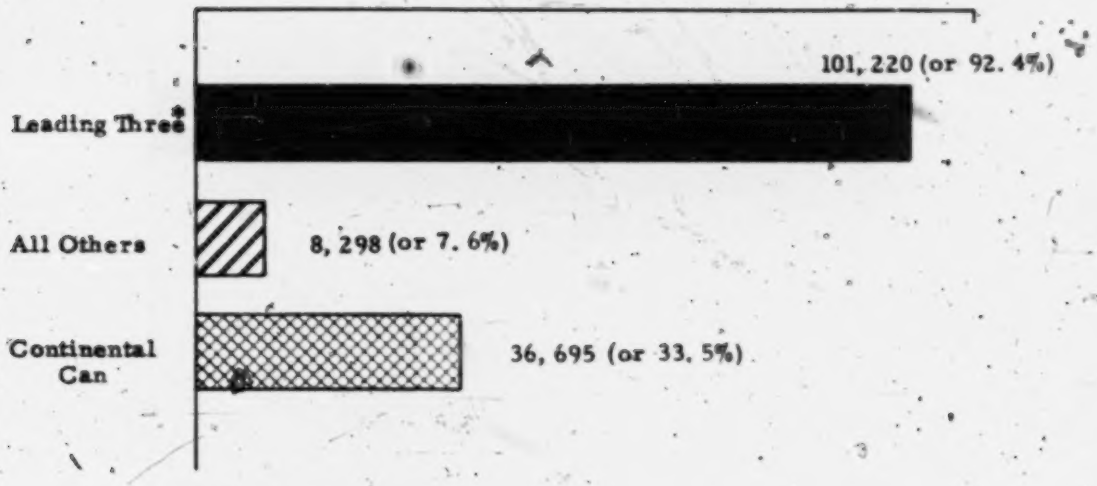
METAL CAN SHIPMENTS

1955

FISH AND SEAFOOD
LEADING THREE COMPANIES AND ALL OTHERS
CONTINENTAL CAN SHARE

(Short Tons)

TOTAL 109,518



* 1. American Can
2. Continental Can
3. National Can Co.

Source: Can Manufacturers Institute, Inc. United States Total from Facts For Industry, Metal Cans Summary, 1956, Series M75D, Bureau of the Census, Industry Division.

[fol. 1362]

28993

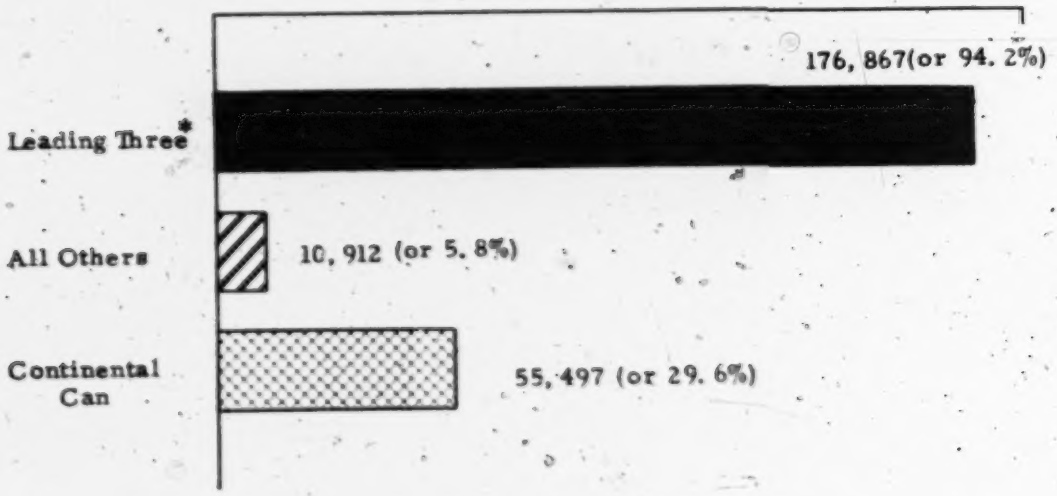
METAL CAN SHIPMENTS

1955

COFFEE
LEADING THREE COMPANIES AND ALL OTHERS
CONTINENTAL CAN SHARE

(Short Tons)

TOTAL 187, 779



* 1. American Can
2. Continental Can
3. National Can Co.

Source: Can Manufacturers Institute, Inc., United States Total from Facts For Industry, Metal Cans Summary, 1956, Series M75D, Bureau of the Census, Industry Division.

[fol. 1363]
2894

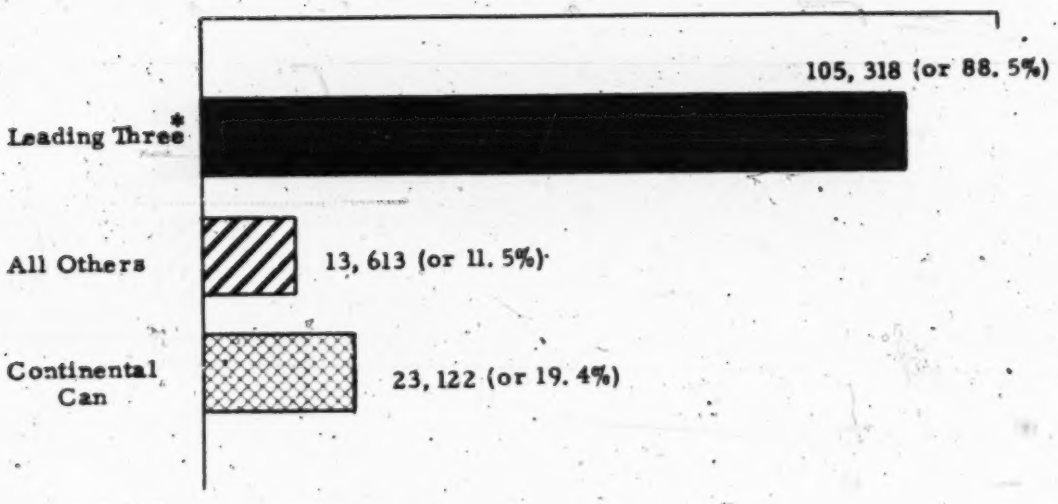
METAL CAN SHIPMENTS

1955

LARD AND SHORTENING
LEADING THREE COMPANIES AND ALL OTHERS
CONTINENTAL CAN SHARE

(Short Tons)

TOTAL 118, 931



* 1. American Can
2. Continental Can
3. National Can Co.

Source: Can Manufacturers Institute, Inc. United States Total from Facts For Industry, Metal Cans Summary, 1956, Series M75D, Bureau of the Census, Industry Division.

[fol. 1364]

METAL CAN SHIPMENTS

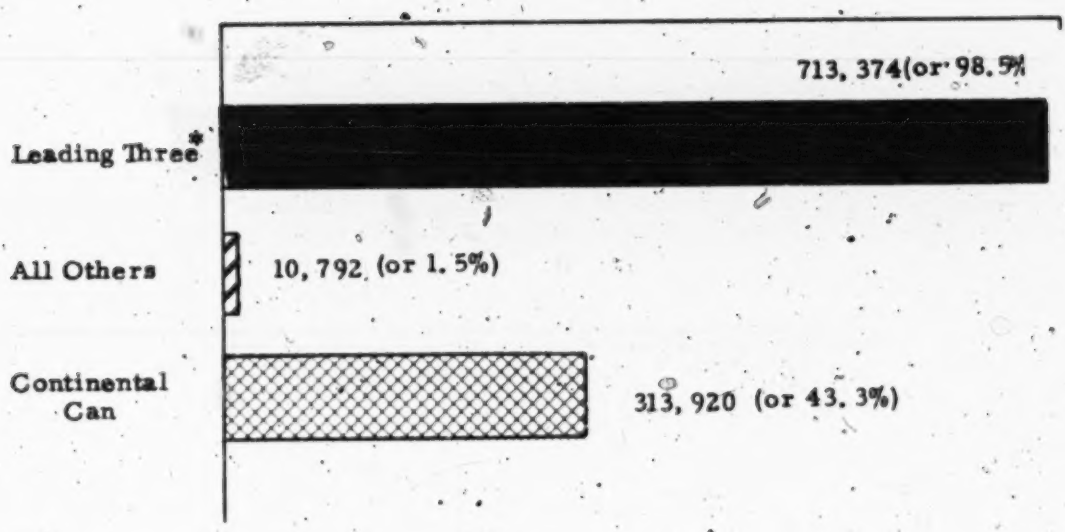
2895

1955

BEER
LEADING THREE COMPANIES AND ALL OTHERS
CONTINENTAL CAN SHARE

(Short Tons)

TOTAL 724,166



* 1. American Can
2. Continental Can
3. National Can Co.

Source: Can Manufacturers Institute, Inc. United States Total from Facts For Industry, Metal Cans Summary, 1956, Series M75D, Bureau of the Census, Industry Division.

[fol. 1365] 2896

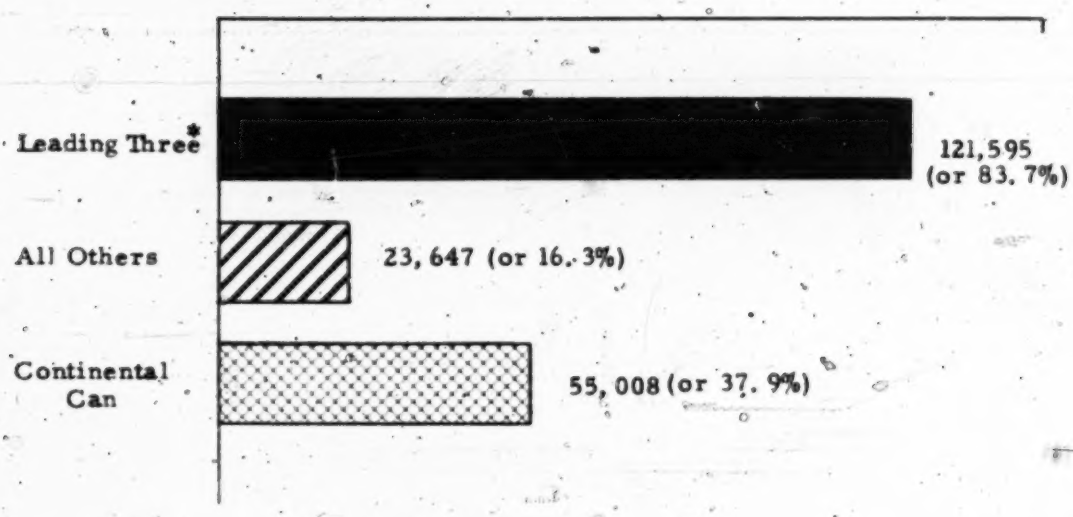
METAL CAN SHIPMENTS

1955

PET FOOD
LEADING THREE COMPANIES AND ALL OTHERS
CONTINENTAL CAN SHARE

(Short Tons)

TOTAL 145, 242



* 1. American Can
2. Continental Can
3. National Can Co.

Source: Can Manufacturers Institute, Inc. United States Total from Facts For Industry, Metal Cans Summary, 1956, Series M75D, Bureau of the Census, Industry Division.

[fol. 1366]

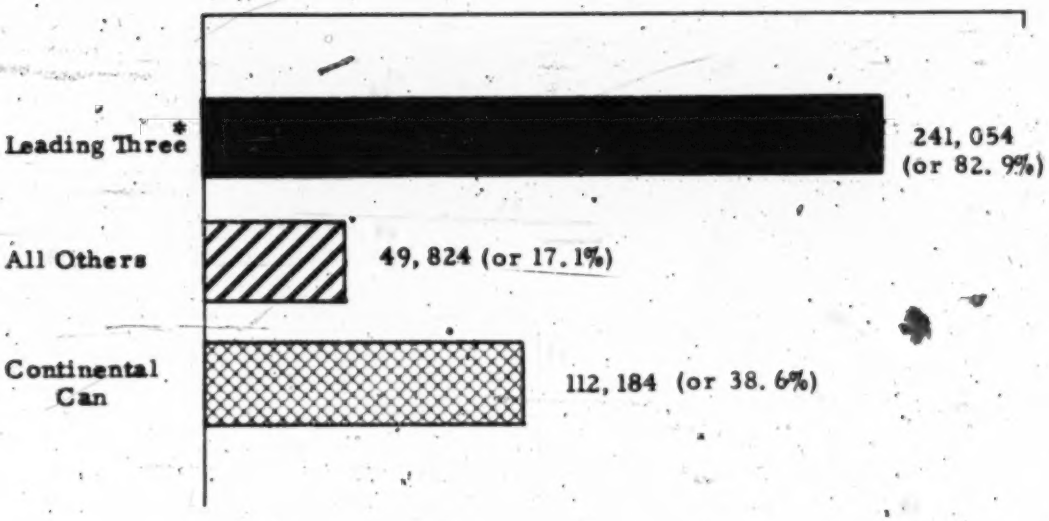
METAL CAN SHIPMENTS

1955

OIL OPEN TOP (1 QT. AND 5 QT.)
LEADING THREE COMPANIES AND ALL OTHERS
CONTINENTAL CAN SHARE

(Short Tons)

TOTAL 290, 878



* 1. American Can
2. Continental Can
3. National Can Co.

Source: Can Manufacturers Institute, Inc. United States Total from Facts For Industry, Metal Cans Summary, 1956, Series M75D, Bureau of the Census, Industry Division.

[fol. 1367]

METAL CAN SHIPMENTS

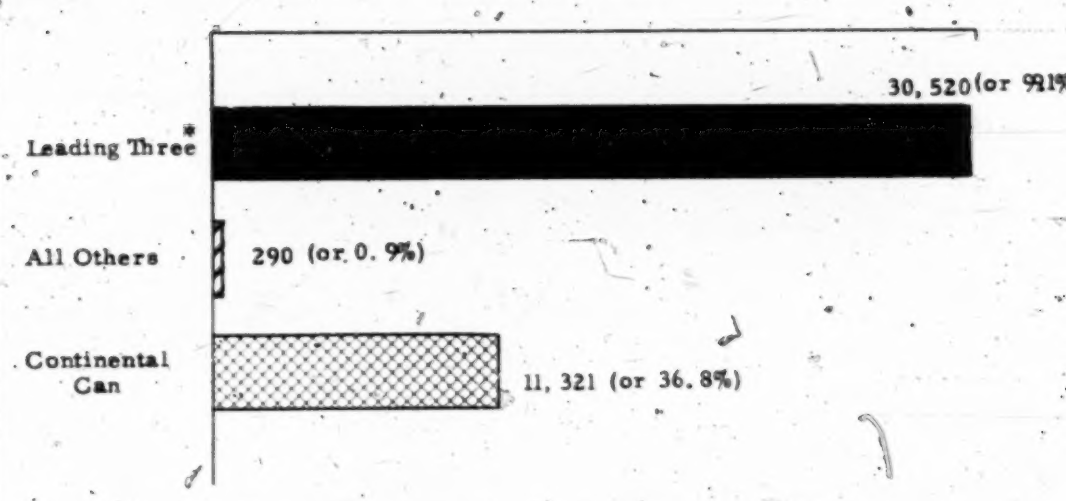
28,99

1955

SOFT DRINK
LEADING THREE COMPANIES AND ALL OTHERS
CONTINENTAL CAN SHARE

(Short Tons)

TOTAL 30, 810



* 1. American Can
2. Continental Can
3. National Can Co.

Source: Can Manufacturers Institute, Inc. United States Total from Facts For Industry, Metal Cans Summary, 1956, Series M75D, Bureau of the Census, Industry Division.

[fol. 1368]

2900

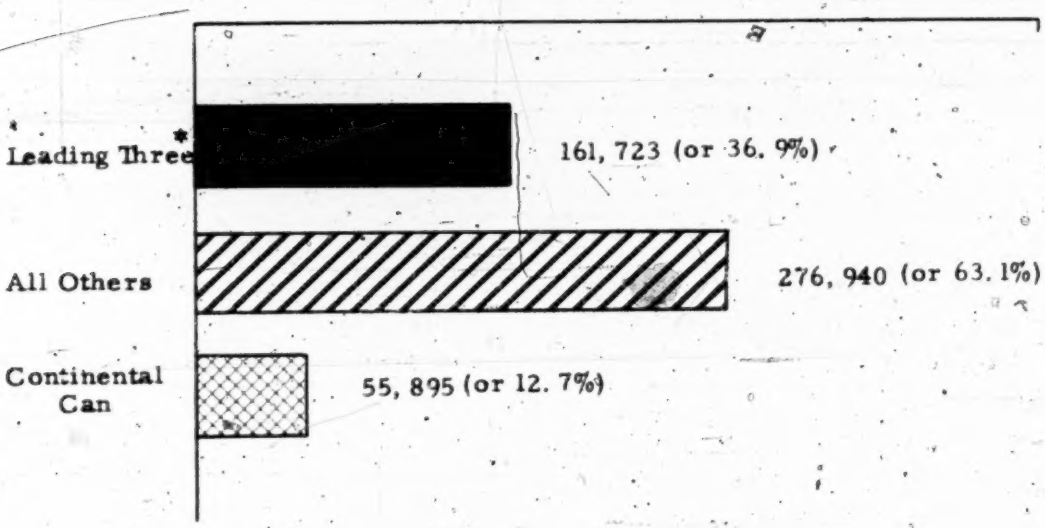
METAL CAN SHIPMENTS

1955

ALL OTHER FOOD, SOUP, BABY FOOD
LEADING THREE COMPANIES AND ALL OTHERS
CONTINENTAL CAN SHARE

(Short Tons)

TOTAL 438, 663



* 1. American Can
2. Continental Can
3. National Can Co.

Source: Can Manufacturers Institute, Inc. United States Total from Facts For Industry, Metal Cans Summary, 1956, Series M75D, Bureau of the Census, Industry Division.

[fol. 1369]

2901

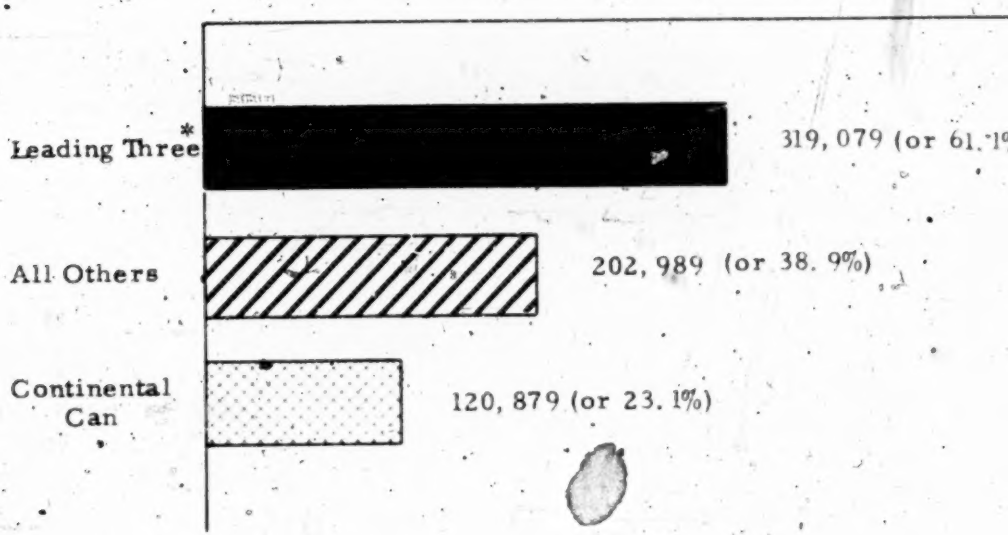
METAL CAN SHIPMENTS

1955

ALL OTHER NON-FOODS
LEADING THREE COMPANIES AND ALL OTHERS
CONTINENTAL CAN SHARE

(Short Tons)

TOTAL 522,068



* 1. American Can
2. Continental Can
3. National Can Co.

Source: Can Manufacturers Institute, Inc. United States Total from Facts For Industry, Metal Cans Summary, 1956, Series M75D, Bureau of the Census, Industry Division.

ol. 1371]

TOTAL METAL CONTAINER SHIPMENTS AND CONTINENTAL CAN PARTICIPATION

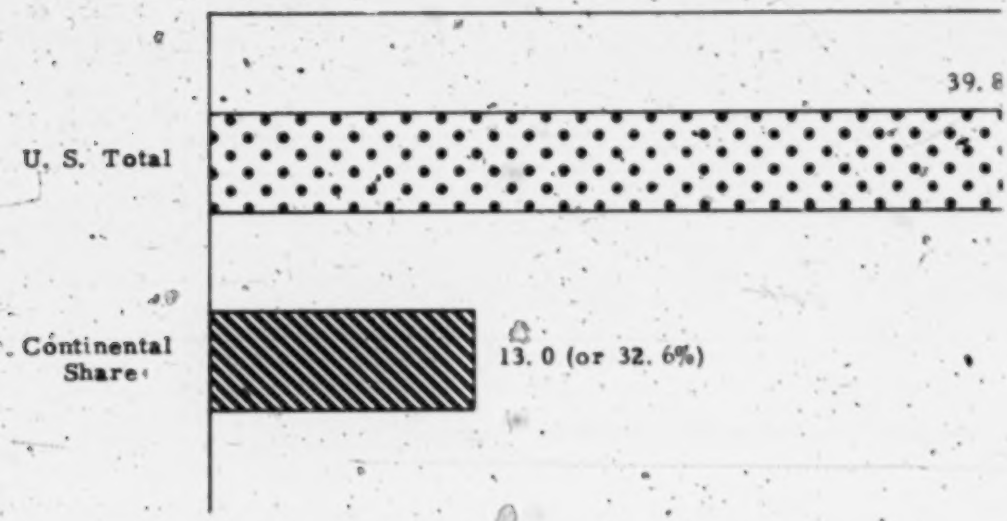
29083

1955

ALL TYPES

TOTAL U. S.

(Billions of Units)*



* Rounded to nearest Hundred Million.

Source: U. S. Total from the Bureau of the Census, Facts for Industry, Metal Container Summary, 1956 Series M75D exclusive of the Hawaiian Island shipments. The total deducted for Hawaii 93,088 short tons for 1955.

29014

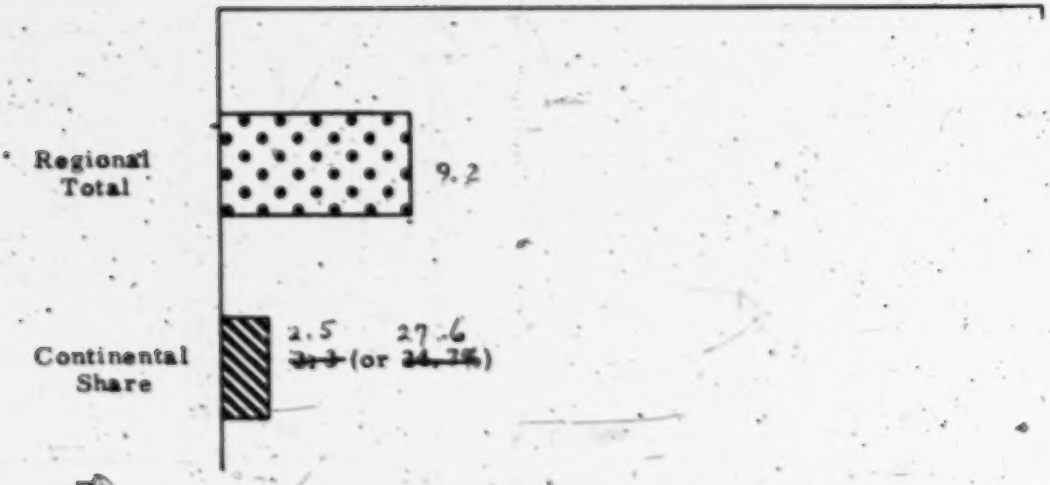
TOTAL METAL CONTAINER SHIPMENTS AND CONTINENTAL CAN PARTICIPATION

1955

ALL TYPES

WEST OF ROCKIES •

(Billions of Units) • •



• States included W shington, Oregon, California, Idaho, Nevada, Utah and Arizona.

•• Rounded to nearest Hundred Million.

Source: U. S. Total from the Bureau of the Census, Facts for Industry, Metal Container Summary, 1956 Series M75D exclusive of the Hawaiian Island shipments. The total deducted for Hawaii 93,088 short tons for 1955.

See following page for regional statistics and method of computation.

[fol. 1373] Notes Applicable to Metal Can Charts for 1955 2905

West of the Rockies

All Types

On a tonnage basis the West of the Rockies market area statistics were computed by subtracting the Hawaiian Islands metal can shipments for each end use category (shipments of American Can Co. plants in Hawaii) from the metal can statistics covering the west geographic area (States of Washington, Oregon and California) for 1955 as published in the Bureau of the Census, Facts for Industry, Metal Container Summary, Series M75D. Statistical data furnished the Department in base boxes of tin plate was converted to a tonnage basis by using conversion factors as published in the Facts for Industry, Metal Cans Summary, Series M75D.

Since the west geographic area in the Bureau of the Census, Facts for Industry tabulations includes the States of Washington, Oregon and California, the shipments from Utah can plants were included in the West of the Rockies market area. In the other States located west of the eastern boundaries of Idaho, Utah and Arizona there were no can manufacturing plants in 1955.

As mentioned above the computations dividing the East and West areas was accomplished on a tonnage basis. The tonnage was then converted to thousands of units by multiplying the number of cans which might have been produced for each end use category from one short ton of steel consumed (See Annual Report of Steel and Tin Consumed in Metal Cans published by the Can Manufacturers Institute, Inc. for 1947-1956, pages 9 and 10) and applied to the West tonnage.

The conversion factors used for 1955 in converting one ton of steel to can units were as follows:

(a) food containers 9237 units
(b) beer containers 10161 units
(c) soft drink containers 11167 units
(d) non-food* containers 7681 units

The sum of food, beer, soft drink and non-food containers, on a unit basis, equal the U. S. total of all types of containers West of the Rockies.

---

* Non-food containers include:

(a) pet food
(b) oil, open top (1 qt. and 5 qt.)
(c) all other non-food

[fol. 1374]

2906

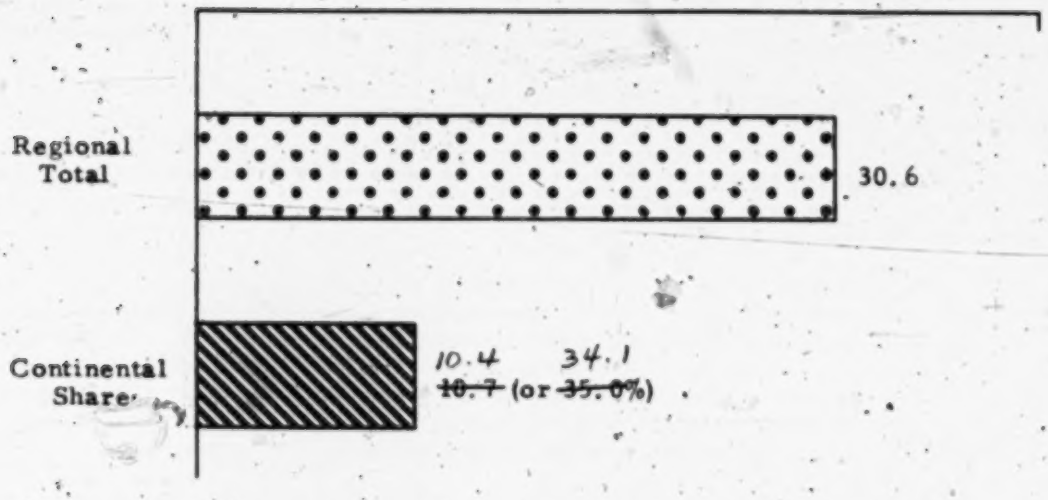
TOTAL METAL CONTAINER SHIPMENTS AND CONTINENTAL CAN PARTICIPATION

1955

ALL TYPES

EAST OF ROCKIES

(Billions of Units)*



* Rounded to nearest Hundred Million.

Source: U.S. Total from the Bureau of the Census, Facts for Industry, Metal Container Summary, 1956 Series M75D exclusive of the Hawaiian Island shipments.

See following page for regional statistics and method of computation.

[fol. 1375] Notes Applicable to Metal Can Charts for 1955 29097

East of the Rockies

All Types

Metal can shipments, by end use categories, for West of the Rockies market area, was subtracted from the Continental U. S. total (exclusive of the Hawaiian Islands), to get the volume applicable to East of the Rockies market area, on a tonnage basis. The tonnage was then converted to thousands of units by multiplying the number of cans which might have been produced for each end use category from one short ton consumed (See Annual Report of Steel and Tin Consumed in Metal Cans published by the Can Manufacturers Institute, Inc. for 1947-1956, pages 9 and 10) and applied to the East tonnage.

The conversion factors used for 1955 in converting one ton of steel to can units were as follows:

(a) food containers 9237 units
(b) beer containers 10161 units
(c) soft drink containers 11167 units
(d) non-food* containers 7681 units

The sum of food, beer, soft drink and non-food containers, on a unit basis, equal the U. S. total of all types of containers East of the Rockies.

* Non-food containers include:

(a) pet food
(b) oil, open top (1 qt. and 5 qt.)
(c) all other non-food

[fol. 1376]

2908

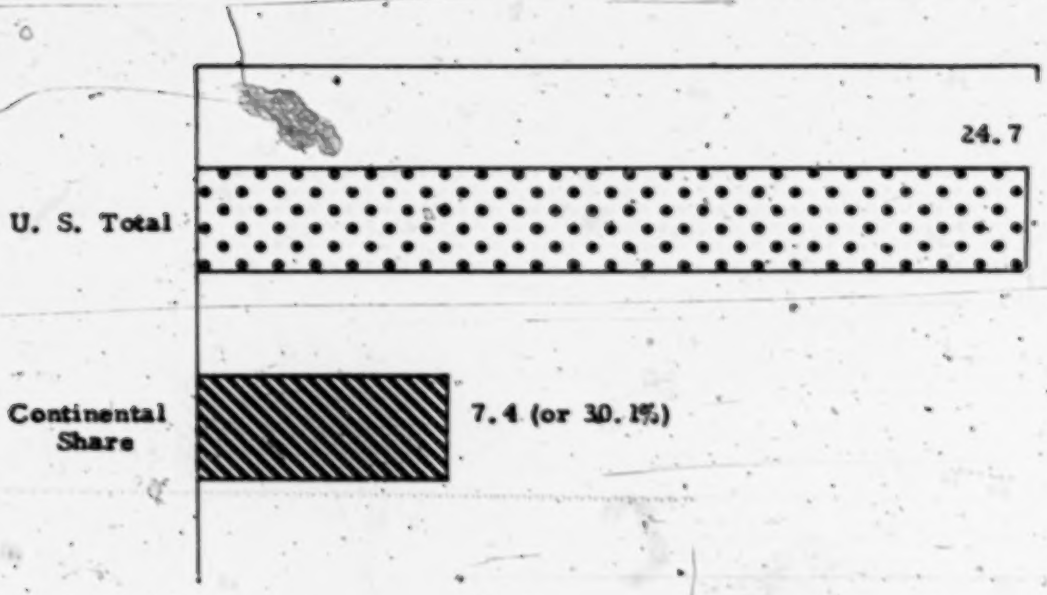
TOTAL METAL CONTAINER SHIPMENTS AND CONTINENTAL CAN PARTICIPATION

1955

FOOD

TOTAL U. S.*

(Billions of Units)**



* Continental U. S.

** Rounded to nearest Hundred Million.

Source: U. S. total from the Bureau of the Census, Facts for Industry, Metal Container Summary, Series M75D, exclusive of Hawaiian Island shipments the total tonnage deducted amounted to 93,044 short tons for 1955. Data for Continental share from DP 2134 through DP 2167.

[fol. 1377]

TOTAL METAL CONTAINER SHIPMENTS AND CONTINENTAL CAN PARTICIPATION

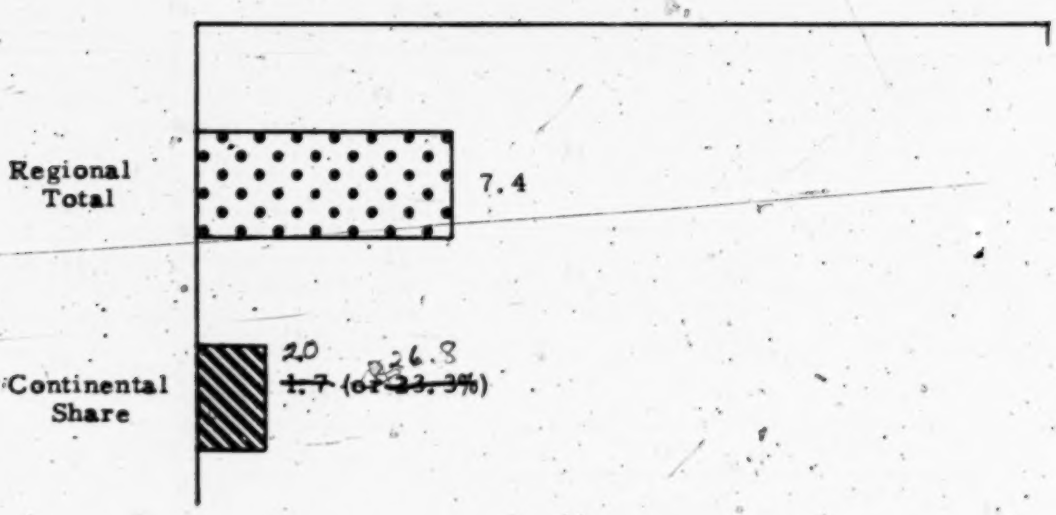
(2)(19)

1955

FOOD

WEST OF ROCKIES*

(Billions of Units)**



* States included Washington, Oregon, California, Idaho, Nevada, Utah and Arizona.

** Rounded to nearest Hundred Million.

Source: U.S. Total is from the Bureau of the Census, Facts for Industry, Metal Cans Summary, Series M75D, less Hawaiian Island shipments. The total deducted for Hawaii 93,044 short tons for 1955. Data for Continental Can Company is from DP 2134 through DP 2167.

See following page for regional statistics and method of computation.

[fol. 1378]

2910

Notes Applicable to Metal Can Charts for 1955

West of the Rockies

Food

On a tonnage basis the West of the Rockies market area statistics were computed by subtracting the Hawaiian Islands metal can shipments for each end use category (shipments of American Can Co. plants in Hawaii) from the metal can statistics covering the west geographic area (States of Washington, Oregon and California) for 1955 as published in the Bureau of the Census, *Facts for Industry, Metal Container Summary, Series M75D.* Statistical data furnished the Department in base boxes of tin plate was converted to a tonnage basis by using conversion factors as published in the *Facts for Industry, Metal Container Summary, Series M34D.*

Since the west geographic area in the Bureau of the Census, *Facts for Industry* tabulations includes the States of Washington, Oregon and California, the shipments from Utah can plants were included in the West of the Rockies market area. In the other States located west of the eastern boundaries of Idaho, Utah and Arizona there were no can manufacturing plants in 1955.

The tonnage for the food group was then converted to thousands of units by multiplying the number of cans which might have been produced from one short ton of steel consumed (See Annual Reports of Steel and Tin Consumed in Metal Cans published by the Can Manufacturers Institute, Inc. for 1947-1954, pages 9 and 10).

The conversion factor used for 1955 to convert the food group tonnage to units was 9237 units per short ton.

Food containers include the following commodity categories:

(a) fruit and vegetable
(b) evaporated milk
(c) other dairy products
(d) fish and seafood
(e) meat
(f) lard and shortening
(g) all other food (including soup and baby food)
(h) coffee

[fol. 1379]

TOTAL METAL CONTAINER SHIPMENTS AND CONTINENTAL CAN PARTICIPATION

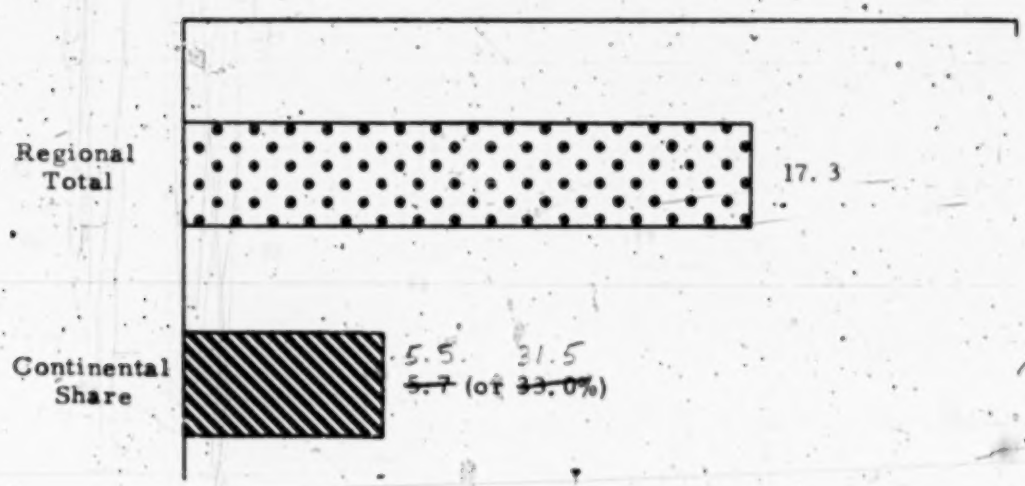
2911

1955

FOOD

EAST OF ROCKIES.

(Billions of Units)*



* Rounded to nearest Hundred Million.

Source: U.S. Total is from the Bureau of the Census, Facts for Industry, Metal Cans Summary, Series M75D, less Hawaiian Island shipments. Data for Continental Can Company is from DP 2134 through DP 2167.

See following page for regional statistics and method of computation.

[fol. 1380] Notes Applicable to Metal Can Charts for 1955

2912

East of the Rockies

Food

The East of the Rockies shipments was accomplished by subtracting West of the Rockies tonnage from U. S. Total (exclusive of the Hawaiian Islands). The tonnage was then converted to thousands of units by multiplying the number of cans which might have been produced from one short ton of steel consumed (See Annual Reports of Steel and Tin Consumed in Metal Cans published by the Can Manufacturers Institute, Inc. for 1947-1956, pages 9 and 10).

The conversion factor used for 1955 to convert the food group tonnage to units was 9237 units per short ton.

Food containers include the following commodity categories:

(a) fruit and vegetable
(b) evaporated milk
(c) other dairy products
(d) fish and seafood
(e) meat
(f) lard and shortening
(g) all other food (including soup and baby food)
(h) coffee

[fol. 1381]

TOTAL METAL CONTAINER SHIPMENTS AND CONTINENTAL CAN PARTICIPATION

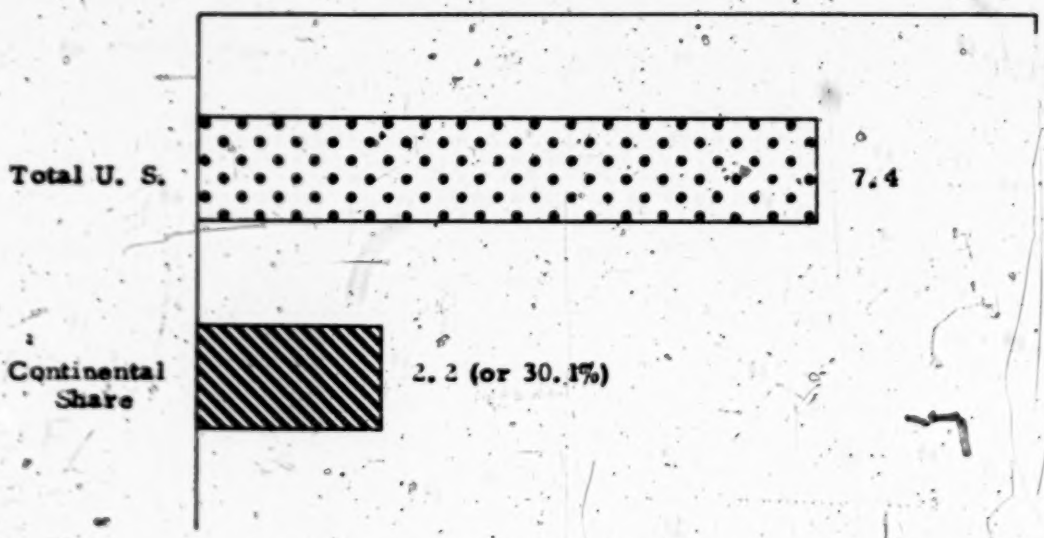
2913

1955

NON-FOOD

TOTAL U. S.*

(Billions of Units)**



* Continental U. S.

** Rounded to nearest Hundred Million.

Source: U. S. totals from the Bureau of the Census, Facts for Industry, Metal Container Summary, Series M75D, less Hawaiian Island shipments, the tonnage deducted for non-food amounting to 44 short tons for 1955. Data for Continental Can Co. is from DP 2134 through DP 2167.

Non-food containers include:

Pet food
Oil, open top (1 qt. and 5 qt.)
All other non-food

[fol. 1382]

2914

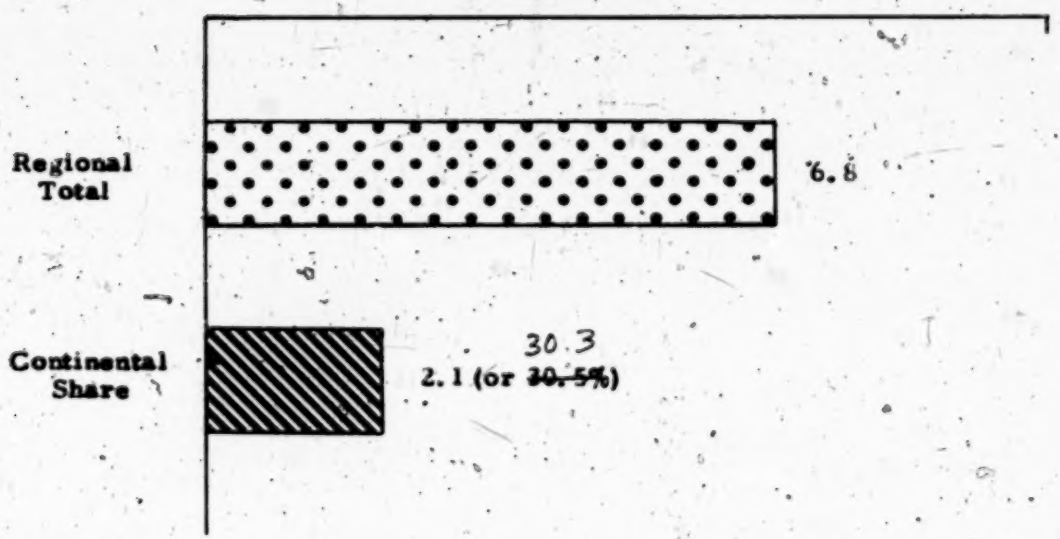
TOTAL METAL CONTAINER SHIPMENTS AND CONTINENTAL CAN PARTICIPATION

1955

NON-FOOD

EAST OF ROCKIES

(Billions of Units) *



* Rounded to nearest Hundred Million.

Source: U. S. total is from the Bureau of the Census, Facts for Industry, Metal Container Summary, Series M75D, less Hawaiian Island shipments. Data for Continental Can Co. is from DP 2134 through DP 2167.

See following page for regional statistics and method of computation.

[fol. 1383] Notes Applicable to Metal Can Charts for 1955

2915

East of the Rockies

Non-Food

The East of the Rockies shipments was accomplished by subtracting West of the Rockies tonnage from the U. S. total (exclusive of Hawaiian Islands). The tonnage was then converted to thousands of units by multiplying the number of cans which might have been produced from one short ton of steel consumed (See Annual Reports of Steel and Tin Consumed in Metal Cans published by the Can Manufacturers Institute, Inc. for 1947-1956, pages 9 and 10). The conversion factor used for 1955 to convert the non-food group tonnage to units was 7,681 units per short ton. Non-food containers include the following commodity categories: pet food; oil, open top (1 qt. and 5 qt.); all other non-food.

On a tonnage basis the West of the Rockies market area statistics were computed by subtracting the Hawaiian Islands metal can shipments for each end use category (shipments of American Can Co. plants in Hawaii) from the metal can statistics covering the west geographic area (States of Washington, Oregon and California) for 1955 as published in the Bureau of the Census, Facts for Industry, Metal Container Summary, Series M75D. Statistical data furnished the Department in base boxes of tin plate was converted to a tonnage basis by using conversion factors as published in the Facts for Industry, Metal Container Summary, Series M75D.

Since the west geographic area in the Bureau of the Census, Facts for Industry tabulations includes the States of Washington, Oregon and California, the shipments from Utah can plants were included in the West of the Rockies market area. In the other States located west of the eastern boundaries of Idaho, Utah and Arizona there were no can manufacturing plants in 1955.

The tonnage was then converted to units by the same method as mentioned above.

[fol. 1384]

2916

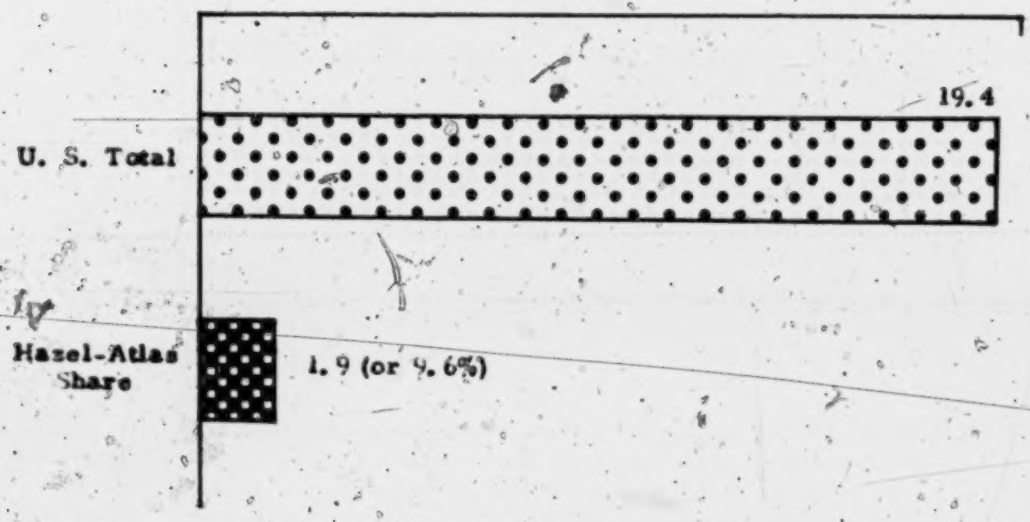
TOTAL GLASS CONTAINER SHIPMENTS AND HAZEL-ATLAS PARTICIPATION

1955

ALL TYPES

TOTAL U. S.

(Billions of Units)*



* Rounded to nearest Hundred Million.

Source: U. S. totals are from the Bureau of the Census, Facts for Industry, "Glass Containers Summary, Series M32G-4. Hazel-Atlas figures derived from Interrogatory No. 13.

[fol. 1385] TOTAL GLASS CONTAINER SHIPMENTS AND HAZEL-ATLAS PARTICIPATION

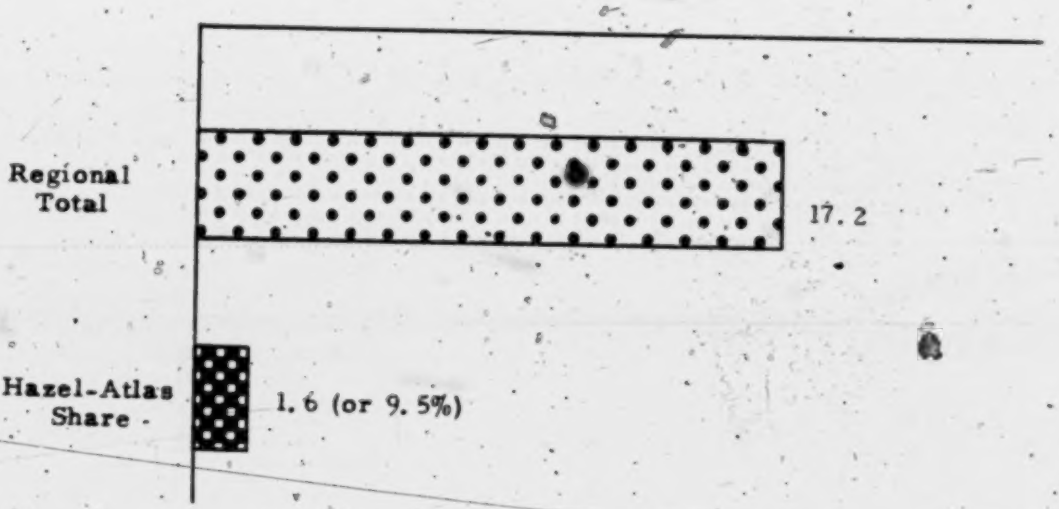
2917

1955

ALL TYPES

EAST OF ROCKIES

(Billions of Units) *



* Rounded to nearest Hundred Million.

Source: U. S. Total is from the Bureau of the Census, Facts for Industry, Glass Containers Summary, Series M32G. Data for Hazel-Atlas from Interrogatory Number 13.

See following page for regional source and method of computation.

Notes Applicable to Glass Containers for 1955

East of the Rockies

All Types

Data for East of the Rockies was accomplished by subtracting the total for West of the Rockies from the Continental United States total.

Containers included in the non-food group are both narrow neck and wide mouth glass containers used for household and industrial, toiletries and cosmetics, and medicinal and health supplies.

Data for the Continental Can Company, Hazel-Atlas Division are from the answers to Plaintiff's Interrogatory No. 13. The information furnished reflects sales to customers rather than actual shipments. Plants and warehouses alike are treated as shipping points to which sales are attributed, and inter-plant shipments are eliminated. The data also contains a small amount of export sales plus other minor variations resulting from lost or misplaced data cards and the use of different methods of handling the cards. For a more detailed description of these variations see pages 1 through 4 of the answer to Plaintiff's Interrogatory No. 13. For these reasons the figures set forth in the answer to Plaintiff's Interrogatory No. 13 do not exactly coincide with the statistical shipment data the Hazel-Atlas Glass Company furnished the Glass Containers Manufacturers Institute, Inc. which the Government used in Folder "A" Statistical Tables. In most instances these differences are minor.

[fol. 1387]

TOTAL GLASS CONTAINER SHIPMENTS AND HAZEL-ATLAS PARTICIPATION

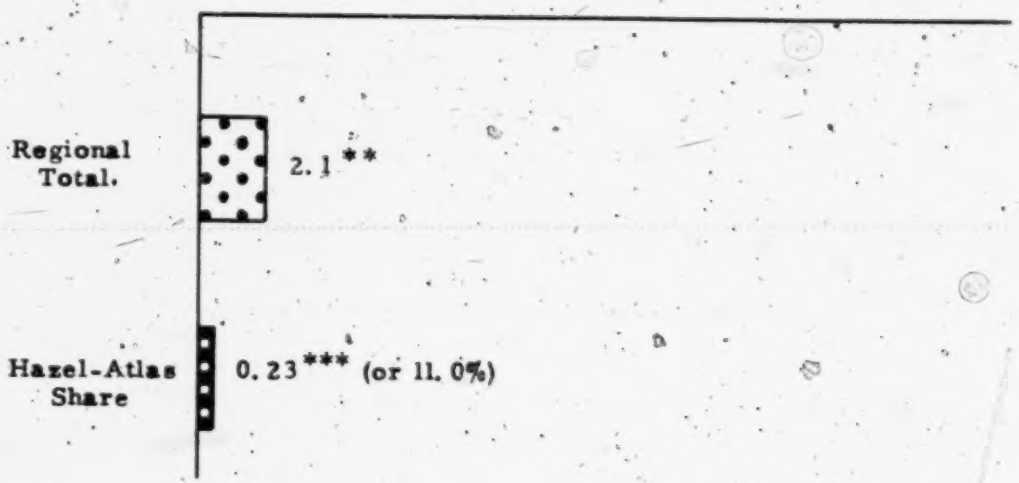
2919

1955

ALL TYPES

WEST OF ROCKIES *

(Billions of Units)



* States included Washington, Oregon, California, Idaho, Nevada, Utah and Arizona.

** Rounded to nearest Hundred Million.

*** Rounded to nearest Ten Million.

Source: U. S. Total from the Bureau of the Census, Facts for Industry, Glass Containers Summary, Series M32G. Data for Hazel-Atlas from Interrogatory Number 13.

See following page for regional source and method of computation.

[Vol. 1388]
2920

Notes Applicable to Glass Containers for 1955

West of the Rockies

All Types

The computation of West of the Rockies statistics included domestic shipments of glass containers by food, non-food, beer, beverage categories and were consolidated for those companies operating and shipping glass from plants West of the Rockies. This tabulation included the following companies operating plants in the States of Washington, Oregon and California.

Anchor Hocking Glass Co. (its subsidiary Maywood Glass Co.)
Ball Bros. Co.
Glass Containers Corp. (its subsidiary United Can and Glass Co.)
Continental Can Co., Hazel-Atlas Division
Alexander Kerr & Co., Inc.
Latchford Glass Co.
Northwestern Glass Co.
Owens-Illinois Glass Co.
Thatcher Glass Manufacturing Co.

Containers included in the non-food group are both narrow neck and wide mouth glass containers used for household and industrial, toilstries and cosmetics, and medicinal and health supplies.

Data for the Continental Can Co., Hazel-Atlas Division are from the answers to Plaintiff's Interrogatory No. 13. The information furnished reflects sales to customers rather than actual shipments. Plants and warehouses alike are treated as shipping points to which sales are attributed, and inter-plant shipments are eliminated. The data also contains a small amount of export sales plus other minor variations resulting from lost or misplaced data cards and the use of different methods of handling the cards. For a more detailed description of these variations see pages 1 through 4 of the answer to Plaintiff's Interrogatory No. 13. For these reasons the figures set forth in the answer to Plaintiff's Interrogatory No. 13 do not exactly coincide with the statistical shipment data the Hazel-Atlas Company furnished the Glass Containers Manufacturers Institute, Inc. which the Government used in Folder "A" Statistical Tables. In most instances these differences are minor.

[fol. 1389] SOURCE: 2921

Company data from:

(a) Glass Container Manufacturers Institute.
(b) Answer to Plaintiff's Interrogatory No. 13.
(c) Copies of monthly reports Series M 77 C made by Owens-Illinois Glass Co. to the Bureau of the Census covering the year 1955.
(d) Letter dated March 2, 1960 to Robert A. Bicks, Acting Assistant Attorney General, Antitrust Division from William J. Green, President, Thatcher Glass Manufacturing Co.
(e) Letter dated April 29, 1960 to Robert A. Bicks, Acting Assistant Attorney General, Antitrust Division from William A. Kerr, Vice President, Finance, Alexander H. Kerr & Co., Inc.
(f) Letter dated February 22, 1960 to Robert A. Bicks, Acting Assistant Attorney General, Antitrust Division from Alexander M. Bracken, Vice President and General Counsel Ball Brothers Company.

[fol. 1390]

29922

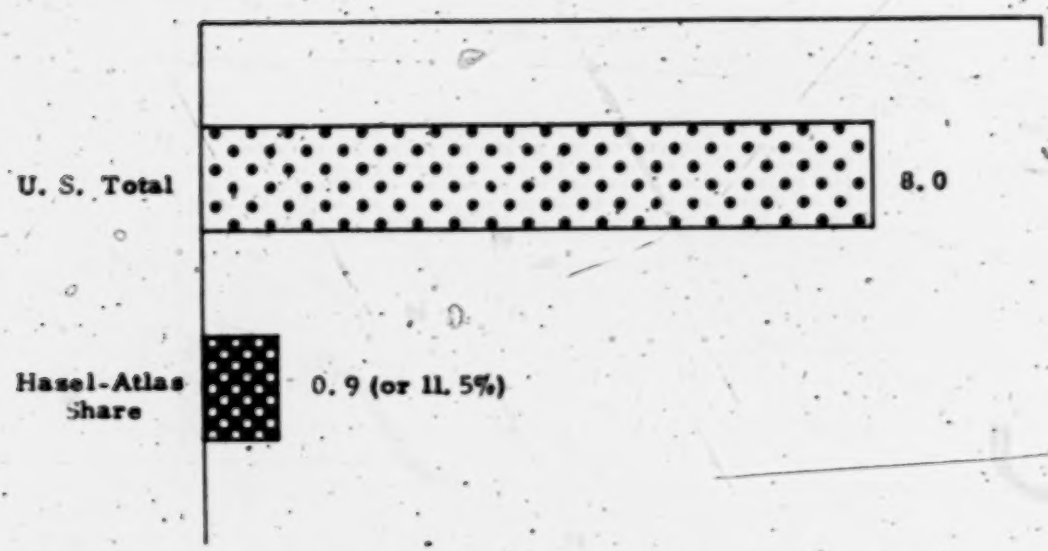
TOTAL GLASS CONTAINER SHIPMENTS AND HAZEL-ATLAS PARTICIPATION

1955

FOOD

TOTAL U. S.*

(Billions of Units)**



* Continental U. S.

** Rounded to nearest Hundred Million.

Source: U. S. total from the Bureau of the Census, Facts for Industry, Glass Containers Summary, Series M77C. Data for Hazel-Atlas share from Answer to Government's Interrogatory No. 13.

[Fol. 1391]

TOTAL GLASS CONTAINER SHIPMENTS AND HAZEL-ATLAS PARTICIPATION

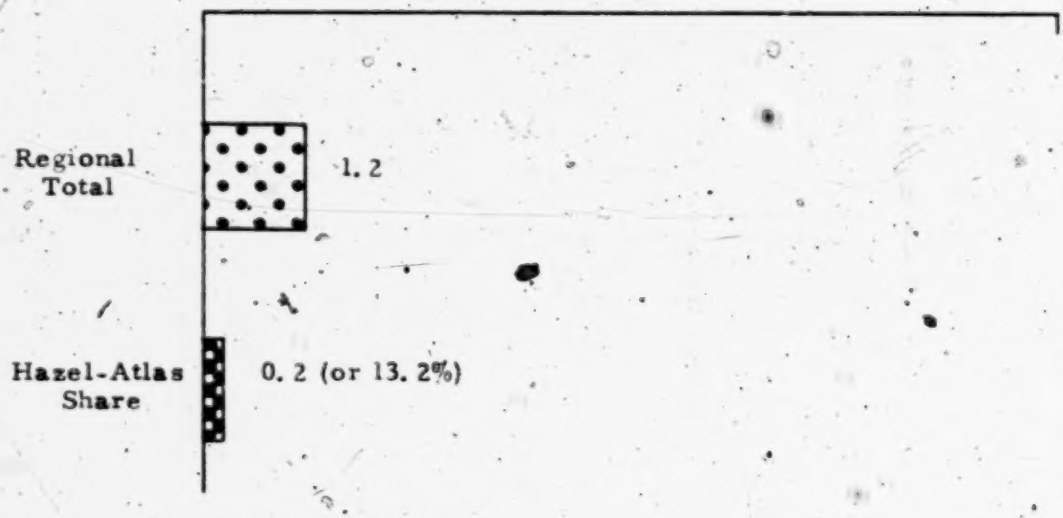
2923

1955

FOOD

WEST OF ROCKIES *

(Billions of Units) * *



* States included Washington, Oregon, California, Idaho, Nevada, Utah and Arizona.

** Rounded to nearest Hundred Million.

Source: U. S. Total from the Bureau of the Census, Facts for Industry, Glass Containers Summary, Series M32G. Data for Hazel-Atlas from Interrogatory Number 13.

See following page for regional source and method of computation.

[fol. 1392] Notes Applicable to Glass Containers for 1955

2924

Food

West of the Rockies

The computation of West of the Rockies statistics included domestic shipments of glass containers by food categories and were consolidated for those companies operating and shipping glass from plants West of the Rockies. This tabulation included the following companies operating plants in the States of Washington, Oregon and California.

Anchor Hocking Glass Co. (for its subsidiary Maywood Glass Co.)
Ball Bros. Co.
Glass Containers Corp. (its subsidiary United Can and Glass Co.)
Continental Can Company, Hazel-Atlas Division
Alexander Kerr & Co., Inc.
Latchford Glass Co.
Northwestern Glass Co.
Owens-Illinois Glass Co.
Thatcher Glass Manufacturing Co.

Included in the food group of glass containers are both narrow neck and wide mouth food, dairy products and packers tumblers.

Data for the Continental Can Company, Hazel-Atlas Division are from the answer to Plaintiff's Interrogatory No. 13. The information furnished reflects sales to customers rather than actual shipments. Plants and warehouses alike are treated as shipping points to which sales are attributed, and inter-plant shipments are eliminated. The data also contains a small amount of export sales plus other minor variations resulting from lost or misplaced data cards and the use of different methods of handling the cards. For a more detailed description of these variations see pages 1 through 4 of the answer to Plaintiff's Interrogatory No. 13. For these reasons the figures set forth in the answer to Plaintiff's Interrogatory No. 13 do not exactly coincide with the statistical shipment data the Hazel-Atlas Glass Company furnished the Glass Containers Manufacturers Institute, Inc. which the Government used in Folder "A" Statistical Tables. In most instances these differences are minor.

[fol. 1393] SOURCE: 2925

Company data from:

(a) Glass Container Manufacturers Institute.
(b) Answer to Plaintiff's Interrogatory No. 13.
(c) Copies of monthly reports Series M 77 C made by Owens-Illinois Glass Co. to the Bureau of the Census covering the year 1955.
(d) Letter dated March 2, 1960 to Robert A. Bicks, Acting Assistant Attorney General, Antitrust Division from William J. Green, President, Thatcher Glass Manufacturing Co.
(e) Letter dated April 29, 1960 to Robert A. Bicks, Acting Assistant Attorney General, Antitrust Division from William A. Kerr, Vice President, Finance, Alexander H. Kerr & Co., Inc.
(f) Letter dated February 22, 1960 to Robert A. Bicks, Acting Assistant Attorney General, Antitrust Division from Alexander M. Bracken, Vice President and General Counsel Ball Brothers Company.

[fol. 1394]

TOTAL GLASS CONTAINER SHIPMENTS AND HAZEL-ATLAS PARTICIPATION

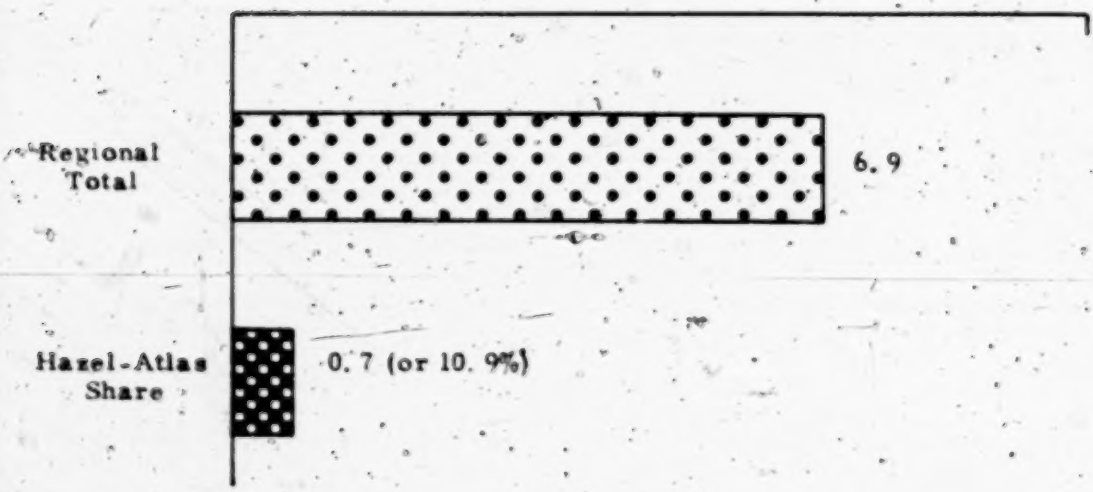
2926

1955

FOOD

EAST OF ROCKIES

(Billions of Units) *



* Rounded to nearest Hundred Million.

Source: U.S. Total from Bureau of the Census, Facts for Industry, Glass Containers Summary, Series M32G. Data for Hazel-Atlas is from Interrogatory Number 13.

See following page for regional source and method of computation.

[fol. 1395] Notes Applicable to Glass Containers for 1955 2927

Food

East of the Rockies

Data for East of the Rockies was accomplished by subtracting the total for the Food group West of the Rockies from the Continental United States total for Food.

Included in the food group of glass containers are both narrow neck and wide mouth food, dairy products and packers tumblers.

Data for the Continental Can Company, Hazel-Atlas Division are from the answers to Plaintiff's Interrogatory No. 13. The information furnished reflects sales to customers rather than actual shipments. Plants and warehouses alike are treated as shipping points to which sales are attributed, and inter-plant shipments are eliminated. The data also contains a small amount of export sales plus other minor variations resulting from lost or misplaced data cards and the use of different methods of handling the cards. For a more detailed description of these variations see pages 1 through 4 of the answer to Plaintiff's Interrogatory No. 13. For these reasons the figures set forth in the answer to Plaintiff's Interrogatory No. 13 do not exactly coincide with the statistical shipment data the Hazel-Atlas Glass Company furnished the Glass Containers Manufacturers Institute, Inc. which the Government used in Folder "A" Statistical Tables. In most instances these differences are minor.

[fol. 1396]

2928

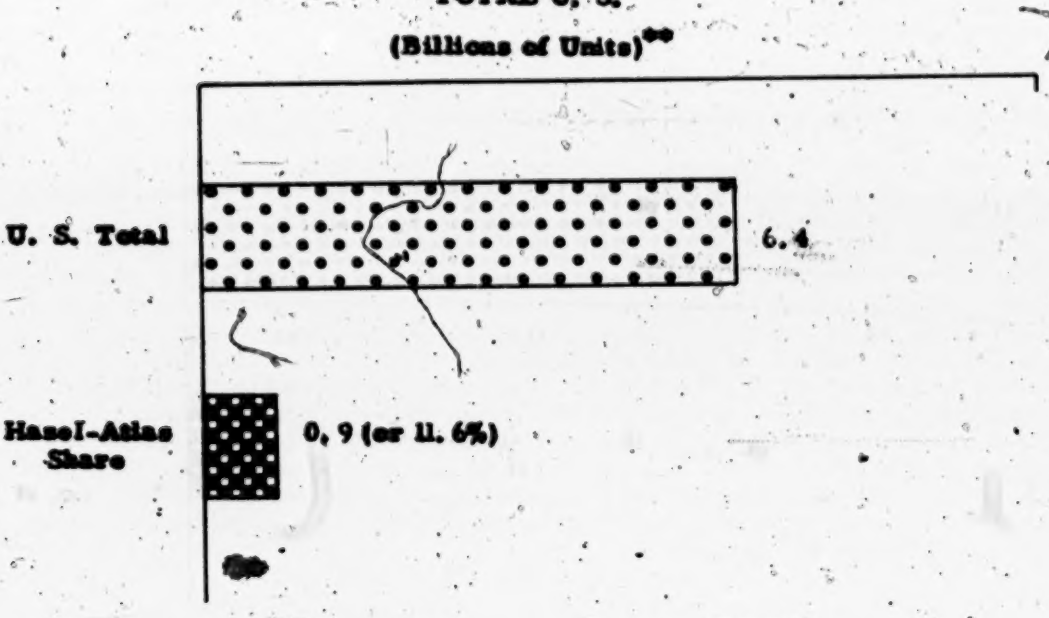
TOTAL GLASS CONTAINER SHIPMENTS AND HAZEL-ATLAS PARTICIPATION

1955

NON-FOOD

TOTAL U. S.*

(Billions of Units)**



* Continental U. S.

** Rounded to nearest Hundred Million.

Source: U. S. totals from the Bureau of the Census, Facts for Industry, Glass Containers Summary, Series M77C. Hazel-Atlas data from Defendant's Answer to Government's Interrogatory No. 13.

[fol. 1397]

TOTAL GLASS CONTAINER SHIPMENTS AND HAZEL-ATLAS PARTICIPATION

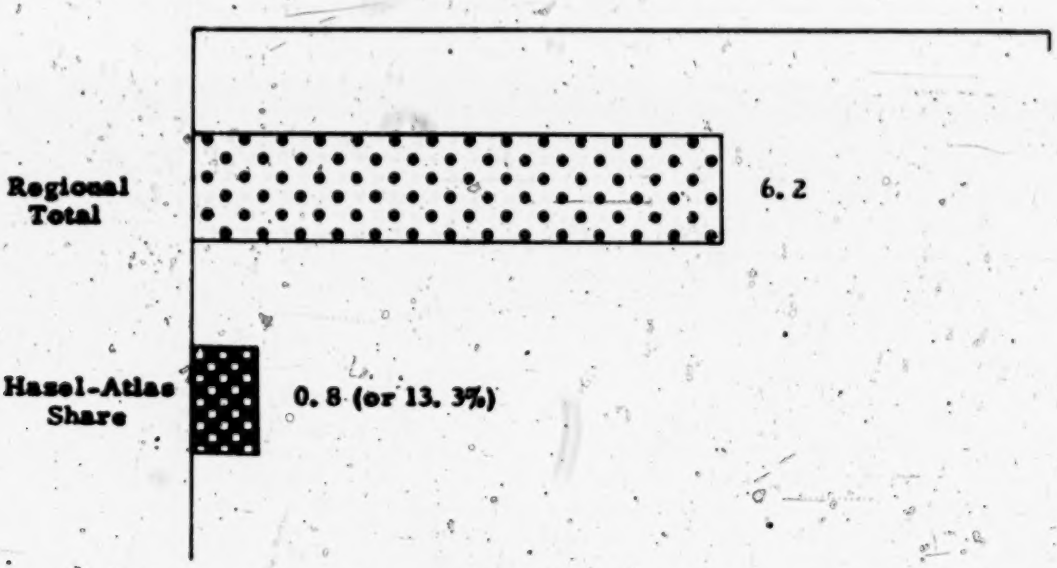
2929

1955

NON-FOOD

EAST OF ROCKIES

(Billions of Units) *



* Rounded to nearest Hundred Million.

Source: U. S. total from the Bureau of the Census, Facts for Industry, Glass Container Summary, Series M77C. Data for Hazel-Atlas from Defendant's Answer to Government's Interrogatory No. 13.

See following page for regional source and method of computation.

[fol. 1398]

2930

Notes Applicable to Glass Containers for 1955

East of the Rockies

Non-Food

Data for East of the Rockies was accomplished by subtracting the total for the non-food group West of the Rockies from the Continental United States total for non-food. Included in the non-food group of glass containers are both narrow neck and wide mouth glass containers used for household and industrial, toiletries and cosmetics, medicinal and health supplies.

The computation of West of the Rockies statistics included domestic shipments of glass containers by food categories and were consolidated for those companies operating and shipping glass from plants West of the Rockies. This tabulation included the following companies operating plants in the States of Washington, Oregon and California:

Anchor-Hocking Glass Co. (for its subsidiary Maywood Glass Co.)
Ball Bros. Co.
Glass Containers Corp. (its subsidiary United Can and Glass Co.)
Continental Can Company, Hazel-Atlas Division
Alexander Kerr & Co., Inc.
Latchford Glass Co.
Northwestern Glass Co.
Owens-Illinois Glass Co.
Thatcher Glass Manufacturing Co.

Data for the Continental Can Co., Hazel-Atlas Division are from the Answer to Plaintiff's Interrogatory No. 13. The information furnished reflects sales to customers rather than actual shipments. Plants and warehouses alike are treated as shipping points to which sales are attributed, and inter-plant shipments are eliminated. The data also contains a small amount of export sales plus other minor variations resulting from lost or misplaced data cards and the use of different methods of handling the cards. For a more detailed description of these variations see pages 1 through 4 of the Answer to Plaintiff's Interrogatory No. 13. For these reasons the figures set forth in the Answer to Plaintiff's Interrogatory No. 13 do not exactly coincide with the statistical data the Hazel-Atlas Glass Company furnished the Glass Containers Manufacturers Institute, Inc., which the Government used in Folder "A" statistical tables. In most instances these differences are minor.

Company data from:

(a) Glass Container Manufacturers Institute.
(b) Answer to Plaintiff's Interrogatory No. 13.
(c) Copies of monthly reports Series M77C made by Owens-Illinois Glass Co. to the Bureau of the Census covering the year 1955.
(d) Letter dated March 2, 1960 to Robert A. Bicks, Acting Assistant Attorney General, Antitrust Division from William J. Green, President, Thatcher Glass Manufacturing Co.
(e) Letter dated April 29, 1960 to Robert A. Bicks, Acting Assistant Attorney General, Antitrust Division from William A. Kerr, Vice President, Finance, Alexander H. Kerr & Co., Inc.
(f) Letter dated February 22, 1960 to Robert A. Bicks, Acting Assistant Attorney General, Antitrust Division from Alexander M. Bracken, Vice President and General Counsel Ball Brothers Company.

IV. HISTORICAL GROWTH OF METAL AND GLASS CONTAINER SHIPMENTS EXPRESSED AS INDEX NUMBERS AND SHOWN AS A TREND

[fol. 1400]

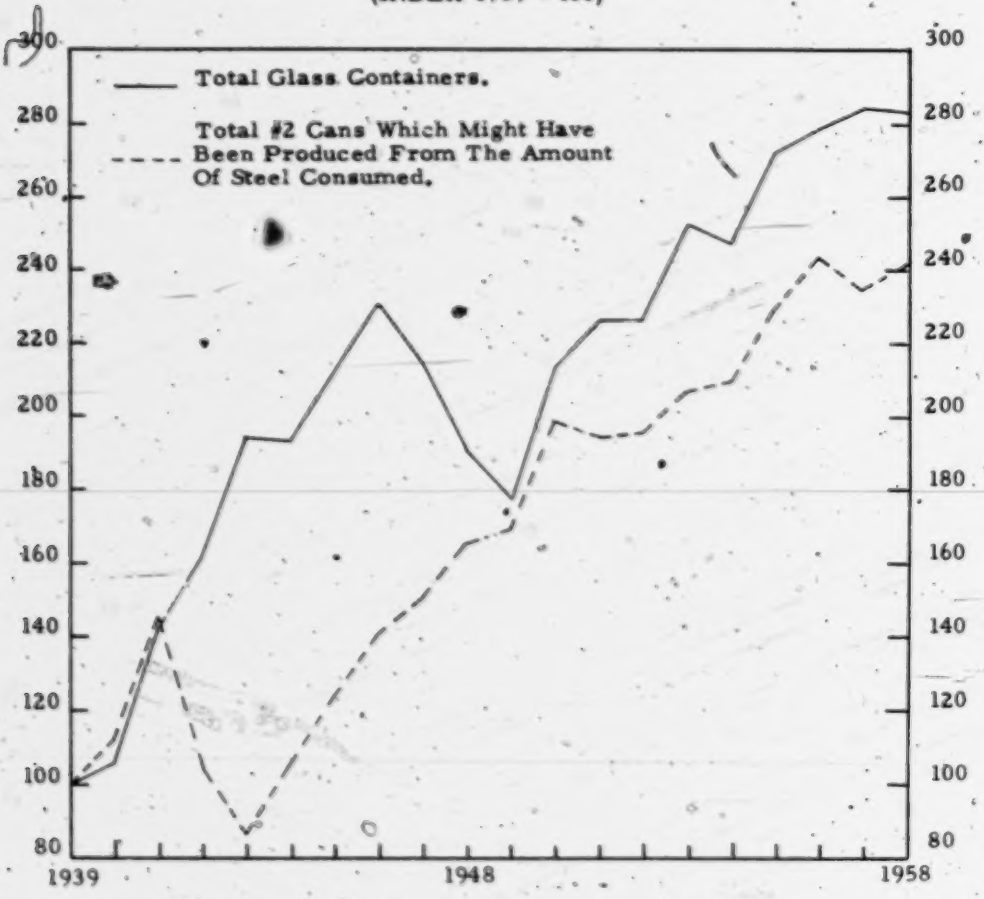
HISTORICAL GROWTH OF METAL AND GLASS CONTAINER SHIPMENTS EXPRESSED AS INDEX NUMBERS AND SHOWN AS A TREND

2932

ALL TYPES

1939 - 1958

(INDEX 1939 = 100)



Source: GLASS CONTAINERS U. S. Totals, 1939 through 1956 from Glass Container Manufacturers Institute, Inc., 1957 (page 47) 1957 - 1958 from Bureau of the Census Glass Containers Summary 1958, Series M32G.
METAL CANS U. S. Totals, 1939 through 1957 from Can Manufacturers Institute (March 1949, page 6, 1947 - 1956, page 12, 1948 - 1957, page 10). 1958 from Bureau of the Census Metal Can Summary 1958, Series M34D.

[fol. 1401]

Historical Growth of All Types of Metal and Glass Container Shipments, 1939 - 1958

(thousands of gross)

29833

Year	Glass (Domestic) U.S. Total	Glass (Domestic) Index No.	Estimated Number #2 Cans Which Might Have Been Produced in U.S. U.S. Total	Estimated Number #2 Cans Which Might Have Been Produced in U.S. Index No.
1939	49,366	100.0	119,444	100.0
1940	52,494	106.3	133,333	111.6
1941	69,408	140.6	172,917	144.8
1942	79,685	161.4	124,306	104.1
1943	95,518	193.5	102,083	85.5
1944	96,471	193.1	125,694	105.2
1945	104,007	210.7	147,917	123.8
1946	113,547	230.0	167,361	140.1
1947	105,681	214.1	179,167	150.0
1948	93,964	190.3	197,222	165.1
1949	87,450	177.1	201,389	168.6
1950	105,254	213.2	236,111	197.7
1951	111,676	226.2	231,250	193.6
1952	111,427	225.7	232,639	194.8
1953	124,404	252.0	246,528	206.4
1954	121,870	246.9	250,000	209.3
1955	134,424	272.3	272,222	227.9
1956	137,553	278.6	290,278	243.0
1957	139,952	283.5	279,168	233.7
1958	139,848	283.3	288,889	241.9

Source: Glass Containers — 1939-1956 from Glass Container Manufacturers Institute, Inc. 1957 (page 47); 1957-1958 from Bureau of the Census Glass Container Summary 1958, Series M32G.

Metal Cans — U.S. total 1939-1957 from Can Manufacturers Institute, Inc. March 1949 (page 6, 1939-1948); 1947-1956 (page 12, 1949-1954, page 8, 1955 and 1956); 1949-1958 (page 12, 1957 and 1958).

Note: These index numbers have been test checked against index numbers developed on a tonnage basis. The resulting check revealed very minor differences of less than a point for each of the several years.

fol. 1402]

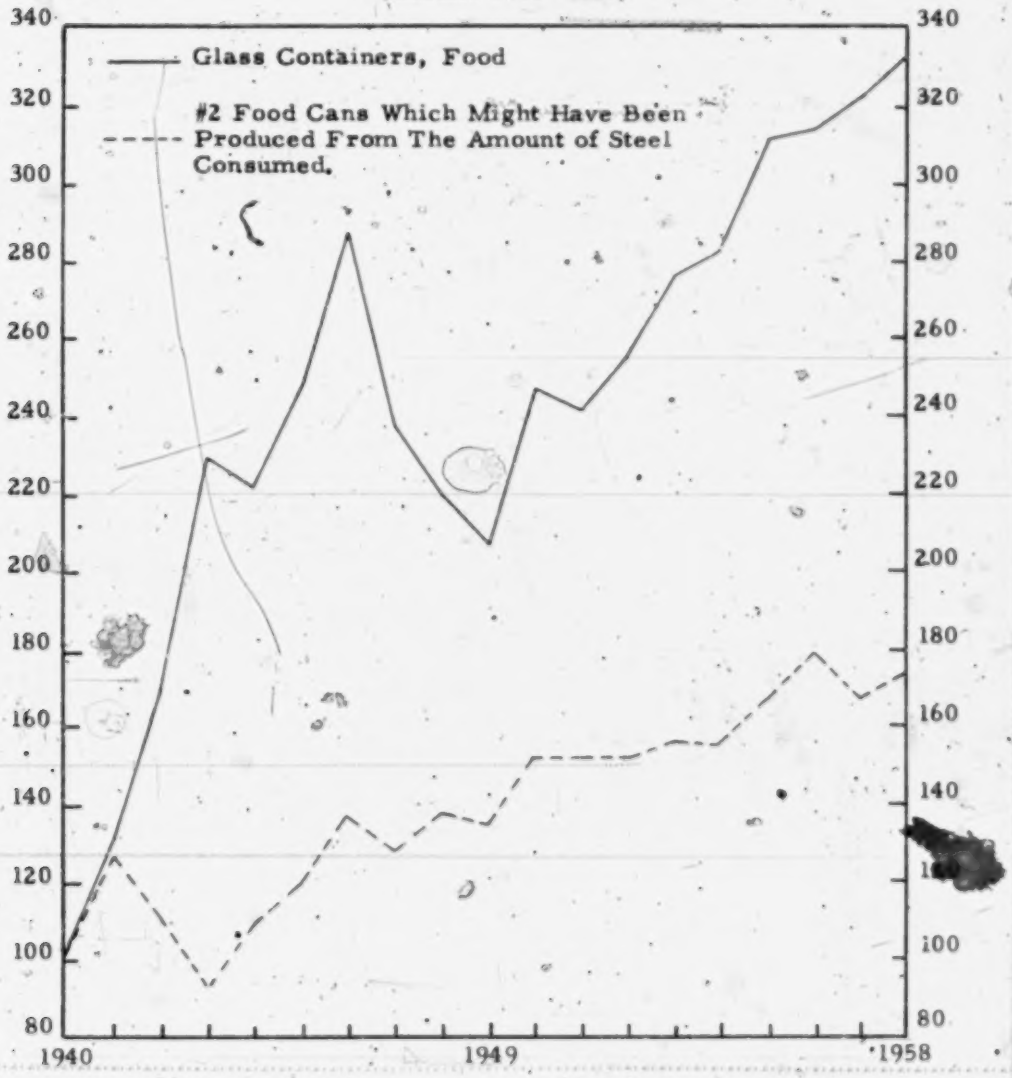
2934

HISTORICAL GROWTH OF METAL AND GLASS CONTAINER SHIPMENTS EXPRESSED AS INDEX NUMBERS AND SHOWN AS A TREND

FOOD

1940 - 1958

(INDEX 1940 = 100)



Source: See Following Page.

[fol. 1403] Historical Growth of Metal and Glass Food Container Shipments, 1940 - 1958 2935

Year	Glass (Domestic) U.S. Total	Glass (Domestic) Index No.	Estimated Number #2 Cans Which Might Have Been Produced in U. S. U.S. Total	Estimated Number #2 Cans Which Might Have Been Produced in U. S. Index No.
1940	17,968	100.0	102,083	100.0
1941	23,586	131.3	129,861	127.2
1942	30,271	168.5	114,583	112.2
1943	41,365	230.2	94,444	92.5
1944	39,878	221.9	111,111	108.8
1945	44,289	246.5	122,917	120.4
1946	51,647	287.4	139,583	136.7
1947	42,838	238.4	130,556	127.9
1948	39,542	220.1	140,972	138.1
1949	37,241	207.3	137,500	134.7
1950	44,430	247.3	154,861	151.7
1951	43,375	241.4	155,556	152.4
1952	45,842	255.1	154,861	151.7
1953	49,657	276.4	159,028	155.8
1954	50,609	281.7	158,333	155.1
1955	55,858	310.9	170,139	166.7
1956	56,413	314.0	182,639	178.9
1957	57,896	322.2	170,833	167.3
1958	59,700	332.3	176,389	172.8

Source: Glass Containers, Food — 1940-1957 from Glass Containers Manufacturers Institute, Inc. 1957 (page 47); 1958 from Bureau of the Census Glass Containers Summary 1958, Series M32G.

Metal Cans, Food — 1940-1951 from Quarterly Containers and Packaging - Spring 1952 (page 36, table 16). 1952-1958 from Bureau of the Census Metal Can Summaries 1952-1958, Series M34D.

Note: These index numbers have been test checked against index numbers develope on a tonnage basis. The resulting check revealed several very minor differences of less than a point for each of the several years.

Note: Included in Food Containers:

Glass

Food, Narrow Neck and Wide Mouth
Dairy Products
Packers Tumblers and Home Canning Jars

Metal

Fruit & Vegetable (including juice)
Evaporated and condensed milk
Other Dairy Products
Meat (including poultry)
Fish and Seafood
Lard and shortening
Coffee
Soft Drinks
All Other Food including soup and baby food.

[fol. 1404]

29:36

Source: Glass Containers - Food 1940 - 1957

from Glass Container Manufacturers Institute, 1957 (page 47). 1958 from Bureau of the Census Glass Containers Summary, Series M32G.

Metal Containers - Food 1940 - 1951

from Quarterly Containers and Packaging - Spr 1952 (page 36, Table 16). 1952 - 1958 Bureau of Census Metal Can Summaries, Series M34D. Included in Food Containers, Glass: Food Narr Neck and Wide Mouth, Dairy Products, Packer Tumblers and Home Canning Jars. Metal: Fru and Vegetable, including Juice, Evaporated and Condensed Milk, Other Dairy Products, Meat including Poultry, Fish and Seafood, Lard and Shortening, Coffee, Soft Drinks, All Other Foo including Soup and Baby Food.

V METAL AND GLASS CONTAINER SHIPMENTS

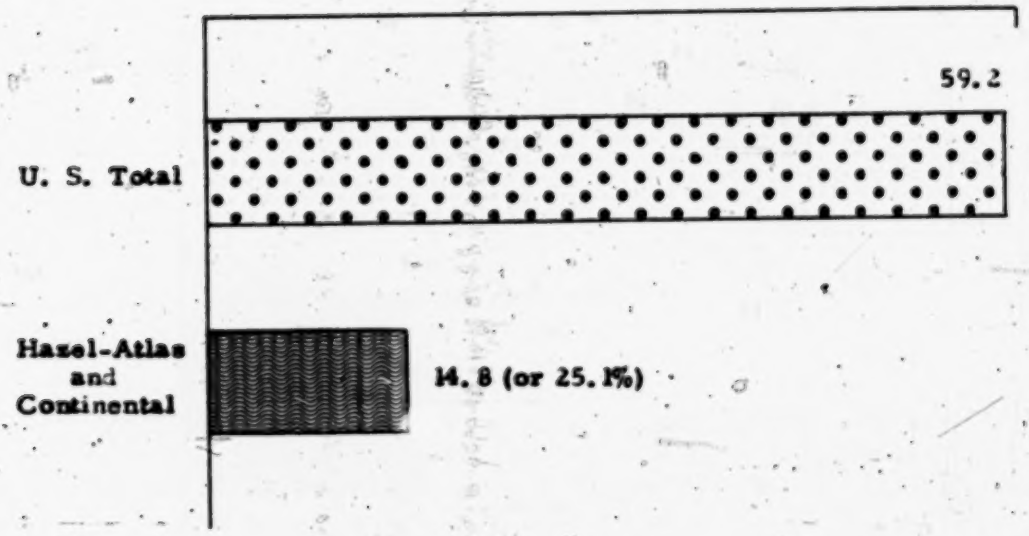
[fol. 1466]

TOTAL GLASS AND METAL CONTAINER SHIPMENTS AND HAZEL-ATLAS AND CONTINENTAL CAN PARTICIPATION

1955

ALL TYPES*

(Billions of Units)**



* Continental U. S.

** Rounded to nearest Hundred Million.

Source: This chart is a consolidation of Metal and Glass Containers for East and West Regions.

U. S. Metal shipment totals from the Bureau of the Census, Facts for Industry, Metal Container Summary, Series M75D, less Hawaiian Island shipments. Data for Continental Can from DP 2134 through DP 2167.

U. S. Glass shipment totals from the Bureau of the Census, Facts for Industry, Glass Container Summary, Series M77C. Data for Hazel-Atlas from Defendant's Answer to Government's Interrogatory No. 13.

2939

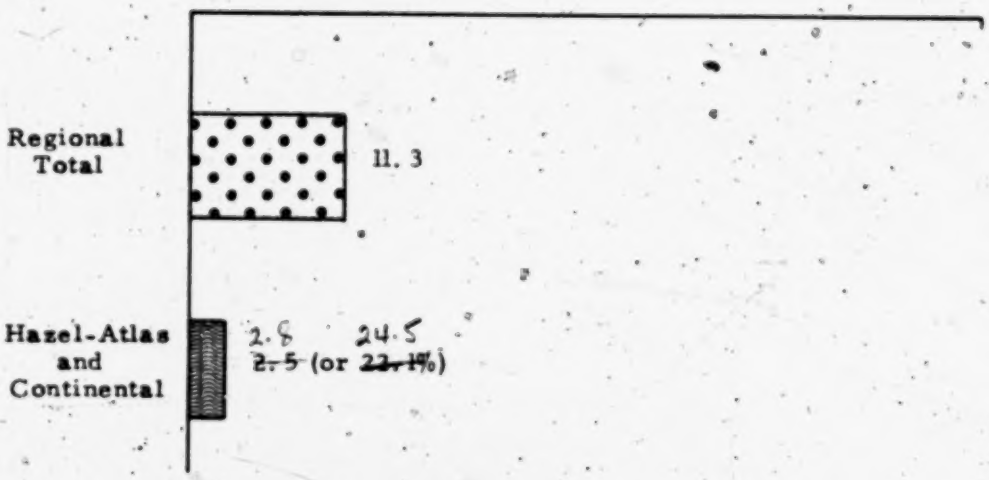
[fol. 1407] **TOTAL GLASS AND METAL CONTAINER SHIPMENTS AND HAZEL-ATLAS AND CONTINENTAL CAN PARTICIPATION**

1955

ALL TYPES

WEST OF ROCKIES *

(Billions of Units) **



* States included Washington, Oregon, California, Idaho, Nevada, Utah and Arizona.

** Rounded to nearest Hundred Million.

Note: This chart is a consolidation of Glass and Metal Containers. See notes for Glass Containers and notes for Metal Containers.

2940

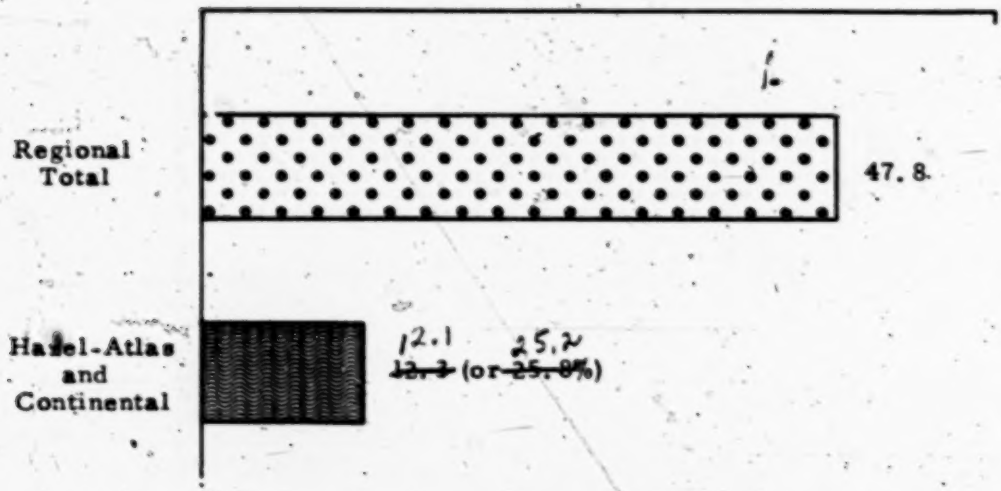
[fol. 1408] **TOTAL GLASS AND METAL CONTAINER SHIPMENTS AND HAZEL-ATLAS AND CONTINENTAL CAN PARTICIPATION**

1955

ALL TYPES

EAST OF ROCKIES

(Billions of Units)*



* Rounded to nearest Hundred Million.

Note: This chart is a consolidation of Glass and Metal Containers. See notes for Glass Containers and notes for Metal Containers.

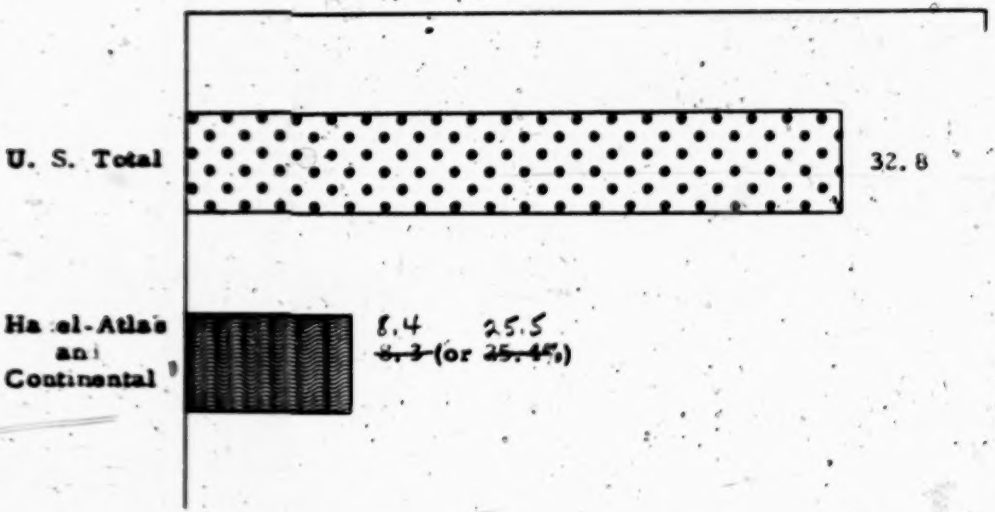
TOTAL GLASS AND METAL CONTAINER SHIPMENTS AND HAZEL-ATLAS AND CONTINENTAL CAN PARTICIPATION

1955

FOOD

TOTAL U. S. *

(Billions of Units) **



* Continental U. S.

** Rounded to nearest Hundred Million.

Source: This chart is a consolidation of Glass and Metal Containers for East and West Region.

U. S. Metal shipments from the Bureau of the Census, Factory Industry, Metal Container Summary, Series M75C, less Hawaiian Island shipments. Continental Can data from CX 134 through CX 2167. U. S. Glass shipments from the Bureau of the Census, Factory Industry, Glass Container Summary, Series M77C. Hazel-Atlas data from Defendants Answer to Government's Interrogatory No. 13.

[fol. 1410] 2942

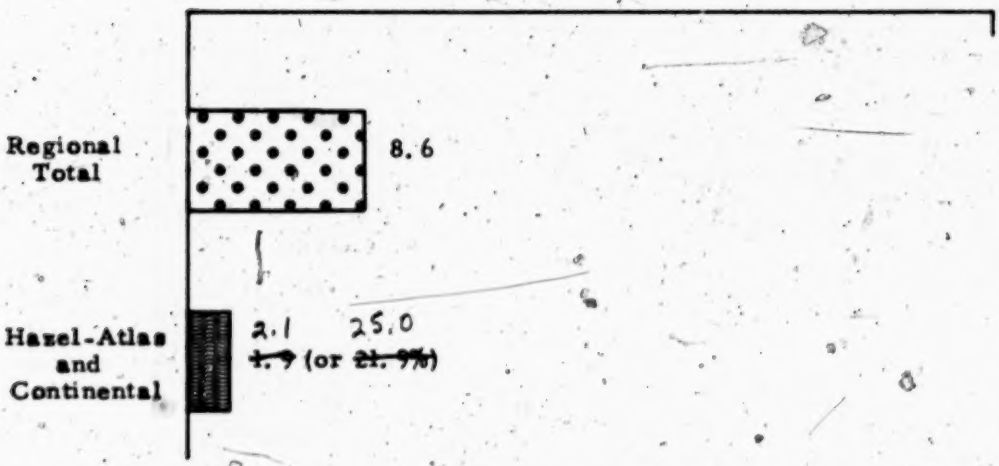
TOTAL GLASS AND METAL CONTAINER SHIPMENTS AND HAZEL-ATLAS AND CONTINENTAL CAN PARTICIPATION

1955

FOOD

WEST OF ROCKIES *

(Billions of Units) **



* States included Washington, Oregon, California, Idaho, Nevada, Utah and Arizona.

** Rounded to nearest Hundred Million.

Note: This chart is a consolidation of Glass and Metal Containers. See notes for Glass Containers and notes for Metal Containers.

2943

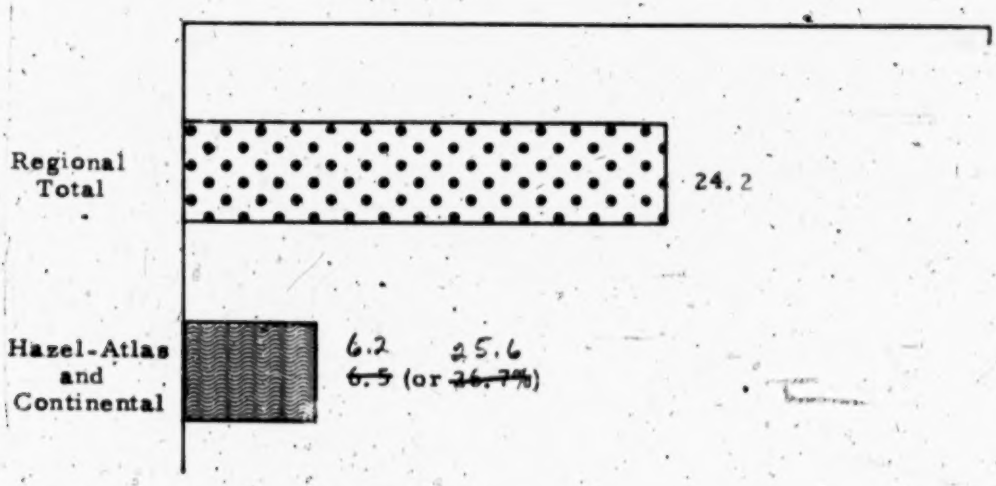
[fol. 1411] **TOTAL GLASS AND METAL CONTAINER SHIPMENTS AND HAZEL-ATLAS AND CONTINENTAL CAN PARTICIPATION**

1955

FOOD

EAST OF ROCKIES

(Billions of Units)*



* **Rounded to nearest Hundred Million.**

Note: This chart is a consolidation of Glass and Metal Containers. See notes for Glass Containers and notes for Metal Containers.

[fol. 1412] TOTAL GLASS AND METAL CONTAINER SHIPMENTS AND HAZEL-ATLAS AND CONTINENTAL CAN PARTICIPATION

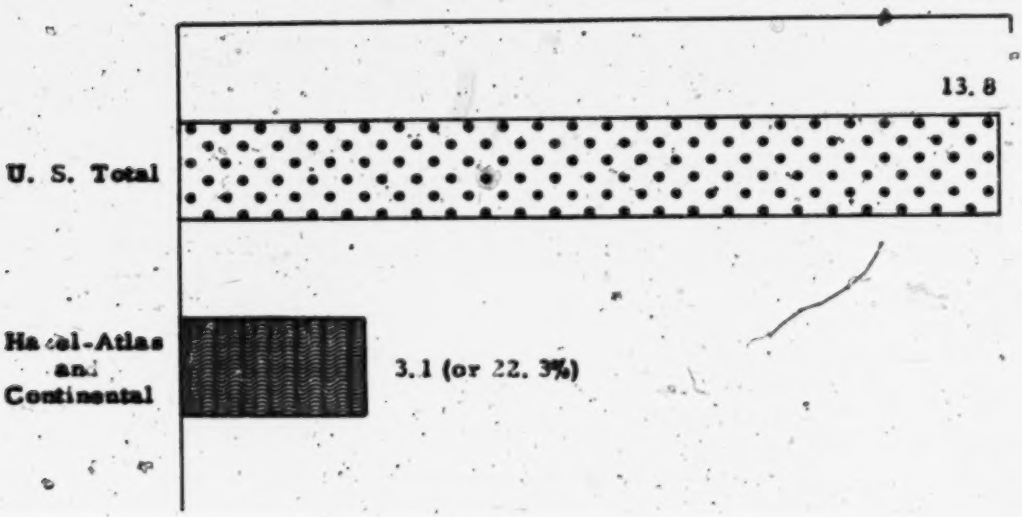
2944

1955

NON-FOOD

TOTAL U. S.*

(Billions of Units)**



* Continental U. S.

** Rounded to nearest Hundred Million.

Source: U. S. Metal shipments total from the Bureau of the Census, Facts for Industry, Metal Can Summary, Series M75D, less Hawaiian shipment of 44 short tons for 1955. U. S. Glass shipment total from the Bureau of the Census, Facts for Industry, Glass Container Summary, Series M77C. Hazel-Atlas data from Answer to Government's Interrogatory No. 13. Continental Can Co. data from DP 2134 through DP 2167. This chart is a consolidation of Glass and Metal Containers for East and West Regions.

[fol. 1413]

TOTAL GLASS AND METAL CONTAINER SHIPMENTS AND HAZEL-ATLAS AND CONTINENTAL CAN PARTICIPATION

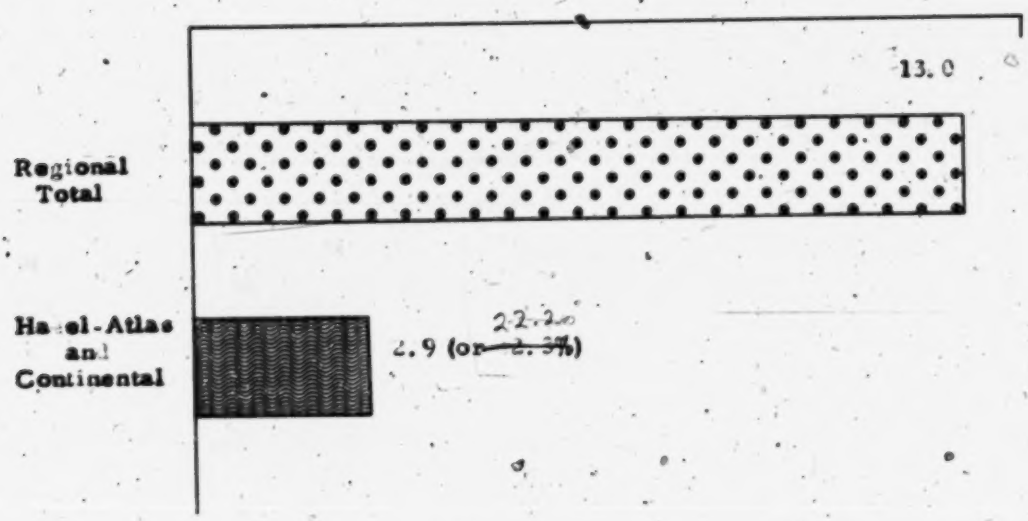
2945

1955

NON-FOOD

EAST OF ROCKIES

(Billions of Units)*



* Rounded to nearest Hundred Million.

Source: This chart is a consolidation of Glass and Metal Containers in East Region.

[fol. 1414]

2946

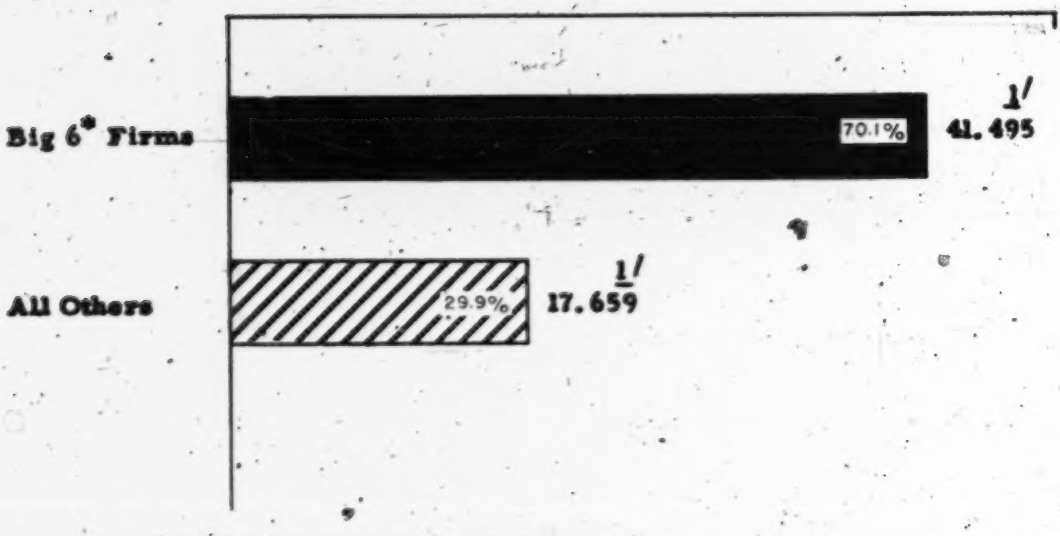
GLASS AND METAL CONTAINERS
LEADING GLASS AND METAL CONTAINER FIRMS

1955

TOTAL SHIPMENTS
CONTINENTAL UNITED STATES

UNITS

59.154 BILLIONS OF CONTAINERS



* 1. American Can Co. (Cans)
2. Continental Can Co. (Cans)
3. Owens-Illinois (Glass)
4. Anchor-Hocking (Glass)
5. National Can Co. (Cans)
6. Hazel-Atlas Co. (Glass)

1/ Rounded to Nearest Million.

Sources: See Following Page.

Sources: Glass, U. S. totals are from the Bureau of the Census, Facts for Industry, Glass Containers Summary, Series M32G. Company totals are from Glass Containers Manufacturers Institute, Inc.

Metal, U. S. and Company unit totals are the sum of all types of containers that were converted from base boxes of tin plate to short tons of steel by using Bureau of the Census conversion factors for metal cans, as published in the Facts for Industry, Metal Container Summary, Series M34D, then converted to (000) units by multiplying the number of cans which might have been produced from one short ton of steel consumed, (see Can Manufacturers Institute, Inc. for 1947-1956 and 1948-1957, pages 9 and 10, 11 and 12).

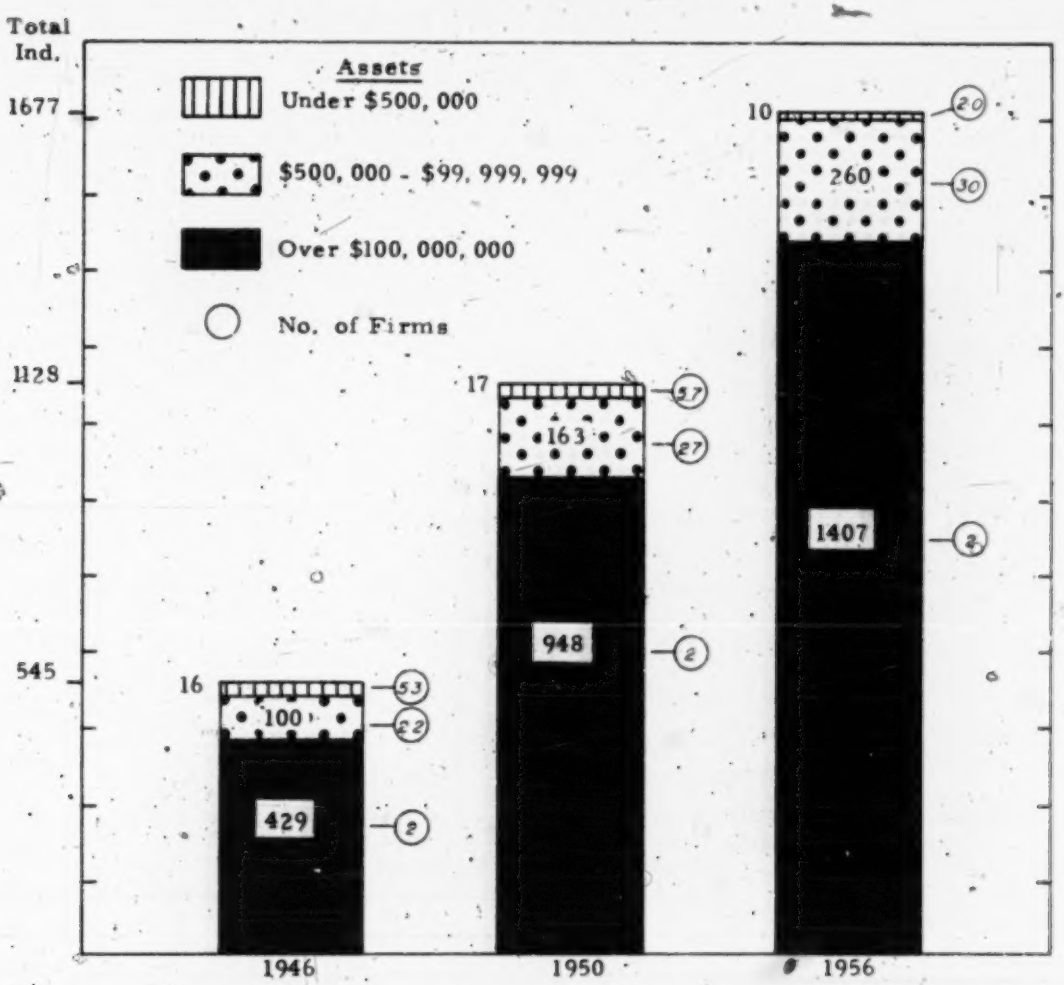
VII TIN CAN AND OTHER TINWARE INDUSTRY

[fol. 1417]

29449

TIN CAN AND OTHER TINWARE INDUSTRY
NUMBER OF FIRMS AND GROSS SALES OF INDUSTRY
BY GROUPINGS BASED ON FIRM ASSET CLASSIFICATION

(Millions of Dollars)*



* Rounded to nearest Million.

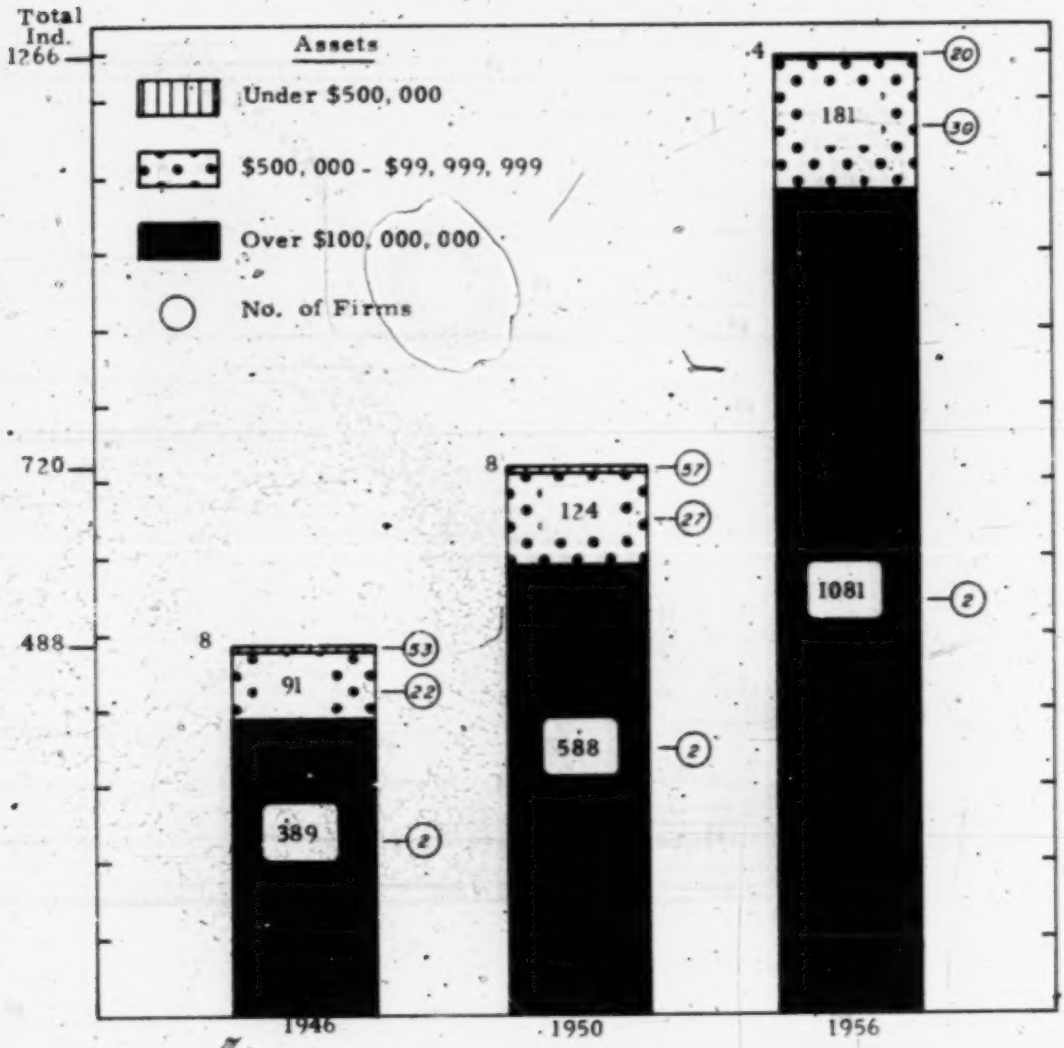
Source: Internal Revenue Services - Division of Statistics.

[fol. 1418]

2950

TIN CAN AND OTHER TINWARE INDUSTRY
NUMBER OF FIRMS AND TOTAL ASSETS OF INDUSTRY
BY GROUPINGS BASED ON FIRM ASSET CLASSIFICATION

(Millions of Dollars)*



* Rounded to nearest Million.

Source: Internal Revenue Services - Division of Statistics.

[fol. 1419]

2951-

SHIPMENTS OF COMMERCIAL CLOSURES VACUUM AND NON-VACUUM TYPES, SCREW THREAD, LUG AND CROWN CAPS IN THE U. S.

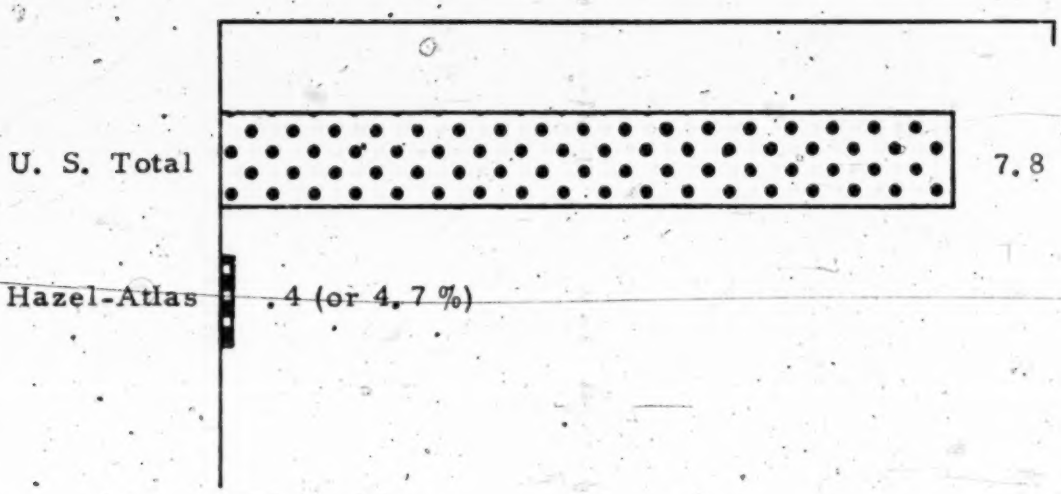
[fol. 1420]

29052

U. S. SHIPMENTS OF SCREW THREAD AND LUG TYPE CLOSURE (TIN MILL PRODUCTS) AND HAZEL-ATLAS COMPANY SHARE

1958

(Billions of Units)*



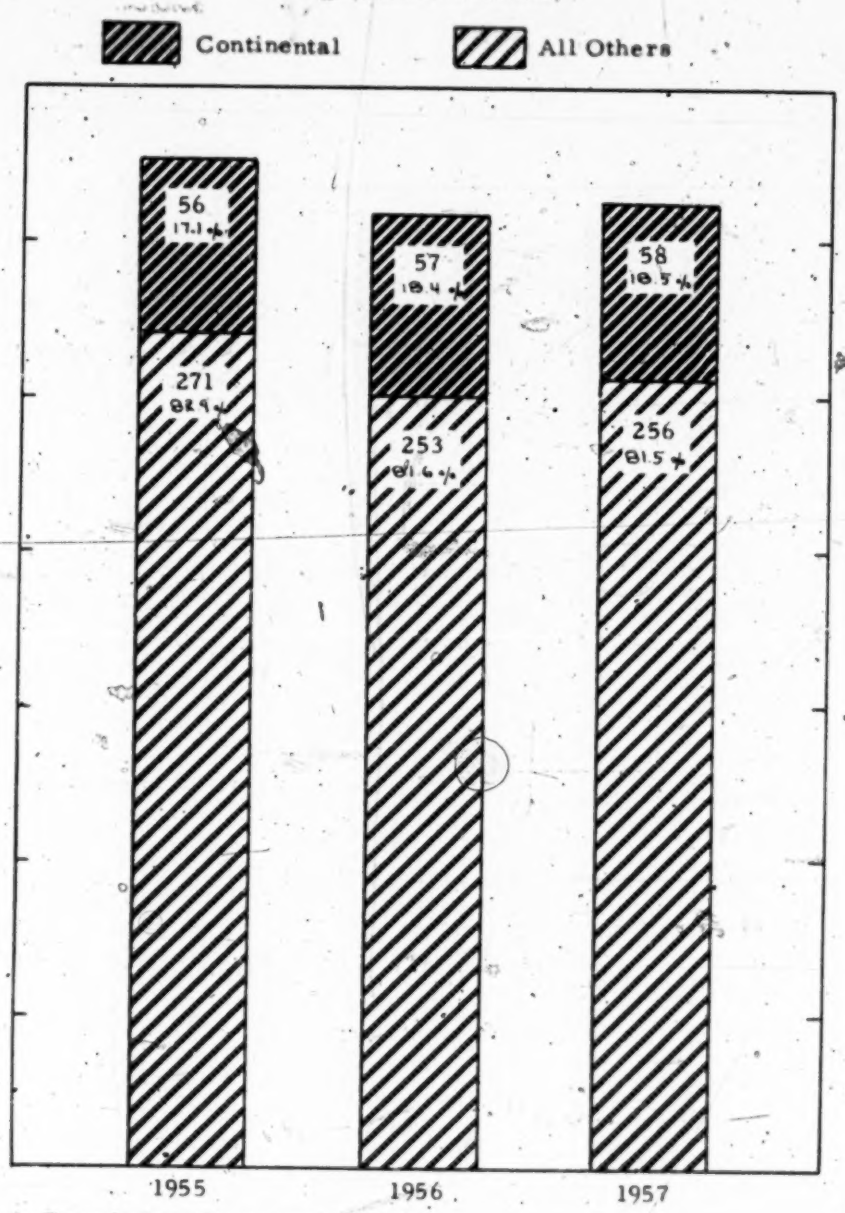
* Rounded to nearest million.

Sources: DP 3240 for Hazel-Atlas Co.
U. S. Totals from U. S. Department of Commerce, Bureau of the Census, Facts for Industry, Closures for Glass Containers and Crowns, Summary for 1958, M34H-08.

[fol. 1421] SHIPMENTS OF CROWN CAPS BY CONTINENTAL CAN AND THE REMAINING SEGMENT OF U. S. TOTAL

1955 - 1956 - 1957

(Millions of Gross)*



* Rounded to the nearest Million.

Source: Individual plant production and shipment statistics from DP 2343 through 2444 and 3297. U. S. Totals from U. S. Department of Commerce, Bureau of the Census, Facts for Industry, Closures for Glass Containers and Crowns. Series M34H-08 formerly M75C-06.

[fol. 1422] GOVERNMENT'S EXHIBIT 801

Plaintiff's Statistical Tables—Folder A

Section 1—Folder A

	Tabulation No.
Continental United States Shipments for 1955, 1956 and 1957 of	
All Types of Glass Containers	A-1a
All Food, Non-Food, Beer and Beverage Glass Containers	A-1b
Glass Food Containers	A-1c
Beer Bottles, Returnable and Non-Returnable	A-1d
Beverage Containers, Returnable and Non-Returnable	A-1e
Non-Food Glass Containers	A-1f

Section 2—Folder A

Continental United States Shipments for 1955, 1956 and 1957 of	
All Types of Metal Containers	A-2a,b
Food Containers	A-2c
Beer Containers	A-2d
Soft Drink Containers	A-2e
Non-Food Containers	A-2f

Section 3—Folder A

Continental United States Shipments for 1955, 1956 and 1957 of	
Glass and Metal Containers	A-3a
Glass and Metal Food, Non-Food, Beer, Soft Drink and Beverage Containers	A-3b
Glass and Metal Food Containers	A-3c
Glass and Metal Beer Containers	A-3d
Glass and Metal Soft Drink & Beverage Containers	A-3e
Glass and Metal Non-Food Containers	A-3f

[fol. 1423] Section 1—Folder A

[fol. 1424] 1a

Continental United States Shipments of *All Types of Glass Containers* for 1955, 1956 and 1957, Compared with the Leading Manufacturers in the Industry

(In Thousands of Units)

	All Types of Glass Container					
	1957		1956		1955	
	Volume	Percent	Volume	Percent	Volume	Percent
All Types Glass Containers, Total	20,153,088	100.0	19,807,632	100.0	19,357,056	100.0
Owens-Illinois Glass Co.	6,898,032	34.2	6,819,552	34.4	6,629,760	34.2
Anchor-Hocking Glass Co.	2,299,824	11.4	2,337,264	11.8	2,246,400	11.6
Continental Can Co.						
Hazel-Atlas Glass Div.	1,721,952	8.6	1,748,448	8.8	1,857,168	9.6
All Other Manufacturers	9,233,280	45.8	8,902,368	45.0	8,623,728	44.6

The following companies are included in the shipments by Anchor-Hocking Glass Co.,—Carr-Lowrey Glass Co.—Maywood Glass Co.—Swindell Bros., Inc.

Source: U. S. totals are from the Bureau of the Census, Facts For Industry, Glass Containers Summary, Series M33G. Company totals are from Glass Containers Manufacturers Institute, Inc.

[fol. 1425] 1b

[fol. 1425]

Continental United States Shipments of All Food, Non-Food, Beer and Beverage Glass Containers for 1955, 1956 and 1957, Compared with the Leading Manufacturers in the Industry

(In Thousands of Units)

	Food, Non-Food, Beer and Beverage					
	1957		1956		1955	
	Volume	Percent	Volume	Percent	Volume	Percent
Food, Non-Food, Beer, Beverage, Total	18,131,328	100.0	17,678,160	100.0	17,360,640	100.0
Owens-Illinois Glass Co.	6,235,632	34.4	6,100,848	34.5	5,921,568	34.1
Anchor-Hocking Glass Co.	2,171,232	12.0	2,195,856	12.4	2,120,400	12.2
Continental Can Co.						
Hazel-Atlas Div.	1,623,600	9.0	1,658,016	9.4	1,763,424	10.2
All Other Manufacturers	8,100,864	44.6	7,723,440	43.7	7,555,248	43.5

Note: The following companies are included in the shipments by Anchor-Hocking Glass Co.—Carr-Lowrey Glass Co.—Maywood Glass Co.—Swindell Bros. Inc.

Source: U. S. Totals from Bureau of the Census, Facts For Industry, Glass Containers Summary, Series M32G. Company totals are from Glass Containers Manufacturers Institute, Inc.

2957

[fol. 1426] 1c

Continental United States Shipments of *Glass Food Containers* for 1955, 1956 and 1957, Compared with the Leading Manufacturers in the Industry

(In Thousands of Units)

	Glass Food Containers					
	1957		1956		1955	
	Volume	Percent	Volume	Percent	Volume	Percent
Glass Food Containers, Total	8,337,024	100.0	8,123,472	100.0	8,043,552	100.0
Owens-Illinois Glass Co.	2,771,424	33.2	2,703,600	33.3	2,577,744	32.1
Anchor-Hocking Glass Corp.	1,329,552	16.0	1,370,736	16.9	1,296,576	16.1
Continental Can Co.						
Hazel-Atlas Glass Div.	835,200	10.0	873,216	10.7	926,784	11.5
All Other Manufacturers	3,400,848	40.8	3,175,920	39.1	3,242,448	40.3

Note: Containers included in Food Group Food, narrow neck and wide mouth—Dairy Products—Packers Tumblers.

The following companies are included in shipments by Anchor-Hocking Glass Co.—Carr-Lowrey Glass Co.—Maywood Glass Co.—Swindell Bros., Inc.

Source: U. S. Total from Bureau of the Census, Facts For Industry, Glass Containers Summary, Series M32G. Company totals are from Glass Containers Manufacturers Institute, Inc.

[fol. 1427] 1d

[fol. 1427]

Continental United States Shipments of *Beer Bottles, returnable and non-returnable* for 1955, 1956 and 1957, Compared with the Leading Manufacturers in the Industry

(In Thousands of Units)

	Beer Bottles Returnable and Non-Returnable					
	1957		1956		1955	
	Volume	Percent	Volume	Percent	Volume	Percent
Beer, returnable & non-returnable, Total	1,560,528	100.0	1,542,240	100.0	1,505,520	100.0
Owens-Illinois Glass Co.	540,864	34.7	550,656	35.7	528,192	35.1
Anchor-Hocking Glass Corp.	202,752	13.0	189,648	12.3	202,698	13.5
Continental Can Co.						
Hazel-Atlas Glass Div.	17,136	1.1	13,824	0.9	12,816	0.8
All Other Manufacturers	799,776	51.2	788,112	51.1	761,904	50.6

Note: The following companies are included in shipments by Anchor-Hocking Glass Co.—Carr-Lowrey Glass Co.—Maywood Glass Co.—Swindell Bros., Inc.

Source: U. S. Totals from Bureau of the Census, Facts For Industry, Glass Containers Summary, Series M32G. Company totals are from Glass Containers Manufacturers Institute, Inc.

[fol. 1428]

1e

Continental United States Shipments of *Beverage Containers, returnable and non-returnable*, for 1955, 1956 and 1957, Compared with the Leading Manufacturers in the Industry

(In Thousands of Units)

	Beverage Containers, Returnable and Non-Returnable					
	1957		1956		1955	
	Volume	Percent	Volume	Percent	Volume	Percent
Glass Beverage Containers, Total	1,400,544	100.0	1,501,488	100.0	1,402,848	100.0
Owens-Illinois Glass Co.	611,856	43.7	690,480	46.0	671,184	47.8
Anchor-Hocking Glass Corp.	115,056	8.2	105,264	7.0	74,304	5.3
Continental Can Co. Hazel-Atlas Glass Div.	8,640	0.6	1,296	0.1	576	0.1
All Other Manufacturers	664,992	47.5	704,448	46.9	656,784	46.8

Note: The following companies are included in shipments by Anchor-Hocking Glass Co.—Carr-Lowrey Glass Co.—Maywood Glass Co.—Swindell Bros., Inc.

Source: U. S. Totals from Bureau of the Census, Facts For Industry, Glass Containers Summary, Series M32G. Company totals are from Glass Containers Manufacturers, Inc.

[fol. 1429]

1f

[fol. 1429] 1f

Continental United States Shipments of *Non-Food Glass Containers* for 1955, 1956 and 1957, Compared with the Leading Manufacturers in the Industry

(In Thousands of Units)

	Non-Food Glass Containers					
	1957		1956		1955	
	Volume	Percent	Volume	Percent	Volume	Percent
Glass Non-Food Containers, Total	6,833,232	100.0	6,510,960	100.0	6,408,720	100.0
Owens-Illinois Glass Co.	2,311,488	33.8	2,156,112	33.1	2,144,448	33.5
Anchor-Hocking Glass Corp.	523,872	7.7	530,208	8.2	546,912	8.5
Continental Can Co. Hazel-Atlas Glass Div.	762,624	11.2	769,680	11.8	823,248	12.8
All Other Manufacturers	3,235,248	47.3	3,054,960	46.9	2,894,112	45.2

Note: Containers included in Non-Food Group Household and Industrial, narrow neck and wide mouth Toiletries and cosmetics, narrow neck and wide mouth Medicinal and Health Supplies, narrow neck and wide mouth.

The following companies are included in shipments by Anchor-Hocking Glass Co. —Carr-Lowrey Glass Co.—Maywood Glass Co.—Swindell Bros., Inc.

Source: U. S. Totals from Bureau of the Census, Facts For Industry, Glass Containers Summary, Series M32G. Company totals are from Glass Containers Manufacturers Institute, Inc.

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[fol. 1430] Section 2—Folder A

[fol. 1431] 2 a, b

Continental United States Shipments of *All Types* of Metal Containers for 1955, 1956 and 1957 Compared with the Leading Manufacturers in the Industry
(In Thousands of Units)

	All Types of Metal Containers					
	1957		1956		1955	
	Volume	Percent	Volume	Percent	Volume	Percent
All Types Metal Containers, Total	*41,529,266	100.0	42,812,540	100.0	39,796,497	100.0
American Can Co.	15,456,013	37.2	16,358,942	38.2	15,821,371	39.8
Continental Can Co.	13,596,456	32.8	13,840,068	32.3	12,972,860	32.6
National Can Co.	2,287,467	5.5	2,209,785	5.2	1,967,401	4.9
All Other Manufacturers	10,189,330	24.5	10,403,745	24.3	9,034,865	22.7

Note: U. S. and company unit totals are the sum of all types of containers that were converted from base boxes of tin plate to short tons of steel, by using Bureau of the Census conversion factors for metal cans, as published in the Facts For Industry, Metal Containers Summary, Series M34D, then converted to 000 units, by multiplying number of cans which might have been produced from one short ton of steel consumed, (see Can Mfgrs. Institute, Inc., for 1947-1956 and 1948-1957 (pages 9 and 10, 11 and 12).

Source: U. S. total from Bureau of the Census, Facts For Industry, Metal Container Summary, Series M34D, less Hawaiian Island shipments, the total tonnage deducted amounting to 93,088 short tons for 1955, 78,572 short tons for 1956, 49,934 short tons for 1957.

Data for Continental Can Co. is from DP 2134 through DP 2176. Metal can statistics for American Can Company and National Can Company are from those companies.

[fol. 1432] 2c

Continental United States Shipments of Metal *Food Containers*, for 1955, 1956 and 1957 Compared with the Leading Manufacturers in the Industry

(In Thousands of Units)

	Metal Food Containers					
	1957		1956		1955	
	Volume	Percent	Volume	Percent	Volume	Percent
Metal Food Containers, Total	25,379,074	100.0	26,883,120	100.0	24,734,349	100.0
American Can Co.	8,861,397	34.9	9,803,577	36.5	9,509,528	38.4
Continental Can Co.	7,515,128	29.6	7,902,712	29.4	7,444,024	30.1
National Can Co.	1,290,854	5.1	1,250,178	4.6	982,318	4.0
All Other Manufacturers	7,711,695	30.4	7,925,653	29.5	6,798,479	27.5

Food containers include the following commodity categories: fruit and vegetable, evaporated milk, other dairy products, fish and seafood meat, lard and shortening, all other food, coffee.

Note: U. S. and company shipments were converted from base boxes of tin plate to short tons of steel, by applying Bureau of the Census conversion factors for metal cans, as published in the Facts For Industry, Metal Containers Summary, Series M34D. Short ton shipments were then converted to thousands of units, by multiplying actual number of Food Cans which might have been produced from each short ton of steel consumed, (see Annual Report of Steel and Tin Consumed in Metal Cans published by Can Manufacturers Institute, Inc. for 1947—1956 pages 9 and 10 and 1948—1957, pages 11 and 12). Unit shipments were estimated on the basis of 9,237 food cans per ton for 1955; 9,254 food cans per ton for 1956 and 9,248 food cans per ton for 1957.

Source: U. S. Total from Bureau of the Census, Facts For Industry, Metal Container Summary, Series M34D, exclusive of Hawaiian Island shipments. The total tonnage deducted amounted to 93,044 short tons for 1955; 78,524 short tons for 1956; 49,835 short tons for 1957.

[fol. 1433] 2d

Continental United States Shipments of Metal *Beer Containers* for 1955, 1956 and 1957 Compared with the Leading Manufacturers in the Industry

(In Thousands of Units)

	Beer Containers					
	1957		1956		1955	
	Volume	Percent	Volume	Percent	Volume	Percent
Metal Beer Containers, Total	8,042,503	100.0	7,796,728	100.0	7,358,251	100.0
American Can Co.	3,857,553	48.0	3,873,769	49.7	3,714,577	50.5
Continental Can Co.	3,635,649	45.8	3,477,308	44.6	3,189,741	43.3
National Can Co.	361,193	4.5	333,047	4.3	344,275	4.7
All Other Manufacturers	138,108	1.7	112,604	1.4	109,658	1.5

Note: U. S. and Company shipments were converted from base boxes of tin plate to short tons of steel by applying Bureau of the Census conversion factors for metal cans, as published in the Facts For Industry, Metal Containers Summary, Series M34D. Short ton shipments were then converted to thousands of units, by multiplying actual number of beer cans which might have been produced from each short ton of steel consumed, (see Annual Report of Steel and Tin Consumed in Metal Cans published by Can Manufacturers Institute, Inc., for 1947—1956, pages 9 and 10 and 1948—1957, pages 11 and 12). Unit shipments were estimated on the basis of 10,161 beer cans per ton for 1955, 1956 and 1957.

Source: U. S. total from Bureau of the Census, Facts For Industry, Metal Container Summary, Series M34D.

Continental United States Shipments of Metal *Soft Drink Containers* for 1955, 1956 and 1957 Compared with the Leading Manufacturers in the Industry

(In Thousands of Units)

	Soft Drink Containers					
	1957		1956		1955	
	Volume	Percent	Volume	Percent	Volume	Percent
Metal Soft Drink Containers, Total	376,808	100.0	317,580	100.0	344,055	100.0
American Can Co.	224,479	59.6	175,686	55.3	156,874	45.6
Continental Can Co.	100,715	26.7	97,299	30.6	126,422	36.8
National Can Co.	51,513	13.7	39,210	12.4	57,521	16.7
All Other Manufacturers	101	.....	5,385	1.7	3,238	0.9

Note: U. S. and Company shipments were converted from base boxes of tin plate to short tons of steel, by applying Bureau of the Census conversion factors for metal cans, as published in the Facts For Industry, Metal Containers Summary, Series M34D. Short ton shipments were then converted to thousands of units by multiplying actual number of Soft Drink cans which might have been produced from each short ton of steel consumed (see Annual Report of Steel and Tin Consumed in Metal Cans published by Can Manufacturers Institute Inc., for 1947—1956, pages 9 and 10 and 1948—1957, pages 11 and 12). Unit shipments were estimated on the basis of 11167 soft drink cans per ton for 1955; 11171 soft drink cans per ton for 1956; and 11167 soft drink cans per ton for 1957.

Source: U. S. total from Bureau of the Census, Facts For Industry, Metal Container Summary, Series M34D.

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[fol. 1435] 2f

Continental United States Shipments of Metal *Non-Food Containers* for 1955, 1956 and 1957 Compared with the Leading Manufacturers in the Industry

(In Thousands of Units)

	Non-Food Containers					
	1957		1956		1955	
	Volume	Percent	Volume	Percent	Volume	Percent
Metal Non-Food Containers, Total	7,730,881	100.0	7,815,112	100.0	7,359,842	100.0
American Can Co.	2,512,584	32.5	2,505,910	32.1	2,440,392	33.2
Continental Can Co.	2,294,964	29.7	2,361,749	30.2	2,212,673	30.1
National Can Co.	583,907	7.5	587,350	7.5	583,287	7.9
All Other Manufacturers	2,339,426	30.3	2,360,103	30.2	2,123,490	28.8

Note: U. S. and Company shipments were converted from base boxes of tin plate to short tons of steel, by applying Bureau of the Census conversions factors for metal cans, as published in the Facts For Industry, Metal Containers Summary, Series M34D. Short ton shipments were then converted to thousands of units, by multiplying actual number of non-food containers which might have been produced from each short ton of steel consumed, (see Annual Report of Steel and Tin Consumed in Metal Cans published by Can Manufacturers Institute Inc., for 1947—1956, pages 9 and 10 and 1948—1957, pages 11 and 12). Unit shipments were estimated on the basis of 7681 non-food cans per ton for 1955; 7766 for 1956; and 7832 for 1957.

Source: U. S. total from Bureau of the Census, Facts For Industry, Metal Container Summary, Series M34D, less Hawaiian Island shipments, the tonnage deducted for non-food amounting to 44 short tons for 1955; 48 short tons for 1956; 79 short tons for 1957.

Non-Food containers include: Pet food, oil, open top (1 qt. and 5 qt.), all other non-food.

[fol. 1436]

Section 3—Folder A

[fol. 1437]

3a

This tabulation is a consolidation of Tables: A-1a and A-2a

Continental United States Shipments of Glass and Metal Containers for 1955, 1956 and 1957 Showing the Percentage of the Leading Manufacturers in the Industry

(In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total Glass and Metal Container Shipments	Percent
1957				
Continental United States	20,153,088	41,529,266	61,682,354	100.0
Continental Can Co.	1,721,952	13,596,456	15,318,408	24.8
American Can Co.	.....	15,456,013	15,456,013	25.1
Owens-Illinois Glass Co.	6,898,032	.....	6,898,032	11.2
Anchor-Hocking Glass Co.	2,299,824	.....	2,299,824	3.7
National Can Co.	.....	2,287,467	2,287,467	3.7
All Other Manufacturers	9,233,280	10,189,330	19,422,610	31.5
1956				
Continental United States	19,807,632	42,812,540	62,620,172	100.0
Continental Can Co.	1,748,448	13,840,068	15,588,516	24.9
American Can Co.	.....	16,358,942	16,358,942	26.1
Owens-Illinois Glass Co.	6,819,552	.....	6,819,552	10.9
Anchor-Hocking Glass Co.	2,337,264	.....	2,337,264	3.7
National Can Co.	.....	2,209,785	2,209,785	3.5
All Other Manufacturers	8,902,368	10,403,745	19,306,113	30.9
1955				
Continental United States	19,357,056	39,796,497	59,153,553	100.0
Continental Can Co.	.....	12,972,860	12,972,860	21.9
American Can Co.	.....	15,821,371	15,821,371	26.8
Owens-Illinois Glass Co.	6,629,760	.....	6,629,760	11.2
Anchor-Hocking Glass Co.	2,246,400	.....	2,246,400	3.8
National Can Co.	.....	1,967,401	1,967,401	3.3
Hazel-Atlas Glass Co.	1,857,168	.....	1,857,168	3.1
All Other Manufacturers	8,623,728	9,034,865	17,658,593	29.9

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[fol. 1438]

This tabulation is a consolidation of tables: A-1b & A-2ab

Continental United States Shipments of Glass and Metal Food, Non-Food, Beer, Soft Drink and Beverage Containers for 1955, 1956 and 1957, Showing the Percentage of Leading Manufacturers in the Industry

(In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total Glass and Metal Container Shipments	Percent
1957				
Food, Non-Food, Beer, Soft Drink, Beverage, U. S. Total	18,131,328	41,529,266	59,660,594	100.0
Continental Can Co.	1,623,600	13,596,456	15,220,056	25.5
American Can Co.	.....	15,456,013	15,456,013	25.9
Owens-Illinois Glass Co.	6,235,632	.....	6,235,632	10.5
Anchor-Hocking Glass Co.	2,171,232	.....	2,171,232	3.6
National Can Co.	.....	2,287,467	2,287,467	3.8
All Other Manufacturers	8,100,864	10,189,330	18,290,194	30.7
1956				
Food, Non-Food, Beer, Soft Drink, Beverage, U. S. Total	17,678,160	42,812,540	60,490,700	100.0
Continental Can Co.	1,658,016	13,840,068	15,498,084	25.6
American Can Co.	.....	16,358,942	16,358,942	27.1
Owens-Illinois Glass Co.	6,100,848	.....	6,100,848	10.0
Anchor-Hocking Glass Co.	2,195,856	.....	2,195,856	3.6
National Can Co.	.....	2,209,785	2,209,785	3.7
All Other Manufacturers	7,723,440	10,403,745	18,127,185	30.0
1955				
Food, Non-Food, Beer, Soft Drink, Beverage, U. S. Total	17,360,640	39,796,497	57,157,137	100.0
Continental Can Co.	.....	12,972,860	12,972,860	22.7
American Can Co.	.....	15,821,371	15,821,371	27.7
Owens-Illinois Glass Co.	5,921,568	.....	5,921,568	10.4
Anchor-Hocking Glass Co.	2,120,400	.....	2,120,400	3.7
National Can Co.	.....	1,967,401	1,967,401	3.4
Hazel-Atlas Glass Co.	1,763,424	.....	1,763,424	3.1
All Other Manufacturers	7,555,248	9,034,865	16,590,113	29.0

This tabulation is a consolidation of Tables: A-1c and A-2c

Continental United States Shipments of Glass and Metal Food Containers for 1955, 1956 and 1957, Showing the Percentage of the Leading Manufacturers in the Industry

(In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total Glass and Metal Container Shipments	Percent
1957				
Food Containers, Total	8,337,024	25,379,074	33,716,098	100.0
Continental Can Co.	835,200	7,515,128	8,350,328	24.8
American Can Co.	.....	8,861,397	8,861,397	26.3
Owens-Illinois Glass Co.	2,771,424	.....	2,771,424	8.2
Anchor-Hocking Glass Co.	1,329,552	.....	1,329,552	3.9
National Can Co.	.....	1,290,854	1,290,854	3.8
All Other Manufacturers	3,400,848	7,711,695	11,112,543	33.0
1956				
Food Containers, Total	8,123,472	26,883,120	35,006,592	100.0
Continental Can Co.	873,216	7,903,712	8,776,928	25.1
American Can Co.	.....	9,803,577	9,803,577	28.0
Owens-Illinois Glass Co.	2,703,600	.....	2,703,600	7.7
Anchor-Hocking Glass Co.	1,370,736	.....	1,370,736	3.9
National Can Co.	.....	1,250,178	1,250,178	3.6
All Other Manufacturers	3,175,920	7,925,653	11,101,573	31.7
1955				
Food Containers, Total	8,043,552	24,734,349	32,777,901	100.0
Continental Can Co.	.....	7,444,024	7,444,024	22.7
American Can Co.	.....	9,509,528	9,509,528	29.0
Owens-Illinois Glass Co.	2,577,744	.....	2,577,744	7.9
Anchor-Hocking Glass Co.	1,296,576	.....	1,296,576	4.0
National Can Co.	.....	982,318	982,318	3.0
Hazel-Atlas Glass Co.	926,784	.....	926,784	2.8
All Other Manufacturers	3,242,448	6,798,479	10,040,927	30.6

This tabulation is a consolidation of Tables: A-1d and A-2d

Continental United States Shipments of Glass and Metal Beer Containers for 1955, 1956 and 1957, Showing the Percentage of Leading Manufacturers in the Industry

(In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total Glass and Metal Container Shipments	Percent
1957				
Beer Containers, Total	1,560,528	8,042,503	9,603,031	100.0
Continental Can Co.	17,136	3,685,649	3,702,785	38.6
American Can Co.	.....	3,857,553	3,857,553	40.2
Owens-Illinois Glass Co.	540,864	.....	540,864	5.6
Anchor-Hocking Glass Co.	202,752	.....	202,752	2.1
National Can Co.	.....	361,193	361,193	3.8
All Other Manufacturers	799,776	138,108	937,884	9.7
1956				
Beer Containers, Total	1,542,240	7,796,728	9,338,968	100.0
Continental Can Co.	13,824	3,477,308	3,491,132	37.4
American Can Co.	.....	3,873,769	3,873,769	41.5
Owens-Illinois Glass Co.	550,656	.....	550,656	5.9
Anchor-Hocking Glass Co.	189,648	.....	189,648	2.0
National Can Co.	.....	333,047	333,047	3.6
All Other Manufacturers	788,112	112,604	900,716	9.6
1955				
Beer Containers, Total	1,505,520	7,358,251	8,863,771	100.0
Continental Can Co.	.....	3,189,741	3,189,741	36.0
American Can Co.	.....	3,714,577	3,714,377	41.9
Owens-Illinois Glass Co.	528,192	.....	528,192	6.0
Anchor-Hocking Glass Co.	202,608	.....	202,608	2.3
National Can Co.	.....	344,275	344,275	3.9
Hazel-Atlas Glass Co.	12,816	.....	12,816	0.1
All Other Manufacturers	761,904	109,658	871,562	9.8

[fol. 1441]

This tabulation is a consolidation of tables: A-1e & A-2e

Continental United States Shipments of *Glass and Metal Soft Drink & Beverage Containers* for 1955, 1956 and 1957, Showing the Percentage of Leading Manufacturers in the Industry

(In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total Glass and Metal Container Shipments	Percent
1957				
Soft Drink & Beverage Containers, Total	1,400,544	376,808	1,777,352	100.0
Continental Can Co.	8,640	100,715	109,355	6.2
American Can Co.	.....	224,479	224,479	12.6
Owens-Illinois Glass Co.	611,856	.....	611,856	34.4
Anchor-Hocking Glass Co.	115,056	.....	115,056	6.5
National Can Co.	.....	51,513	51,513	2.9
All Other Manufacturers	664,992	101	665,093	37.4
1956				
Soft Drink & Beverage Containers, Total	1,501,488	317,580	1,819,068	100.0
Continental Can Co.	1,296	97,299	98,595	5.4
American Can Co.	.....	175,686	175,686	9.7
Owens-Illinois Glass Co.	690,480	.....	690,480	38.0
Anchor-Hocking Glass Co.	105,264	.....	105,264	5.8
National Can Co.	.....	39,210	39,210	2.1
All Other Manufacturers	704,448	5,385	709,833	39.0
1955				
Soft Drink & Beverage Containers, Total	1,402,848	344,055	1,746,903	100.0
Continental Can Co.	.....	126,422	126,422	7.2
American Can Co.	.....	156,874	156,874	9.0
Owens-Illinois Glass Co.	671,184	.....	671,184	38.4
Anchor-Hocking Glass Co.	74,304	.....	74,304	4.3
National Can Co.	.....	57,521	57,521	3.3
Hazel-Atlas Glass Co.	576	.....	576	.....
All Other Manufacturers	656,784	3,238	660,022	37.8

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This tabulation is a consolidation of tables: A-1f & A-2f

Continental United States Shipments of Glass and Metal *Non-Food Containers* for 1956, 1955 and 1957, Showing the Percentage of the Leading Manufacturers in the Industry

(In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total Glass and Metal Container Shipments	Percent
1957				
Non-Food Containers, Total	6,833,232	7,730,881	14,564,113	100.0
Continental Can Co.	762,624	2,294,964	3,057,588	21.0
American Can Co.	.....	2,512,584	2,512,584	17.2
Owens-Illinois Glass Co.	2,311,488	.....	2,311,488	15.9
Anchor-Hocking Glass Co.	523,872	.....	523,872	3.6
National Can Co.	.....	583,907	583,907	4.0
All Other Manufacturers	3,235,248	2,339,426	5,574,674	38.3
1956				
Non-Food Containers, Total	6,510,960	7,815,112	14,326,072	100.0
Continental Can Co.	769,680	2,361,749	3,131,429	21.8
American Can Co.	.....	2,505,910	2,505,910	17.5
Owens-Illinois Glass Co.	2,156,112	.....	2,156,112	15.1
Anchor-Hocking Glass Co.	530,208	.....	530,208	3.7
National Can Co.	.....	587,350	587,350	4.1
All Other Manufacturers	3,054,960	2,360,103	5,415,063	37.8
1955				
Non-Food Containers, Total	6,408,720	7,359,842	13,768,562	100.0
Continental Can Co.	.....	2,212,673	2,212,673	16.1
American Can Co.	.....	2,440,392	2,440,392	17.7
Owens-Illinois Glass Co.	2,144,448	.....	2,144,448	15.6
Anchor-Hocking Glass Co.	546,912	.....	546,912	4.0
National Can Co.	.....	583,287	583,287	4.2
Hazel-Atlas Glass Co.	823,248	.....	823,248	6.0
All Other Manufacturers	2,894,112	2,123,490	5,017,602	36.4

Plaintiff's Statistical Tables—Folder B

SECTION 1 - FOLDER B

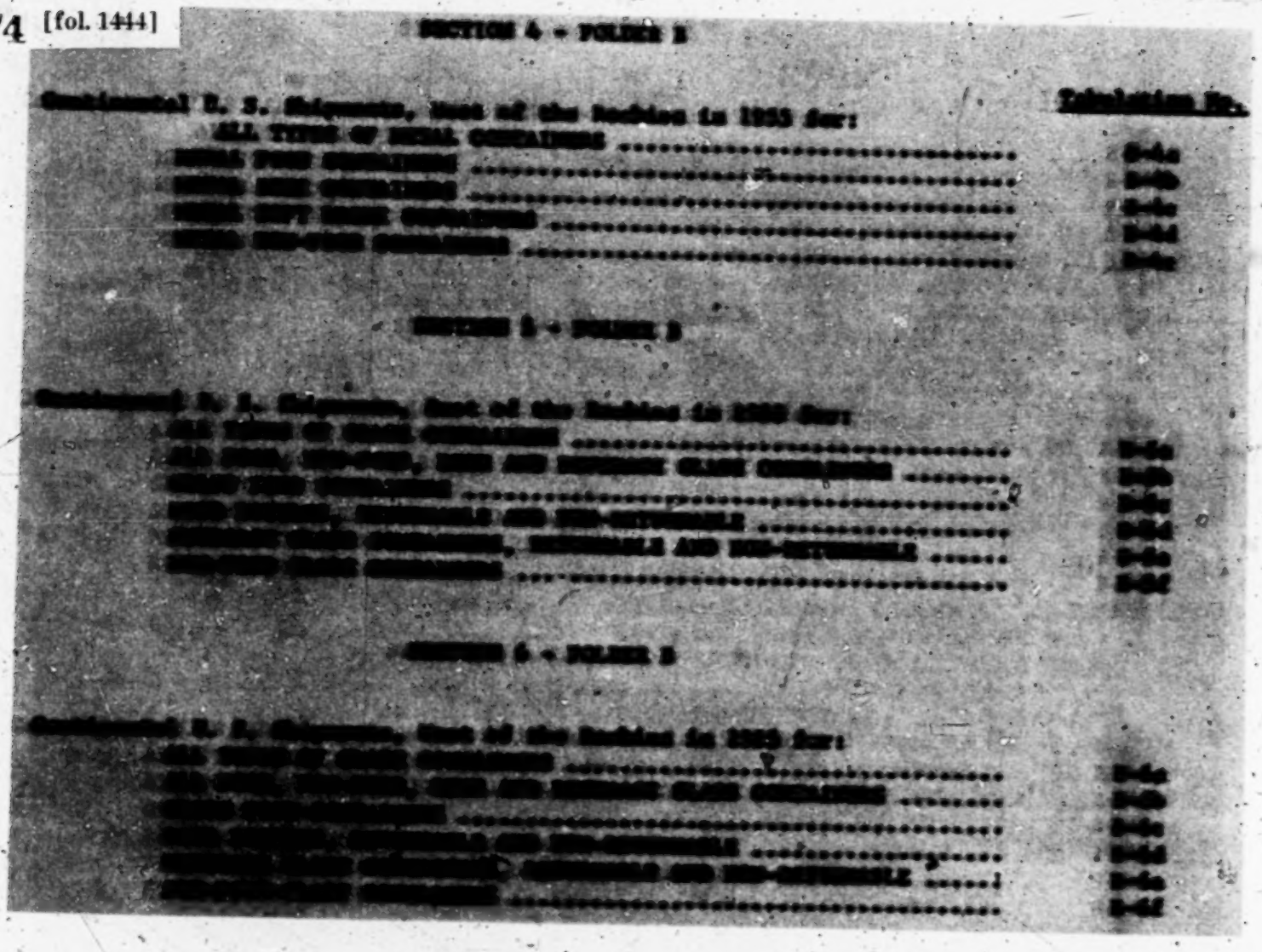
	Tabulation No.
Continental U. S. Shipments, East of the Rockies in 1955 for:	
GLASS AND METAL CONTAINERS, ALL TYPES	B-1a
GLASS AND METAL FOOD, NON-FOOD, BEER, SOFT DRINK AND BEVERAGE CONTAINERS	B-1b
GLASS AND METAL FOOD CONTAINERS	B-1c
GLASS AND METAL BEER CONTAINERS	B-1d
GLASS AND METAL SOFT DRINK AND BEVERAGE CONTAINERS	B-1e
GLASS AND METAL NON-FOOD CONTAINERS	B-1f

SECTION 2 - FOLDER B

Continental U. S. Shipments, West of the Rockies in 1955 for:	
GLASS AND METAL CONTAINERS, ALL TYPES	B-2a
GLASS AND METAL FOOD, NON-FOOD, BEER, SOFT DRINK AND BEVERAGE CONTAINERS	B-2b
GLASS AND METAL FOOD CONTAINERS	B-2c
GLASS AND METAL BEER CONTAINERS	B-2d
GLASS AND METAL SOFT DRINK AND BEVERAGE CONTAINERS	B-2e
GLASS AND METAL NON-FOOD CONTAINERS	B-2f

SECTION 3 - FOLDER B

Continental U. S. Shipments, East of the Rockies in 1955 for:	
ALL TYPES OF METAL CONTAINERS	B-3a
METAL FOOD CONTAINERS	B-3b
METAL BEER CONTAINERS	B-3c
METAL SOFT DRINK CONTAINERS	B-3d
METAL NON-FOOD CONTAINERS	B-3e



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[fol. 1446] 2976 NOTES APPLICABLE TO THE METAL CAN TABULATIONS IN SECTIONS 3 AND 4 OF FOLDER 8.

On a tonnage basis the West of the Rockies market area statistics were computed by subtracting the Hawaiian Islands metal can shipments for each end use category (shipments of American Can Co. plants in Hawaii) from the metal can statistics covering the west geographic area (States of Washington, Oregon and California) for 1955 as published in the Bureau of the Census, Facts For Industry, Metal Containers Summary, Series 75 D. Statistical data furnished the Department in base boxes of tin plate was converted to a tonnage basis by using conversion factors as published in the Facts For Industry, Metal Container Summary, Series M 34 D.

Since the west geographic area in the Bureau of the Census Facts For Industry tabulations includes the States of Washington, Oregon and California, the shipments from Utah can plants were included in the West of the Rockies market area. In the other States located west of the eastern boundaries of Idaho, Utah and Arizona there were no can manufacturing plants in 1955.

Metal can shipments, by end use categories, for the West of the Rockies market area, was then subtracted from the Continental U. S. total (exclusive of the Hawaiian Islands). The balance is the volume applicable to the East of the Rockies market area.

As mentioned above the computations dividing the East and West areas was accomplished on a tonnage basis. The tonnage was then converted to thousands of units by multiplying the number of cans which might have been produced for each end use category from one short ton of steel consumed (See Annual Reports of Steel and Tin Consumed in Metal Cans published by the Can Manufacturers Institute, Inc. for 1947-1956 and 1948-1957, pages 9, 10 and 11 and 12) and applied to the East and West tonnages.

The conversion factors used for 1955 in converting one ton of steel to can units were as follows:

(a) food containers 9,237 units
(b) beer containers 10,161 units
(c) soft drink containers 11,167 units
(d) non-food containers 7,631 units

Food containers include the following commodity categories:

(a) fruit and vegetables
(b) evaporated milk
(c) other dairy products
(d) fish and seafood
(e) meat
(f) lard and shortening
(g) all other food (including soup and baby food)
(h) coffee

Non-food containers include: pet food, oil, open top (1 qt. and 5 qt.) and all other non-food.

SOURCE: Bureau of the Census, Facts For Industry, Metal Container Summary, Series 75 D.
Data for Continental Can Co. is from DP 2134 through 2176. Metal can statistical data for American Can Co. and National Can Co. are from those companies.

[fol. 1447]

[redacted]

The following companies are included in the shipments by Anchor Hocking Glass Co:

(a) [redacted]
(b) [redacted]
(c) [redacted]

Containers included in the specified group are both narrow mouth and wide mouth glass containers used for household and industrial, utilitarian and decorative, and medicinal and health supplies.

Included in the food group of glass containers are both narrow mouth and wide mouth food, dairy products and packers tumblers.

Data for the Continental Can Co., Hazel-Atlas Division are from the answers to Plaintiff's Interrogatory No. 13. The information furnished reflects sales to customers rather than actual shipments. Plants and warehouses alike are treated as shipping points to which sales are attributed, and interplant shipments are eliminated. The data also contains a small amount of export sales plus other minor variations resulting from lost or misplaced data cards and the use of different methods of handling the data. For a more detailed description of these variations see pages 1 through 4 of the answer to Plaintiff's Interrogatory 13. For these reasons the figures set forth in the answer to Plaintiff's Interrogatory No. 13 do not exactly coincide with the statistical shipment data the Hazel-Atlas Glass Co. furnished the Glass Containers Manufacturers Institute Inc. which the Government used to Publish "G" Statistical Tables. In most instances these differences are minor.

The computation of the West and West of the Rockies section statistics included domestic shipments of glass containers by food, non-food, beer, beverage categories and were consolidated for those companies operating and shipping glass from plants West of the Rockies. This tabulation included the following companies operating plants in the States of California, Washington and Oregon.

Anchor-Hocking Glass Co.
(for its subsidiary Hayward Glass Co.)

Ball Brothers Company

Glass Containers Corporation
(and its subsidiary United Can and Glass Co.)

Continental Can Co., Hazel-Atlas Division
Kerr & Co., Inc. Alexander
Latchford Glass Co.
Northwestern Glass Co.
Owens-Illinois Glass Co.
Thatcher Glass Manufacturing Co.

The differences between the totals for the West of the Rockies section and the totals for the entire Continental United States segments the East of the Rockies section.

For the year 1955 Hazel-Atlas has been listed in third position because of their volume of shipments of all types of glass containers in that year. This does not necessarily mean that Hazel-Atlas ranked third in shipments for all end use categories of glass containers. For example, Hazel-Atlas was not among the first ten in total shipment of beer or beverage bottles. This fact in no way alters the percentage figures for Hazel-Atlas in these two categories.

[redacted]:

Continental United States totals are from the Bureau of Census, Pasts Bar Industry, Glass Containers Summary Series M 32 G and M 77 C.

Company data from:

(a) Glass Container Manufacturers Institute.
(b) Answer to Plaintiff's Interrogatory No. 13.
(c) Copies of monthly reports Series M 77 C made by Owens-Illinois Glass Co. to the Bureau of the Census covering the year 1955.
(d) Letter dated March 2, 1960 to Robert A. Hicks Acting Assistant Attorney General, Antitrust Division from William J. Owen, President, Thatcher Glass Manufacturing Co.
(e) Letter dated April 28, 1960 to Robert A. Hicks Acting Assistant Attorney General, Antitrust Division from William A. Starr, Vice President, Finance, Alexander H. Starr & Co., Inc.
(f) Letter dated February 22, 1960 to Robert A. Hicks Acting Assistant Attorney General, Antitrust Division from Alexander H. Brookes, Vice President and General Counsel Ball Brothers Company.

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Continental United States Shipments of All Types Glass and Metal Containers
Rest of the Bubble for 1955 Compared with the Leading Manufacturers in that Section
(In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total Glass and Metal Container Shipments	Percent
Rest of the Bubble Total	17,267,991	30,365,414	47,633,405	100.0
Anchor Cap Co.	-	12,056,747	12,056,747	25.3
Continental Can Co.	-	10 420 084 10,384,974	10 420 084 10,384,974	21.8 21.8
National Can Co.	-	1,112,520	1,112,520	2.3
Owens-Illinois Glass Co.	5,788,688	-	5,788,688	12.1
Anchor-Hocking Glass Co.	2,031,204	-	2,031,204	4.3
Ball Bros Glass Co.	1,634,600	-	1,634,600	3.4
All Other Manufacturers	7,788,726	6 916 063 6,781,173	14 769 787 14,494,897	30.9 30.3

Note: This tabulation is a compilation of tables.

Continental United States Shipments of Glass and Metal Food, Non-Food, Beer, Beverage and Soft Drink Containers East of the Rockies for 1955 Compared with the Leading Manufacturers in That Section
(In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total, Glass and Metal Container Shipments	Percent
East of the Rockies, Total	15,572,707	30,565,414	46,138,121	100.0
American Can Co.	-	12,056,747	12,056,747	26.1
Continental Can Co.	-	10,420,084 ~~10,694,974~~	10,420,084 ~~10,694,974~~	22.6 ~~23.2~~
National Can Co.	-	1,112,580	1,112,580	2.4
Owens-Illinois Glass Co.	5,166,944	-	5,166,944	11.2
Anchor-Hocking Glass Co.	1,989,024	-	1,989,024	4.2
Hazel-Atlas Glass Co.	1,584,000	-	1,584,000	3.4
All Other Manufacturers	6,898,739	6,976,063 ~~6,701,173~~	13,868,802 ~~13,599,912~~	30.1 ~~29.5~~

Continental United States Shipments of Glass and Metal Food Containers Rest of the Nation for 1955 Compared with the Leading Manufacturers in that Section (In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total, Glass and Metal Container Shipments	Percent
Rest of the Nation, Total	6,871,683	17,349,789	24,221,462	100.0
American Can Co.	-	6,578,589	6,578,589	27.1
Continental Can Co.	-	5,723,670	5,723,670	23.6
National Can Co.	-	487,242	487,242	2.0
Owens-Illinois Glass Co.	2,119,926	-	2,119,926	8.8
Anchor-Hocking Glass Co.	1,175,472	-	1,175,472	4.9
Hazel-Atlas Glass Co.	747,936	-	747,936	3.1
All Other Manufacturers	2,828,359	4,560,088	7,388,447	30.5

Continental United States Shipments of Glass and Metal Beer Containers
East of the Rockies for 1955 Compared with the Leading Manufacturers in that Section
(In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total, Glass and Metal Container Shipments	Percent
East of the Rockies, Total	1,865,378	6,158,247	7,483,625	100.0
American Can Co.	-	3,155,641	3,155,641	42.5
Continental Can Co.	-	2,784,754	2,784,754	37.5
National Can Co.	-	146,806	146,806	2.0
Owens-Illinois Glass Co.	449,996	-	449,996	6.1
Anchor-Hocking Glass Co.	151,488	-	151,488	2.0
Foremost-Dalton Glass Co.	12,672	-	12,672	0.2
All Other Manufacturers	651,222	71,046	722,268	9.7

Continental United States Shipments of Glass and Metal Beverage and Soft Drink Containers East of the Rockies for 1955 Compared with the Leading Manufacturers in that Section (In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total, Glass and Metal Container Shipments	Percent
East of the Rockies, Total	1,247,356	234,819	1,302,175	100.0
American Can Co.	-	128,434	128,434	8.6
Continental Can Co.	-	114,763	114,763	7.6
National Can Co.	-	8,364	8,364	0.6
Owens-Illinois Glass Co.	548,293	-	548,293	36.5
Anchor-Hocking Glass Co.	60,768	-	60,768	4.0
Hazel-Atlas Glass Co.	720	-	720	-
All Other Manufacturers	637,575	3,238	640,813	42.7

Continental United States Shipments of Glass and Metal Bar-Food [illegible] for 1955 compared with the Leading Manufacturers in that Section
(In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total, Glass and Metal Container Shipments	Percent
[illegible], Total	6,188,290	6,802,629	12,990,919	100.0
[illegible] Can Co.	-	2,202,143	2,202,143	16.9
[illegible] Can Co.	-	2061066 2,072,387	2061066 2,072,387	15.9 16.0
[illegible] Can Co.	-	470,188	470,188	3.6
[illegible]-Illinois Glass Co.	2,048,729	-	2,048,729	15.8
[illegible]-Stalling Glass Co.	541,296	-	541,296	4.2
[illegible]-Atlas Glass Co.	822,672	-	822,672	6.3
All Other Manufacturers	2,775,583	2,069322 4,833,394	4 844905 4,833,394	37.3 37.2

Continental United States Shipments of All Types Glass and Metal Containers West of the Rockies for 1955 Compared with the Leading Manufacturers in that Section (In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total Glass and Metal Container Shipments	Percent
West of the Rockies, Total	2,109,865	9,231,083	11,340,148	100.0
American Can Co.	-	3,764,624	3,764,624	33.2
Continental Can Co.	-	2,277,886	2,277,886	20.1
National Can Co.	-	854,881	854,881	7.5
Owens-Illinois Glass Co.	841,157	-	841,157	7.4
Anchor-Hocking Glass Co.	215,136	-	215,136	1.9
Hazel-Atlas Glass Co.	232,704	-	232,704	2.1
All Other Manufacturers	820,868	2,333,692	3,153,760	27.8

Note: This tabulation is a consolidation of tables.

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2b

Continental Total United States Shipments of Glass and Steel Pail, Including Pail, Bungs and Lugs, [illegible] Shipments Made Out of the Boston Use Area by Companies Having Plants in that Section (In Thousands of Units)

	Glass Container Shipments	Steel Container Shipments	Total, Glass and Steel Container Shipments	Percent
Rest of the Nation, Total	1,787,933	9,231,083	11,019,016	100.0
American Can Co.	-	3,764,684	3,764,684	34.2
Continental Can Co.	-	2,548 518 ~~2,871,086~~	2,548 518 ~~2,871,086~~	23.1 ~~26.1~~
National Can Co.	-	854,881	854,881	7.8
Owens-Illinois Glass Co.	754,684	-	754,684	6.8
Anchor-Hocking Glass Co.	191,376	-	191,376	1.7
Hazel-Atlas Glass Co.	190,656	-	190,656	1.7
All Other Manufacturers	651,877	2 063 060 ~~2,333,632~~	2 714 337 ~~2,984,509~~	24.6 ~~27.1~~

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2c

Continental United States Shipments of Glass and Metal Food Containers
Most of this Decline for 1955 compared with the Leading Manufacturers in that Section
(In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total, Glass and Metal Container Shipments	Percent
Most of the Decline, Total	1,171,839	7,384,640	8,556,409	100.0
[redacted]	-	2,939,819	2,939,819	34.3
[redacted]	-	1980265	1980265	23.1
[redacted]	-	1,730,984	1,730,984	20.2
[redacted]	-	485,076	485,076	5.8
[redacted]	457,818	-	457,818	5.4
[redacted]	121,184	-	121,184	1.4
[redacted]	155,688	-	155,688	1.8
[redacted]	437,849	1970280	2408129	28.2
421 Other Manufacturers	437,849	2,259,391	2,697,440	31.2

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Continental, United States Shipments of Glass and Metal Beer Containers
Part of The Section for 1955 Compared with the Leading Manufacturers in that Section
(In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total, Glass and Metal Container Shipments	Percent
Part of the Section, Total	840,148	1,280,054	1,440,146	100.0
American Can Co.	-	558,996	558,996	38.8
Continental Can Co.	-	404,987	404,987	28.1
National Can Co.	-	197,469	197,469	13.7
Owens-Illinois Glass Co.	78,196	-	78,196	5.4
Anchor-Hocking Glass Co.	51,120	-	51,120	3.6
Hazel-Atlas Glass Co.	-	-	-	-
All Other Manufacturers	110,886	38,612	149,438	10.4

Continental United States Shipments of Glass and Metal Beverage and Soft Drink Containers West of the Rockies for 1955 Compared with the Leading Manufacturers in that Section
(In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total, Glass and Metal Container Shipments	Percent
West of the Rockies, Total	155,492	89,236	244,728	100.0
American Can Co.	-	28,420	28,420	11.6
Continental Can Co.	-	11,659	11,659	4.8
National Can Co.	-	49,157	49,157	20.1
Owens-Illinois Glass Co.	122,891	-	122,891	50.2
Anchor-Hocking Glass Co.	13,536	-	13,536	5.5
Hazel-Atlas Glass Co.	-	-	-	-
All Other Manufacturers	19,065	-	19,065	7.8

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2f

Continental United States Shipments of Glass and Metal Non-Food Part of the Packing for 1955 Compared with the Leading Manufacturers in that Section (In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total, Glass and Metal Container Shipments	Percent
Part of the Packing, Total	220,440	557,203	777,643	100.0
American Can Co.	-	238,249	238,249	30.6
Continental Can Co.	-	140,286	140,286	18.0
National Can Co.	-	113,179	113,179	14.6
Owens-Illinois Glass Co.	95,719	-	95,719	12.3
Anchor-Hocking Glass Co.	5,616	-	5,616	0.7
Hazel-Atlas Glass Co.	35,568	-	35,568	4.6
All Other Manufacturers	83,537	65,489	149,026	19.2

[fol. 1464]

Shipments of All Types Metal Containers, East of the Rockies, for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	1955 Volume	Percent
East of the Rockies, Total	30,565,484	100.0
American Can Co.	12,836,747	39.5
	10420084	34.1
Continental Can Co.	10,684,974	35.0
National Can Co.	1,112,320	3.6
	6976063	22.8
All Other Manufacturers	6,701,173	21.9

[fol. 1465] 2995

3b

Shipments of Metal Food Containers, East of the Rockies, for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	1955 Volume	Percent
East of the Rockies, Total	17,349,709	100.0
American Can Co.	6,570,509	37.9
Continental Can Co.	~~5,723,070~~ 5459501	~~33.0~~ 31.5
National Can Co.	487,242	2.8
All Other Manufacturers	~~4,568,888~~ 4832457	~~26.3~~ 27.8

3c

Shipments of Metal Beer Containers, East of the Rockies, for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands Of Units)

	1955 Volume	Percent
East of the Rockies, Total	6,158,247	100.0
American Can Co.	3,155,641	51.2
Continental Can Co.	2,784,754	45.2
National Can Co.	146,806	2.4
All Other Manufacturers	71,046	1.2

3d

Shipments of Metal Soft Drink Containers, East of the Rockies, for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands Of Units)

		1955 Volume	Percent
East of the Rockies, Total		254,819	100.0
American Can Co.		128,454	50.4
Continental Can Co.		114,763	45.0
National Can Co.		8,364	3.3
All Other Manufacturers	a/	3,238	1.3

a/ In the East, Central and West geographical areas set forth in the Facts For Industry Metal Cans, Summary For 1955 the end use category for soft drink was consolidated with another end use category entitled, "all other food."
Since the three leading companies manufactured 99.0 of all cans for soft drinks the breakdown East and West of the Rockies was accomplished by selecting the plants of each company manufacturing this product and totaling the shipments from the plants located in each of the two market areas. There were 3238 units that could not be accounted for when comparing the total for all plants to the U.S. total and therefore placed in the East of the Rockies area under the heading "all other manufacturers."

Shipments of Metal Non-Food Containers, East of the Rockies for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	1955	
	Volume	Percent
East of the Rockies, Total	6,802,635	100.0
American Can Co.	2,202,143	32.4
Continental Can Co.	~~2,072,387~~ 2,061,066	~~30.5~~ 30.3
National Can Co.	470,108	6.9
All Other Manufacturers	~~2,058,000~~ 2,069,322	~~30.2~~ 30.4

SECTION 4 - FOLDER 3

4a

Shipments of All Types of Metal Containers, West of the Rockies, for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	1955 Volume	1955 Percent
West of the Rockies, Total	9,231,083	100.0
American Can Co.	3,764,624	40.8
	2548518	27.6
Continental Can Co.	~~3,877,006~~	~~34.7~~
National Can Co.	854,881	9.2
	2063060	22.4
All Other Manufacturers	~~2,333,692~~	~~25.3~~

[fol. 1471] 3001 4b

Shipments of Metal Food Containers, West of the Rockies, for 1955
Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	1955 Volume	1955 Percent
West of the Rockies, Total	7,384,640	100.0
American Can Co.	2,939,019	39.8
	1980265	26.8
Continental Can Co.	~~2,180,954~~	~~29.3~~
National Can Co.	495,076	6.7
	1970280	26.7
All Other Manufacturers	~~1,969,591~~	~~26.2~~

4c

Shipments of Metal Base Cartridges, West of the Rockies, for 1935
Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	1935 Volume	1935 Percent
West of the Rockies, Total	1,200,884	100.0
American Gun Co.	558,936	46.6
Continental Gun Co.	404,987	33.7
National Gun Co.	197,469	16.5
All Other Manufacturers	38,612	3.2

Shipments of Metal Soft Drink Containers, West of the Rockies, for 1955
Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	1955 Volume	1955 Percent
West of the Rockies, Total	89,836	100.0
American Can Co.	28,480	31.8
Continental Can Co.	11,699	13.1
National Can Co.	49,157	55.1
All Other Manufacturers	a/	-

a/ In the East, Central and West geographical areas set forth in the Facts For Industry Metal Cans, Summary For 1955 the end use category for soft drink was consolidated with another end use category entitled, "all other food."
Since the three leading companies manufactured 99.0 of all cans for soft drinks the breakdown East and West of the Rockies was accomplished by selecting the plants of each company manufacturing this product and totaling the shipments from the plants located in each of the two market areas. There were 3238 units that could not be accounted for when comparing the total for all plants to the U.S. total and therefore placed in the East of the Rockies area under the heading "all other manufacturers".

4c

Shipments of Metal Non-Food Containers, West of the Rockies for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	1955 Volume	1955 Percent
West of the Rockies, Total	557,203	100.0
American Can Co.	238,249	42.8
Continental Can Co.	151607 ~~141,886~~	27.2 ~~25.2~~
National Can Co.	113,179	20.3
All Other Manufacturers	54168 ~~65,489~~	9.7 ~~11.7~~

Continental U. S. Shipments of All Types of Glass Containers, East of the Rockies, for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	Units	Percent
East of the Rockies, Total	17,267,991	100.0
Owens-Illinois Glass Co.	5,700,603	33.5
Anchor Hocking Glass Co.	2,031,266	11.8
Hazel Atlas Glass Co.	1,636,400	9.5
All Other Manufacturers	7,793,724	45.2

Continental U. S. Shipments of All Food, Non-Food, Beer and Beverage Glass Containers, East of the Rockies, for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	Volume	Percent
East of the Rockies, Total	15,572,787	100.0
Owens-Illinois Glass Co.	5,166,964	33.2
Amber Bottling Glass Co.	1,929,834	12.4
Hazel Atlas Glass Co.	1,584,000	10.2
All Other Manufacturers	6,892,738	44.2

Continental U. S. Shipments of Glass Food Containers, East of the Rockies, for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	Volume	Percent
East of the Rockies, Total	6,871,693	100.0
Owens-Illinois Glass Co	2,119,926	30.8
Anchor Hocking Glass Co	1,175,472	17.1
Hazel Atlas Glass Co	747,936	10.9
All Other Manufacturers	2,828,359	41.2

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5d

Continental U S. Shipments of Beer Bottles, Returnable and Non-Returnable, East of the Rockies, for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	Volume	Percent
East of the Rockies, Total	1,265,378	100 0
Owens-Illinois Glass Co.	449,996	35.5
Anchor Hocking Glass Co.	151,408	12.0
Hazel Atlas Glass Co.	12,672	1.0
All Other Manufacturers	651,222	51.5

Continental U. S. Shipments of Beverage Glass Containers, Returnable and Non-Returnable, East of the Rockies, for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	Volume	Percent
East of the Rockies, Total	1,247,356	100.0
Owens-Illinois Glass Co.	548,293	44.0
Anchor Hocking Glass Co.	60,768	4.9
Hazel Atlas Glass Co.	720	0.6
All Other Manufacturers	637,575	51.1

Continental U. S. Shipments of Non-Food Glass Containers, East of the Rockies, for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	Volume	Percent
East of the Rockies, Total	6,188,280	100.0
Owens-Illinois Glass Co.	2,048,729	33.1
Anchor Hocking Glass Co.	541,296	8.7
Hazel Atlas Glass Co.	822,672	13.3
All Other Manufacturers	2,775,583	44.9

Continental U. S. Shipments of All Types of Glass Containers, West of the Rockies, for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	Volume	Percent
West of the Rockies, Total	2,109,065	100.0
Owens-Illinois Glass Co.	841,157	39.9
Anchor Hocking Glass Co.	215,136	10.2
Hazel-Atlas Glass Co.	232,704	11.0
All Other Manufacturers	820,068	38.9

Continental U. S. Shipments of All Food, Non-Food, Beer and Beverage Glass Containers, West of the Rockies, for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	Volume	Percent
West of the Rockies, Total	1,787,933	100.0
Owens-Illinois Glass Co.	754,624	42.2
Anchor-Hocking Glass Co.	191,376	10.7
Hazel-Atlas Glass Co.	190,656	10.7
All Other Manufacturers	651,277	36.4

Continental U. S. Shipments of Glass Food Containers, West of the Rockies, for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	Volume	Percent
West of the Rockies, Total	1,171,859	100.0
Owens-Illinois Glass Co.	457,818	39.1
Anchor Hocking Glass Co.	121,104	10.3
Hazel Atlas Glass Co.	155,088	13.2
All Other Manufacturers	437,849	37.4

Continental U. S. Shipments of Beer Bottles, Returnable and Non-Returnable, West of the Rockies, for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	Volume	Percent
West of the Rockies, Total	240,142	100.0
Owens-Illinois Glass Co.	78,196	32.6
Anchor-Hocking Glass Co.	51,120	21.3
Kanawha-Atlas Glass Co.	-	-
All Other Manufacturers	110,826	46.1

Continental U. S. Shipments of Beverage Glass Containers, Returnable and Non-Returnable, West of the Rockies, for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	Volume	Percent
West of the Rockies, Total	155,492	100.0
Owens-Illinois Glass Co.	122,891	79.0
Anchor Hocking Glass Co	13,536	8.7
Hazel Atlas Glass Co.	-	-
All Other Manufacturers	19,065	12.3

Continental U. S. Shipments of Non-Food Glass Containers, West of the Rockies, for 1955 Compared with the Leading Manufacturers in that Section

(In Thousands of Units)

	Volume	Percent
West of the Rockies, Total	220,440	100.0
Owens-Illinois Glass Co.	95,719	43.4
Anchor Hocking Glass Co.	5,616	2.6
Hazel Atlas Glass Co.	35,568	16.1
All Other Manufacturers	83,537	37.9

Continental United States Shipments of All Types Glass and Metal Containers For 1955 Compared With the Leading Manufacturers in the Industry (In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total Glass and Metal Container Shipments	Percent
Continental United States	19,357,056	39,796,497	59,153,553	100.0
American Can Co. (exc. Hawaii)	-	15,821,371	15,821,371	26.8
Continental Can Co.	-	12,967,602 ~~13,972,860~~	12,967,602 ~~13,972,860~~	21.9 ~~21.9~~
National Can Co.	-	1,967,401	1,967,401	3.3
Owens-Illinois Glass Co.	6,629,760	-	6,629,760	11.2
Anchor-Hocking Glass Co.	2,246,400	-	2,246,400	3.8
Hazel-Atlas Glass Co.	1,867,104	-	1,867,104	3.2
All Other Manufacturers	8,613,792	9,039,123 ~~9,034,865~~	17,652,915 ~~17,648,657~~	29.8 ~~29.8~~

Note: This tabulation is a consolidation of tables.

Continental United States Shipments of Glass and Metal, Food, Non-Food, Beer, Beverage and Soft Drink Containers for 1955 Compared with the Leading Manufacturers in the Industry (In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total, Glass and Metal Container Shipments	Percent
Food, Non-Food, Beer, Beverage	17,360,640	39,796,497	57,157,137	100.0
American Can Co.	-	15,821,371	15,821,371	27.7
Continental Can Co.	-	~~12,972,860~~ 12,968,602	~~12,972,860~~ 12,968,602	~~22.7~~ 22.7
National Can Co.	-	1,967,401	1,967,401	3.4
Owens-Illinois Glass Co.	5,921,568	-	5,921,568	10.4
Anchor-Hocking Glass Co.	2,120,400	-	2,120,400	3.7
Hazel-Atlas Glass Co.	1,774,656	-	1,774,656	3.1
All Other Manufacturers	7,544,016	~~9,834,865~~ 9,039,123	16,578,881 ~~16,583,139~~	29.0 ~~29.0~~

[fol. 1492]

Continental United States Shipments of Glass and Metal Food Containers For 1955 Compared with the Leading Manufacturers in the Industry (In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total, Glass and Metal Container Shipments	Percent
Food Containers	8,043,552	24,734,349	32,777,901	100.0
American Can Co.	-	9,509,528	9,509,528	29.0
Continental Can Co.	-	7,439766 ~~7,444,034~~	7,439766 ~~7,444,034~~	22.7 ~~22.7~~
National Can Co.	-	982,318	982,318	3.0
Owens-Illinois Glass Co.	2,377,744	-	2,377,744	7.9
Anchor-Hocking Glass Co.	1,296,576	-	1,296,576	4.0
Hazel-Atlas Glass Co.	903,024	-	903,024	2.7
All Other Manufacturers	3,266,208	6,802737 ~~6,798,479~~	10,068945 ~~10,064,687~~	30.7 ~~30.7~~

[fol. 1493]

Continental United States Shipments of Glass and Metal Beer Containers for 1955 Compared With the Leading Manufacturers in the Industry (In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total, Glass and Metal Container Shipments	Percent
Beer Containers	1,505,520	7,358,251	8,863,771	100.0
American Can Co.	-	3,714,577	3,714,577	41.9
Continental Can Co.	-	3,189,741	3,189,741	36.0
National Can Co.	-	344,275	344,275	3.9
Owens-Illinois Glass Co.	528,192	-	528,192	5.9
Anchor-Hocking Glass Co.	202,608	-	202,608	2.3
Hazel-Atlas Glass Co.	12,672	-	12,672	0.2
All Other Manufacturers	762,048	109,658	871,706	9.8

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Continental United States Shipments of Glass and Metal Beverage and Soft Drink Containers For 1955 Compared with the Leading Manufacturers in the Industry (In Thousands of Units)

	Glass Container Shipments	Metal Container Shipments	Total, Glass and Metal Container Shipments	Percent
Beverage and Soft Drink	1,402,348	344,055	1,746,903	100.0
American Can Co.	-	156,874	156,874	9.0
Continental Can Co.	-	126,422	126,422	7.2
National Can Co.	-	57,521	57,521	3.3
Owens-Illinois Glass Co.	671,184	-	671,184	38.4
Anchor-Hocking Glass Co.	74,304	-	74,304	4.3
Hazel-Atlas Glass Co.	720	-	720	-
All Other Manufacturers	656,640	3,238	659,878	37.8

Continental United States Shipments of Glass and Metal Non-Food Containers
For 1955 Compared with the Leading Manufacturers in the Industry
(In Thousand of Units)

	Glass Container Shipments	Metal Container Shipments	Total, Glass and Metal Container Shipments	Percent
Non-Food Containers	6,408,720	7,359,842	13,768,562	100.0
American Can Co.	-	2,440,392	2,440,392	17.7
Continental Can Co.	-	2,212,673	2,212,673	16.1
National Can Co.	-	583,287	583,287	4.2
Owens-Illinois Glass Co.	2,144,448	-	2,144,448	15.6
Anchor-Hocking Glass Co.	546,912	-	546,912	4.0
Hazel-Atlas Glass Co.	858,240	-	858,240	6.2
All Other Manufacturers	2,859,120	2,123,490	4,982,610	36.2

[fol. 1496]

GOVERNMENT'S EXHIBIT 803

Plaintiff's Statistical Tables—Folder C

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Continental United States Shipments of Metal Containers for Sale by the Three Leading Manufacturers (Excludes Metal Containers Shipments by Captive Plants)

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3-c

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Production and Shipments of Vacuum Type Commercial Closures (Tin Mill Product) in 1958 By White Cap Company and Screw Thread and Lug Type (Non-Vacuum) Commercial Closures by Hazel-Atlas Glass Co.

5-c

The Value of Packaging Materials for 1957 and 1958 Compared to the Net Sales and Operating Revenues of Continental Can Company

[fol. 1497]

1c

Continental United States Shipments of Metal Containers for Sale by the Three Leading Manufacturers (Excludes Metal Containers Shipments by Captive Plants)

(In Short Tons of Steel Consumed)

	1957		1956		1955	
	Tons	Percent	Tons	Percent	Tons	Percent
Continental United States	4,556,616		4,707,099		4,390,911	
Less Shipments by Manufacturers For Own Use	632,859		672,270		574,144	
Shipments For Sale In Continental U.S.	3,923,757	100%	4,034,829	100%	3,816,767	100%
Shipments By						
American Can Co.	1,678,751	42.8	1,779,031	44.1	1,726,842	45.2
Continental Can Co.	1,477,390	37.6	1,509,131	37.4	1,419,204	37.2
National Can Co.	254,296	6.5	247,014	6.1	221,318	5.8
All Other Manufacturers	513,320	13.1	499,653	12.4	449,403	11.8

Note: Continental United States includes the 48 States only.

Tonnage totals for the three companies are the result of converting base boxes of steel consumed by using Bureau of the Census end use conversion factors for metal cans as published in Facts For Industry, Series M34D.

"All other manufacturers" represents the difference of the total shipments for sales and the combined total for the three manufacturers. Continental U. S. Totals are from the Bureau of Census, Facts For Industry, Series M34D and adjusted by excluding the shipments by plants operating in Hawaii which totals (1955–93,088 tons; 1956–78,572 tons and 1957–49,934 tons.)

Source: Bureau of the Census, Facts For Industry, Series M34D. Metal can statistical data obtained from American Can Co. and National Can Co. Data for Continental Can is from DP 2134 through DP 2176.

Can Co. Data for Continental Can is from DP 2134 through DP 2176.

[fol. 1498] 2c

Production and Shipments of Crown Caps by Continental Can Company Compared to United States T[illegible] for the Years 1955, 1956 and 1957

(Gross)

	1957		1956		1955	
	Production	Shipments	Production	Shipments	Production	Shipments
Total for the United States	317,646,839	313,772,070	298,387,180	310,202,831	332,645,526	326,733,012
Percent	100%	100%	100%	100%	100%	100%
Continental Can Company	60,991,000	58,106,000	56,615,000	57,128,000	54,284,852	55,798,548
Percent of Total for United States	19.2%	18.5%	19.0%	18.4%	16.3%	17.1%
All other Manufacturers	256,655,839	255,666,070	241,772,180	253,074,831	278,360,674	270,934,464
Percent of Total for United States	80.8%	81.5%	81.0%	81.6%	83.7%	82.9%

Source: Continental Can Co. production and shipment statistics from DP 2343 through 2444 and 3297 U. S. totals from U. S. Department of Commerce, Bureau of the Census, Facts For Industry Closures for Glass Containers and Crowns. Series M34H-08, M75C-06. "All other Manufacturers" represents the difference in the totals for the United States and Continental Can Co.

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[fol. 1499] 3c

1956 and 1957 Production and Shipments of Vacuum, Screw Thread, and Lug Commercial Closures Made From Tin Mill Products By White Cap Company and Hazel-Atlas Glass Co. in 1956
(In thousands of units)

	1956		1957	
	Production	Shipments	Production	Shipments
U. S. Production and Shipments of:				
Screw thread and lug types made from tin mill products	8,380,719	8,157,737	8,752,629	8,558,968
Vacuum (friction) type	3,281,742	3,287,705	2,693,747	2,622,421
Total U. S.	11,662,461	11,445,442	11,446,376	11,181,389
	100%	100%	100%	100%
White Cap Company	460,597	377,223	1,226,001	1,131,570
Reported under vacuum (friction) type	1,747,483	1,740,549	1,127,040	1,175,197
Total White Cap	2,208,080	2,117,772	2,353,041	2,306,717
Percent of U. S. Total	18.9%	18.5%	20.6%	20.6%
Hazel-Atlas Glass Co.	440,618	431,561	392,518	380,047
Percent of U. S. Total	3.8%	3.8%	3.4%	3.4%
Total for White Cap and Hazel-Atlas	2,648,698	2,549,333	2,745,559	2,686,764
Percent of U. S. Total	22.7%	22.3%	24.0%	24.0%

Source: D.P. 2297 through 2320 for White Cap Company. D.P. 2273 through 2296 for Hazel-Atlas Glass Co.
U. S. Totals from U. S. Department of Commerce, Bureau of the Census, Facts For Industry, Closures For Glass Containers and Crowns. M34H–07.

Note: Prior to 1958 top seal vacuum closures with a lug thread are included with screw, thread and lug type ~~vacuum type~~ caps.

[fol. 1500] 4c

[fol. 1500]

4c

Production and Shipments of Vacuum Type Commercial Closures (Tin Mill Product) in 1958 by White Cap Company and Screw Thread and Lug Type (Non-Vacuum) Commercial Closures by Hazel-Atlas Glass Co.

(In thousands of units)

	1958	
	Production	Shipments
U. S. Production and Shipments of vacuum type closures	4,332,540	4,301,952
Percent	100%	100%
White Cap Company		
Reported under vacuum type, tin mill products	2,670,132	2,607,100
Percent of U. S. Total	61.6%	60.6%
U. S. Production and Shipments of screw thread and lug type closures, tin mill products	7,749,183	7,776,361
Percent	100%	100%
Hazel-Atlas Glass Co.		
Reported under screw thread and lug type closures, tin mill products	364,240	365,356
Percent of U. S. Total	4.7%	4.7%

Source: D.P. 3297 for White Cap Company. D.P. 3240 for Hazel-Atlas Glass Co.
U. S. Totals from U. S. Department of Commerce, Bureau of the Census, Facts For Industry, *Closures for Glass Containers and Crowns*. M34H-08.

Note: Prior to 1958 top seal vacuum closures with a lug thread are included with screw, thread and lug type ~~vacuum type~~ caps.

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[fol. 1501] GOVERNMENT'S EXHIBIT 805

Willkie Farr Gallagher Walton & FitzGibbon
15 Broad Street
New York 5, N. Y.

June 9, 1960.

Honorable Robert A. Bicks,
Assistant Attorney General,
Antitrust Division,
United States Department of Justice,
Washington, D. C.

Re: United States of America v Continental Can Company, Inc. and Hazel-Atlas Glass Company—Civil Action No. 112-387

Dear Mr. Bicks:

This is to advise that in the interest of expediting the trial of the above case, defendant does not propose to make any objections to the admissibility of the following numbered documents in the event they are offered in evidence, even though their relevance is unclear. With respect to those documents which were produced by defendant, the numbers assigned by the defendant at the time they were produced are given in parenthesis immediately following the number assigned by the Government.

G-132
G-170B
G-171-184, inclusive
G-299
G-300
G-403 (DP-2543)
G-405A (DP-2519)
G-423 (DP-3132)
G-424 (DP-3131)
G-425 (DP-2497)
G-426 (DP-2908)
G-427 (DP-2909)
G-448 to G-466 inclusive (DP-2560 to DP-2578 inclusive)
[fol. 1502] G-467 (DP-2559)

G-468 (DP-2558)
G-469 (DP-2557)
G-470 to G-588, inclusive (DP-2579 to DP-2687, inclusive)
G-651 (DP-324)
G-652 (DP-326)
G-653 (DP-327)
G-654 (DP-330)
G-655 (DP-331)
G-657 (DP-378)
G-658 (DP-395)
G-659 (DP-424)
G-660 (DP-426)
G-661 (DP-496)
G-662 (DP-497)
G-663 (DP-503)
G-664 (DP-545)
G-665 (DP-554)
G-666 (DP-558)
G-667 (DP-594)
G-668 (DP-712)
G-669 (DP-716)
G-670 (DP-719)
G-671 (DP-723)
G-672 (DP-730)
G-673 (DP-710)
[fol. 1503] G-674
G-675 (DP-587)
G-676 (DP-479)
G-677 (DP-375)
G-678 (DP-381)
G-679 (DP-422)
G-680 (DP-439)
G-681 (DP-477)
G-682 (DP-569)
G-683 (DP-413)
G-694
G-695
G-696 (DP-720)
G-697 (DP-765)
G-699 (DP-714)
G-701 (DP-391)

G–702 (DP–392)
G–703 (DP–546)
G–704 (DP–377)
G–705 (DP–393)
G–706 (DP–604)
G–708 (DP–615)
G–709 (DP–325)
G–710 (DP–329)
G–711 (DP–362)
G–712 (DP–350)
G–713 (DP–365)
G–716
[fol. 1504] G–718
G–719 (DP–433)
G–720 (DP–437)
G–721 (DP–547)
G–722 (DP–562)
G–723 (DP–966)
G–724 (DP–954)
G–725 (DP–951)
G–726 (DP–947)
G–727 (DP–940)
G–728 (DP–563)
G–729 (DP–941)
G–730 (DP–945)
G–731 (DP–948)
G–732 (DP–953)
G–733 (DP–959)
G–734 (DP–944)
G–735 (DP–946)
G–736
G–737
G–739 (DP–887)
G–740 (DP–889)
G–742 (DP–897)
G–743 (DP–904)
G–744 (DP–914)
G–746 (DP–926)
G–747 (DP–927)
[fol. 1505] G–760 (DP–817)
G–761 (DP–808)
G–762 (DP–816)

G–763 (DP–818)
G–764 (DP–783)
G–765 (DP–785)
G–766 (DP–780)
G–767 (DP–776)
G–768 (DP–820)
G–769 (DP–778)
G–770 (DP–812)
G–788

Very truly yours
Helmer R. Johnson.

cc: Honorable Frederick van Pelt Bryan, United States Court House, Foley Square, New York 7, New York.

[fol. 1506] GOVERNMENT'S EXHIBIT 806

Joint Session Aerosol Division and Insecticide Division

Mid-Year Meeting

May 21 and 22, 1957

Chemical Specialities Manufacturers Association, Inc.

[fol. 1506a] Joint Session—Aerosol Division and Insecticide Division Mid-Year Meeting

May 21 and 22, 1957

Tenth Anniversary Symposium

Moderators: E. J. McKernan
Seaquist Manufacturing Company
Cary, Ill.
and
John A. Rodda
Fairfield Chemicals Division
Food Machinery and Chemical
Corporation, New York, N. Y.

Aerosol Containers—1947, Present and Future

by John M. Heinen, Jr.
Continental Can Company, Inc.
Chicago, Ill.

In the animal world, the ages at which particular breeds come to maturity vary widely. Some turtles, for instance, may be young at the age of 50 years while the entire life span of certain insects may be only a matter of hours or days. So it is in the business world, particularly in the field of packaging. Some excellent ideas never become fully developed; others with little apparent merit may reach general acceptance overnight, only to fade out equally fast; still others enjoy a steady growth and ever-increasing popularity. Take, for example, the aerosol industry, which was mothered by wartime necessity and carefully nurtured by hopeful entrepreneurs in the period immediately following World War II, and now in this its tenth year of commercial acceptance has reached maturity. The name "aerosol" is commonplace today, and, what is more important, people use aerosols, they want them, and they buy them and in rather astounding quantities. Aerosol packages accounted for $320 million last year in the United States alone, and the industry is just beginning to hit its stride. This meteoric rise has been due to steady progress in the development of containers, valves, and propellants as well as continuing advances in product formulation.

General speaking, the term "aerosol" is applied to those products which derive their dispensing pressure from a liquefied gas propellant in direct contact with the product. From a commercial standpoint, foams as well as airborne and surface-deposited sprays of either liquid or powder are properly classified as aerosols. Pressurized food products such as whipped cream use a compressed gas as the propellent—usually a mixture of nitrous oxide and carbon dioxide. Pressure packaging would then be a general term which could apply to all products packed in containers with an internal pressurized atmosphere which serves the purpose of expelling the contents.

Let's take a quick look at the background of this rapidly growing industry, particularly from the standpoint of the container. The story of the development of the original high-pressure "bug-bomb" by Goodhue and Sullivan and its subsequent use by the military during World War II is too well known to be repeated here. Suffice it to say that 40 million 1-lb liquefied gas aerosols were used with striking success.

Even before the end of the war it was quite evident that the heavy, cumbersome, expensive military aerosol bomb would have to be replaced by a much simpler and less costly package if this unique method of dispensing insecticide, and perhaps other products, was to find a place in the civilian market. The container industry picked up the challenge of providing a throw-away container which would retain the convenience aspect and functional characteristics of the heavy welded steel "bug-bombs" but would be light in weight, easy to fill, simple to operate, and above all less costly.

The natural initial choice of a container which would meet these requirements was the beer can, which was in fact a pressure container. It would not, however, withstand the high pressure (70 psi gage at 70F) then in use. The most obvious and practical approach was to reduce the pressure in the aerosol container without sacrificing performance in terms of killing power. The two-piece drawn container made by Crown Can Company offered immediate possibilities. Continental Can Company meanwhile developed the three-piece soldered side seam beer can container into an aerosol container. Our aim was to obtain the

desired killing power of the insecticide by the use of a propellant pressure low enough to permit the use of the cheapest possible container. Strengthening the can body of the three-piece can by structure and manufacturing improvements was relatively simple, but perfecting the valve was another matter. The ideal valve had to: (1) be low in cost, (2) provide a suitable aerosol spray at a lower pressure, (3) provide consistent performance, (4) be readily assembled, and (5) be easily operated. No such valve was available, and entry of the three-piece can on the market was delayed for nearly a year while we designed and built a low cost valve to do the job. The result was Continental's "Fingertip" Dispenser, with a soldered valve which operated at a pressure of 25 to 35 psi gage at 70F and proved to be a highly successful aerosol container for many years. I might add that Continental later went out of the valve business, since other manufacturers soon entered the field and took over the task of designing special purpose valves for the myriad products which followed in the wake of the successful marketing of insecticides.

So much for the historical background. Now what about today's containers? Originally only steel (both tin plate and black plate) met the exacting requirements for aerosols, and the 12-oz size was the standard, adapted from the beer can. Today steel cans are being made in the 3-oz, 6-oz, 8-oz, [fol. 1507] 12-oz, 14-oz and 16-oz sizes. While steel still offers certain advantages, other materials have put in their appearance in the last few years, especially for the smaller sizes. Glass aerosols are on the market, ranging in size from ½-oz to 4-oz. Plastic containers have been made up to 4 oz and are likewise expected to find a place in the market. Small aluminum containers have joined the parade in the United States, and, as you heard yesterday, aluminum containers of many sizes have been in extensive use in Europe for some time.

Packaging requirements are never static. They are constantly changing. When an unromantic, highly utilitarian, and still novel aerosol can containing hair lacquer moved into milady's boudoir, a new and very demanding requirement arrived on the scene. The package now was required to "belong" in a new company, a different room, a different atmosphere. The insecticide can was a misfit here. Em-

phasis was put on appearance. Color, size, symmetry appeal all became very important. In spite of what some husbands may think, the wifely, toil-stained hand that grasps the insecticidal aerosol in the kitchen with deadly intent directed against a meandering fly is not at all the same, soft, carefully-manicured hand that daintily reaches for the aerosol hair lacquer, perfume or anti-perspirant in another part of the house. Likewise, it should be remembered that merchandising has changed drastically over the last 10 years. With the pronounced trend toward supermarkets, we find that the container is the best, and very often the only, salesman. Consequently, size, shape, color, shelf appeal, eye appeal, label attractiveness, symmetry and contour all become important factors to be added to the previous demanding performance requirements of the aerosol container. These are the factors that have led to marked improvements in the steel aerosol container, and these are likewise the factors which have provided the opportunity for glass, aluminum and plastic to join steel in the aerosol container field. All of these offer possibilities for a new and a different look, at a price.

Container requirements for aerosols must be carefully considered, and compromise decisions must be made in order to come up with the best container for the specific purpose, product and market involved. Cost, strength, weight, appearance, cost of handling, ease of handling, ability to be decorated, ease of filling, corrosion resistance, flexibility with respect to different valves, and quality control factors must all be considered in a final analysis of the choice of container for a particular product.

The Future

We who have been a part of this dynamic aerosol industry may be tempted to look back nostalgically at our past achievements. We may sometimes gaze with pride, and perhaps rightfully so, at the tremendous number and variety of aerosol products now occupying the shelves of the hardware stores, the drug stores, the cosmetic counters, the department stores and the supermarkets. But gentlemen, we cannot afford to be complacent. There are still more unexplored opportunities for aerosol packaging. Practically none of the existing markets are saturated, and many others have not even been touched. On the basis

of the present rate of growth, many people have estimated a production of 600 million aerosol units in 1960, and I for one feel that 1 billion units is not too unrealistic. What are some of the things we can expect in the next few years? I have talked recently with many people both within the industry and outside of it, and these are some of the conclusions I have reached:

1. Container Materials

Steel has been the leader, but glass, aluminum, plastic and perhaps paper will be used more extensively. Composite containers—that is, containers made of more than one of these materials—are practically a certainty. The particular properties of each will be used to advantage.

2. Convenience

There is no question that people are getting lazier and lazier and are willing to pay for convenience. Perhaps not so well understood, however, is the fact that the American consumer is not just interested in the gimmick or novelty aspect. He or she is interested in things that will really save time or will offer some other plus factor. Hence, emphasis can be expected on factors that will not only offer initial attraction, but will assist in obtaining repeat business.

3. Appearance

The requirements of the personal cosmetic field as well as supermarket merchandising and the push-button shopping of the future will continue to emphasize the need for visual salesmanship in the container.

4. Shape

While still greater diversity in the shape and size of containers can be expected, it must be remembered that this trend can mean higher costs, and as a result some pressure will be exerted for standardization.

5. Size

In the packaging field, there is generally a marked trend toward unit packaging and multi-unit packaging on the one hand, and toward the large, economy, king-size or house-

hold size package on the other. These cross-trends have already been evident in the aerosol field, and they are expected to continue. The merchandising of functionally related aerosols in kits of two, three or even more containers can be expected.

6. Pharmaceutical Aerosols

This group is still in its infancy, and we can look for tremendous gains in this field in the next few years.

7. Pressurized Foods

The biggest volume gains in the pressurized dispenser industry will perhaps be in the food field. Here is a practically virgin territory, and while many problems are present, the rewards can be very gratifying. As a matter of fact, the successful packaging of pressurized foods other than whipped cream is no longer a dream. Our laboratories, working in cooperation with valve manufacturers and other suppliers, have produced experimentally a complete package which will do the job. Some difficulties yet remain, but these are in the refinement category. Barbecue sauce, meat tenderizer, ice cream topping, table syrup and an endless number of other products are already in the offing. Some of them will be commercial realities before the end of the year.

Having taken a look at the past, present and future of our vigorous industry from the container standpoint, we cannot but be impressed, not only with the progress made during the first 10 years, but also with the opportunities for additional growth in the next.

More and increasingly complex problems will confront the container manufacturer as *new and improved* products attempt to find a place in the aerosol field. Packaging requirements will become increasingly demanding, but your container industry is prepared to meet this challenge and supply you with a steady stream of new, different and improved containers to satisfy your requirements.

[fol. 1508] GOVERNMENT'S EXHIBIT 900

Willkie Owen Farr Gallagher & Walton
15 Broad Street
New York 5, N. Y.

July 18, 1956.

Honorable Victor R. Hansen,
Assistant Attorney General,
Antitrust Division,
Department of Justice,
Washington 25, D. C.

Re: SNB:EJ:WDK 60-0-37, 60-358-34, 60-14-33

Dear Judge Hansen:

On behalf of Continental Can Company, Inc. ("Continental"), we transmit herewith the following information and enclosed exhibits requested by Judge Barnes in his letter dated June 27, 1956 and telegram dated June 29, 1956 concerning, respectively, its proposed acquisition of Hazel-Atlas Glass Company ("Hazel-Atlas") and Robert Gair & Company, Inc. ("Gair"). The Hazel-Atlas closing is scheduled for August 8, 1956; it is contemplated that the Gair closing will take place around or shortly after the middle of September.

Before answering the questionnaire, we shall discuss first the application of the Final Judgment entered June 26, 1950 in U. S. v. Continental Can Company, Inc. to the proposed acquisitions and then Continental's tailor-made packaging concept.

[fol. 1509] Application of Final Judgment to Proposed Acquisitions

Judge Barnes' letter raised the question of the application of the Final Judgment entered June 26, 1950 in U. S. v. Continental Can Company, Inc. to the Hazel-Atlas and Gair acquisitions. More specifically, do glass containers, folding cartons, shipping containers and kraft paper bags come within the scope of "containers" as used in provision 12 of Section II of the Judgment?

We respectfully submit that such containers do not come within the Judgment for the reason (1) that the term "con-

tainers" is confined to those metal (packers and general line cans) and fibre (composite containers, fibre milk bottles and comparable products) containers involved in U. S. v. American Can Campany and U. S. v. Continental Can Company, Inc. ("Can cases") and which were sold by defendants under long-term requirements contracts and closed by closing machines leased to purhasers of such containers; (2) that glass containers, besides not being metal or fibre, were excluded from the Can cases by agreement of counsel; (3) that bags manufactured from a variety of materials, such as paper, foils, cellophane, laminates, glassine, plastics and wax paper, were deemed not covered by the term in a Stipulation and Order (Exhibit 1 signed November 21, 1952 by Hon. George B. Harris, Judge of the United States [fol. 1510] District Court for the Northern District of California, and *a fortiori*, therefore, folding cartons, shipping containers, and kraft paper bags do not come within the Judgment; and (4) that folding cartons, shipping containers and kraft paper bags were not in any way involved in the Can cases.

An examination of the pleadings, including interrogatories and admissions, pre-trial stipulations and orders, the transcript of the American Can trial and the transcript of the hearings pertaining to the framing of the Can Judgments shows that the Can cases and their resulting Judgments were directed at those types of metal cans and fibre containers which defendants manufactured and sold under long-term requirements contracts and which were closed on closing machines under lease to such container purchasers. An examination of the various proceedings before Judge Harris since the entry of the Can Judgments as well as surveys of the Antitrust Division, such as the one now being made, also demonstrates this point.

It is our recollection that during the early informal pre-trial discussions among counsel in the Can cases, the question of the line of commerce for purposes of computation of market participation was raised by defendants' counsel. Their suggestion that glass containers be included in this computation was rejected by Government counsel. Eventually both Government and defendants' counsel at a con-

[fol. 1511] ference* held May 24, 1948 in San Francisco, agreed that:

"5a: 'All containers' appearing in plaintiff's answer to this interrogatory does not include glass."

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"5c 2: As it appears from the allegations of plaintiff's amended complaint plaintiff limits percentage figures to metal containers."

• • • • • • •

"8 i & j: The percentages referred to are limited to metal containers and metal container closing machinery and plaintiff makes no claim as to percentages of fibre containers or fibre container closing machinery."

The foregoing statements relate to the Government's answers to certain numbered paragraphs [5(a), 5(c)(2), 8(i) and (j)] in interrogatories propounded to the Government by American. Moreover, in a Pre-trial Order signed and filed on August 6, 1948 by Hon. Michael J. Roche, United States District Judge for the Northern District of California, there were stipulations in paragraphs 6 and 7 which defined metal and fibre containers. The substance of these stipulations was that "containers" were confined to metal [fol. 1512] and fibre containers which were sold under requirements contracts and closed by closing machines. To the best of our knowledge, neither American nor Continental manufactured glass containers, folding cartons, shipping containers and kraft paper bags from the time the Government filed its amended complaint on June 7, 1948 to the time that the Judgments were entered in June, 1950.

At the time Continental was considering the acquisition of Benjamin C. Betner Company, a manufacturer of small and medium sized bags from a variety of materials such as paper, foils, cellophane, laminates, glassine, plastics and wax paper, the question of the application of provision

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* See Statement of Plaintiff Concerning Memorandum of Matters Agreed upon by Counsel for Parties at a Conference Held in Room 230 of the Federal Building, San Francisco, California, on May 24, 1948, pp. 3 and 5.

12 of Section II of the Judgment to this type of container was presented to the Antitrust Division. After the submission of a Memorandum on the subject dated September 23, 1952 and a full discussion of the matter among an official of Continental, Continental counsel and Government counsel from the Legislative and Clearance Section and Judgments and Judgment Enforcement Section, it was decided that "bags" were not containers within the meaning of the Judgment. Pursuant to this determination, a Stipulation and Order (Exhibit 1) was presented to Judge Harris together with a copy of the Memorandum. It was signed and filed with the Memorandum November 21, 1952 with the Clerk of the Court. For your convenience, we set forth [fol. 1513] an excerpt from this Memorandum:

> "Continental, however, is now raising the question whether Betner is a manufacturer of containers within the meaning of the Judgment. If it is, the affirmative showing of the lack of effect on competition would have to be made to the Court. Continental's position is that Betner is not a manufacturer of containers within the meaning of the Judgment. It does not wish, nevertheless, to consummate the acquisition without first presenting the matter to the Antitrust Division.
>
> "The word 'container' is a broad generic term. In common parlance, it embraces practically every conceivable form of receptacle such as barrels, boxes, cartons, cases, trunks, garbage cans, buckets, waste paper baskets, decanters, pots and pans in the kitchen, glass bottles and jars, trays and literally thousands of other products which readily come to mind. In drafting the Judgment, the Court was concerned only with specific types of containers, namely, those containers which were involved in the American and Continental cases; metal cans (general line and packers) and fibre containers (milk bottles and those containers of a comparable nature). This is evident from the transcript which reported the formulation of the Judgment.
>
> "During those proceedings, considerable discussion occurred as to whether the Court intended American's fibre milk bottles to come within the Judgment's definition of containers. Counsel for American urged that it should not, but Mr. Jansen, Counsel for the Govern-

ment, stated (VI Transcript 27, 28): 'It would be a strange fact if the one thing in which American had almost an absolute monopoly, the fibre milk container, were to have no restrictions.'

"Discussion was then had whether Continental's paper cups and plastic containers came within the Judgment. Mr. Jansen readily agreed that they did not, saying (VII Transcript 3): 'They were not in issue in the American Can case. They are not in issue in the [fol. 1514] Continental Can case. We have no objection to spelling that out in the definitions.'

"In short, it seems clear that the prohibition against acquisition of concerns 'in the manufacture for sale of containers' means concerns manufacturing those specific types of containers which were involved in the complaint and in the evidence of the litigation. Containers were narrowed by both Government counsel and the Court to general line and packers metal cans and fibre containers such as milk bottles and the like. These were the containers about which the Government made charges, introduced evidence and helped to formulate a judgment.

"Neither American nor Continental manufactured paper bags or other similar bags produced by Betner at the time of the American litigation or at the time the American and Continental Judgments were entered. Such bags were not in any conceivable way in issue in the proceedings. As a matter of fact, we doubt very much that bags were even mentioned during the trial or during the discussions before the Court on the formulation of the Judgments. Both the Government and the Court recognized that the Judgments should be formulated and construed in the light of the type of containers in issue. Otherwise, the various provisions would not make sense.

"If the Antitrust Division agrees that paper bags do not come within the scope of the Continental Judgment, it will not be necessary to make any presentation to the Court. The matter then could be disposed of by stipulation."

It is our conclusion, therefore, that glass containers, folding cartons, shipping containers and kraft paper bags do

not come within the scope of the term "containers" as used in provision 12 of Section II of the Judgment.

In evaluating the answers to the questionnaire, you may find helpful the following background information on Con- [fol. 1515] tinental's packaging concept and the type of packaging service it seeks to render.

Continental's Tailor-Made Packaging Concept

The development over the years of Continental's operations and products has made its name, Continental Can Company, Inc., something of a misnomer. While metal containers are still the major part of its business, the business is now "tailor-made packaging" for nearly any product.

The enormous growth in packaging, which is sometimes referred to as a "revolution," was foreseen some sixteen years ago by the then Chairman of the Board and Chief Executive Officer, Carle C. Conway. In the Company's 1940 Annual Report, Mr. Conway wrote: "We must give our customers not only value and quality, but an ever-widening variety and improvement in our products. But management must do more than this. It must be creative. Before the product must come the idea, the inspiration for the product, for without such idea there would be no product.

"We are constantly making increased demands on our Research Departments for the study and development of new ideas. We recognize that in the success of these efforts, rests the hope for the continued growth of the Company." [fol. 1516] Mr. Conway not only correctly interpreted the trend toward more and better packaging, but acted upon it, and laid the foundation for Continental's unique position as a company which can provide whatever type of packaging its customers desire, or whatever kind its customers' products may require. In 1942, Continental entered the paper container and fibre drum fields. In 1944, it undertook the manufacture of paper cups, steel pails, and decorated kitchenware. A modern kraft pulp and paper mill was purchased in 1947, to support the rapidly growing fibre drum operations.

When General Lucius D. Clay succeeded Mr. Conway in 1950, a further study of the packaging industry was made. It showed enormous possibilities for future growth, and

emphasized the importance of a broad variety of packaging media to meet the shifting but ever increasing public demand for attractive and functionally effective individual packages, and the requirements of industry for strong, economical bulk shipping containers. Confirmed in the correctness of its earlier decisions, Continental continued its program of increasing the range of packaging services it could offer its customers. In 1953 the Company continued its diversification or broadening program by entering such packaging fields as paper and laminated bags for coffee and other dry products; flexible packaging involving the conversion, extrusion, lamination and printing of cello- [fol. 1517] phane, polyethylene and other materials; plastic products such as squeeze bottles and pipes; and plastic coated paper plates. Early this year, Continental went into the business of manufacturing vacuum type metal closures.

Continental's tailor-made packaging business was developed through external as well as through internal growth. Because each particular packaging field has its own history, technical information, manufacturing skills, trained workers, managerial problems, selling methods and competitive situation, Continental in many instances entered a particular field by acquiring an existing company. In each non-metal packaging venture, as in the can business, Continental has done its utmost to improve the quality of the package and service provided. We believe a study of the industry will show that, without exception, the effect of Continental's entry into a new packaging line has been to sharpen competition. Well-established national and local leaders in individual packaging fields have felt impelled to review and improve their policies on merchandising, pricing and quality to match the type of service offered by Continental. Continental has breathed new life into packaging fields which were slipping. For example, modern fibre drum manufacturing is a long way from old-style cooperage businesses. By the same token, Continental has had to assume substantial financial and managerial risks [fol. 1518] in challenging the well-entrenched positions of the industry leaders, while at the same time meeting its competitive responsibilities as a metal can manufacturer.

Internal growth is responsible for most of Continental's development. For example, in 1955 Continental had in oper-

ation 72 domestic factories. Of these, 42 were built by Continental, while 30 were obtained through acquisitions. Moreover, Continental's 1955 net sales and operating revenues were $666 million. $410 million came from domestic factories which Continental constructed, while $216 million came from domestic factories it acquired. (It should be added that the originally-purchased equipment in these plants has been greatly increased and modernized, at Continental's expense.) It would seem that in an expanding, competitive economy, the balance between internal growth and external growth must be determined by the situation in the market.

The packaging revolution is still in progress, and we believe it has a long way yet to go. The American economic way of life has become a packaged way of life. As a matter of taste, convenience and necessity, the demand for packaging increases each year. Our economic system of mass production and distribution depends to a large extent upon packaging to protect, to help sell, and to provide more satisfaction. In order to complete its diversifica- [fol. 1519] tion program and to render a tailor-made packaging service for any customer who wishes to reach any segment of the market with any type of product, Continental must offer glass jars and bottles, folding cartons, shipping containers and kraft paper bags.

In considering the Hazel-Atlas acquisition, Continental was guided by the respective packaging uses of glass and metal containers, and by the fact that in U. S. v. American Can Company and U. S. v. Continental Can Company, Inc., the Antitrust Division took the position that metal containers and glass containers were separate and distinct lines of commerce and thus defendants in those cases could not combine the two for the computation of market participation. The metal closures of Hazel-Atlas are of a different type from the metal closures of Continental, and do not compete with them. The former are screw and home canning types, while the latter is the vacuum type.

In entering the glass container field, Continental recognizes that it will be competing with three national leaders: Owens-Illinois Glass Company, Anchor-Hocking Glass Corporation and Thatcher Glass Manufacturing Company, Inc. One of these, Owens-Illinois, has a dollar volume of

sales many times that of Hazel-Atlas. In this situation [fol. 1520] Continental hopes to create a degree of competition which Hazel-Atlas alone has not been able to provide.

Continental appreciates that to be successful in the glass container business and to provide effective competition to the industry leaders, it must be in a position to offer a complete line of glass jars and bottles, including beverage bottles. Hazel-Atlas' facilities for the production of beverage bottles are very limited. In order to provide a satisfactory entry into this field, Continental has asked us to inform you in the strictest confidence that it is carefully considering the acquisition of the business of Obear-Nestor, Inc., East St. Louis, Illinois, including its subsidiary, Lincoln Container Company, Lincoln, Illinois, to supplement the lines of Hazel-Atlas. This concern is primarily a beverage bottle manufacturer with combined net sales in 1954 and 1955 of around $15,949,000 and $14,328,000 respectively. It is our intention to discuss this matter with you fully before proceeding with the acquisition.

As far as Robert Gair Company, Inc. is concerned, Continental is not engaged in the manufacture of folding cartons, shipping containers or the type of kraft paper bag manufactured by Gair. While it is true that Continental's only pulp and paper mill, located at Hopewell, Virginia, manufactures paperboard for sale, as do the mills of Gair, yet their combined net sales of paperboard would not exceed about 5% of the total industry sales.* With the addi-

*This estimated figure was derived by using the dollar paperboard shipment figures reported respectively by Continental and Gair to the Department of Commerce for 1954 and 1955 and the total industry dollar paperboard shipment figure for these years as determined by the trade journal Fibre Containers and Paperboard Mills, vol. XI, No. 8, p. 90 (August 1955) and a telephone call from the publisher, Board Products Publishing Co., to Gair on July 13, 1956 reporting the estimated total industry figure for 1955. It is to be noted that Continental and (we are informed) Gair included in reports to the Department of Commerce their respective intra-company sales of paperboard.

[fol. 1521] tion of glass jars and bottles and cartons, shipping containers and kraft paper bags, Continental will have achieved the degree of diversification in the packaging field toward which it has been carefully building for so many years.

Many products now use or can use a variety of different types of packaging. Thus, it is the policy of Continental to encourage its various individual product divisions to push their own particular type of packaging to maximize customer service, volume and profits. This results in strong intra-company competition which in many instances is more effective than outside competition in bringing about the adoption of improved products, cost reductions and better service to customers. It is our belief that the Continental concept of a broad, all-embracing packaging service, provided by vigorous well-managed and adequately financed product divisions, does more to ensure active and effective competition in the national market place than would be possible without the existence of the organization Continental has developed.

[fol. 1522] With this background in mind, we turn to the answers to the questionnaire.

1. A statement of the plan of merger, and copies of all documents and agreements to be utilized and entered into by the two companies in consummating the merger.

(A) Hazel-Atlas

The plan of merger, described by the Purchase Agreement (Exhibit 2) as a tax-free reorganization within the meaning of the Internal Revenue Code, provides that on the Closing Date Hazel-Atlas will convey, transfer, assign and deliver to Continental all the assets, properties, business and good will of Hazel-Atlas and that in consideration thereof Continental will issue and deliver to Hazel-Atlas an aggregate of 999,140 shares of its presently authorized but unissued Common Stock of the par value of $20. per share and will assume all the liabilities and obligations of Hazel-Atlas outstanding on the Closing Date. The Purchase Agreement was signed June 29, 1956, and it is anticipated that the Closing Date will be on or about August 8, 1956.

As a part of the plan, as revealed in the Hazel-Atlas

proxy statement (Exhibit 3), Hazel-Atlas will dissolve and distribute all of the Continental Common Stock received to its stockholders in complete winding up and liquidation and complete cancelation or redemption of its Stock, such distribution to be made promptly after the receipt by Hazel-Atlas of the certificates representing such shares. The [fol. 1523] distribution of the Continental Stock to stockholders of Hazel-Atlas will be at the rate of 46/100ths of a share of Common Stock of Continental for each share of Capital Stock of Hazel-Atlas. Fractional shares of Common Stock of Continental will not be issued, but in lieu thereof cash adjustments will be made. The presently issued and outstanding shares of Common Stock of Continental are, and the shares to be distributed to Hazel-Atlas stockholders will be, listed on the New York Stock Exchange.

(B) Gair

The plan of the merger has not as yet been developed in detail. It would appear that it will take the form of a statutory merger. We shall send you copies of all documents as soon as they are available.

2. A brief physical and functional description of the lines or classes of containers and other articles produced and sold by your company, together with copies of all its current price lists.

Item 2 requests two things: (1) a physical and functional description of Continental's product lines and (2) copies of all current price lists for items within each product line. We are setting forth below part (1) and Continental is in the process of preparing part (2), namely, copies of current price lists, but only for representative and large volume items of each product category. To furnish a price list for every item in each category would call for thousands of documents and would, we believe, serve no useful purpose. If you find that you want a price list for any particular item in any category, Continental will be glad to furnish it upon request.

[fol. 1524]

Product Line	Physical Description	Functional Use
1. Metal Cans	Metal Cans are single-walled containers constructed of tin plate, terne plate, black plate or waste plate and manufactured from steel sheets of 29 gauge or lighter; includes all steel pails produced from steel sheets of 29 gauge or lighter but does not include those produced from steel sheets of heavier than 29 gauge; also excluded are ice cream cans and fluid milk shipping containers.	Used for packaging a variety of food products such as fruits and fruit juices, vegetables, evaporated and condensed milk, meat, fish, coffee, syrup, lard and beer; and non-food products such as motor oil, grease, paint, varnish, polish, waxes, drugs, cosmetics and other products.
2. Steel Pails	Steel pails are single-walled shipping containers with a range of capacity from 1 to 12 gallons inclusive, constructed of steel heavier than 29 gauge; excludes metal cans, terne plate oil containers, fluid milk shipping containers, ice cream cans, gas cylinders, beer barrels, reconditioned pails or containers not commercially usable in the transportation of commodities.	Used for bulk packaging of foods, chemicals, paint and petroleum products.
3. Lithographed Kitchenware (Tin Mill Products only)	Manufactured from lithographed tin mill products into metal housewares items.	Used for canister sets, wastebaskets, trays, step-on cans and bread boxes, and is a consumer line.
4. Military Items	Manufactured from a variety of materials, products range from military adaptations of peacetime containers and packaging to aircraft components, and other defense items. (During World War II, Continental turned over large sections of its machine shops and plants to production for the armed forces, and acted as prime and subcontractor for innumerable war products.)	Containers are used by armed forces for packaging a variety of military products. Also manufactured are V/T fuses, parts for Nike guided missiles, aircraft components, honeycomb and barrier materials.
5. Can Closing Equipment and Parts	Designs and manufactures can closing machines, related equipment, auxiliary equipment and repair parts for lease or sale to packers of a variety of food and non-food products.	Used for the final double seaming or crimping of metal covers to metal cans and to supplement operations of closing cans.

[fol. 1525]

Product Line	Physical Description	Functional Use
6. Metal Closures	Crown caps, manufactured from tin plate into metal shells with plastic or cork liners, the latter being "spotted" with aluminum or vinylite for certain beverages.	Used as caps or closures on beverage bottles by brewers and soft drink bottlers.
	Closures, manufactured of tin plate, sealing compound and paper liners into round metal closures.	Used to seal glass bottles and jars for food packaging, on such products as baby foods, catsup, juices, fruits and vegetables.
7. Cork Products	Imported cork waste is ground for the manufacture of composition cork.	Used as liners for caps and closures in beverage and food industries; as expansion joints in highways, etc., school bulletin boards, gaskets, shoe sole fillers and floor underlayment.
8. Low Pressure Laminates	Reinforced polyester resin laminate, available in roll or sheet form.	Used as a decorative material for surfacing furniture and working surfaces and as insulation for electrical products.
[fol. 1526]		
9. Squeeze Bottles	Custom-made or stock polyethylene bottles in various shapes and sizes, to dispense products via a physical squeeze of the container.	Used mainly for packaging and dispensing of deodorants, cosmetics, nasal sprays and various food products, such as mustard and honey.
10. Injection Molding and Rigid Plastic Containers	Custom-made plastic products of many sizes, shapes and uses.	A variety of plastic products.
	Polystyrene and high impact polystyrene nested containers, with lids of polystyrene and polyethylene.	Rigid plastic containers are suited for the packaging of ice cream, sherbet, cottage cheese, salads, candies and various other food products.
11. Plastic Pipe and Fittings	Saran, butyrate, polyethylene and styrene-alloy plastic pipe in various sizes, with complete line of fittings.	Possesses standard application in petroleum and natural gas industry; for irrigation and drainage lines, chemical and food processing lines, water service, waste and disposal lines.

Product Line	Physical Description	Functional Use
12. Paperboard	Kraft linerboard, kraft paper, .009 corrugating medium, folding boxboard and laminated chipboard.	Linerboard used for outside and inside plies in corrugated shipping cases and for cylindrical sidewalls and bottoms of fibre drums; corrugating medium for the layer inside the two liners in a corrugated shipping case; kraft paper for such purposes as wrappings and bag making, folding boxboard for folding and set-up boxes; laminated chipboard for the bottoms of fibre drums.
13. Paper Products	Fibre drums with cylindrical side-walls convolutely wound of kraft linerboard laminated with adhesive, while top and bottom construction vary from all fibre to all metal.	Used primarily for bulk shipments of dry, solid and liquid products, such as chemicals, plastics, foods, films and metal parts.
	Containers and cups, manufactured of paper with paper or metal lids. Nesting type containers are single or double-wrapped in tub or tumbler shapes. Cylindrical containers are spiral wound and have slip-over lids.	Containers are used for packaging salads, ice cream, cottage cheese and other dairy products, while the tumbler-shaped cups are used for hot and cold drinks.
	Consumer plates and cups, manufactured of paper.	Used by consumers primarily for picnic use.
	Paper specialty packaging envelopes in machine-folded sizes, from 1 x 1 inch to 16 x 20 inches, in various shapes.	Used to package miscellaneous products like seeds, scissors, saw blades, dyes and powdered foods.
	Kraft paper bags, unlined or lined with glassine paper, films and foils.	Used for the packaging of dry products such as coffee, insecticide, fertilizer, pet food, chemicals.
14. Flexible Packaging	Manufactures, converts and prints basic flexible packaging materials (films, foil and paper), supplying each, or a lami-	Used for packaging foods, chemicals, textiles, photographic supplies and various other types of prod-

[fol. 1527]

Product Line	Physical Description	Functional Use
[fol. 1528]	nation combining two or more, in sheets, rolls, bags or pouches.	ucts.
	Vaporized metal coatings on various transparent films such as Mylar.	Used as a decorative material, and, in laminated and slit form, and used as metallic yarn by the textile industry.

[fol. 1529] 3. The total dollar volume of sales for each line or class of products of your company in each of the past two years.

Continental's Gross Sales By Product Group
(million $)

	1954	1955
Metal Cans	$401.1	$433.1
Steel Pails	4.8	5.5
Lithographed Kitchenware (Tin Mill Products only)	2.6	3.1
Military Items	35.7	30.0
Can Closing Equipment & Parts	3.3	3.4
Metal Closures (a)	33.4	36.7
Cork Products	1.1	1.3
Low Pressure Laminates	.8	1.1
Squeeze Bottles	.7	1.3
Injection Molding & Rigid Plastic Containers	1.3	1.1
Plastic Pipe and Fittings (b)	.6	.4
Paperboard	16.5	20.4
Paper Products	72.2 (c)	77.1
Flexible Packaging	22.5 (c) (d)	23.7

(a)—Includes 1954 and 1955 sales of White Cap Co. which was acquired in January 1956.

(b)—Continental is no longer manufacturing a line of Plastic Pipe. The Company disposed of this operation to Orangeburgh Manufacturing Co. in early 1956.

(c)—Includes full year's sales of American Paper Goods Company which was acquired in November 1954.

(d)—Includes 1954 sales and full year's sales in 1955 of Vaporized Metal Coatings, Inc. which was acquired in May 1955.

[fol. 1530] 4. The dollar volume of sales in these lines or classes of products by all companies in each of the past two years.

Estimated Gross Sales of All Companies By Product Line
(million $)

	1954	1955
Metal Cans (a)	$1,270	$1,380
Steel Pails (a)	52	60
Lithographed Kitchenware (Tin Mill Products only)	n.a.	n.a.
Military Items	n.a.	n.a.
Can Closing Equipment & Parts	n.a.	n.a.
Metal Closures (a)	175	195
Cork Products (a)	36	36.5
Low Pressure Laminates	n.a.	n.a.
Squeeze Bottles (b)	11	14
Injection Molding & Rigid Plastic Containers	n.a.	n.a.
Plastic Pipe & Fittings (b)	40	45
Paperboard (c)	1,513	1,767
Paper Products	n.a.	n.a.
Flexible Packaging	n.a.	n.a.

(a)—Industry estimates made by Continental based on U. S. Department of Commerce data.
(b)—Industry estimates made by Continental based on diverse sources due to lack of government or trade association data.
(c)—Industry estimates made by Continental based on trade association data; represents the dollar value of paperboard production only, including paperboard used internally.

[fol. 1531] 5. If the two companies, separately or jointly, have prepared a survey or forecast of anticipated demands for these products and/or a forecast of growth trends for the industry, please furnish a copy.

Exhibit 4 contains those available forecasts of anticipated changes in physical volume through 1959. Possible price changes were not considered in these forecasts. Continental has based its estimates in Exhibit 4 on the expectation that 1956-1959 will be predominantly a period of growth in the over-all economy.

6. Present position of your company in the industry. Show by dollar volume of sales and percentage of the market the five or six leading companies in each line or class of products.

Continental's 1955 Position in Various Segments of the Packaging Industry

1. Metal Cans

1. American Can Co.
2. Continental Can Co.—31.4%

3. Campbell Soup Co.
4. National Can Corp.
5. Crown Cork & Seal Co.

2. Steel Pails

1. Jones & Laughlin Steel Corp.
2. Inland Steel Co.
3. Rheem Manufacturing Co.
4. U. S. Steel Corp.
5. Continental Can Co.—9.2%

3. Lithographed Kitchenware (Tinmill Products only)

1. National Can Corp.
2. Continental Can Co.—20%
3. Nesco, Inc.
4. Harvell Manufacturing Corp.
5. Parker Metal Decorating Co.

[fol. 1532] 4. Military Items

Because of the large number of suppliers furnishing directly or indirectly a wide variety of military items to the Government, Continental has no way of determing its participation.

5. Can Closing Equipment

1. American Can Company
2. Continental Can Co.*
3. National Can Corp.
4. Crown Cork & Seal Co.
5. Angelus Can Machinery Co.
6. Baldwin-Lima-Hamilton Corp.
7. Max Ams

6. Metal Closures

1. Crown Cork & Seal Co.
2. Continental Can Co.—18.8%
3. Owens-Illinois Glass Co.

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*Figures are not available to Continental for determining its percentage participation in this line. The order of rank after Continental is only an estimate.

4. Anchor-Hocking Glass Corp.
5. Ball Bros. Co.

7. Cork Products

Continental's cork production is an adjunct to its crown manufacturing function. Commercial sales account for less than 5% of industry volume. Continental has insufficient knowledge of primary commercial operations in this field to be able to rank companies by size.

8. Low Pressure Laminates and

10. Injection Moldings and Rigid Plastic Containers

These two lines are minor with the company. They cover a variety of products. Continental has insufficient knowledge of primary manufacturers to rank them. Continental's sales volume is estimated to be less than 1% in the injection moldings field and less than 3% in the high and low pressure laminates field.

9. Squeeze Bottles

1. Plax Corp.
2. Injection Molding Corp.
3. Royal Manufacturing Co.
4. Continental Can Co.—9.3%
5. Bradley Container Corp.

[fol. 1533] 11. Plastic Pipe and Fittings

Continental is no longer engaged in manufacturing plastic pipe. During the period of its activity in this field, it was about No. 10 in order of rank. The field has received recently a number of new entries, including the steel companies.

12. Paperboard

Paperboard is not a major company line. Continental's sales represent less than 2% of industry production. Because its knowledge of major commercial operations is limited, Continental is unable to rank the leaders in this field by sales volume.

13. Paper Products

A variety of products is included here. For most of these, Continental's sales represent less than 1% of industry volume. Fiber drums and paper cups, plates and nested containers account for nearly 80% of its business in this category.

Major companies in the paper cup, plate and nested container industry follow in order of estimated rank:

1. Lily-Tulip Cup Corp.
2. Dixie Cup Co.
3. Sutherland Paper Co.
4. Continental Can Co.—11.5%
5. Diamond Match Co.

Major companies in the fibre drum industry follow in order of estimated rank:

1. Continental Can Co.—82.3%
2. Grief Bros. Cooperage Corp.
3. Rheem Mfg. Co.
4. Master Package Corp.
5. Fibre Drum Co.

14. Flexible Packaging

The products of this industry include packages and packaging materials in a wide variety of forms made from both converted and unconverted materials such as cellophane, polyethylene, other transparent films, foils, specialty papers, and laminations. Because of the industry's diverse nature, Continental is unable to develop a meaningful industry dollar estimate of sales.

[fol. 1534] 7. A statement of the patent positions of your company on these products.

1. Metal Cans

Although Continental has approximately 160 unexpired patents relating to metal cans, not including patents covering methods or apparatus for their manufacture, the over-all picture is that neither Continental nor any other company in the industry is in a position to prevent competitors from manufacturing metal cans.

2. Steel Pails

Continental does not have any patents in the steel pail field.

3. Lithographed Kitchenware

Continental has only three patents in this field and these are insignificant. One, for instance, is a design patent and another covers a refuse container. Continental is not a position, therefore, to prevent anyone from continuing to operate in this field or from entering it.

4. Military Items

Continental has three insignificant patents in this field. Its patent position, therefore, would prevent no one from competing with it in any of the military products which it manufactures.

5. Can Closing Equipment

Continental patents on can closing machines, related equipment and auxiliary equipment are largely controlled by Section IV of the Final Judgment entered June 26, 1950 in U. S. v. Continental Can Company, Inc. Continental holds about 62 patents. These are improvement patents since all basic have expired. As a consequence, Continental has no control which would prevent others from manufacturing, selling, leasing or using closing equipment.

[fol. 1535] 6. Metal Closures

Crown Caps

Continental has about 41 patents. These include crown cap patents, whether relating to spotting machines or methods of placing spots on cork discs or counters, or methods for compound lining crowns. While Continental's Pearson spotting machine patent does an excellent job here, it will expire August 29, 1956. Furthermore, in order to use it without engaging in infringement litigation, Continental has been paying Crown Cork & Seal Company a royalty at the rate of ⅛¢ per gross for many years. Although Continental has several method patents covering the

lining of crown shells with a compound, others are not prevented from using a compound in a shell. It is true, however, that they would have to employ a method different from Continental's, as for example, the Dewey & Almy method.

It is believed that Continental has a slight edge on its competitors in compound lining crown shells. On the other hand, none of its patents would prevent anyone from producing crown caps with a cork liner, either spotted or unspotted.

Vacuum Metal Closures

Continental has approximately 26 unexpired patents. On the whole, caps similar to the well-known White Cap can be produced by others without patent infringement. It is not believed that Continental has a position in the vacuum type metal closure field which would prevent vigorous competition.

7. Cork Products

In this field Continental has a patent expiring this year covering an extruder for cork sheets; two 1943 patents covering cork rod extruders; and a 1945 patent covering a cork rod extruder. Its position, therefore, is such that it would be unable to prevent the manufacture of cork sheets or slabs or cork rods by others.

[fol. 1536] 8. Low Pressure Laminates

Continental has 8 patents in this field. One of these covers continuous lamination. Continental has licensed three competitors under this patent and has even extended the offer to license others who make resin impregnated laminates.

This patent would not prevent others from producing laminates. However, for the manufacture of laminates containing a polyester resin in a continuous manner, it is believed that the patent is fairly broad in its coverage.

9. Squeeze Bottles

Continental has four patents. One of these covers a specific atomizing structure in a squeeze bottle, but

there are ways of avoiding this patent. The other three cover the apparatus and method for manufacturing bottles.

Summed up, while Continental believes it has a good method and machine for producing squeeze bottles, its position could not prevent others from entering and practicing in this field.

10. Injection Molding and Rigid Plastic Containers

Injection Molding

In this field Continental has three patents relating only to minor improvements in preheating molding powders, cure testing and injection molding. It also has an exclusive license under 2 product patents and one pending application for the manufacture and sale of a turret seal spout. For this one spout, Continental believes its license is valid. Its patent position, however, in injection moldings is insignificant.

Rigid Plastic Containers

Continental has no patents.

11. Plastic Pipe and Fittings

Continental has one patent covering an injection unit for a molding machine. It is insignificant.

[fol. 1537] 12. Paperboard

Continental has two patents relating only to the production of paper laminated structures. It has no patents relating to the manufacture of paperboard. Its position, therefore, is such that it would be unable to prevent the manufacture of paperboard of any kind.

13. Paper Products

Fibre Drums

Continental has approximately 18 patents in this field, none of which could be construed as basic in any degree. In other words, Continental would not be in a position to prevent others from manufacturing fibre drums unless they infringed specific patent claims.

Nested Containers and Cups

Continental does not have any patents on paper cups per se. The only patent in this field is one covering an automatic machine for manufacturing cone-shape paper cups, which by no means dominates this type of cup. Others in the field have been producing it for years.

Thus, patentwise in this field Continental is not in a position to prevent anyone from making nested paper containers and cups.

Consumer Plates and Cups

Continental's patent position in the field of consumer paper plates and cups is not such that it could prevent others from producing paper plates. It has no patent protection on consumer paper cups.

Packaging Envelopes

Continental's position in the packaging envelope field is such that it cannot prevent anyone from manufacturing packaging envelopes.

[fol. 1538] Kraft Paper Bags

Continental has a patent on a method for producing bags which are principally used for the packaging of coffee. This method patent, however, does not prevent others from producing bags for the packaging of coffee. As a matter of fact, there are other such bags which are being produced today in competition with Continental's.

14. Flexible Packaging

In this field Continental has approximately 120 patents. These include, in addition to article patents, machines and methods for producing flexible packages and printing rolls. None of these patents, it is believed, prevent others from manufacturing rolls of flexible material or flexible containers whether they are paper bags, cellophane bags, polyethylene bags, etc. The patents are, generally speaking, directed to specific structures or apparatus or method for making

them. The claims of these patents, of course, would prevent others from employing them, but there are diverse other ways of producing flexible packages. Continental also has a patent covering a heating element and assembly for the deposition of metals by thermo vaporization of metal in vacuo from the surface of such heating element. The patent is used to assist in the deposition of metal on flexible materials. This patent does not place Continental in a position to prevent its competitors from depositing metals on flexible materials by vaporization.

8. Copies of the annual report, income statement and balance sheet for your company for the past three years.

Attached hereto as Exhibits 5(a), 5(b) and 5(c) are copies of Continental's annual report for the past three years.

9. Copies of the minutes of meetings of the boards of directors, executive committees and finance committees of your company concerning the merger.

Exhibit 6(a) consists of two certified copies of portions [fol. 1539] of the minutes of meetings of the Board of Directors held May 16, and June 20, 1956, as well as an uncertified copy of a portion of the minutes of a meeting of the Board of Directors to be held on July 18, 1956. We did not wish to delay this letter until certification after the meeting. A certified copy, however, will be available if desired. Exhibit 6(b) is a copy of a portion of the minutes of a meeting of the Executive Committee of the Board of Directors held June 13, 1956. Both Exhibits pertain to the acquisition of Hazel-Atlas.

Exhibits 7(a) and 7(b) are certified copies of portions of the minutes of a meeting of the Board of Directors held June 20, 1956 and of a meeting of the Executive Committee of the Board of Directors held July 11, 1956, respectively, with regard to the acquisition of Gair.

10. A brief description of previous mergers and acquisitions of your company.

Chartered in 1913 to succeed, among others, Continental Can Company, producing metal cans since 1905, Continental Can Company, Inc. entered an industry which was dominated by American Can Company. Through natural expan-

sion and through a number of acquisitions, Continental furnished the competition with which American had not [fol. 1540] hitherto been confronted. The purpose and effect of this growth was to increase competition in the entire can making industry.

Continental's acquisitions from 1923-1944 enabled it to engage in the manufacture of new types of general line cans, to compete in localities not previously serviced, as the Pacific Coast and the Gulf Coast, and to expand production. In only a few cases, and then to a minor extent, had there existed any competition between Continental and the company acquired. In such instances, competition in the industry was never lessened but was vigorously continued and expanded under Continental's efficient management.

As far as we can determine from presently available records, all of Continental's significant acquisitions of can making facilities from 1920 through 1944 were taken up with the Department of Justice or reported to the Federal Trade Commission. In many of these acquisitions, as for example, Owens-Illinois Can Company in October 1944, clearance was obtained from the Department of Justice. It was the position of the Department and the Commission that the can making industry should have at least one concern which could compete effectively against American Can Company.

Around 1939 or 1940, Mr. Conway conceived the idea of furnishing a "tailor-made packaging service" for almost [fol. 1541] every product. Accordingly, the acquisitions from 1942 to date, with the exceptions of Owens-Illinois Can Company and Val Vita Food Products Company,* were exclusively in packaging lines other than the metal can one. Attached hereto is a summary description (Exhibit 8) of these acquisitions.

11. A list of directors, officers and major stockholders of your company and their connection with other companies in comparable fields.

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*Val Vita had operated a can making line to furnish cans for its own food packing business. In 1943 Continental purchased the can making machinery and equipment when Val Vita found it unprofitable to make its own cans.

We are enclosing a list of Continental's Directors and Officers (Exhibit 9) and major stockholders (Exhibit 10). As explained on July 6, 1956 to Mr. Ephraim Jacobs on the telephone, that part of the question asking for "their connection with other companies in comparable fields" is difficult to answer with certainty and within a short time for the reason that each must examine his security portfolio and then communicate with each concern in which stock is held to determine the various products manufactured. We experienced this last May 1956 in connection with Continental's response to a Grand Jury subpoena duces tecum in connection with the Kraft paper investigation. If you find that you need specific information with respect to any Director or Officer, Continental will be glad to furnish it.

[fol. 1542] As a result of an arrangement reached with the New York Field Office of the Antitrust Division pertaining to the Grand Jury subpoena, we discovered that the following Officers and Directors owned stock in these paper companies:

Name	Status	Shares	Company
C. E. Eggerss	Officer	558	Waldorf Paper Products
R. L. Perin	Officer	1,220	Champion Paper Company
E. R. Van Meter	Officer	210	Eastern Corporation
Paul C. Cabot	Director	1,250	International Paper Company
		500	West Virginia Pulp & Paper Company
W. I. Myers	Director	100	St. Regis Paper Company

It is the best judgment of Continental's management that no Officer or Director has a sufficient number of voting shares in a competitor which would be of sufficient size to influence the corporate policies of Continental or the competitor.

If you need any further information, please do not hesitate to communicate with us.

Sincerely yours, Willkie Owen Farr Gallagher & Walton.

{fol. 1343} GOVERNMENT'S EXHIBIT 949

Federal Bureau of Investigation

Date 8/30/60.

The following items were purchased at the Safeway Store, 4015 Wisconsin Avenue, N. W., Washington, D. C., on August 26, 1960. This store is a large supermarket located on a heavily traveled street in residential Washington, D. C.:

One can Libbys tomato juice	$ .35
One glass bottle Ritters tomato juice	.31
One glass jar whole onions	.31
One can superfine whole onions	.18
One glass jar cut green beans	.43
One can cut green beans	.27
One glass jar asparagus spears	.49
One can asparagus tips	.35
One glass jar sliced beets	.19
One can sliced red beets	.13
One can Whitehouse apple sauce	.15
One glass jar Mott's apple sauce	.19
One can superfine diced carrots	.10
One glass jar diced carrots	.19
One can olive oil	.75
One glass bottle olive oil	.15
One can Peter Pan peanut butter	.89
One glass jar Peter Pan peanut butter	.41
One can Pomona pimientos	.29
One glass jar Pomona pimientos	.23
One can Scamper liquid for dishwashing	.34
One plastic container Lux liquid soap for dishes	.37
One can Breath O Pine all purpose cleaner	.29
One bottle all purpose texize cleaner	.39
One bottle Windex	.15
One can Windex	.59
One bottle Old English furniture polish	.15
One can of Johnson's Pledge furniture polish	1.39

It is to be noted that a number of items were purchased in the smaller size in the interest of economy.

On 8/26/60 at Washington, D. C.
By SA Laurence E. Danbom:pjt.

[fol. 1544] The amount of the purchases made at the Safeway Store amounted to $10.01. This receipt was identified and turned over to Antitrust Division Attorney William H. McManus on August 31, 1960.

[fol. 1545] Federal Bureau of Investigation

Date 8/30/60.

The following items were purchased from the Giant Supermarket, Newark Avenue and Wisconsin Avenue, N. W., Washington, D. C., on August 26, 1960. The Giant Food Store is a large modern supermarket located on a corner of two heavily traveled streets and is located in a residential and commercial section of Washington, D. C. The following items were purchased:

One plastic container Dial shampoo	$ .57
One bottle Halo shampoo	.60
One Sutton Stick deodorant (bottle)	.76
One (plastic) Mennen spray deodorant	.66
One Ipana Plus dentifice (plastic)	.99
One can Colgate Dental Cream	.88
One can Noxon metal polish	.39
One bottle Easy Off Oven Cleaner	.69
One plastic Beam Oven and Grill Cleaner	.98
One can Parson's ammonia	.29
One bottle Parson's ammonia	.15
One Hot Shot bug killer (bottle)	.89
One Hot Shot bug killer (can)	1.29
One (can) Simoniz Body Sheen	1.49
One (plastic) Johnsons Holiday Cream	1.79
One (bottle) Savoy Car Shampoo	.69
One Esquire shoe polish (bottle)	.29
One can Esquire boot polish	.29
One can Easy-on spray starch	.69
One bottle Perma starch	.62
One bottle sauerkraut	.29
One can sauerkraut	.22
One bottle sweet peas	.23
One can sugar peas	.19
One can baked beans	.15
One glass jar baked beans	.27
One can green ripe olives	.49

One jar green olives	.25
One can Snow's Clams	.39
One bottle whole clams	.45
One jar whole mushrooms	.27
One can mushrooms	.39
One can Oregon Purple Plums	.18

On 8/26/60 at Washington, D. C.
By SA Laurence E. Danbom:pjt.

[fol. 1546] One jar Del Monte Deluxe Plums	$ .31
One glass jar fruits for salad	.39
One can fruits for salad	.27
One can pears	.27
One jar pears	.35
One can Kadota figs	.18
One jar Kadota figs	.35
One can Del Monte Boysenberries	.19
One jar Del Monte Boysenberries	.35
One can Borden Instant Malted Milk	.47
One jar Carnation Instant Malted Milk	.47
One jar peanuts	.65
One can peanuts	.35
One jar Wesson oil	.31
One can Crisco	.31

Many of the items purchased at this store were of the small size and this was done in the interest of economy.

The amount of these purchases totaled $23.82. The receipt was identified and turned over to Antitrust Division Attorney William H. McManus on August 26, 1960.

[fol. 1547] Federal Bureau of Investigation

Date 8/30/60.

The following items were purchased at the Giant Food Store, Newark Avenue and Wisconsin Avenue, N. W., on August 29, 1960. This is the same supermarket from which other items were purchased on August 26, 1960. The following items were purchased:

One Johnsons Pride Wax in bottle	$ .79
One Griffin Aersol can shoe polish	.89
One jar Prince spaghetti sauce	.37

One can Progresso spaghetti sauce	.25
One jar Prince Ravioli with meat in sauce	.43
One can Progresso Ravioli with meat in sauce	.37
One can Oregon Purple Plums	.18
One can dark cherries	.39
One jar dark cherries	.43
One bottle apple juice	.20
One can apple juice	.33
One can Sun Sweet prune juice	.17
One bottle Sun Sweet prune juice	.45
One jar Nescafe Instant Coffee (glass)	.39
One can Nescafe Instant Coffee	.79
One bottle Root Beer	.10
One can Root Beer	.09
One can King Syrup	.39
One bottle King Syrup	.25

The total amount of purchases made at the Giant Food Store on this date totaled $7.36. This receipt was identified and turned over to Antitrust Division Attorney William H. McManus on August 29, 1960.

On 8/29/60 at Washington, D. C.
By SA Laurence E. Danbom:pjt.

[fol. 1548] Federal Bureau of Investigation

Date 8/30/60.

The following items were purchased from Magruders Grocery Store, 1357 Wisconsin Avenue, N. W., on August 29, 1960:

One bottle clam juice	$ .20
One can clam juice	.21
One can boned chicken	.39
One jar boned chicken	.49
One can Sunkist lemon juice	.12
One bottle Realemon lemon juice	.23
One can B and M baked beans	.15
One jar B and M baked beans	.29
One can Vienna sausage	.15
One jar cocktail sausage	.79
One can deviled ham	.17

One jar deviled ham	.45
One can chopped chicken livers	.89
One jar chopped chicken livers	.55
One bottle Noxon Metal Polish	.40
One plastic Cameo copper cleaner	.49
One jar (glass) Copper Brite Cleaner	.89

The amount of purchases made at Magruders Store totaled $7.05 and this receipt was identified and turned over to Antitrust Division Attorney William H. McManus on August 29, 1960.

On 8/29/60 at Washington, D. C.
By SA Laurence E. Danbom:pjt.

[fol. 1549] Federal Bureau of Investigation

Date 8/30/60.

The following items were purchased at Fishers Market, Wisconsin Avenue and N Street, N. W., on August 29, 1960:

One can Nestles Pushbutton Zip Chocolate	$ .59
One jar Cocoa Milk Chocolate	.45
One jar Sani Flush (glass)	.29
One can Sani Flush	.15
One can potato salad	.48
One jar potato salad	.48
One can Derby Beef Tongue	2.89
One jar Derby Beef Tongue	.72

It is to be noted that some of the purchases made at this grocery store were in the smaller size and purchased in the interest of economy.

Fishers Market is a small neighborhood store and has been long established in Washington, D. C., and caters neighborhood business.

The total amount of purchases made at Fishers was $6.09. This receipt was identified and turned over to Antitrust Division Attorney William H. McManus on August 29, 1960

On 8/29/60 at Washington, D. C.
By SA Laurence E. Danbom:pjt.

[fol. 1550] Federal Bureau of Investigation

Date 9/1/60.

The following items were purchased at the Safeway Supermarket, 4015 Wisconsin Avenue, N. W., on August 30, 1960. This is the same Safeway Supermarket from which purchases were made on August 26, 1960. The following items were purchased:

One can Hershey chocolate syrup	$ .21
One jar cranberries	.21
One can cranberries	.20
One can Royal Anne cherries	.29
One jar Royal Anne cherries	.47
One can Seven Up	.13
One bottle Seven Up	.10
One can Cragmont Ginger Ale	.09
One quart bottle Rock Creek Ginger Ale	.22
One can strawberry jam	.29
One jar strawberry preserves	.29
One jar Evans chocolate fudge	.35
One can Hershey fudge	.15

The total amount of purchases made totaled $3.50. This receipt was identified and turned over to Antitrust Division Attorney William H. McManus on August 30, 1960.

On 8/30/60 at Washington, D. C.
By SA Laurence E. Danbom:pjt.

[fol. 1551] Federal Bureau of Investigation

Date 9/1/60.

The following items were purchased from the Drug Fair, Connecticut and Florida Avenues, N.W., on August 30, 1960. The Drug Fair is a large modern drug store located in a newly constructed office building and is located in a commercial and residential section of Washington, D. C. The following items were purchased:

One glass jar suntan lotion	$ .59
One (plastic) suntan lotion	1.19
One can suntan oil	1.60
One (plastic) suntan oil	1.25

One (plastic) Emulsion cream	1.00
One glass jar Emulsion cream	1.25
One plastic perfume spray	1.25
One glass jar perfume spray mist	2.00
One glass jar talcum powder	1.00
One plastic talcum powder	1.00
One can talcum powder	1.25
One glass jar Lanolin Plus hand lotion	1.00
One plastic Elizabeth Arden hand lotion	1.25
One can hair spray	1.75
One plastic container hair spray	1.75
One bottle of hair dressing	.69
One plastic container hair dressing	.60
One glass jar shaving cream	.98
One metal can shaving cream	1.00

The total amount of purchases plus tax made at the Drug Fair was $24.37. This receipt was identified and turned over to Antitrust Division Attorney William H. McManus on August 30, 1960.

On 8/30/60 at Washington, D. C.
By SA Laurence E. Danbom:lbh.

[fol. 1552] Federal Bureau of Investigation

Date 9/1/60.

The following purchases were made at the Woodward and Lothrop Department Store, Washington, D. C., on August 31, 1960.

The Woodward and Lothrop Department Store is located in the downtown section of Washington, D. C., and is a large well-established store. The following items were purchased:

One jar glass polish	$ .35
One can wax	.81
One Easy-Off window spray (bottle)	.59
One can spot spray	1.98
One bottle spray kleen	1.19
One plastic container Meroman furniture cream	1.00
One can Kopper Kare	1.49
One bottle International Silver Polish	.50

One aerosol can Silver Polish	.75
One can Bissell rug shampoo	1.98
One plastic Bissell rug shampoo	2.49
One glass jar Foam Clean rug cleaner	1.00

The total amount of purchases made at this store amounted to $14.41 including tax. This receipt was identified and turned over to Antitrust Division Attorney William H. McManus on August 31, 1960.

On 8/31/60 at Washington, D. C.
By SA Laurence E. Danbom:lbh.

[fol. 1553] Federal Bureau of Investigation

Date 9/1/60

On September 1, 1960, the following items were purchased from the Drug Fair at Connecticut Avenue and Florida Avenue, N.W. This drug store is located in a newly constructed office building. The items purchased are as follows:

One bottle Anti Persperant	$1.00
One can after shave lotion	1.00
One glass jar after shave lotion	.60
One plastic container Caladryl	.79
One bottle Caladryl	.96
One bottle Airwick deodorant	.59
One bottle Turtle wax	1.95
One can Airwick deodorant (aerosol)	.89

The total amount of purchases made on this date was $8.10 including tax. This receipt was identified and turned over to Antitrust Division Attorney William H. McManus on September 1, 1960.

On 9/1/60 at Washington, D. C.
By SA Laurence E. Danbom:lbh.

[fol. 1554] Federal Bureau of Investigation

Date 9/7/60.

The following purchases were made on September 1, 1960, at the Woodward and Lothrop Department Store in downtown Washington, D. C. The items are as follows:

One bottle Clean Tint, fabric color	$2.99
One metal can Fabspray, color tint	2.99

The total amount of purchases including tax from the above store was $6.10. This receipt was identified and turned over to Antitrust Division Attorney William H. McManus on September 1, 1960.

On 9/1/60 at Washington, D. C.
By SA Laurence E. Danbom:lbh.

[fol. 1555] Federal Bureau of Investigation

Date 9/7/60.

The following items were purchased from the Peoples Drug Store, Langley Park, Maryland, on September 2, 1960. This drug store is located in a newly established shopping center in the suburban section of Washington, D. C., and is one of the modern drug stores located in a residential section. The following items were purchased:

One glass bottle Jergens hand lotion (dispenser)	$1.25
One Diaprove baby lotion (glass)	.59
One Johnsons plastic baby lotion	.60
One Jergens lotion (bottle)	.54
One (plastic) Aqua Marine lotion	1.45
One (glass) Aqua Marine lotion	1.00
One Odol mouth wash (bottle)	1.08
One My-O-Mist mouth wash (plastic)	.68
One Pepsodent mouth wash (bottle)	.57
One Rhullispray can (insect bites)	1.21
One bottle Rhullispray (insect bites)	.52
One plastic container insect bites	1.50
One nasal spray (plastic)	1.19
One bottle nasal spray	.59
One Murine (plastic)	.59
One Murine (bottle)	.59

One glass Sucaryl	.89
One Squib Sweeter (plastic)	2.89
One bottle Bactine	.98
One plastic Bactine	.59

The total amount of purchases made at Peoples Drug Store on this date totaled $20.09 including tax. This receipt was identified and turned over to Antitrust Division Attorney William H. McManus on September 2, 1960.

On 9/2/60 at Washington, D. C.
By SA Laurence E. Danbom:lbh.

[fol. 1556] Federal Bureau of Investigation

Date 9/7/60.

The following items were purchased from the Jumbo Food Store on September 2, 1960. This store is located in Adelphi, Maryland, and a suburb of Washington, D. C. It is a large supermarket located in a shopping center in a residential district. The following items were purchased:

One can tomato catsup	$ .99
One bottle tomato catsup	.25
One can barbecue sauce	.14
One bottle barbecue sauce	.23
One glass jar whole apricots	.57
One can apricots	.29
One can Wesson oil	1.99
One molasses (can)	.39
One molasses (bottle)	.27

The total amount of purchases made at Jumbo Food Store was $5.11 including the tax. This receipt was identified and turned over to Antitrust Division Attorney William H. McManus on September 2, 1960.

On 9/2/60 at Washington, D. C.
By SA Laurence E. Danbom:lbh.

[fol. 1557] Federal Bureau of Investigation

Date 9/7/60.

The following purchases were made on September 6, 1960, at the Woodward and Lothrop Department Store located in downtown Washington, D. C. The items are as follows:

One (plastic) Arden for Men after shave lotion	$2.24
One can Arden for Men hair spray	1.97
One Jean Note After Bath lotion (bottle)	1.50
One Jean Note After Bath Lotion (plastic)	1.75
One Foam Bath Oil (bottle)	1.25
One plastic Foam Bath Oil	1.50
One Ciro cologne (glass coated aerosol)	2.50

The total amount of purchases made from the above store on this date was $13.75 which included the tax. This receipt was identified and turned over to Antitrust Division Attorney William H. McManus on September 6, 1960.

On 9/6/60 at Washington, D. C.
By SA Laurence E. Danbom:lbh.

[fol. 1558] Federal Bureau of Investigation

Date 9/7/60.

The following items were purchased from Woodward and Lothrop Department Store on September 7, 1960. This department store has been previously described.

One Breck shampoo (plastic)	$1.25
One Breck shampoo (bottle)	1.00

The total amount of purchases on this date from the above store amounted to $2.30 which included tax. This receipt was identified and turned over to Antitrust Division Attorney William H. McManus on September 7, 1960.

On 9/7/60 at Washington, D. C.
By SA Laurence E. Danbom:lbh.

[fol. 1559] 3081

60-236 #155 AUG 29 1960

GOVERNMENT'S EXHIBIT 1158

CONTINENTAL CAN CO. INC.

Schedule of products observed at Kroger Store 02, Candler Rd. and McAfee Rd., Decatur, Ga. Page 1 of 9 pages

PRODUCT	BRAND	SIZE	TYPE OF CONTAINER			
			PLASTIC	GLASS	CAN	AEROSOL
Apple Sauce	White House	8½ oz.			✓	
	Motts	1 lb. 9 oz.		✓		
	CS	1 lb. 1 oz.			✓	
	Red Gate	1 lb. 1 oz.			✓	
	White House	1 lb. 1 oz.			✓	
Whole Purple Plums	Libby's	1 lb. 1 oz.			✓	
	Del Monte	1 lb. 13 oz.		✓		
Mixed Fig	Libby's	9 oz			✓	
Whole Figs	Del Monte	1 lb. 1 oz.		✓		
	Argo	1 lb. 1 oz.			✓	
Royal Anne Cherries	Del Monte	1 lb. 1 oz.		✓		
Black Beauty Cherries	Del Monte	1 lb. 1 oz.		✓		
Dark Sweet Cherries	West Peak	1 lb.			✓	
Red Sour Pitted Cherries	CS	1 lb.			✓	
Dark Sweet Cherries	Windsor	1 lb.			✓	
Maraschino Cherries	White Swan	10½ oz.		✓		
" "	" "	8 oz.		✓		
" "	" "	4 oz.		✓		
Whole Sweet Pickled Peaches	Pomona Sunshine	28 oz		✓		
Whole Yellow Cling Spiced Peaches	Del Monte	1 lb. 13 oz		✓		
Whole Sweet Pickled Peaches	Alimosa	1 lb. 13 oz.		✓		

[fol. 1560] 3082

60-234
21152
AUG 29 1960

CONTINENTAL CAN CO. INC.

Schedule of products observed at Colonial Store 02, Page 2 of 9 pages
Candler Rd. and McAfee Rd, Decatur, Ga.

PRODUCT	BRAND	SIZE	TYPE OF CONTAINER			
			PLASTIC	GLASS	CAN	AEROSOL
Fruits for Salad	Libby's	8 3/4 oz.			✓	
"	"	1 lb. 1 oz.			✓	
"	Del Monte	1 lb. 13 oz.		✓		
Grape Juice	Welch's	4 Fl. oz.		✓		
"	"	12 Fl. oz.		✓		
"	"	1 Pt. 8 Fl. oz.		✓		
"	Keystone	" "		✓		
"	Welch's	12 Fl. oz.			✓	
Prune Juice	Sunsweet	6 Fl. oz.			✓	
"	"	12 Fl. oz.			✓	
"	"	1 quart		✓		
"	Shedd's Lady Betty	1 qt. 8 oz.		✓		
"	"	1 qt.		✓		
Apple Juice	Mott's	6 Fl. oz.			✓	
"	"	1 qt.		✓		
"	Apple Joy	1 qt.			✓	
Tomato Juice	Libby's	1 pt. 2 oz.			✓	
"	CS	" "			✓	
"	Redgate	" "			✓	
"	CS	1 qt. 14 oz.			✓	
"	Ritter	1 qt.		✓		
"	Crosse and Blackwell	1 pt. 4 oz.		✓		

[fol. 1561] **3083**

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CONTINENTAL CAN CO. INC.
Schedule of products observed at national tour 62, Page 3 of 4 pages
Leadler Rd and Alabee Rd, Decatur, Ga.

PRODUCT	BRAND	SIZE	TYPE CONTAINER
Whole Beets	Del Monte	1 lb.	
Harvard Beets	Greenwood's	1 lb.	
Pickled "	"	1 lb.	
Sliced "	"	1 lb.	
Shoestring Beets	CS	1 lb.	
Spec. Whole Beets	"	1 lb.	
Cut Beets	Stokely	1 lb.	
" "	Redgate	1 lb.	
Asparagus Spears	Ritter	13½ oz.	
" "	Green Giant	1 lb. 3 oz.	
" "	Le Sueur	1 lb. 3 oz.	
" "	"	14½ oz.	
" "	CS	14½ oz.	
Whole "	Super Fine	8½ oz.	
" "	"	1 lb.	
Whole Green Beans	Pomona Sanitic	15½ oz.	
" "	CS	1 lb.	
Sliced Pimientos	Dromedary	4 oz.	
Whole Pimientos	Pomona Porkshire	7 oz.	
" "	" "	4 oz.	
Sliced Pimientos	" "	2 oz.	

[fol. 1562] 3084

AUG 29 1960

CONTINENTAL CAN CO. INC.

Schedule of products observed at Colonial Store #2 Page 4 of 9 pages.
Candler Rd, and McAfee Rd, Decatur, Ga.

PRODUCT	BRAND	SIZE	TYPE OF CONTAINER			
			PLASTIC	GLASS	CAN	AEROSOL
Tomato Catsup	Hunt's	7 lb. 2 oz.			✓	
	C.S.	14 oz.		✓		
	Del Monte	14 oz.		✓		
	"	1 lb. 4 oz.		✓		
	Redgate	14 oz.		✓		
	Stokely's	14 oz.		✓		
	Heinz	14 oz.		✓		
Olive Oil	Pompeian	2 Fl. oz.		✓		
	"	4 Fl. oz.		✓		
	"	8 Fl. oz.			✓	
	De Umberto	1 quart			✓	
Vegetarian Baked Beans	Heinz	1 lb.		✓		
Brick Oven " "	B. & M.	1 lb 6 oz.		✓		
Pork and Beans	Campbell's	" "			✓	
" " "	Redgate	1 lb.			✓	
" " "	"	3 lb 4 oz.			✓	
" " "	Stokely's Van Camp	1 lb 15 oz.			✓	
" " "	Redgate	" "			✓	
Spanish Olives	South Shore Packing Co	2 Fl. oz.		✓		
	" " " "	3 Fl. oz.		✓		
	" " " "	7½ Fl oz.		✓		
	Grandee	3 oz.		✓		
Ripe Olives	Libby's	4½ oz			✓	
	Early California	8 oz.			✓	
Green Olives	" "	10½ oz.		✓		

[fol. 1563] 3085

AUG 1960

CONTINENTAL CAN CO. INC.
Schedule of products observed at Colonial Store 03, Candler Rd, and McAfee Rd, Decatur, Ga. Page 5 of 9 pages.

PRODUCT	BRAND	SIZE	TYPE OF CONTAINER			
			PLASTIC	GLASS	CAN	AEROSOL
Cane Sugar Syrup & Country Corn Syrup	Country Valley Farms	1 qt. 13 oz.			✓	
Syrup	Alaga	Npt. 8 oz.		✓		
	Log Cabin	64 Fl. oz.		✓		
	Karo	1 pint		✓		
	"	1 quart		✓		
	Brer Rabbit	1 qt. 13 Fl oz.		✓		
	Oh Boy	1 qt 11 Fl. oz.		✓		
Cane Syrup	Blue Label Georgia Maid	Npt. 8 Fl. oz.			✓	
Black Pepper	French's	1 3/8 oz.		✓		
	McCormick	2 oz.			✓	
	"	4 oz.			✓	
	"	1 1/2 oz.			✓	
	Triangle	1 oz.			✓	
	"	2 oz.			✓	
	"	4 oz.			✓	
Chili Powder	French's	1 5/8 oz.		✓		
	McCormick	1 1/2 oz.			✓	
Celery Salt	French's	2 3/4 oz.		✓		
	McCormick	2 3/4 oz.			✓	
Curry Powder	French's	1 5/8 oz.		✓		
	McCormick	1 1/4 oz.			✓	
Ginger	French's	1 3/4 oz.		✓		
	McCormick	1 1/8 oz.			✓	
Cinnamon	French's	1 1/2 oz.		✓		
	McCormick	1 1/2 oz.			✓	

[fol. 1564] 3086

60-735
AUG 30 1960

CONTINENTAL CAN CO. INC.
Schedule of products stored at Colonial Stores Inc. Page 6 of 9 pages.
Chandler Rd. & McAfee Rd. Decatur, Ga.

PRODUCT	BRAND	SIZE	TYPE OF CONTAINER: PLASTIC	GLASS	CAN	METAL
Paprika	French's	1 1/2 oz.		✓	✓	
	Mc Cormick	1 1/2 oz.		✓	✓	
Nutmeg	French's	1 1/2 oz		✓		
	Mc Cormick	1 1/2 oz.		✓	✓	
Onion Powder	French's	1 5/8 oz.		✓		
	Mc Cormick	5/16 oz.			✓	
Poultry Seasoning	French's	1 1/8 oz.		✓		
	Mc Cormick	7/8 oz.			✓	
Sage	French's	3/8 oz.		✓		
	Mc Cormick	1/2 oz.			✓	
Crushed Red Peppers	French's	7/8 oz.		✓		
	McCormick	1 1/2 oz.			✓	
Mustard	French's	1 1/2 oz		✓		
	McCormick	1 1/4 oz			✓	
Parsley Flakes	Mc Cormick	5/16 oz.			✓	
	French's	1/8 oz.		✓		

[Fol. 1565] 3087

60-536
AUG 30 1960

CONTINENTAL CAN CO. INC.
Schedule of products observed at Colonial Store 02, Page 7 of 9 pages
Candler Rd, [illegible], Decatur, Ga.

Product	Brand	Size	Type	Container
			Plastic / Glass	Can / Bottle
Grapefruit Drink	Canada Dry	12 Fl. oz.		✓
"	"	10 Fl. oz.		✓
"	"	1 pt 12 Fl. oz.		✓
True Fruit Orange	"	12 Fl. oz.		✓
"	"	1 pt 12 fl. oz.		✓
Hi Grape Imitation Grape Soda	"	12 Fl. oz.		✓
"	"	1 pt. 12 fl. oz.		✓
Cola Fruit Drink	"	12 Fl. oz.		✓
"	"	"		✓
Hi Spot Lemon Soda	"	12 Fl. oz.		✓
"	"	1 pt. 12 fl. oz.		✓
Sparkling Cola	"	1 pt. 12 fl. oz.		✓
"	"	12 Fl. oz.		✓
Old Fashioned Ginger Ale	"	1 pt. 12 fl. oz.		✓
"	"	12 Fl. oz.		✓
Ginger Ale	"	12 Fl. oz.		✓
"	"	1 pt. 12 fl. oz.		✓
Pepsi Cola	Pepsi Cola	12 Fl. oz.		✓
"	"	"		✓
Royal Crown Soda	Royal Crown	12 Fl. oz.		✓
"	"	"		✓

[fol. 1566] 3088

60-236
AUG 30 1960

CONTINENTAL CAN CO INC.
Schedule of products observed at Colonial Store 02, Candler Rd, and McAfee Rd, Decatur, Ga. Page 8 of 9 pages

PRODUCT	BRAND	SIZE	TYPE OF CONTAINER: PLASTIC	GLASS	CAN	AEROSOL
Vegetable Oil	Wesson	1 pint		✓		
	"	1 quart		✓		
	"	½ gallon		✓		
	"	1 gallon			✓	
Apple juice	Gerber's	4.2 Fl. oz.			✓	
	Clapp's	4 Fl. oz.		✓		
Orange-Apple juice	Gerber's	4.2 Fl. oz.		✓		
	Clapp's	4 Fl. oz			✓	
Window Cleaner	Windex	6 Fl. oz		✓		
	"	1¼ Fl. pt.		✓		
	"	14 oz.				✓
Shoe Polish	Griffin	1 5/16 oz.			✓	
	"	7 oz.				✓
	"	2 Fl. oz.		✓		
Toilet Bowl Cleaner	Sani Flush	1 pint		✓		
		11 6 oz				✓
Bug Killer	Real Kill	1 quart		✓		
	" "	14 oz.				✓
	Black Flag	14 oz.				✓
	" "	1 pt		✓		
	" "	1 pt			✓	

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3089

CONTINENTAL CAN CO. INC.

Schedule of products observed at Colonial Store on Glenwood Rd, and Mr. H. Decatur, Ga. Page 9 out 9 pages

PRODUCT	BRAND	SIZE	TYPE OF CONTAINER: PLASTIC	GLASS	CAN	AEROSOL
Deodorizer	Wizard	6 fl. oz.				
	"	7 oz.				
	Colgate	5½ oz.				
	Gulf coast	6 oz.				
	Glade	5½ oz.				
Hair Shampoo	Prell	1.5 Fl. oz.				
	"	3.5 Fl. oz.				
	"	7 Fl. oz.				
		3 oz.				
Deodorant	Mum	1.2 Fl. oz.				
	"	7 oz.				
Pink liquid Detergent	Vel	12 Fl. oz.				
	Vel	12 Fl. oz.				
~~Liquid Detergent~~	Glim	12 Fl. oz.				
	Lux	12 Fl. oz.				
	Texize	22 Fl. oz.				
	3D	1 pt 6 fl. oz.				
	Joy	" "				

[fol. 1568] GOVERNMENT'S EXHIBIT 1160

List of products packaged in glass, can, and plastic containers observed on shelves of Big Apple Supermarket, 3203 Glenwood Road, SE, Atlanta, by SA William B. Sloan on 9/1/60:

Product	Number in Glass	Number in Can
Olives	5	3
Catsup	7	1
Olive Oil	2	2
Barbecue Sauce	5	1
Baby Food	22	7
Prune Juice	2	1
Apple Juice	1	3
Apple Sauce	2	3
Figs	2	3
Cherries	5	4
Fruits for Salad	2	3
Peaches	4	7
Pears	1	3
Orange Drink	2	2
Baked Beans	2	8
Beets	5	2
Butter Beans	1	1
Onions	1	1
Asparagus	1	6
[fol. 1569]		
Tamales	1	1
Soft Drinks	23	12
Sugar Cane Syrup	11	2
Chocolate Syrup	4	1
Coffee	8	9
Spices	14	31
Vegetable Oil	1	1

Household Products

Product	Number in Plastic	Number in Glass	Number in Can
Hair Shampoo	3	5	
Liquid Detergents	7		5
Bug Killer		2	4
Shoe Polish		3	3
Toilet Bowl Cleaners		1	2
Copper Cleaner	1	1	1
Room Deodorizers		1	3
Window Cleaners		2	2

[fol. 1570] GOVERNMENT'S EXHIBIT 1161

List of Products Packaged in Glass, Can, and Plastic Containers Observed on Shelves of Winn Dixie Food Market, Number 477, 2023 Candler Road, S. E., Atlanta, Georgia, by SA William B. Sloan on September 8, 1960:

Food Product

Product	Number in Glass Containers	Number in Can Containers
Asparagus	1	7
Beets	4	4
Baked Beans	2	7
Prune Juice	2	1
Apple Juice	1	2
Tomato Juice	1	5
Cherries	4	1
Apple Sauce	2	3
Apples	1	2
Figs	1	2
Peaches	1	2
Fruits for Salad	1	1
Grape Drink	1	2
Olives	3	4
Sugarcane Syrups	7	4
Baby Food	10	32

[fol. 1571]

Soft Drinks	16	17
Cranberry Sauce	1	1
Chocolate Syrup	5	4
Tea	1	1
Coffee	12	7
Vegetable Oil	1	1
Popcorn	1	2
Peanuts	1	1

In addition, it was noted there was one type of honey packaged in a plastic container and two types of honey packaged in glass.

Household Products

Product	Number in Plastic Containers	Number in Glass Cantainers	Number in Can Containers
Animal Shampoo	0	1	2
Flea Killer	0	2	4
Parakeet Food	0	2	2
Bug Killer	0	3	9
Liquid Detergent	5	0	3
Shoe Polish	0	6	4

[fol. 1572]

Deodorizer	0	4	7
Drain Cleaner	0	1	5
Window Cleaner	0	1	2
Furniture Polish	0	4	3
Silver Polish	0	4	1
Car Wash	0	1	1
Deodorant	3	12	0
Hair Shampoo	1	10	0
Baby Bottles	1	1	0
Baby Lotion	2	2	0
Rug Cleaner	0	1	1
Glue	1	4	0

[fol. 1573] GOVERNMENT'S EXHIBIT 1162

List of products packaged in glass, can, and plastic containers observed on shelves of A & P Food Store Number 37, 3871 Peachtree Road, NE, Atlanta, by SA William B. Sloan on 9/6/60:

Food Products

Products	Number in Glass	Number in Can
Soft Drinks	23	15
Coffee	11	5
Spices	28	24
Peaches	2	7
Figs	1	2
Pears	1	4
Fruits for Salad	1	3
Apple Sauce	1	4
Cherries	1	5
Grape Juice	1	1
Apple Juice	2	2
Prune Juice	2	1
Tomato Juice	1	6
Baked Beans	2	7
Beets	1	4
String Beans	1	4
Asparagus	1	5
Syrups	6	2
[fol. 1574]		
Baby Food	31	11
Olives	5	3
Barbecue Sauce	5	1
Vegetable Oil	3	1

Household Products

Product	Number in Plastic	Number in Glass	Number in Can
Deodorant	4	2	
Hair Shampoo	2	15	
Shoe Polish		5	3
Liquid Detergents	6		3
Deodorizer		2	5
Liquid Starch		3	1
Window Cleaner		2	3
Bug Killer		1	3
Furniture Polish		4	1
Bowl Cleaner		1	2
Silver Polish		1	2
Tooth Paste	1		3

[fol. 1575] GOVERNMENT'S EXHIBIT 1163

List of products packaged in glass, can, and plastic containers observed on shelves of Kroger Retail Store, 1863 Memorial Drive, SE, Atlanta, by SA William B. Sloan on 9/6/60:

Food Products

Product	Number in Glass	Number in Can
Orange Drink	1	2
Grape Drink	1	3
Fruit Punch	1	2
Peaches	1	9
Figs	1	2
Apricots	1	3
Pears	2	3
Plums	1	2
Fruits for Salad	1	2
Apple Sauce	1	3
Cherries	3	3
Grape Juice	2	1
Apple Juice	1	2
Prune Juice	3	1
Tomato Juice	1	5
Baked Beans	1	8
Mushrooms	1	2
Beets	5	7
Asparagus	1	6

[fol. 1576]

Tamales	1	2
Baby Food	29	12
Spices	17	24
Soft Drinks	21	9
Olives	6	2
Coffee	8	10
Chocolate Syrup	3	1

Household Products

Product	Number in Plastic	Number in Glass	Number in Can
Deodorant	2	7	
Hair Shampoo	2	8	
Shoe Polish		7	6
Glue	1	5	
Liquid Detergents	6	3	
Deodorizer	5	2	
Liquid Starch	1	3	
Window Cleaner		1	2
Bug Killer		1	5
Furniture Polish		6	3

[fol. 1577] GOVERNMENT'S EXHIBIT 1164

List of Products Packaged in Glass, Tin, and Plastic Containers Observed on Shelves of Rich's, Inc., Atlanta, Georgia, by SA Edward J. Craig on August 30, 1960:

Household Products

Product	Number in Glass	Number in Plastic	Number in Tin
Shoe Polish	1	0	2
Cold Water Soap	1	0	1
Leather Preserver	1	0	1
Hair Shampoo	1	1	0
Insecticide	1	0	1

[fol. 1578] Cosmetics and Toiletry Products

*Perfumes
*Colognes
*Toilet Waters
*Stick Colognes
*Dusting Powders
*Soaps
*Fragrance Items for Above

Product	Number in Glass	Number in Plastic	Number in Tin
Tinted Foundations	1	1	0
Rouge Makeup	1	1	1
Hand Lotion (Various fragrances)	1	1	1
Sun Tan Lotion	1	1	1
Deodorants	1	1	1
Men's Lotions (This item which consists of pre-shave, after shave, perfumes, toilet waters, colognes comes in various formulas and fragrances. There are available 25 to 30 varying formulas)	1	1	1

*This department handles 50 different lines of these items which are packaged in glass, plastic and tin containers.

[fol. 1579] GOVERNMENT'S EXHIBIT 1165

List of Products Packaged in Glass, Tin, and Plastic Containers Observed on Shelves of Davison-Paxon Department Store, 180 Peachtree Street, N. W., Atlanta, Georgia, by SA Edward J. Craig, on September 1, 1960:

Household Products

Product	Number in Glass	Number in Plastic	Number in Tin
Rug Shampoos	1	1	5
Oven Cleaners	1	1	
Air Refreshers	1		1
Gum Turpentine	3		1
Glue	2	3	
Wood Filler		1	1
Rose Spray		1	1
Furniture Polish	1		1

[fol. 1580] Cosmetics and Toiletry Products

*Perfumes
*Colognes
*Toilet Waters
*Stick Colognes
*Dusting Powders
*Soaps
*Fragrance Items for Above

Product.	Number in Glass	Number in Plastic	Number in Tin
Face Powder			
Loose		1	1
Pressed		1	1
Makeup Foundations	1	1	
Shampoos	1	1	1
Rouge Makeup	1	1	1
Dry and Cream Rouges		1	1
Liquid Rouge	1		
Hand Lotions	1	1	1

*This department handles 100 different lines of these items. For example, Flambeau Cologne comes in five fragrances and is packaged in glass, plastic and tin containers. To elaborate further, the plastic container, which is an Aerosol item, comes in four different sizes. The fragrance items packaged in the tin type container comes in one size.

Product	Number in Glass	Number in Plastic	Number in Tin
Eye Makeup ..... (There are approximately 100 items in this line, consisting of eye shadow, mascara, eye liner, eye pencils and each item comes in assortment of 12 to 15 shades.)	1	1	1
[fol. 1581]			
Sun Tan Lotion ..... (There are approximately 50 formulas in various sizes)	1	1	1
Deodorants ..... (There are available 50 different lines consisting of all types of liquid, creams and roll-on types. Item comes in various fragrances.)	1	1	1
Creams ..... (There are approximately 50 various formulas packaged in all shapes and sizes. There are many textures as well as fragrances to this line.)	1	1	
Men's Lotions ..... (This item which consists of pre-shave, after shave lotions, perfumes, toilet waters, colognes, comes in various formulas, fragrances. There are approximately 30 varying formulas of three sizes to each formula.)	1	1	1

[fol. 1582] GOVERNMENT'S EXHIBIT 1166

List of Products Packaged in Glass, Tin, and Plastic Containers Observed on Shelves of W. T. Grant and Company, 3507 Memorial Drive, Atlanta, Georgia, by SA Edward J. Craig on September 2, 1960:

Household Products

Product	Number in Glass	Number in Plastic	Number in Tin
Lipstick	1		1
Face Powder			1
Liquid Makeup		1	
Aspirin	2		2
Band Aid Adhesive		1	1
Glue	1		1
Furniture Polish	1		1
Shoe Polish	2		2
Home Permanent Wave Set ..	1	1	

[fol. 1583] GOVERNMENT'S EXHIBIT 1167

List of Products Packaged in Glass, Tin, and Plastic Containers Observed on Shelves of Sears Roebuck and Company, 677 Ponce de Leon Avenue, Atlanta, Georgia, by SA Edward J. Craig on September 2, 1960:

Household Products

Product	Number in Glass	Number in Plastic	Number in Tin
Glass Cleaners	1	1	1
Furniture Polish	2		1
Copper Cleaner		1	2
Oven Cleaner		2	1
Insect Repellents	2		2
Rug Cleaner	4		3
White Shellac	2		2
Hand Cleaner	1		3
Aluminum Paint	2		1
Weed Killer	1		2
Rose Dust		1	1
Aspirin	3		3

[fol. 1584] List of Products Packaged in Glass, Tin, and Plastic Containers Observed on Shelves of Sears Roebuck and Company, 677 Ponce de Leon Avenue, Atlanta, Georgia, by SA Edward J. Craig on September 2, 1960:

Cosmetics and Toiletry Products

*Perfumes
*Colognes
*Toilet Waters
*Stick Colognes
*Dusting Powders
*Soaps
*Fragrance Items for Above

Product	Number in Glass	Number in Plastic	Number in Tin
Face Powder			
Package Loosely		1	1
Packaged in Pressed Formulas		1	1
Makeup Foundations	1	1	1
Shampoos	1	1	1
Rouge Makeup	1	1	1

*This department handles approximately 25 lines of these items and each item comes packaged in glass, plastic or tin containers.

Product	Number in Glass	Number in Plastic	Number in Tin
Liquid Rouge	1		
Cream Rouge		1	1
Hand Lotions (They are packaged in varying types and formulas as well as fragrances.)	1	1	1

[fol. 1585]

Eye Makeup (Includes all shades of eye shadow, eye liner, eye pencil as well as mascara)	1	1	1
Sun Tan Lotions	1	1	1
Deodorants (Packaged also in Aerosol cans; there are available approximately 20 different lines consisting of liquids, creams and roll-on types. Items also packaged in various fragrances.)	1	1	1
Hair Colorings (There are approximately 20 formulas packaged in all shapes, sizes, textures, and fragrances.)	1	1	1
Men's Lotions (Items consist of pre-shave, after-shave lotions, perfumes, toilet waters, colognes packaged in various formulas, fragrances. There are available ten varying formulas of three sizes to each formula.)	1	1	1

[fol. 1586] GOVERNMENT'S EXHIBIT 1168

List of Products Packaged in Glass, Tin, and Plastic Containers Observed on Shelves of Belk and Gallant Company, 514 North McDonough, Decatur, Georgia, by SA Edward J. Craig on September 2, 1960:

Product	Number in Glass	Number in Plastic	Number in Tin
Cosmetics (There are available 5 lines of cosmetics)	1	1	1
Fragrance Items (There are available 16 different fragrance lines in above cosmetic lines) (There are available 2 different fragrance lines in:	1	1	1

Product	Number in Glass	Number in Plastic	Number in Tin
Cologne	1	1	1
Perfume	1	1	1
Toilet Water	1	1	1
Powder	1	1	1
Soap (There are available in these two lines 9 different fragrances)	1	1	1
Men's Lotions	1	1	1
Men's Powder		1	1
Deodorants (There are available 13 different lines)	1	1	1
[fol. 1587]			
Eye Shadow (There are available four different lines)	1	1	1
Rouge (Available in two different lines)	1	1	
Makeup Foundation			
(Dry skin formula)	1	1	
(Rough skin formula) (Available in two different lines)	1	1	
Powders (Available in all cosmetic lines)	1	1	1

[fol. 1588] GOVERNMENT'S EXHIBIT 1169

List of Products Packaged in Glass, Can, and Plastic Containers Observed on Shelves of Austin's Super Market, 780 North Highland, N. E., Atlanta, Georgia, by SA William O. Landsgaard on August 30, 1960:

Food Products

Product	Number in Glass	Number in Cans	Number in Plastic
Peaches	1	2	
Apple Sauce	2	2	
Fruit Cocktail	1	3	
Cherries	2	3	
Prune Juice	1	1	
Grape Juice	1	1	
Apple Juice	1	1	
Tomato Juice	1	2	
Baby Fruit Juice	1	1	
Beans	1	4	
Beets (sliced, diced and whole)	2	2	
Asparagus	1	2	
Boned Chicken	1	1	
Chocolate Syrup	1	1	
Honey	1		1

Product	Number in Glass	Number in Cans	Number in Plastic
Syrup	1	3	
Olive Oil	1	1	
Olives	1	3	

[fol. 1589]

Vegetable Oil and Shortening	2	5	
Popcorn	1	1	

Household Products

Product	Number in Glass	Number in Cans	Number in Plastic
Laundry Starch	2	1	
Furniture Polish	1	1	
Window Cleaner	1	1	
Car Wax	1		1
Shoe Polish	3	3	
Liquid Detergent		2	3
Insecticides	1	1	
Baby Lotion	1		1

[fol. 1590] GOVERNMENT'S EXHIBIT 1170

List of products packaged in glass, can, and plastic containers observed on shelves of Crook's Foodtown, 280 Chandler Road, S. E., Atlanta, Georgia, by SA William O. Landsgaard on August 31, 1960:

Food Products

Product	Number in Glass	Number in Cans	Number in Plastic
Olive Oil	1	1	
Olives	2	2	
Honey	1		1
Barbecue Sauce	3	1	
Prune Juice	3	1	
Apple Juice	1	1	
Tomato Juice	1	4	
Orange Drink	1	1	
Grape Drink	1	3	
Grape Juice	2	1	
Peaches (all types)	3	3	
Apple Sauce	1	2	
Fruits for salads	1	2	
Cherries	4	3	
Beets (all types)	6	2	
Onions	1	1	
Asparagus	1	4	

[fol. 1590a]

Sauerkraut	1	4	
Beans (baked and pork and beans)	1	5	

Product	Number in Glass	Number in Cans	Number in Plastic
Pimentos	1	1	
Shrimp	1	1	
Chocolate Syrup and Chocolate Flavoring	2	1	
Vegetable Oil and Shortening	3	4	
Spices	14	14	
Soft drinks	10	6	

Household Products

Product	Number in Glass	Number in Cans	Number in Plastic
Window Cleaner	1	2	
Furniture Polish	1	1	
Floor Cleaner	1	3	1
Air Deodorizer	3	3	
Silver Creme	1	1	
Liquid Detergent	4	4	7
Liquid Starch	3	1	
Insecticides	3	6	
Shoe Polish	4	4	
Shampoo	6		1
Hair Dressing	1		1
Baby Creme	1		1
[fol. 1591]			
Deodorant	1		3
Bird Spray		1	1
Cleansing Formula for Pets	3	1	2
Eye Drops	1		1
Aspirin	4	5	
Suntan Lotion	1		6
Glue	1	1	

[fol. 1592] GOVERNMENT'S EXHIBIT 1171

List of products packaged in glass, can, and plastic containers, observed on shelves of T. L. Lyle Food Store, 1401 North Highland, N. E., Atlanta, Georgia, by SA William O. Landsgaard on September 1, 1960.

Food Products

Product	Number in Glass	Number in Cans	Number in Plastic
Beans	1	2	
Beets (whole, pickled, and sliced)	1	4	
Grape Juice	1	1	
Apple Juice	1	1	
Prune Juice	1	1	
Tomato Juice	1	3	
Fruits for salads	1	1	
Cherries	1	4	

Product	Number in Glass	Number in Cans	Number in Plastic
Spices	5	16	
Pimentos (whole and sliced)	1	2	
Olives	2	2	
Olive Oil	1	1	
Soft Drinks	8	1	

Household Products

Product	Number in Glass	Number in Cans	Number in Plastic
Liquid Detergent	3	2	4
Insecticides	1	1	

[fol. 1593]

Window Cleaner	1	1	
Furniture Polish	4	1	
Air Deodorizer	2	1	
Aspirin	2	1	
Shoe Polish	2	2	

[fol. 1594] GOVERNMENT'S EXHIBIT 1172

List of products packaged in glass, can, and plastic containers observed on shelves of J. S. Broyles Super Market, 1586 Piedmont Avenue, N. E., Atlanta, Georgia, by SA William O. Landsgaard on Septemer 2, 1960.

Food Products

Product	Number in Glass	Number in Cans	Number in Plastic
Fruits for salads	1	2	
Pears	2	2	
Peaches	1	3	
Cherries	2	3	
Apples (baked and sauce)	1	3	
Beets (pickled; whole, and diced)	1	3	
Asparagus	1	4	
Tomato juice	1	2	
Apple Juice	1	2	
Prune Juice	2	1	
Beans	2	5	
Onions	1	1	
Vegetable Oil and Shortening	4	4	
Spices	1	1	
Instant Coffee	11		
Coffee		7	
Olive Oil	1	1	
Olives	2	4	
Pimentos	1	2	

[fol. 1595]

Chocolate Syrup and Chocolate Flavoring	2	1	

Household Products

Product	Number in Glass	Number in Cans	Number in Plastic
Aspirin	4	4	
Deodorant	7		3
Nasal Spray and Drops	1		2
Liquid Detergent	3	2	4
Window Cleaner	1	3	
Silver Creme	1	1	
Insecticides	2	5	
Car Wax		1	1
Air Deodorizer	1	2	
Furniture Polish	7	1	
Shoe Polish	5	1	

[fol. 1596] GOVERNMENT'S EXHIBIT 1173

List of products packaged in glass, can, and plastic containers observed on shelves of Altman's Super Market, 2508 N. Decatur Road, Atlanta, Georgia, by SA William O. Landsgaard on September 6, 1960.

Food Products

Product	Number in Glass	Number in Cans	Number in Plastic
Soft Drinks	9	2	
Honey	1		1
Barbecue Sauce	6	1	
Olives	6	3	
Olive Oil	1	1	
Chocolate Syrup and so called Milk Amplifier	4	2	
Saurkraut	1	2	
Peaches	6	6	
Pears	2	4	
Figs	1	2	
Cherries	1	4	
Purple Plums	1	1	
Apples (spiced, baked, and sauce)	2	5	
Tomato Juice	1	4	
Apple Juice	2	1	
Grape Juice	1		
Grape Drink		3	
Prune Juice	3	1	

[fol. 1597]

Beans (baked, and pork and beans)	1	12	
Mushrooms	1	3	
Pimentos	1	1	
Beets	3	2	
Asparagus	1	7	
Onions	1	1	

Product	Number in Glass	Number in Cans	Number in Plastic
Marshmallows			Plastic bag
Marshmallow Creme	1		
Baby Fruit Juice	1	2	
Instant Coffee	12		
Coffee		8	
Spices	2	2	
Popcorn	1	1	
Vegetable Oil and Shortening	8	6	

Household Products

Product	Number in Glass	Number in Cans	Number in Plastic
Baby Creme and Oil	1	1	1
Dusting Powder		1	1
Shampoos for Pets	5	2	1

[fol. 1598]

Window Cleaner	1	3	
Liquid Detergent	5	6	7
Liquid Starch	2	1	
Air Deodorizer	2	1	
Furniture Polish	5	1	
Silver Creme	1	1	
Copper Polish		1	
Oven Cleaner	1		
Insecticide	1	4	
Shoe Polish	3	2	

[fol. 1599] GOVERNMENT'S EXHIBIT 1174

List of products packaged in glass, can, and plastic containers observed by SA John J. Golden on shelves of Walgreen's Drugstore, Lenox Square Shopping Center, Atlanta, Georgia, on August 30, 1960.

Household Products

Product	Number in Plastic	Number in Glass	Number in Can
Liquid detergent	3		3
Cleaning Fluid		2	2
Window Cleaner		2	1
Shoe Polish		3	3
Insect Repellent		3	2
Bug killer		1	3
Air deodorizer		3	3
Glue	1	2	
Baby bottles	2	2	

Toiletry Products

Shave cream		4	9
Tooth paste	1		4

Product	Number in Glass	Number in Cans	Number in Plastic
Hair remover	1	3	
Deodorant	10	12	2
Hair Shampoo	4	10	
Hair conditioner	8	7	1
Foot powder	1	2	2

[fol. 1600]

Drug Products

Product	Number in Plastic	Number in Glass	Number in Can
Nasal medication	4	4	
Eye drops	1	2	
Pain reliever	2	3	
Petroleum jelly	1	2	
Rubbing alcohol	1	2	
Vitamin-Vidaylin	1	1	

[fol. 1601] GOVERNMENT'S EXHIBIT 1175

List of products packaged in glass, can, and plastic containers observed on shelves of Dart's Drugstore, East Paces Ferry Road and Peachtree Road, Atlanta, Georgia, by SA John J. Golden on September 2, 1960.

Drug Products

Product	Number in Plastic	Number in Glass	Number in Can
Nasal spray	5	3	
Mints		1	1
Laxative (liquid)		2	1
Aspirin		6	3
Foot powder	1	1	3
Pain reliever	3	3	

Toiletry Products

Shave cream		4	8
Hair conditioner	2	3	1
Hair shampoo	1	4	
Hair remover	1	3	
Deodorant	6	9	

[fol. 1602]

Household Products

Product	Number in Plastic	Number in Glass	Number in Can
Baby Bottles	1	1	
Baby Cream	2	1	
Shoe Polish	1	1	
Insect Repellent	1	3	1

[fol. 1603] GOVERNMENT'S EXHIBIT 1176

List of products packaged in glass, can, and plastic containers observed on shelves of Jacob's Drugstore, Ponce De Leon Avenue and Peachtree Street, Atlanta, Georgia, by SA John J. Golden on September 1, 1960.

Drug Products

Product	Number in Plastic	Number in Glass	Number in Can
Lotion cream	2	2	
Throat lozenge	1	1	
Sweetner	2	2	
Pain reliever	3	3	1
Petroleum jelly	1	2	
Vitamins-Vidaylin	1	1	
Anti-biotic ointment	1	1	
Skin cleanser	1	1	
Aspirin		5	5

Household Products

Insect Repellent	2	2	1
Shoe Polish	1	4	4
Bug Killer		1	2
Silver Polish		1	1
Cold Water Soap	1		1
Glue	1	1	
Baby bottles	1	1	
Rubbing Alcohol	1	3	

[fol. 1604]

Toiletry Products

Product	Number in Plastic	Number in Glass	Number in Can
Baby Cream	1	1	
Shave Cream		2	9
Skin Cream		1	1
Suntan Lotion	4	2	
Hand Lotion	1	1	
Deodorant	2	6	
Hair shampoo	2	6	
Hair conditioner	4	6	
Foot powder		1	2
Eye lotion	1	3	
Nasal spray	2	3	

[fol. 1605] GOVERNMENT'S EXHIBIT 1177

List of products packaged in glass, can, and plastic containers observed on shelves of Lane-Rexall Drugstore, Peachtree and 10th Streets, Atlanta, Georgia, by SA John J. Golden on September 7, 1960.

Drug Products

Product	Number in Plastic	Number in Glass	Number in Can
Athletes foot remedy	6		6
Nose drops	6	6	
Aspirin		6	6
Eye drops	10	10	
Vitamins	1		1
Milk of magnesia tablets		2	2

Toiletry Products

Suntan lotion	4	2	
Insect repellent	4	3	1
Baby lotion	3	3	
Baby shampoo	1	2	
Shaving cream		2	9
Deodorants	6	10	
Hair remover	3	3	
Hair conditioners	2	4	1
Hair shampoo	3	23	
Hair Spray		1	6

[fol. 1606]

Household Products

Product	Number in Plastic	Number in Glass	Number in Can
Glue	2	2	
Baby bottles	1	2	
First aid antiseptic	1	1	
Sweetner	1	2	
Shoe Polish		6	6
Fever thermometers		1 (stored in plastic container)	
Bug killer		2	4
Cleaning fluid		3	1
Cold water soap		1	1
Car wax		1	4

[fol. 1607] GOVERNMENT'S EXHIBIT 1178A

United States Department of Justice
Federal Bureau of Investigation

Report of: Albert A. Hustedt (A)
Date: 9/7/60
Field Office File No.: Los Angeles 60-602
Office: Los Angeles, California
Bureau File No.: 60-4975
Title: Continental Can Company, Inc., et al
Character: Antitrust

Synopsis: Investigation at five leading chain grocery stores, five leading independent grocery stores, five leading drug chain stores and five leading department stores in the Los Angeles area identified 120 types of the same product which appear in cans and glass containers; 17 types in glass and plastic containers; 20 types in cans and plastic containers; and 32 types in cans, glass and plastic containers.

RUC

Details:—

[fol. 1608] Federal Bureau of Investigation

Date 9/6/60

Fred T. McIntyre, Head of Security, downtown store of the May Co., 7th and Hill Street, Los Angeles, California, • • •. Mr. McIntyre furnished permission to Special Agents Albert A. Hustedt and Harry A. Kerley to make a shelf check to determine this information. This shelf check identified the following products which appear packaged as follows:

Cans and Glass Containers

Vegetable Juice
Loguats
Papaya
Asparagus
Onions
Beans
Peas
Artichokes

Sauerkraut
Mushrooms
Chicken Broth
Bouillon
Calfs Foot Jelly
Chestnuts
Salad Oils
Syrup
Currie Powder
La Truffe
Caviar
Spot Remover
Lobster
Cement Cleaner
Sardines
Spices
Cooking Compound
Deviled Ham
Fertilizer
Nuts
Tea
Coffee
Candy
Cookies
Health Foods (All kinds)
Salted Cherry Blossoms
Perfume

Cans and Plastic Containers

French Fried Ants
French Fried Butterflies
French Fried Grasshoppers
Toothpaste

On 8/31/60 at Los Angeles, California
By SAs Albert A. Hustedt (A) and Harry A. Kerley (A):BLR

[fol. 1609] Glass and Plastic Containers

Antiseptic

Cans, Glass and Plastic Containers

Insecticides

Floor Wax
Metal Cleaner
Rug Shampoo
Patent Medicines
Deodorant (Human)
Baby Products
Glue
Dietary Aids
Ginger
Sun Tan Lotion
Hair Beautifyer
Skin Lotion
Bubble Bath
Mascara
Men's Shave Lotion
Men's Deodorants
Men's Hair Tonic
Foot Powders

[fol. 1610] Federal Bureau of Investigation

Date 9/6/60,

M. Lou Hawthorne, Chief of Store Protection, downtown store of Bullock's Department Store, Inc., 659 South Broadway, Los Angeles, * * * furnished permission, to Special Agent Albert A. Hustedt to make this inspection at this store. This inspection identified the following products packaged in the following manners:

Cans and Glass Containers

Candy
Syrup
Olives
Onions
Face Powder
Glue
Furniture Wax
Floor Wax
Laxative
Aspirin

Cans and Plastic Containers

Lipstick
Face Powder

Glass and Plastic Containers

Hair Shampoo
Antiseptic
Tooth Brushes

On 9/2/60 at Los Angeles, California
By SAA Albert A. Hustedt:BLR

[fol. 1611] Cans, Glass and Plastic Containers

Perfume
Hair Beautifyer
Tooth Paste
Shampoo
Rug Shampoo
Metal Polish
Insecticides
Deodorant (Human)
Sun Tan Lotion
Foot Powder
Shaving Lotion
Patent Medicines
Metal Cleaner
Rug Shampoo
Skin Lotion
Baby Care Products
Men's Shave Lotion
Men's Deodorant
Men's Hair Tonic
Mascara
Bubble Bath
Dietary Aids

[fol. 1612] Federal Bureau of Investigation

Date 9/6/60.

George C. Lowry, Assistant Security Manager, the Broadway downtown store of Broadway Hall Department

Stores, 401 South Broadway, Los Angeles, California, * * *. Lowry furnished permission to Special Agent Albert A. Hustedt to make a shelf inspection of this store which resulted in the following products being identified as being packaged in the following manners:

Cans and Glass Containers

Putty
Glue
Turpentine
Furniture Wax
Floor Wax
Shaving Cream
Laxatives

Cans and Plastic Containers

Lipsticks
Face Powders

Glass and Plastic Containers

Tooth Brushes
Hair Shampoo
Antiseptic

Cans, Glass and Plastic Containers

Rug Shampoo
Metal Polish
Insecticides
Candy
Deodorant (Human)
Sun Tan Lotion
Teeth Cleaners
Hair Beautifyer
Perfumes
Foot Powder
Dietary Aids
Bubble Bath
Medicated Cream

Shaving Lotions
Patent Medicines

On 9/1/60 at Los Angeles, California
By SAA Albert A. Hustedt:BLR.

[fol. 1613] Federal Bureau of Investigation

Date 9/6/60.

J. M. Wilkes, Manager, W. T. Grant Company, 437 South Broadway, Los Angeles, California, * * *. Wilkes furnished permission to Special Agent Albert A. Hustedt to make a shelf inspection of his store during which the following products were identified as being packaged in the following manners:

Cans and Glass Containers

Shoe Polish
Tooth Paste
Aspirin
Turpentine
Fish Food (Pet)
Bird Food (Pet)
Fertilizer
Room Deodorizer
Floor Wax
Furniture Wax
Window Cleaner
Disinfectant

Cans and Plastic Containers

Scotch Tape
Sun Tan Lotion

Glass and Plastic Containers

Glue
Baby Skin Lotion
Tooth Brushes

Cans, Glass and Plastic Containers

Hair Shampoo
Hair Beautifyer

Deodorant
After Shave Lotion
Insecticides
Bird Sprays
Animal Shampoo
Metal Cleaner

On 9/1/60 at Los Angeles, California
By SAA Albert A. Hustedt:BLR.

[fol. 1614] Federal Bureau of Investigation

Date 9/6/60.

E. D. Victor, Store Protection, downtown store of J. W. Robinson, 600 West 7th Street, Los Angeles, California, * * *. Victor furnished Special Agent Albert A. Hustedt with permission to make a shelf check of this store, which resulted in the following items being identified as being packaged in the following manners:

Cans and Glass Containers

Beef
Chicken
Asparagus
Olives
Cookies
Coffee
All Types Spices
Tea
Shrimp
Chestnuts
Anchovies
Caviar
Mushrooms
Cheese
Food Pastes
Nuts
Shaving Cream
Floor Wax
Furniture Wax

Cans and Plastic Containers

Tooth Paste

Glass and Plastic Containers

Tooth Brushes
Antiseptics
Sun Tan Lotion

On 9/1/60 at Los Angeles, California.
By SAA Albert A. Hustedt:BLR.

[fol. 1615] Cans, Glass and Plastic Containers

Candy
Body Lotion
Tooth Paste
Hair Set
Hair Shampoo
Deodorant (Human)
After Shave Lotion
Foot Powder
Bubble Bath
Tooth Cleaner
Insecticides
Rug Shampoo
Patent Medicines
Baby Products
Glue
Dietary Aids
Skin Lotion
Mascara
Men's Shave Lotion

[fol. 1616] Federal Bureau of Investigation

Date 9/6/60.

Ernest Konga, Assistant Manager, Thrifty Drug Company, Inc., 427 South Broadway, Los Angeles, California, * * * furnished Special Agent Albert A. Hustedt permission to make a shelf check of the products sold in this store. This check identified the following products to be packaged in the following manners:

Cans and Glass Containers

Shaving Cream
Antiseptics

Laxatives
Medicated Creams
Aspirin
Food Supplements
Baby Foods (All kinds)
Floor Wax
Window Cleaner
Spot Remover
Furniture Wax
Rug Shampoo
Room Deodorizer
Shoe Polish
Pet Food
Pet Cleaners
Beer
Soft Drinks (All kinds)

Cans and Plastic Containers

Lipsticks
Scotch Tape
Animal Sprays
Liquid Detergents

On 9/1/60 at Los Angeles, California.
By SAA Albert A. Hustedt:BLR.

[fol. 1617] Glass and Plastic Containers

Cologne
Nail Polish
Tooth Brushes

Cans, Glass and Plastic Containers

Hand Cream
Cleansing Creams
Skin Lotion
Perfumes
Bubble Bath
Deodorant (Human)
Sun Tan Lotion
After Shave Lotion
Tooth Cleaners

Insecticides
Baby Cleansing Items
Glue
Hair Shampoo
Hair Creams
Hair Beautifyer
Car Wax
Metal Cleaners
Foot Powder
Candy

[fol. 1618] Federal Bureau of Investigation

Date 9/6/60.

Bernie Brodsky, Owner of the Charm Drug Company, 1602 West 7th Street, Los Angeles, California, * * *. Brodsky furnished permission to Special Agents Albert A. Hustedt and Harry A. Kerley to make a shelf inspection of the products sold in his store and this inspection identified the following products to be packaged in the following manners:

Cans and Glass Containers

Beer
Laxatives
Shoe Polish
Insecticides

Cans and Plastic Containers

Scotch Tape
Face Powder
Lipstick
Cotton Balls
Band aids
Tooth Paste

Glass and Plastic Containers

Mascara
Cologne
Tooth Brushes
Rubbing Compounds

Cans, Glass and Plastic Containers

Glue
Shampoo (Human)
Hair Beautifyer
Deodorant (Human)
Patent Drugs
After Shave Lotion
Sun Tan Lotion
Baby Care Items
Foot Powder

On 9/2/60 at Los Angeles, California
By SAAs Albert A. Hustedt and Harry A. Kerley:BLR.

[fol. 1619] Federal Bureau of Investigation

Date 9/6/60

Irving Schneider, President of Manray, Inc., 3170 Wilshire Boulevard, Los Angeles, * * *. He furnished permission to Special Agents Albert A. Hustedt and Harry A. Kerley to make a shelf inspection which resulted in the following products being identified as being packed in the following manners:

Cans and Glass Containers

Shave Cream
Cleaning Fluid
Insecticides
Laxatives
Dog Shampoo
Shoe Polish
Aspirin
Sucaryl
Candy
Beer

Cans and Plastic Containers

Lipstick
Tooth Paste
Band Aids
Cotton Balls
Scotch Tape

Glass and Plastic Containers

Body Lotion
Cologne
Tooth Brushes

On 9/2/60 at Los Angeles, Californa.
By SAAs Albert A. Hustedt and Harry A. Kerley:BLR.

[fol. 1620] Cans, Glass and Plastic Containers

Sun Tan Lotion
Cold Water Soap
Deodorant (Human)
Hair Beautifyer
Shampoo (Human)
Mascara
After Shave Lotion
Foot Powder
Baby Care Items
Glue
Patent Medicines

[fol. 1621] Federal Bureau of Investigation

Date 9/6/60.

Leo Mispagiel, Assistant Manager, Sav-On Drugs, 1701 South Western Avenue, Los Angeles, * * *. Mispagiel furnished permission to Special Agents Albert A. Hustedt and Harry A. Kerley to make a shelf inspection of the products sold in this store, which identified the following products to be packaged as follows:

Cans and Glass Containers

Health Foods
Laxative
Coffee
Aspirin
Home Deodorants
Rug Shampoo
Carbontetra-Chloride
Floor Wax

Furniture Wax
Shoe Polish
Pet Food
Fertilizer
Shaving Cream
Shaving Lotion
Beer

Cans and Plastic Containers

Cotton Balls
Adhesive Tape
First Aid Travel Kits
Scotch Tape

Glass and Plastic Containers

Tooth Brushes
Cologne
Lipstick
Fingernail Hardner
Skin Tan Lotion

On 9/2/60 at Los Angeles, California.
By SAAs Albert A. Hustedt and Harry A. Kerley:BLR.

[fol. 1622] Cans, Glass and Plastic Containers

Patent Medicines
Foot Powder
Baby Care Products
Metal Cleaner
Spot Remover
Insecticides
Car Wax
Pet Shampoo
Glue
Detergent
Cold Water Soap
Deodorant (Human)
Tooth Paste
Hair Beautifyer
Shampoo (Human)
Bubble Bath

Perfume
Skin Lotions
Face Powder

[fol. 1623] Federal Bureau of Investigation

Date 9/6/60.

Ronald Hodson, Pharmacist, D&B Pharmacy, 11000 South Vermont Avenue, Los Angeles, California, * * * furnished permission to Special Agents Albert A. Hustedt and Harry A. Kerley to make a shelf inspection of this store during which the following products were identified to be packaged as follows:

Cans and Glass Containers

Ointments
Laxatives
Cleaning Fluids
House Deodorants
Shaving Cream
After Shave Lotion
Shoe Polish
Salts
Aspirin

Cans and Plastic Containers

Insecticides
Candy
Adhesive Tape
Face Powder
Lipstick

Glass and Plastic Containers

Hand Lotion
Colognes
Tooth Brushes

Cans, Glass and Plastic Containers

Patent Drugs
Glue

Hair Beautifyer
Human Deodorant
Sun Tan Lotion
Pet Food
Baby Care Products
Pet Sprays
Mascara

On 9/2/60 at Los Angeles, California.
By SAAs Albert A. Hustedt and Harry A. Kerley:BLR.

[fol. 1624] Federal Bureau of Investigation

Date 9/6/60.

As a result of investigation at five leading chain grocery stores, five leading independent grocery stores, five leading drug chain stores and five leading department stores in the Los Angeles area, the following is a summary of the total individual products found packaged in the following manners:

Cans and Glass Containers

1. Aji-No-Moto
2. Ammonia
3. Anchovies
4. Antiseptics
5. Apple Sauce
6. Apricots
7. Artichokes
8. Asparagus
9. Aspirin
10. Baby Foods (All kinds)
11. Beans
12. Beef
13. Beer
14. Beets
15. Bouillon
16. Boysenberries
17. Calfs Foot Jelly
18. Candy
19. Carbontetra-chloride
20. Cagrots

21. Caviar
22. Cement Cleaner
23. Cheese
24. Cherries
25. Chestnuts
26. Chicken
27. Chicken Broth
28. Chili Sauce
29. Cleaning Fluid
30. Coffee
31. Cookies
32. Cooking Compound
33. Crab Apples
34. Currie Powder
35. Deviled Ham
36. Diced Cactus
37. Deodorizer (Home)
38. Disinfectants
39. Dry Cleaner
40. Face Powder
41. Fertilizer
42. Figs
43. Fish
44. Floor Wax
45. Food Pastes
46. Food Supplement
47. Fruit Juice (All Kinds)
48. Fruit Salad
49. Furniture Wax
50. Glue
51. Gravy (Meat)
52. Hair Set
53. Health Foods
54. Honey
55. Ice Cream Topping
56. Insecticides
57. La Truffe
58. Laxatives
59. Lobster
60. Loguats

On 9/6/60 at Los Angeles, California.
By SAA Albert A. Hustedt:BLR.

[fol. 1625] 61. Lotions (Hair Wave)
62. Malted Milk
63. Medicated Creams
64. Metal Cleaners
65. Mushrooms
66. Ointments
67. Olives
68. Onions
69. Oysters
70. Nuts
71. Papaya
72. Peaches
73. Peanut Butter
74. Pears
75. Peas
76. Perfume
77. Pet Cleaners
78. Pet Food
79. Petroleum Jelly
80. Pimientos
81. Plums
82. Popcorn
83. Prunes
84. Putty
85. Raviola and Chicken
86. Salad Oils
87. Salted Cherry Blossoms
88. Sandwich Spread
89. Sardines
90. Sauerkraut
91. Sausage
92. Seasoning (All Kinds)
93. Serutan
94. Shampoo (Rug)
95. Shave Cream
96. Shave Lotion
97. Shoe Polish
98. Shoyu
99. Shrimp
100. Soft Drinks (All Kinds)
101. Sorghum

102. Spaghetti Sauce
103. Spices (All Kinds)
104. Spot Remover
105. Sprays (Animal)
106. Starch
107. Steak Sauce
108. Sucaryl
109. Sugar
110. Syrup
111. Tea
112. Toilet Cleaner
113. Tooth Paste
114. Turkey
115. Turpentine
116. Vegetable Juice
117. Wave Set
118. Welsh Rarebit
119. Window Cleaner
120. Zuke

Cans and Plastic Containers

1. Animal Sprays
2. Band Aids
3. Cake Icing
4. Candy
5. Car Wax
6. Cotton Balls
7. Detergents (Liquid)
8. Face Powder
9. First Aid Travel Kits
10. Foot Powder
11. French Fried Ants
12. French Fried Butterflies
13. French Fried Grasshoppers
14. Hair Set
15. Ice Cream Topping
16. Insecticides
17. Lipstick
18. Scotch Tape
19. Sun Tan Lotion
20. Tooth Paste

[fol. 1625a] Glass and Plastic Containers

1. Antiseptic
2. Baby Lotions
3. Body Deodorants
4. Body Lotion
5. Bouillon
6. Cologne
7. Fingernail Hardener
8. Glue
9. Lipstick
10. Makeup Powder
11. Mascara
12. Oven Cleaner
13. Rubbing Compounds
14. Shampoo
15. Shaving Lotion
16. Sun Tan Lotions
17. Tooth Brushes

Cans, Glass and Plastic Containers

1. Auto Wax
2. Baby Care Products
3. Bubble Bath
4. Candy
5. Cleansing Creams
6. Cold Water Soap
7. Deodorant (Human)
8. Detergent
9. Dietary Aids
10. Glass Cleaner
11. Glue
12. Ginger
13. Floor Wax
14. Foot Powder
15. Hair Beautifyer
16. Hand Cream
17. Honey
18. Insecticides
19. Mascara
20. Medicated Creams
21. Metal Polish and Cleaners

22. Oven Cleaners
23. Patent Medicines
24. Perfumes
25. Shampoo (Animal)
26. Shampoo (Human)
27. Shampoo (Rug)
28. Shave Lotion
29. Skin Lotion
30. Spot Remover
31. Sun Tan Lotion
32. Tooth Cleansers

[fols. 1626-1627] GOVERNMENT'S EXHIBIT 1178B

United States Department of Justice
Federal Bureau of Investigation

Report of: SAA Albert A. Hustedt
Date: August 31, 1960
Field Office File No.: Los Angeles 60-602
Office: Los Angeles, California
Bureau File No.: 60-4975
Title: Continental Can Company, Inc., Et al
Character: Antitrust

Synopsis: Investigation at five leading chain grocery stores and five leading independent grocery stores in the Los Angeles area, identified 83 types of the same product which appear in cans and glass containers; 10 types in glass and plastic containers; 8 types in cans and plastic containers; and 15 types in cans, glass, and plastic containers.

P

Details: This investigation was predicated upon receipt of a letter dated August 22, 1960, from Mr. Robert A. Bicks, Assistant Attorney General, Antitrust Division. Mr. Bicks requested that investigation be conducted in the Los Angeles area in order to identify as many products as possible which are packaged in a combination of two or more of the following containers: cans; glass; or plastic.

On August 29, 1960, Leo R. Gilleran, Controller, Ralphs

Grocery Company, 3410 West 3rd Street, Los Angeles, California, was interviewed by SA's Albert A. Hustedt and Harry A. Kerley. * * *.

[fol. 1628] Federal Bureau of Investigation

Date August 31, 1960.

Arthur G. Goertzen, manager of store #32 of Ralphs Grocery Company, located at 3rd Street and Vermont Avenue, Los Angeles, * * *.

* * * furnished permission to SA's Albert A. Hustedt and Harry A. Kerley to make a shelf check to determine this information. This shelf check identified the following products which appear packaged as follows:

Cans and Glass Containers

Nuts
Welsh Rarebit
Cocktail Sausages
Cheese
Oysters
Chicken
Aspirin
Olives
Fruit and Vegetable Juice
Soft Drinks (all types)
Baked Beans
Artichokes
Carrots
Beets
Chili Sauce
Pimentos
Fruit Salad
Peaches
Cherries
Plums
Crab Apples
Figs
Prunes
Boysenberries
Coffee

Beer
Fish
Baby Food (all kinds)
Many types of food seasonings
Salad Oil
Sugar
Syrup
Shoyu (Japanese sauce)
Deodorizer (spray tops)
Furniture Wax
Floor Wax
Shoe Polish
Dry Cleaner
Ammonia
Starch
Shaving Cream
Syrups

On 8/29/60 at Los Angeles, California.
By SA's Albert A. Hustedt & Harry A. Kerley/els.

[fol. 1629] Cans and Plastic Containers

Bird Sprays
Tooth Paste

Glass and Plastic Containers

Bouillon
Glue
Body Deodorants
Skin Lotion
Sun Tan Lotion

Cans, Glass, and Plastic Containers

Honey
Insecticides
Window Cleaner
Animal flea killing cleaner
Dishwashing Detergents, Soaps (Liquid)
Copper Cleaner
Detergents
Shampoo
Hair Tonic

[fol. 1630] Federal Bureau of Investigation

Date August 31, 1960.

Dale Harris, manager of Safeway Store #32, 230 South Vermont Avenue, Los Angeles, California, *** furnished permission to SA's Albert A. Hustedt and Harry A. Kerley to make this inspection in his store. This inspection identified the following products packaged in the following ways:

Cans and Glass Containers

Petroleum Jelly
Aspirin
Cheese
Chili Sauce
Olives
Spaghetti Sauce
Baby Food (all kinds)
Nuts
Crab Apples
Cherries
Figs
Boysenberries
Plums
Fruit Salad
Peaches
Prunes
Fruit Juices
Chicken Broth
Cocktail Sausages
Dried Beef
Chicken
Baked Beans
Beets
Carrots
Beans
Sauerkraut
Pimentos
Syrup
Soft Drinks
Shoe Polish
Insect Sprays

Floor and Furniture Wax
Room Deodorizers
Window Cleaners
Metal Polish
Pet Cleaners
Bird Food
Coffee
Chocolate Flavorings for Milk
Spices (all kinds)
Beer
Pineapple Ice Cream Topping

On 8/29/60 at Los Angeles, California.
By SA's Albert A. Hustedt & Harry A. Kerley/els.

[fol. 1631] Cans and Plastic Containers

Cake Icing
Strawberry Ice Cream Topping

Glass and Plastic Containers

Deodorants
Baby Lotion
Shampoo
Glue

Cans, Glass, and Plastic Containers

Hair Tonic
Women's Wave Set
Honey
Heavy and Light Detergents

[fol. 1632] Federal Bureau of Investigation

Date August 31, 1960.

Cliff Lindenberger, Manager, Store #1, Alpha Beta Food Markets, Inc., 5071 Rodeo Road, Los Angeles, California, • • •.

• • • Lindenberger furnished permission to SA's Albert A. Hustedt and Harry A. Kerley to make a shelf check of his store to determine how the various products are packaged. This check identified the following products packaged in the following manners:

Cans and Glass Containers

Insecticides
Vegetable Juices
Fruit Juices
Shoe Polish
Floor Wax
Furniture Polish
Metal Cleaner
Deodorants
Rug Shampoo
Soft Drinks
Malted Milk
Pet Foods
Pet Cleaners
Gravy
Coffee
Italian Cheese
Salad Oils
Spices
Chicken
Turkey
Baked Beans
Beans
Beets
Carrots
Mushrooms
Olives
Pimentos
Chili Sauce
Figs
Cherries
Apple Sauce
Prunes
Plums
Crab Apples
Syrup
Aji-No-Moto
Ice Cream Toppings
Baby Food

Aspirin
Shaving Cream

On 8/30/60 at Los Angeles, California.
By SA's Albert A. Hustedt & Harry A. Kerley/els.

[fol. 1633] Cans and Plastic Containers

Car Polish
Tooth Paste
Hair Set

Glass and Plastic

Deodorant
Sun Tan Lotion
Body Lotion
Shampoo

Cans, Glass, and Plastic Containers

Detergent
Honey
Glue
Hair Tonic

[fol. 1634] Federal Bureau of Investigation

Date August 31, 1960.

William Clugston, Market Supervisor, Store #37, Thriftimart, Inc., 3621 South La Brea, Los Angeles, California. * * *.

* * * Clugston furnished permission to SA's Albert A. Hustedt and Harry A. Kerley to make a shelf check of his store. This check identified the following products which are packaged in the following manners:

Cans and Glass Containers

Chicken Broth
Baby Foods
Coffee
Shoe Polish

Cleaning Fluid
Rug Shampoo
Window Cleaner
Toilet Cleaner
Floor and Furniture Wax
Home Deodorants
Starch
Hair Set
Pet Cleaners
Pet Food
Aspirin
Steak Sauce
Chili
Cocktail Sausages
Apricots
Mushrooms
Chicken
Turkey
Soft Drinks
Salad Oil
Spices
Asparagus
Artichoke
Carrots
Olives
Beets
Green Beans
Plums
Crab Apples
Honey
Pears
Baked Beans
Apple Sauce
Pimentos
Prunes
Cherries
Fruit Juices
Beer
Vegetable Juices

On 8/30/60 at Los Angeles, California.
By SA's Albert A. Hustedt & Harry A. Kerley/els.

[fol. 1635] Cans and Plastic Containers

Car Polish
Tooth Paste
Foot Powder

Glass and Plastic Containers

Baby Lotion
Sun Tan Lotion
Glue
Shampoo

Cans, Glass, and Plastic Containers

Liquid Detergent
Metal Polish
Body Deodorant
Hair Tonic

[fol. 1636] Federal Bureau of Investigation

Date August 31, 1960.

Tony Coppa, Manager, Store #32, Market Basket, 6298 West 3rd Street, Los Angeles, California, • • •.

• • • Coppa furnished permission to SA's Albert A. Husiedt and Harry A. Kerley to make a shelf check of his store, during which the following products were identified as being packaged in the following manners:

Cans and Glass Containers

Chili Sauce
Meat Gravy
Pimentos
Mushrooms
Cherries
Ravioli Chicken
Vienna Sausage
Beef Tongue
Chicken
Oysters
Crab Apples
Peaches

Pears
Boysenberries
Figs
Prunes
Apple Sauce
Fruit Salad
Beets
Carrots
Sauerkraut
Artichoke
All Kinds, Fruit Juices
All Kinds, Vegetable Juices
Chocolate Syrup
Ice Cream Topping
Baby Food, All Kinds
Animal Sprays
Insecticides
Home Deodorizer
All Soft Drinks
Floor and Furniture Wax
Beer
Hair Wave Lotions
Aspirin
Laxatives
Petroleum Jelly
Serutan
Window Cleaner
Shoe Polish
Pet Food
Cheese
Olives
Coffee
Salad Oils
Spices

On 8/30/60 at Los Angeles, California.
By SA's Albert A. Hustedt and Harry A. Kerley/els.

[fol. 1637] Cans and Plastic Containers

Foot Powder
Scotch Tape
Tooth Paste

Glass and Plastic Containers

Makeup Powder
Baby Lotion
Baby Shampoo
Shampoo

Cans, Glass, and Plastic Containers

Rug Shampoos
Oven-Cleaners
Auto Wax
Metal Cleaner
Bubble Bath
Glue
Honey
Detergent
Hair Cream
Body Deodorant

[fol. 1638] Federal Bureau of Investigation

Date August 31, 1960.

Max Polesky, owner of the Beverly-Normandie Market, 4213 Beverly Boulevard, Los Angeles, California, * * * furnished permission to SA's Albert A. Hustedt and Harry A. Kerley to make a shelf check of the products carried in his store, and this check identified the following products which are packaged as follows:

Cans and Glass Containers

Baby Food
Food Seasoning
Prunes
Peaches
Cherries
Crab Apples
Pears
Soft Drinks
Figs
Beans
Carrots
Beets

Fruit Juices
Beer
Floor Wax
Furniture Wax
Glass Cleaner
Spot Remover
Deodorant
Metal Polish
Coffee
Chocolate Drink
Pet Food
Shoe Polish
Cheese
Turkey
Chicken
Insecticide
Olives
Salad Oil
Chicken Broth
Aspirin
Hair Tonic
Tooth Paste

Cans and Plastic Containers

None

On 8/30/60 at Los Angeles, California.
By SA's Albert A. Hustedt & Harry A. Kerley/els.

[fol. 1639] Glass and Plastic Containers

Baby Skin Lotion
Glue
Body Deodorant

Cans, Glass, and Plastic Containers

Car Wax
Detergent
Honey

[fol. 1640] Federal Bureau of Investigation

Date August 31, 1960.

Joseph Giovinazzo, Partner, Midtown Market, 2882 West 9th Street, Los Angeles, California, * * *. Giovinazzo furnished permission to SA's Albert A. Hustedt and Harry A. Kerley to make this shelf check, during which time the following products were identified as being packaged in the following manners:

Cans and Glass Containers

Zuke
Salad Oil
Olives
Oysters
Pimentós
Lima Beans
Artichokes
Cherries
Beets
Beer
Soft Drinks
Metal Polish
Rug Shampoo
Starch
Furniture Polish
Floor Wax
Glass Cleaner
Insecticide
Deodorizers
Carrots
Green Beans
Vegetable Juices
Fruit Juice
Beans
Peaches
Prunes
Fruit Salad
Crab Apples
Chicken
Turkey

Chili
Bird Food
Coffee
Chocolate Syrup
Spices
Cleaning Fluid
Shoe Polish

Cans and Plastic Containers

None

On 8/30/60 at Los Angeles, California.
By SA's Albert A. Hustedt & Harry A. Kerley/els.

[fol. 1641] Glass and Plastic Containers

None

Cans, Glass, and Plastic Containers

Detergents
Honey

[fol. 1642] Federal Bureau of Investigation

Date August 31, 1960.

Marty Rumack, owner, Bi-Rite Market, 2913 North Broadway, Los Angeles, California, * * * furnished permission to SA's Albert A. Hustedt and Harry A. Kerley to make a shelf check of his store. This check identified the following products packaged in the following manners:

Cans and Glass Containers

Chicken
Turkey
Chocolate Syrup
Cherries
Crab Apples
Prunes
Soft Drinks
Beets
Carrots

Artichokes
Baked Beans
Diced Cactus
Meat Gravy
Pimentos
Chili
Seasoning, all kinds
Fruit Juices
Vegetable Juices
Salad Oil
Vegetable Oil
Olives
Pancake Syrup
Peanut Butter
Honey
Beer
Home Deodorizer
Insecticide
Window Cleaner
Metal Polish
Spot Remover
Shoe Polish
Floor Wax
Furniture Wax
Baby Foods
Pet Foods
Sandwich spread
Coffee
Instant Malted Milk
Wave Set
Aspirin

Cans and Plastic Containers

None

On 8/30/60 at Los Angeles, California.
By SA's Albert A. Hustedt & Harry A. Kerley/els.

[fol. 1643] Glass and Plastic Containers

Shampoo
Shaving Lotion

Cans, Glass, and Plastic Containers

Detergents
Glue
Hair Tonic

[fol. 1644] Federal Bureau of Investigation

Date August 31, 1960.

Mrs. Elvira Rubin, wife of the owner, LaSalle Market, 1900 West Washington Boulevard, Los Angeles, California, * * * furnished permission to SA's Albert A. Hustedt and Harry A. Kerley to make such a check. This check identified the following products to be packaged in the following manners:

Cans and Glass Containers

Chicken
Turkey
Beer
Soft Drinks
Mushrooms
Salad
Olives
Spices, all kinds
Pet Food
Insecticide
Metal Polish
Home Deodorant
Shoe Polish
Furniture Polish
Floor Wax
Window Cleaner
Beets
Spot Remover
Baked Beans
Carrots
Fruit Juices
Vegetable Juices
Figs
Prunes
Pears

Cherries
Coffee
Sorghum
Pancake Syrup
Wave Set
Aspirin
Chocolate Syrup

Cans and Plastic Containers

None

On 8/30/60 at Los Angeles, California.
By SA's Albert A. Hustedt & Harry A. Kerley/els.

[fol. 1645] Glass and Plastic Containers

Skin Lotion
Body Deodorant

Cans, Glass, and Plastic Containers

Detergents

[fol. 1646] Federal Bureau of Investigation

Date August 31, 1960.

William Lord, owner of Lord's Market, 863 South Vermont, Los Angeles, California, * * * furnished permission to SA's Albert A. Hustedt and Harry A. Kerley to make a shelf check, which identified the following products as being packaged in the following manners:

Cans and Glass Containers

Pop Corn
Cocktail Sausages
Metal Polish
Room Deodorant
Window Cleaner
Rug Shampoo
Floor Wax
Furniture Wax
Starch

Insecticide
Shoe Polish
Beer
Soft Drinks
Pet Spray
Food (Pet)
Honey
Salad Oil
Seasonings
Chili
Turkey
Aspirin
Save Set
Fruit Juices
Vegetable Juices
Coffee
Olives
Chocolate Drink
Cherries
Fruit Salad
Boysenberries
Figs
Prunes
Crab Apples
Sauerkraut
Pears
Beets
Baked Beans
Mushrooms
Chicken

Cans and Plastic Containers

Car Wax

On 8/30/60 at Los Angeles, California.
By SA's Albert A. Hustedt & Harry A. Kerley/els.

[fol. 1647] Glass and Plastic Containers

Oven Cleaner
Detergent
Shampoo
Baby Oil

Cans, Glass, and Plastic Containers

Body Deodorant

[fol. 1648] Federal Bureau of Investigation

Date August 31, 1960.

On August 29 and 30, 1960, shelf checks were made at five chain grocery stores and five independent grocery stores in the Los Angeles area.

The following is a summary of the total individual products found, and the manner in which they are packaged:

Cans and Glass Containers

1. Aji-No-Moto
2. Ammonia
3. Apple Sauce
4. Apricots
5. Artichokes
6. Asparagus
7. Aspirin
8. Baby Food (all kinds)
9. Beans
10. Beef
11. Beer
12. Beets
13. Boysenberries
14. Carrots
15. Cherries
16. Cheese
17. Chicken
18. Chicken Broth
19. Chili Sauce
20. Cleaning Fluid
21. Coffee
22. Crab Apples
23. Diced Cactus
24. Deodorizer (home)
25. Dry Cleaner
26. Figs

27. Fish
28. Floor Wax
29. Fruit Juice (all kinds)
30. Fruit Salad
31. Furniture Wax
32. Gravy (meat)
33. Hair Set
34. Honey
35. Ice Cream Topping
36. Insecticides
37. Laxatives
38. Lotions (hair wave)
39. Malted Milk
40. Metal Cleaners
41. Mushrooms
42. Nuts
43. Olives
44. Oysters
45. Peaches
46. Peanut Butter
47. Pears
48. Pet Cleaners
49. Pet Food
50. Petroleum Jelly
51. Pimentos
52. Plums
53. Pop Corn
54. Prunes
55. Ravioli and Chicken
56. Salad Oils

On 8/29 & 30/60 at Los Angeles, California.
By SA Albert A. Hustedt/els.

[fol. 1649] 57. Sandwich Spread

58. Sauerkraut
59. Sausage (cocktail)
60. Seasonings (all kinds)
61. Serutan
62. Shampoo (rug)
63. Shaving Cream

64. Shoe Polish
65. Shoyu
66. Soft Drinks (all kinds)
67. Sorghum
68. Spaghetti Sauce
69. Spices (all kinds)
70. Spot Remover
71. Sprays (animal)
72. Starch
73. Steak Sauce
74. Sugar
75. Syrup
76. Toilet Cleaner
77. Tooth Paste
78. Turkey
79. Vegetable Juice
80. Wave Set
81. Welsh Rarebit
82. Window Cleaner
83. Zuke

Cans and Plastic Containers

1. Bird Sprays
2. Cake Icing
3. Car Wax
4. Foot Powder
5. Hair Set
6. Ice Cream Topping
7. Scotch Tape
8. Tooth Paste

Glass and Plastic Containers

1. Baby Lotion
2. Body Deodorant
3. Body Lotion
4. Bouillon
5. Glue
6. Make up Powder

7. Oven Cleaner
8. Shampoo
9. Shaving Lotion
10. Sun Tan Lotion

Cans, Glass, and Plastic Containers

[fol. 1650] 1. Auto Wax
2. Bubble Bath
3. Deodorant
4. Detergent
5. Glass Cleaner
6. Glue
7. Hair Tonic
8. Honey
9. Insecticides
10. Metal Polish
11. Oven Cleaners
12. Shampoo (animal)
13. Shampoo (human)
14. Shampoos (rug)
15. Wave Set

[fol. 1651] GOVERNMENT'S EXHIBIT 1179

Federal Bureau of Investigation

Date September 9, 1960.

Miss Winefred Sadecki, Manager, Epicure Shop, Carson Pirie and Scott, 1 South State Street, accompanied by SA Joseph H. Servel on a tour of the Epicure Shop at which time the following list of products which are handled by the store that appear in both cans and glass containers, was prepared:

Food Products	Cans	Glass	Plastic
Coffee	x	x	
Candy	x	x	
Spices	x	x	
Mushrooms	x	x	
Honey	x	x	
Beans	x	x	
Beets	x	x	
Fruit Salad	x	x	
Cherries-brandied		x	
Cherries	x		
Pineapple in liqueur		x	
Pineapple in syrup	x		
Pears in liqueur		x	
Pears in syrup	x		
Peaches in liqueur		x	
Peaches in syrup	x		
Sandwich spread	x	x	
Salted nuts	x	x	
Olives	x	x	
Noodle nests	x	x	
Syrup	x	x	
Olive Oil	x	x	
Fruit Juices	x	x	
Total Products—23	19	19	None

On 9/6/60 at Chicago, Illinois.
By SA Joseph H. Servel/mjt.

[fol. 1652] GOVERNMENT'S EXHIBIT 1180

Federal Bureau of Investigation

Date September 9, 1960.

Fred Starks, Grocer Manager, Model Town and Country Mart, 300 West Sibley Boulevard, ***.

Mr. Starks accompanied SA Joseph H. Servel on a tour of this store at which time the following listed products which are handled by the store that appear in both can and glass containers, glass and plastic containers or can, glass and plastic containers, was prepared:

Food Products	Cans	Glass	Plastic
Spices	x	x	
Fish	x	x	
Asparagus	x	x	
Beets	x	x	
Sauerkraut	x	x	
Baked beans	x	x	
Mushrooms	x	x	
Applesauce	x	x	
Pears	x	x	
Prunes	x	x	
Fruit juice	x	x	
Egg noodles with tuna	x	x	
Spaghetti sauce	x	x	
Dog food	x	x	
Olives	x	x	
Cherries	x	x	
Cooking oil	x	x	
Peanut butter	x	x	
Honey	x	x	

On 9/8/60 at Dolton, Illinois.
By SA Joseph H. Servel/mjt.

[fol. 1653]

Food Products Contd.	Cans	Glass	Plastic
Ice cream topping	x	x	
Syrup	x	x	
Coffee	x	x	
Food Products Total—22	22	22	0
Household Products			
Toilet bowl cleaner	x	x	x
Oven cleaner	x	x	x
Household cleaner	x	x	
Liquid detergent	x		x
Bluing		x	x
Furniture polish	x	x	
Shoe polish	x	x	
Room deodorant	x	x	
Car polish	x		x
Cleaning fluid	x	x	
Window cleaner	x	x	
Household Products Total—11	10	9	5
Toilet Articles			
Dental powder	x		x
Toothpaste	x		x
Foot lotion	x	x	x
Shampoo		x	x
Hair spray (womens)	x		x
Shaving lotion	x	x	
Deodorant		x	x
Hair conditioner (men)	x	x	x
Baby bottles		x	x
Sun tan lotion		x	x
Toilet Articles Total—10	6	7	9

[fol. 1654]

Drugs	Cans	Glass	Plastic
Pain remedies	x	x	x
Baby lotions		x	x
Laxatives	x	x	
Bactine		x	x
Caladryl lotion		x	x
Skin cleaner		x	x
Hand cream		x	x
Cologne		x	x
Drug Products Total—8	2	8	7
Total Number of Products—51	40	46	21

[fol. 1655] GOVERNMENT'S EXHIBIT 1181

Federal Bureau of Investigation

Date September 9, 1960.

James Rentas, Manager, Wasso's Food and Liquor Market, 159th and Wood Streets, ***.

Mr. Rentas accompanied SA Joseph H. Servel on a tour of the store at which time the following list of products which are handled by the store and appear in both can and glass containers, glass and plastic containers or can, glass and plastic containers, was prepared:

Food Products	Cans	Glass	Plastic
Mushrooms	x	x	
Olives	x	x	
Olive Oil	x	x	
Beans	x	x	
Sauerkraut	x	x	
Asparagus	x	x	
Apple juice	x	x	
Prune juice	x	x	
Applesauce	x	x	
Cherries	x	x	
Fruits for Salad	x	x	
Baby food	x	x	
Cooking Oil	x	x	
Pie filling	x	x	
Spaghetti sauce	x	x	
Spices	x	x	
Coffee	x	x	
Dog food	x	x	
Soft drinks	x	x	
Beets	x	x	
Ice cream toppings	x	x	
Beer	x	x	
Food Products Total—22	22	22	None

On 9/8/60 at Harvey, Illinois.
By SA Joseph H. Servel/mjt.

[fol. 1656]

Household Products	Cans	Glass	Plastic
Shoe polish	x	x	
Window cleaners	x	x	
Car wax	x		x
Furniture wax	x	x	
Ammonia	x	x	
Toilet bowl cleaner	x		x
Air deodorant	x	x	
Rug shampoo	x	x	
Starch	x	x	
Oven cleaner	x	x	x
Liquid detergent	x	x	x
Household Products Total—11	11	9	4
Toilet Articles			
Shampoo		x	x
Deodorants		x	x
Hair dressing	x	x	
Toilet Articles Total—3	1	3	2
Total Products—36	34	34	6

[fol. 1657] GOVERNMENT'S EXHIBIT 1182

Federal Bureau of Investigation

Date September 9, 1960

Charles Braun, Grocer Manager, Wally's Market, Incorporated, Store #1, 120 East 147th Street, ***.

Mr. Braun accompanied SA Joseph H. Servel on a tour of the store at which time the following list of products which are handled by the store that appear in both can and glass containers, glass and plastic containers or can, glass and plastic containers, was prepared:

Food Products	Cans	Glass	Plastic
Coffee	x	x	
Spices	x	x	
Ice cream topping	x	x	
Spaghetti sauce	x	x	
Dog food	x	x	
Cooking oil	x	x	
Sauerkraut	x	x	
Baked beans	x	x	
Mushrooms	x	x	
Fruit juice	x	x	
Fruits for salad	x	x	
Cherries	x	x	
Cranberry sauce	x		
Apple cranberry sauce		x	
Applesauce	x	x	
Olives	x	x	
Food Products Total—16	15	15	None
Household products			
Oven cleaner	x	x	
Shoe polish	x	x	
Car wax	x		x

On 9/8/60 at Harvey, Illinois.
By SA Joseph H. Servel/mjt.

[fol. 1658]

	Cans	Glass	Plastic
Insect spray	x	x	
Furniture polish	x	x	
Window cleaner	x	x	
Ammonia	x	x	
Bluing		x	x
Toilet bowl cleaner	x		x
Liquid detergent	x		x
Household Products Total—10	9	7	4
Toilet Articles			
Bubble bath		x	x
Deodorant		x	x
Shampoo		x	x
Bactine		x	x
Hair dressing	x	x	
Baby bottles		x	x
Toilet Articles Total—6	1	6	5
Total Products—32	25	28	9

[fol. 1659] GOVERNMENT'S EXHIBIT 1183

Federal Bureau of Investigation

Date September 9, 1960.

Philip Feldstein, Manager, Tobin Drug Store, 13122 South Ellis, ***.

Mr. Feldstein accompanied SA Joseph H. Servel on a tour of the store at which time the following list of products which are handled by the store appear in both cans and glass containers, glass and plastic containers or cans, glass and plastic containers, was prepared:

Toilet Articles	Cans	Glass	Plastic
Toothpaste	x		x
Deodorants		x	x
Hair preparations (men)	x	x	
Hair preparations (women)	x	x	
Skin lotion		x	x
Shaving lotion		x	x
Shampoo		x	x
Talcum powder	x	x	
Hair coloring	x	x	
Perfume	x	x	
Cologne	x	x	x
Toilet Articles Total—11	7	10	6
Household Products			
Glass cleaner	x	x	
Furniture polish	x	x	
Car polish	x	x	
Cleaning fluid	x	x	
Sani-flush	x	x	
Room deodorizers	x	x	
Shoe polish	x	x	
Insecticides	x	x	
Baby bottles		x	x
Insecticide-sprayers	x	x	
Total Household Products—10	9	10	1

On 9/8/60 at Chicago, Illinois.
By SA Joseph H. Servel/mjt.

[fol. 1660]

Food Products	Cans	Glass	Plastic
Olive Oil	x	x	
Hard candies	x	x	
Food Products Total—2	2	2	0
Cosmetics			
Powder base		x	x
Cosmetics Products Total—1	0	1	1
Drugs			
Epsom salts	x	x	
Vi-Daylin	x	x	
Aspirin	x	x	
Nose drops		x	x
Ointments	x	x	
Drug Products Total—5	4	5	1
Total Number of Products—29	22	28	9

[fol. 1661] GOVERNMENT'S EXHIBIT 1484

Federal Bureau of Investigation

Date August 31, 1960.

Gene Plucinski, Assistant Manager, Garofalos Finer Foods, Incorporated, 179 Joe Orr Road, ***.

Mr. Plucinski accompanied SA Joseph H. Servel on a tour of the grocery store at which time the following list was prepared showing food products, household products, and toilet articles that are stocked in the store which appear in both cans and glass containers, cans and plastic containers or cans, glass and plastic containers.

Food Products	Cans	Glass	Plastic
Applesauce	x	x	
Fruits for salad	x	x	
Peaches—spiced		x	
Peaches—in syrup	x		
Cherries	x	x	
Plums	x	x	
Fruit juices	x	x	
Beets	x	x	
Mushrooms	x	x	
Sauerkraut	x	x	
Spices	x	x	
Baked beans	x	x	
Boned chicken	x	x	

On 8/31/60 at Chicago Heights, Illinois.
By: SA Joseph H. Servel/mps.

[fol. 1662]

Food Products (Cont.)	Cans	Glass	Plastic
Olives—ripe	x		
Olives—green		x	
Honey	x	x	
Peanut butter	x	x	
Cooking oil	x	x	
Baby food	x	x	
Coffee	x	x	
Ice cream toppings	x	x	
Soft drinks	x	x	
Peanuts—shelled	x	x	
Food products total	21	21	
Household Products			
Starch	x	x	
Glass cleaners	x	x	
Oven cleaner	x	x	
Deodorizers	x	x	
Furniture polish	x	x	
Toilet bowl cleaner	x		x
Auto paint cleaner	x		x
Auto wax	x		x
Shoe polish	x	x	
Liquid detergents	x		x
Sweater washing compound		x	x
Stain remover		x	x
Household products total	10	8	6
Toilet Articles			
Dusting powder	x		x
Deodorants		x	x
Shampoo	x	x	x
Hair conditioners	x	x	
Hair spray	x	x	
Tooth paste	x		x
Baby shampoo		x	x
Baby cream		x	x
Skin ointment		x	x
Toilet articles total	5	7	7

[fol. 1663]

Food products	21	21	
Household products	10	8	6
Toilet articles	5	7	7
Grand total	36	36	13

Total number products 44
Number in cans 36
Number in glass 36
Number in plastic 13

[fol. 1664] GOVERNMENT'S EXHIBIT 1185

Federal Bureau of Investigation

Date August 31, 1960.

Robert J. Doyle, Grocery Manager, Rudy's Market, Incorporated, 375 Sauk Trail,***.

Mr. Doyle accompanied SA Joseph H. Servel on a tour of the store, at which time the following list of products which are handled by the store that appear in both cans and glass containers, glass and plastic containers, or cans, glass and plastic containers was prepared:

Food Products	Cans	Glass	Plastic
Applesauce	x	x	
Cherries	x	x	
Peaches	x	x	
Fruits for salad	x	x	
Beets	x	x	
Olives	x	x	
Onions	x	x	
Baked beans	x	x	
Egg noodle w/tuna		x	
Egg noodle w/chicken	x		
Spices	x	x	
Cooking oil	x	x	
Baby food	x	x	
Spaghetti sauce	x	x	
Coffee	x	x	
Ice cream topping	x	x	
Beef	x	x	
Food products total	16	16	

On 8/31/60 at Park Forest, Illinois.

By SA Joseph H. Servel/mps.

[fol. 1665]

Household Products	Cans	Glass	Plastic
Auto cleaner	x	x	x
Auto wax	x	x	
Floor wax	x	x	
Toilet bowl cleaner	x		x
Oven cleaner	x	x	
Deodorizers	x	x	
Shoe polish	x	x	
Spot remover	x	x	
Liquid detergent	x		x
Household products total	9	7	3
Toilet Articles			
Toothpaste	x		x
Shampoo		x	x
Deodorant		x	x
Hair conditioner	x	x	x
Antiseptic		x	x
Skin conditioner		x	x
Toilet articles total	2	5	6
Total number products 32			
Number in cans 27			
Number in glass 28			
Number in plastic 9			

[fol. 1666] GOVERNMENT'S EXHIBIT 1186

Federal Bureau of Investigation

Date September 9, 1960.

Mrs. Alice Landers, Assistant Manager, Housewares Department, Carson Pirie and Scott, 1 South State Street, accompanied SA Joseph H. Servel on a tour of this department at which time the following list of products that appear in both cans and glass containers, glass and plastic containers or cans, glass and plastic containers, was prepared:

Household Products	Cans	Glass	Plastic
Insecticide	x	x	
Oven cleaner	x	x	x
Silver polish	x	x	
Copper cleaner	x		x
Cold water soap	x	—	x
Rug and Upholstery Cleaner	x	x	
Furniture polish	x	x	x
Rug shampoo	x	x	x
Wax remover	x	x	x
Total Products—9	9	7	6

On 9/8/60 at Chicago, Illinois.
By SA Joseph H. Servel/mjt.

[fol. 1667] GOVERNMENT'S EXHIBIT 1187

Federal Bureau of Investigation

Date September 7, 1960.

* * * Musket and Henriksen, Inc. Drug Store, 4456 West Lawrence Avenue, Chicago, * * * [L]ist of products which are packaged in two or more containers made of tin, glass, or plastic:

Product	Tin	Glass	Plastic
Dental Powders	x	x	x
Shaving Creams	x	x	
Dental Creams	x		x
Hair Sprays	x		x
Hair Set Lotions		x	x
Hair Shampoos		x	x
Hair Tonic	x	x	x
Baby Lotions		x	x
Artificial Sweetener		x	x
Diet Preparation	x	x	
Deodorants	x	x	x
Bubble Bath	x	x	x
Suntan Lotions	x	x	x
Insect Repellents	x	x	
Skin Cleansers		x	x
Colognes		x	x
Talcum Powders	x		x
Flea Killers	x		x
Nasal Preparations	x	x	x
Antiseptics (personal)	x	x	x
Medicated Creams		x	x
Ointments (First aid)	x	x	x
Foot Sprays	x		x
Rubbing Alcohols	x	x	
Cleaning Fluids	x	x	
Skin Preparations	x	x	x
Household Deodorants	x	x	
Eye Preparations		x	x
Glue		x	x
Total 29	20	24	23

On 9/6/60 at Chicago, Illinois.
By SA Alton E. Bramblett/mal.

[fol. 1668] GOVERNMENT'S EXHIBIT 1188

Federal Bureau of Investigation

Date September 8, 1960.

* * * Suss Drugs, 1976 West Lawrence Street. * * *

The stock shelves contained the following types of items that were packaged in two or more containers made of tin, glass or plastic:

Product	Tin	Glass	Plastic
Foot Powders	X	X	X
Dental Powders	X	X	X
Dental Creams	X		X
Antiseptics	X	X	
After Shave Lotions	X	X	
After Shave Talcum Powders	X	X	
Shaving Creams	X	X	
Hair Shampoos		X	X
Hair Sets	X	X	X
Baby Oils		X	X
Baby Powders	X	X	
Shoe Polishers	X	X	
Hair Sprays	X	X	X
Cleaning Fluids	X	X	
Household Deodorants	X	X	
Deodorants	X	X	X
Hair Dressings	X	X	X

On 9/7/60 at Chicago, Illinois.
By SA Alton E. Bramblett/maz.

[fol. 1669]

Product	Tin	Glass	Plastic
Suntan Lotions	X	X	X
Insect Repellents	X	X	X
Glue		X	X
Talcum Powders	X	X	
Skin Creams		X	X
Colognes	X	X	X
Eye Drops		X	X
Nasal Preparations		X	X
Reducing Aids	X	X	
Medicated Ointments	X	X	
Pet Shampoos	X	X	
Hand Creams		X	X
Total 29	12	28	17

[fol. 1670] GOVERNMENT'S EXHIBIT 1189

Federal Bureau of Investigation

Date September 7, 1960.

Goldblatt Brothers, Incorporated, 333 South State Street, the Drugs, Cosmetics, Toiletry, Notions, Stationery, and Liquor Departments, contained the following types of merchandise that are packaged in two or more of the containers, tin, glass, and plastic.

Product	Tin	Glass	Plastic
Pills and Tablets	x	x	
Sun Tan Lotions	x	x	x
Hair Shampoos		x	x
Skin Preparations (First Aid)		x	x
Foot Sprays	x		x
Dental Creams	x		x
Insecticides	x	x	
Nasal Sprays		x	x
Reducing Aids	x	x	
Eye Drops		x	x
Total 10	6	8	7

Cosmetics

Hair Sprays	x	x	x
Colognes		x	x
Shaving Creams	x	x	
After Shave Lotions	x	x	
Talcum Powders	x	x	
Deodorants	x	x	x
Skin Conditioners		x	x
Hair Permanent Preparations		x	x
Hair Dyes		x	x
Total 10	5	9	6

On 9/1/60 at Chicago, Illinois.
By SA Alton E. Brambiett:gmf.

[fol. 1671]

Notions

Product	Tin	Glass	Plastic
Shoe Polish	x	x	
Machine Oil (light)	x		x
Nuts	x	x	
Tobacco	x		x
Olives	x	x	
Soft Drinks	x	x	
Beer	x	x	
Total 7	7	5	2

Total Products	27
Tin	18
Glass	22
Plastic	15

[fol. 1672] GOVERNMENT'S EXHIBIT 1190

Federal Bureau of Investigation

Date September 7, 1960.

Houseware Division, Goldblatt Brothers, Incorporated, 333 South State Street, [D]epartment contained the following types of merchandise that are contained in two or more of the following, tin, glass, and plastic containers:

Product	Tin	Glass	Plastic
Furniture waxes	x	x	
Rug Shampoos	x	x	x
Insect Sprays	x	x	
Oven Cleaners	x	x	
Glass waxes	x	x	
Paints	x	x	

On 9/1/60 at Chicago, Illinois.
By SA Alton E. Bramblett:gmf.

[fol. 1673] GOVERNMENT'S EXHIBIT 1191

Federal Bureau of Investigation

Date September 7, 1960.

Food Division, Marshall Field and Company, State and Washington Streets, Chicago, Illinois, the following products which are carried by this store and which are packaged in two or more of the following type containers:

Food	Tin Can	Glass	Plastic
1. Coffee	x	x	
2. Fruit juices	x	x	
3. Boned chicken	x	x	
4. Deviled ham	x	x	
5. Horseradish	x	x	
6. Olives	x	x	
7. Nuts	x		x
8. Party snacks	x	x	
9. Caviar	x	x	

Most foods in this department are imported and this department in no way attempts to compete with the regular food chain stores.

On 9/1/60 at Chicago, Illinois.
By SA Gino L. Lazzari jav.

[fol. 1674] GOVERNMENT'S EXHIBIT 1192

Federal Bureau of Investigation

Date September 7, 1960.

Houseware Department, Marshall Field and Company, State and Washington Streets, Chicago, Illinois, the following products which are carried by this store and which are packaged in two or more of the following type containers:

Housewares	Tin Can	Glass	Plastic
1. Metal polish/wax	x	x	x
2. Furniture polish/wax	x	x	
3. Glass polish/wax	x	x	
4. Cleaning fluids	x	x	
5. Insecticides	x	x	
6. Germicides	x	x	

On 9/1/60 at Chicago, Illinois.
By SA Gino L. Lazzari/jav.

[fol. 1675] GOVERNMENT'S EXHIBIT 1193

Federal Bureau of Investigation

Date September 7, 1960.

Cosmetics Department, Marshall Field and Company, State and Washington Streets, Chicago, Illinois, the following products which are carried by this store and which are packaged in two or more of the following type containers:

Product	Tin Can	Glass	Plastic
1. Cleansing creams		x	x
2. Cologne		x	x
3. Toilet water		x	x
4. Leg make-up		x	x
5. Cleansing pads		x	x
6. Deodorants	x	x	x
7. Body lotions—oils		x	x
8. Sun tan lotion		x	x
9. Shampoo		x	x
10. Hair rinse		x	x

On 9/1/60 at Chicago, Illinois.
By SA Gino L. Lazzari/jav.

[fol. 1676] GOVERNMENT'S EXHIBIT 1194

Federal Bureau of Investigation

Date September 7, 1960.

Drugs and Pharmacy Department, Marshall Field and Company, State and Washington Streets, Chicago, Illinois, the following products which are carried by this store and which are packaged in two or more of the following type containers:

Drugs	Tin Can	Glass	Plastic
1. Nasal spray		x	x
2. Skin ointment	x	x	
3. Aspirin	x	x	
4. Anacin	x	x	
5. Eye drops		x	x
6. Artificial sweetener		x	x

Toiletry	Tin Can	Glass	Plastic
1. Shaving cream	x	x	
2. Tooth paste	x		x
3. Hand lotion		x	x
4. Deodorant	x	x	x
5. Shampoo		x	x
6. Baby oil		x	x
7. Skin cleanser		x	x
8. Hair dressing	x	x	x
9. Mouth wash		x	x
10. Sun tan lotion		x	x
11. Hair remover		x	x

On 9/1/60 at Chicago, Illinois.
By SA Gino L. Lazzari/jav.

[fols. 1677-1678] GOVERNMENT'S EXHIBIT 1195

Federal Bureau of Investigation

Date 9/6/60.

*** Cosmetic, Toiletry, and Drug Department, Wieboldt's Department Store, State and Madison Streets, Chicago, Illinois, *** the following products carried by this store which are packaged in two or more of the following types of containers:

Type of Product	Containers		
Cosmetics	Tin Can	Glass	Plastic
1. Cleansing cream		x	x
2. Hair rinse		x	x
3. Cologne	x	x	x
4. Leg make-up foundation		x	x
5. Leg make-up		x	x
6. Hand lotion		x	x
7. Body lotions and cream		x	x
8. Eye shadow	x	x	
9. Curl lotion		x	x
10. Hair restorer		x	x
11. Lubricating creams		x	x
Toiletries			
1. Deodorant	x	x	x
2. Foot lotion		x	x
3. Shampoo		x	x
4. Bubble bath		x	x
5. Bath salts	x	x	x
6. Body talc	x		x
7. Sun tan lotion—creams		x	x
8. Men's hair dressing	x	x	
9. Men's shaving cream	x	x	
Drugs			
1. Aspirin	x	x	
2. Anacin	x	x	
3. Eye wash		x	x

On 9/1/60 at Chicago, Illinois.
By SA Gino L. Lazzari/kmd.

[fol. 1679] GOVERNMENT'S EXHIBIT 1196

Federal Bureau of Investigation

Date 9/6/60.

*** Houseware Department, Wieboldt's Department Store, State and Madison Streets, Chicago, Illinois, *** the following products carried by this store which are packaged in two or more of the following types of containers:

Type of Product Household	Containers Tin Can	Glass	Plastic
1. Rug shampoo/cleaner	x	x	x
2. Floor wax/polish	x	x	
3. Furniture wax/polish	x	x	
4. Glass wax/polish	x	x	x
5. Metal polish	x	x	
6. Floor cleaner	x	x	x
7. Upholstery cleaner	x	x	
8. Oven Cleaner		x	x
9. Wall and tile cleaner		x	x
10. Rust remover	x	x	x
11. Air Freshener	x	x	x
12. Insecticides	x	x	
13. Household oil	x	x	x
14. Shoe polish	x	x	

On 8/31/60 at Chicago, Illinois.
By SA Gino L. Lazzari/kmd.

[fol. 1680] GOVERNMENT'S EXHIBIT 1197

Federal Bureau of Investigation

Date September 8, 1960.

*** The Great Atlantic and Pacific Tea Company Food Store, 8647 South Stony Island Avenue, Chicago, Illinois, *** the following products which are packaged in two or more of the following type containers:

Food	Tin	Glass	Plastic
1. Coffee	x	x	
2. Honey	x	x	
3. Peanut butter	x	x	
4. Olives	x	x	
5. Spaghetti	x	x	
6. Boned chicken	x	x	
7. Tamales	x	x	
8. Egg noodles	x	x	
9. Deviled ham	x	x	
10. Fish	x	x	
11. Apple sauce	x	x	
12. Plums	x	x	
13. Cherries	x	x	
14. Raspberries	x	x	
15. Figs	x	x	
16. Fruit cocktail	x	x	
17. Peaches	x	x	
18. Fruit juices	x	x	
19. Beets	x	x	
20. Carrots	x	x	
21. Mushrooms	x	x	
22. Sauerkraut	x	x	
23. Beans	x	x	
24. Bouillon	x	x	
25. Dog food	x	x	
26. Malted milk	x	x	
27. Ice cream topping	x	x	
28. Soft drinks	x	x	
29. Beer	x	x	
30. Baby fruit juices	x	x	
31. Maple syrup	x	x	
32. Cooking oil	x	x	
33. Salad oil	x	x	
34. Olive oil	x	x	
35. Spices	x	x	
	35	35	

On 9/7/60 at Chicago, Illinois.
By SAs Gino L. Lazzari and Frederick F. Stahl/med.

[fol. 1681]

Household			
1. Starch	x	x	
2. Shoe Polish	x	x	
3. Air Freshener	x	x	
4. Furniture Polish	x	x	
5. Floor Polish—Wax	x	x	
6. Glass Polish—Wax	x	x	
7. Disinfectant	x	x	x
8. Liquid Detergent	x	x	x
9. Antiseptic		x	x
	8	9	3
Toiletry			
1. Deodorant		x	x
2. Baby Lotion		x	x
3. Hair Dressing	x	x	
4. Shampoo		x	x
5. Hand Lotion		x	x
	1	5	4

[fol. 1682] GOVERNMENT'S EXHIBIT 1198

Federal Bureau of Investigation

Date September 8, 1960.

*** Kroeger Company, 9718 South Halsted Street, *** the following products which are packaged in two or more of the following type containers:

Food	Tin	Glass	Plastic
Coffee	x	x	
Chocolate Malt	x	x	
Malted Milk	x	x	
Ice Cream Topping	x	x	x
Fruit Salad	x	x	
Figs	x	x	
Peaches	x	x	
Cherries	x	x	
Apple Sauce	x	x	
Soft Drinks	x	x	
Beer	x	x	
Beets	x	x	
Asparagus	x	x	
String Beans	x	x	
Sauerkraut	x	x	
Meat	x	x	
Boned Chicken	x	x	
Egg Noodles	x	x	
Beets	x	x	
Gravy	x	x	
Mushrooms	x	x	
Spices	x	x	
Dog Food	x	x	
Honey		x	x
Mustard		x	x
Olive Oil	x	x	
Salad Oil	x	x	
Olives	x	x	
Fruit Juices	x	x	x
Total 29	27	29	4

On 9/7/60 at Chicago, Illinois.

By SAs Gino L. Lazzari and Frederick F. Stahl/med.

[fol. 1683]

Household			
1. Furniture Wax	x	x	
2. Floor Wax	x	x	
3. Glass Wax	x	x	
4. Insecticide	x	x	
5. Oven Cleaner		x	x
6. Air Freshener	x	x	
7. Liquid Detergent	x	x	
8. Starch	x	x	
9. Disinfectant	x	x	
10. Germicide	x	x	
11. Shoe Polish	x	x	
	10	11	1
Toiletry			
1. Hair Dressing	x	x	
2. Baby Lotion		x	x
3. Skin Lotion		x	x
4. Deodorant	x	x	x
5. Shampoo		x	x
6. Tooth Paste	x		x
	3	5	5

[fol. 1684] GOVERNMENT'S EXHIBIT 1199

Federal Bureau of Investigation

Date September 8, 1960.

*** High-Low Foods, Incorporated, 76th and South Stony Island Avenue, *** the following products which are packaged in two or more of the following described containers:

Food	Tin	Glass	Plastic
1. Cherries	x	x	
2. Peaches	x	x	
3. Fruit Salad	x	x	
4. Apple Sauce	x	x	
5. Beets	x	x	
6. Cabbage	x	x	
7. Fruit Juices	x	x	
8. Beer	x	x	
9. Soft drinks	x	x	
10. Dog Food	x	x	
11. Spaghetti	x	x	
12. Anchovy	x	x	
13. Olives	x	x	
14. Baby fruit juices	x	x	
15. Olive Oil	x	x	
16. Salad Oil	x	x	
17. Beans	x	x	
18. Spices	x	x	
19. Honey	x	x	
20. Coffee	x	x	
21. Ice Cream Topping	x	x	
22. Fish	x	x	
	22	22	
Household			
1. Floor Wax	x	x	
2. Furniture Wax	x	x	
3. Glass Wax	x	x	
4. Spot Remover	x	x	
5. Air Freshener	x	x	
6. Disinfectant	x	x	

On 9/7/60 at Chicago, Illinois.

By SAs Gino L. Lazzari and Frederick F. Stahl/med.

[fol. 1685]

7. Shoe Polish	x	x	
8. Liquid Detergent	x	x	x
9. Insecticide	x	x	
10. Oven Cleaner	x	x	
	10	10	1
Toiletry			
1. Hair Dressing	x	x	x
2. Shampoo		x	x
3. Shaving Creme	x	x	
4. Deodorant	x	x	
	3	4	2

[fol. 1686] GOVERNMENT'S EXHIBIT 1200

Federal Bureau of Investigation

Date 9/7/60.

Mr. Lloyd, Manager, Jewel Tea Company Store, located 12730 South Halsted, Chicago, Illinois, *** was agreeable for the agents to tour the store and obtain a list of products packaged in two or more containers made of tin, glass or plastic. Mr. Lloyd refused to furnish his name other than what appeared on an identification tag pinned on his shirt. The listed products are as follows:

Products	Tin	Glass	Plastic
Apple Sauce	x	x	
Cranberry Sauce	x	x	
Fruit Cocktail	x	x	
Cherries	x	x	
Plums	x	x	
Peaches	x	x	
Juices	x	x	
Carrots	x	x	
Beets	x	x	
Cabbage	x	x	
Mushrooms	x	x	
Boned Chicken	x	x	
Sausages	x	x	
Spaghetti Sauce	x	x	
Baked Beans	x	x	
Coffee	x	x	
Chocolate Syrup	x	x	
Spices	x	x	
Cooking Oil	x	x	
Olives	x	x	
Baby Food	x	x	
Liquid Detergents	x	x	x
Antiseptics		x	x
Shampoo		x	x

On 9/6/60 at Chicago, Illinois.

By SAs Gino L. Lazzari and Frederick F. Stahl/Jem.

[fol. 1687]

Products	Tin	Glass	Plastic
Deodorant		x	x
Hair Dressing	x	x	
Car Waxes	x	x	
Air Cleaner	x	x	x
Starch	x	x	
Furniture Wax	x	x	
Glass Wax	x	x	
Floor Wax	x	x	
Fabric Cleaner	x	x	
Beer	x	x	
Soft Drinks	x	x	
Total 35	32	35	5

[fol. 1688] GOVERNMENT'S EXHIBIT 1201

Federal Bureau of Investigation

Date 9/7/60.

Ray Deerey, Manager, National Tea Company Store, located at 12808 South Halsted, Chicago, Illinois, *** accompanied SAs Gino L. Lazzari and Frederick F. Stahl on a tour of the store at which time the following list of products which are packaged in two or more containers made of tin, glass or plastic was prepared:

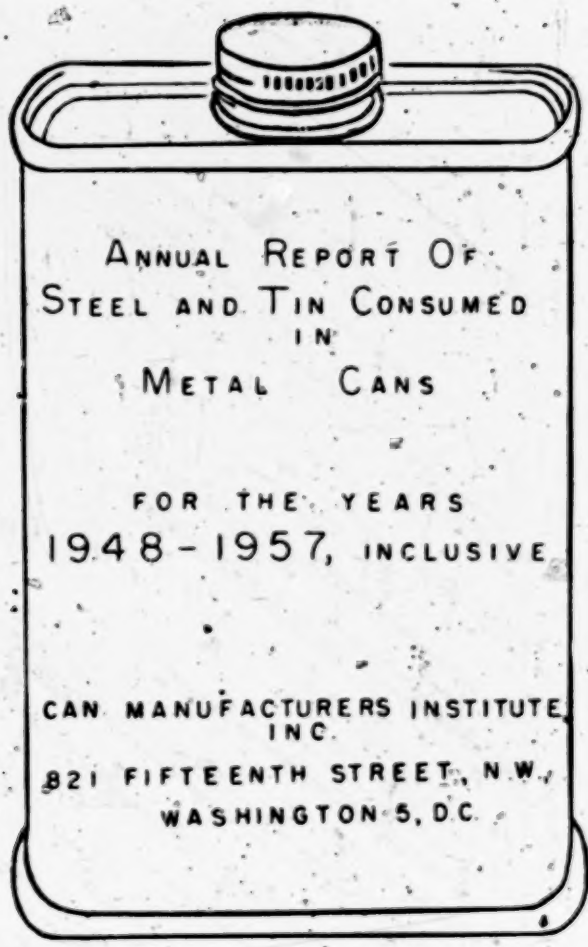
Products	Tin	Glass	Plastic
Apple Sauce	x	x	
Cherries	x	x	
Pears	x	x	
Juices	x	x	
Honey		x	x
Spices	x	x	
Mustard	x	x	
Olives	x	x	
Dog Food	x	x	
Ham Spread	x	x	
Boned Chicken	x	x	
Baked Beans	x	x	
Mushrooms	x	x	
Potato Salad	x	x	
Carrots	x	x	
Beets	x	x	
Soft Drinks	x	x	
Bouillon Cubes	x	x	
Beer	x	x	
Cooking Oil	x	x	
Olive Oil	x	x	
Sauerkraut	x	x	
Floor Waxes	x	x	
Auto Waxes	x	x	x
Shoe Polish	x	x	
Air Freshener	x	x	
Glass Cleaner	x	x	
Liquid Detergent	x		x

On 9/6/60 at Chicago, Illinois

By SAs Gino L. Lazzari and Frederick F. Stahl/Jem.

[fol. 1689]

Products	Tin	Glass	Plastic
Aerosol	x	x	
Deodorant		x	x
Sun Tanning Lotion		x	x
Hair Dressing		x	x
Shampoo		x	x
Pills	x	x	
Total 349	29	33	8



ANNUAL REPORT OF STEEL AND TIN CONSUMED IN METAL CANS

FOR THE YEARS
1948 - 1957, INCLUSIVE

CAN MANUFACTURERS INSTITUTE, INC.
821 FIFTEENTH STREET, N.W.
WASHINGTON 5, D.C.

[fol. 1691]

CMI CAN MANUFACTURERS INSTITUTE, INC.

821 15th ST. N.W. WASHINGTON 5, D.C.

PREFACE

More than forty billion cans were produced in 1957. Compared with 1956, the biggest year in can making, there was a drop of almost 4%. Compared with 1955, however, there was an increase of nearly 3%.

Due to unfavorable weather that sharply cut canning crops, fruit & vegetable cans, which require nearly one third of all the steel consumed, decreased 8.4% from the 1956 tonnage figure. Some classifications showed an increase over 1956; these were Beer, Soft drink, Coffee, Pet food, and Fish and seafood.

The Geographical area in which the greatest number of cans were produced, is the East North Central, followed by Pacific and Hawaii. Each of these districts used more than a million tons of steel last year, and together they produced slightly more than one half of all the cans made.

The amount of tin used is estimated. The figures shown, however, are believed to be as nearly correct as any that could be obtained.

CAN MANUFACTURERS INSTITUTE, INC.

May, 1958

WILLIAM J. MILTON, PRESIDENT ROGER F. HEPENSTAL, VICE PRESIDENT H. FERRIS WHITE, EXECUTIVE DIRECTOR

[fol. 1692]

3184

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[fol. 1693]

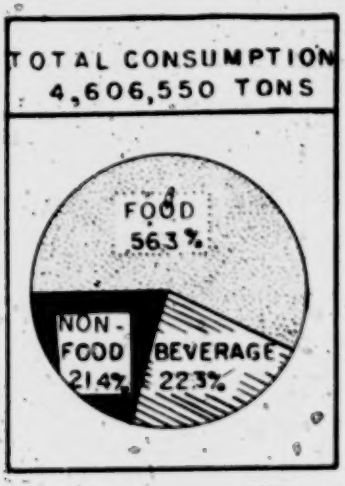
1957 CONSUMPTION OF STEEL IN METAL CANS

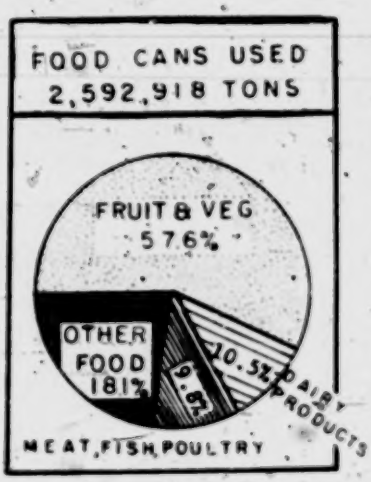
3185

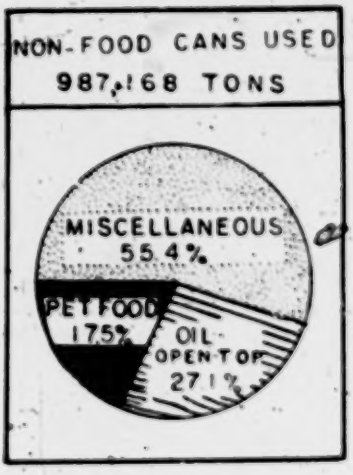
Commodity	Short Tons	% of Total
1. Fruit and vegetable .. (Including juice)	1,494,372	32.4%
2. Beer	791,507	17.2%
3. Miscellaneous Non-foods	546,430	11.9%
4. Miscellaneous Foods .. (Incl. Soup & Baby food)	467,710	10.2%
5. Oil, open top (1 quart and 5 quart)	267,421	5.8%
6. Evaporated & Condensed Milk	228,627	5.0%
7. Coffee	201,214	4.4%
8. Pet food	173,317	3.8%
9. Meat (Incl. poultry) .	140,409	3.0%
10. Fish and Seafood	114,560	2.5%
11. Lard & Shortening	103,599	2.2%
12. Other dairy products .	43,641	.9%
13. Soft drink	33,743	.7%
Total	4,606,550	100.0%

[fol. 1694] 3186

STEEL IN METAL CANS 1957







[fol. 1695] BASE BOXES OF PLATE CONSUMED IN 1957
(Estimated)*

3187

Commodity	Conversion Factor	Base Boxes of Plate	% Of Total
1. Fruit and vegetable ... (Including juice)	21.4	31,979,561	31.8%
2. Beer	20.6	16,305,644	16.2%
3. Miscellaneous Non-foods	21.2	11,584,316	11.5%
4. Miscellaneous Foods .. (Incl. Soup & Baby food)	23.0	10,757,330	10.7%
5. Oil, open top (1 quart and 5 quart)	23.3	6,230,909	6.2%
6. Evaporated & Condensed Milk	25.0	5,715,675	5.7%
7. Coffee	21.3	4,285,858	4.3%
8. Pet food	24.0	4,159,608	4.2%
9. Meat (Incl. poultry) ..	21.7	3,046,875	3.0%
10. Fish and Seafood	23.0	2,634,880	2.6%
11. Lard & Shortening	21.7	2,248,098	2.2%
12. Other dairy products ..	20.4	890,276	.9%
13. Soft drink	22.1	745,720	.7%
Total		100,584,150	100.0%

* Number of base boxes obtained from tons of steel and conversion factors given by Bureau of the Census, as shown above.

[fol. 1696]

3188

STEEL CONSUMPTION IN 1957

COMPARED WITH 1956

DECREASED

Commodity	Tons of Steel	% of 1956
Fruit and vegetable	136,453	8.4%
Oil, open-top (1 qt. & 5 qt.)	23,505	8.1%
Evaporated & Condensed Milk	17,348	7.1%
Miscellaneous foods	13,878	2.9%
Meat and Poultry	10,970	7.2%
Other dairy products	9,483	17.8%
Lard & Shortening	6,786	6.2%
Miscellaneous Non-foods ..	930	.2%

INCREASED

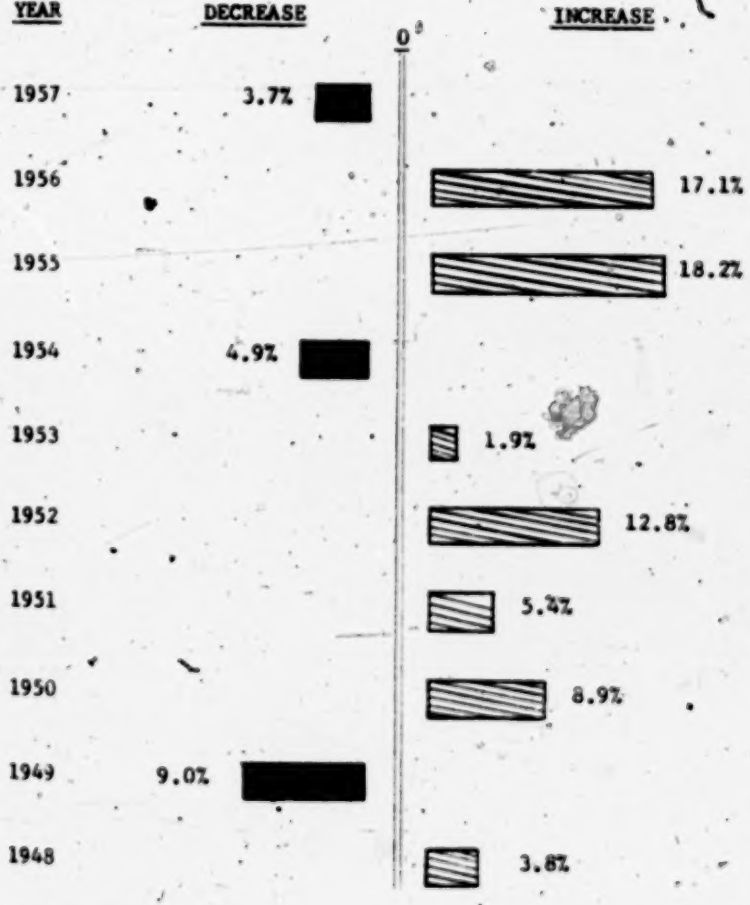
Beer	24,188	3.2%
Soft drink	5,314	18.7%
Pet food	5,231	3.1%
Coffee	3,471	1.8%
Fish and Seafood	2,028	1.8%

Total of All Commodities

Decreased	179,121 Tons	3.7%

[fol. 1697]

STEEL CONSUMPTION COMPARED WITH PRECEDING YEAR



3190 (Vol. 1689) 1957 QUARTERLY SHIPMENTS OF METAL CANS

FRUIT AND VEGETABLE:			
1st Quarter	202,340	Tons of Steel	13.5%
2nd "	358,394	" " "	24.0%
3rd "	663,200	" " "	44.4%
4th "	270,438	" " "	18.1%
Total	1,494,372	" " "	100.0%
EVAPORATED & CONDENSED MILK:			
1st Quarter	55,440	" " "	24.2%
2nd "	74,063	" " "	32.4%
3rd "	56,590	" " "	24.8%
4th "	42,534	" " "	18.6%
Total	228,627	" " "	100.0%
OTHER DAIRY PRODUCTS:			
1st Quarter	10,973	" " "	25.1%
2nd "	12,176	" " "	27.9%
3rd "	10,374	" " "	23.8%
4th "	10,118	" " "	23.2%
Total	43,641	" " "	100.0%
MEAT (Incl. Poultry):			
1st Quarter	37,310	" " "	26.6%
2nd "	33,677	" " "	24.0%
3rd "	31,613	" " "	22.5%
4th "	37,809	" " "	26.9%
Total	140,409	" " "	100.0%
FISH AND SEAFOOD:			
1st Quarter	20,882	" " "	18.2%
2nd "	41,245	" " "	36.0%
3rd "	32,761	" " "	28.6%
4th "	19,672	" " "	17.2%
Total	114,560	" " "	100.0%
COFFEE:			
1st Quarter	54,121	" " "	26.9%
2nd "	47,651	" " "	23.6%
3rd "	45,635	" " "	22.8%
4th "	53,807	" " "	26.7%
Total	201,214	" " "	100.0%
LARD AND SHORTENING:			
1st Quarter	23,975	" " "	23.2%
2nd "	23,421	" " "	22.6%
3rd "	26,974	" " "	26.0%
4th "	29,229	" " "	28.2%
Total	103,599	" " "	100.0%

(Feb 1958)

1957 QUARTERLY SHIPMENTS OF METAL CANS

3191

BEER:			
1st Quarter	154,152	Tons of Steel	19.5%
2nd "	237,599	" " "	30.0%
3rd "	242,315	" " "	30.6%
4th "	157,441	" " "	19.9%
Total	791,507	" " "	100.0%
PET FOOD:			
1st Quarter	43,704	" " "	25.2%
2nd "	40,175	" " "	23.2%
3rd "	44,530	" " "	25.7%
4th "	44,908	" " "	25.9%
Total	173,317	" " "	100.0%
OIL, OPEN TOP (1 Qt. & 5 Qt.):			
1st Quarter	66,773	" " "	25.0%
2nd "	68,561	" " "	25.7%
3rd "	72,618	" " "	27.1%
4th "	59,469	" " "	22.2%
Total	267,421	" " "	100.0%
SOFT DRINK:			
1st Quarter	5,501	" " "	16.3%
2nd "	12,255	" " "	36.3%
3rd "	11,873	" " "	35.2%
4th "	4,114	" " "	12.2%
Total	33,743	" " "	100.0%
ALL OTHER FOOD:			
1st Quarter	113,817	" " "	24.3%
2nd "	115,040	" " "	24.6%
3rd "	108,094	" " "	23.1%
4th "	130,759	" " "	28.0%
Total	467,710	" " "	100.0%
ALL OTHER NONFOOD:			
1st Quarter	130,134	" " "	23.8%
2nd "	143,825	" " "	26.3%
3rd "	148,548	" " "	27.2%
4th "	123,923	" " "	22.7%
Total	546,430	" " "	100.0%
TOTAL SHIPMENTS:			
1st Quarter	919,122	" " "	19.9%
2nd "	1,208,082	" " "	26.2%
3rd "	1,495,125	" " "	32.5%
4th "	984,221	" " "	21.4%
Total	4,606,550	" " "	100.0%

3192 [fol. 1700]

1957 QUARTERLY SHIPMENTS OF METAL CANS

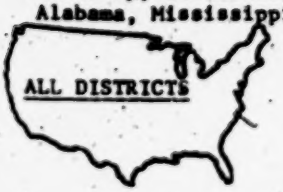
		Steel
FOOD		
1st Qtr.	17.9%	464,737 Tons
2nd "	25.4%	658,016 "
3rd "	35.8%	929,606 "
4th "	20.9%	540,559 "
BEVERAGES		
1st Qtr.	20.8%	213,774 Tons
2nd "	29.0%	297,505 "
3rd "	29.2%	299,823 "
4th "	21.0%	215,362 "
NONFOOD		
1st Qtr.	24.4%	240,611 Tons
2nd "	25.6%	252,561 "
3rd "	26.9%	265,696 "
4th "	23.1%	228,300 "
ALL SHIPMENTS		
1st Qtr.	19.9%	919,122 Tons
2nd "	26.2%	1,208,082 "
3rd "	32.5%	1,495,125 "
4th "	21.4%	984,221 "

[fol. 1701]

1957 CONSUMPTION OF STEEL

3193

District	Tons of Steel Consumed	% of Total	Compared with 1956
EAST NORTH CENTRAL: Ohio, Indiana, Illinois, Michigan, Wisconsin	1,275,694	27.7%	3.6% Decr.
PACIFIC & HAWAII: Washington, Oregon, California, Haw.Isl.	1,080,329	23.5%	6.6% "
MIDDLE ATLANTIC: New York, New Jersey, Pennsylvania	891,210	19.4%	1.7% "
SOUTH ATLANTIC: Del., Md., Va., W.Va., N. Car., S. Car., Ga., Fla., D.C.	525,783	11.4%	5.2% "
WEST NORTH CENTRAL: Minn., Mo., Iowa, N. Dak., S. Dak., Nebr., Kansas	359,976	7.8%	1.3% "
WEST SOUTH CENTRAL: Arkansas, Louisiana, Oklahoma, Texas	306,859	6.7%	.8% Incr.
NEW ENGLAND: Me., Mass., Vt., N.H., R.I., Conn.	65,582	1.4%	.1% Decr.
MOUNTAIN: Mont., Idaho, Wyo., Colo., N.M., Ariz., Utah, Nevada	56,148	1.2%	.8% Incr.
EAST SOUTH CENTRAL: Kentucky, Tennessee, Alabama, Mississippi	44,969	.9%	14.9% Decr.
ALL DISTRICTS	4,606,550	100.0%	3.7% Decr.



[fol. 1702]

3194

NUMBER OF #2 CANS WHICH MIGHT HAVE BEEN PRODUCED FROM THE AMOUNT OF STEEL CONSUMED

Commodities	Year 1957	Year 1956
ALL CLASSIFICATIONS	40,261,246,000	41,826,721,000
FOOD:		
Fruit and Vegetable	13,060,811,000	14,253,411,000
Evap. & Condensed Milk	1,998,200,000	2,149,822,000
Other Dairy Products	381,422,000	464,304,000
Meat (Incl. Poultry)	1,227,175,000	1,323,052,000
Fish and Seafood	1,001,254,000	983,530,000
Lard and Shortening	905,455,000	963,838,000
All other food (Incl. Soup & Baby Food)	4,087,785,000	4,209,805,000
Total Food	22,662,102,000	24,347,762,000
BEVERAGE:		
Coffee	1,758,610,000	1,728,431,000
Beer	6,917,771,000	6,706,368,000
Soft drink	294,914,000	248,469,000
Total Beverage	8,971,295,000	8,683,268,000
PET FOOD	1,514,791,000	1,469,072,000
NONFOOD:		
Oil- open top (1 & 5 Qt.)	2,337,260,000	2,542,693,000
All other nonfood	4,775,798,000	4,783,926,000
Total Nonfood	7,113,058,000	7,326,619,000

Above estimates based upon the use of 88# plate.

ACTUAL NUMBER OF CANS WHICH MIGHT HAVE BEEN PRODUCED FROM THE AMOUNT OF STEEL CONSUMED

Commodities	Year 1957	Year 1956
ALL CLASSIFICATIONS	41,991,115,000	43,539,368,000
FOOD:		
Fruit and Vegetable	13,970,971,000	15,245,898,000
Evap. & Condensed Milk	3,181,207,000	3,422,583,000
Other Dairy Products	148,669,000	180,974,000
Meat (Incl. Poultry)	1,364,232,000	1,470,815,000
Fish and Seafood	1,421,187,000	1,396,175,000
Lard and Shortening	289,148,000	307,708,000
All other food (Incl.Soup & Baby Food)	4,560,896,000	4,697,014,000
Total Food	24,936,310,000	26,721,167,000
BEVERAGE:		
Coffee	904,438,000	888,887,000
Beer	8,042,342,000	7,796,647,000
Soft drink	376,816,000	317,570,000
Total Beverage	9,323,596,000	9,003,104,000
PET FOOD	1,969,604,000	1,910,187,000
NONFOOD:		
Oil-open top (1 & 5 Qt.)	1,548,360,000	1,684,395,000
All other nonfood	4,213,245,000	4,220,515,000
Total Nonfood	5,761,605,000	5,904,910,000

Above estimates based upon different conversion factors for each commodity group.

[vol. 1704]

3196

SHIPMENTS OF METAL CANS

IN TERMS OF SHORT TONS OF STEEL

Product	1957	1956	1955	1954
TOTAL SHIPMENTS	4,606,550	4,785,666	4,483,999	4,143,329
FOOD				
Fruit & Vegetable (Incl. juice)	1,494,372	1,630,825	1,484,311	1,342,488
Evaporated and Condensed Milk	228,627	245,975	245,520	229,270
Other Dairy Prod.	43,641	53,124	50,731	41,979
Fish and Seafood	114,560	112,532	110,188	109,202
Lard & Shortening	103,599	110,279	118,931	119,718
Meat and Poultry	140,409	151,379	134,525	139,694
Other Food (Incl. Soup & Baby Food)	467,710	481,671	438,798	400,439
Total Food Cans	2,592,918	2,785,785	2,583,008	2,382,790
BEVERAGES				
Coffee	201,214	197,761	187,783	178,460
Beer	791,507	767,319	724,166	646,518
Soft Drink	33,743	28,429	30,810	43,874
Total Beverage Cans	1,026,464	993,509	942,759	868,852
NONFOOD				
Oil, open top (1 qt. & 5 qt.)	267,421	290,926	290,887	273,388
Pet Food	173,317	168,086	145,242	131,204
Other Nonfood	546,430	547,360	522,103	487,095
Total Nonfood Cans	987,168	1,006,372	958,232	891,687

[Vol. 1705]

3197

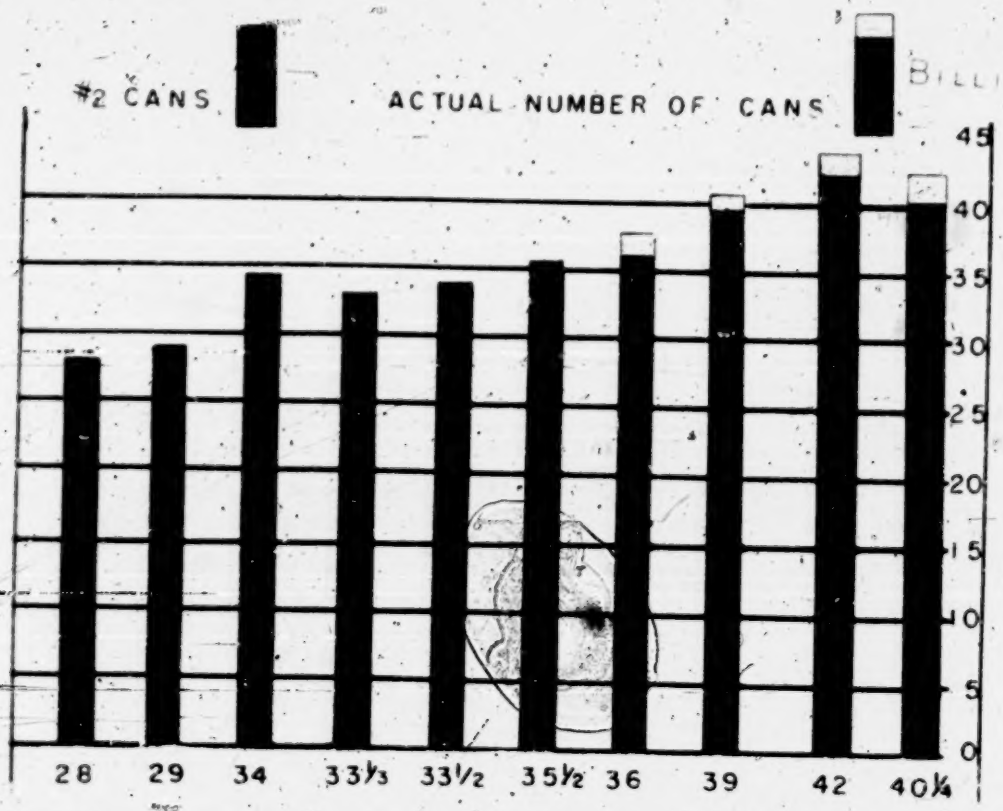
SHIPMENTS OF METAL CANS

IN TERMS OF SHORT TONS OF STEEL

1953	1952	1951	1950	1949	1948
4,082,254	3,842,170	3,804,551	3,893,384	3,276,918	3,245,145
1,386,095	1,340,177	1,354,463	1,304,703	1,104,743	1,097,906
230,425	255,722	257,434	258,514	248,029	301,175
36,643	32,681	35,747	34,576	34,977	42,862
103,501	107,856	105,704	150,372	113,077	116,397
93,637	93,312	83,491	102,095	86,200	73,771
125,634	Combined	Combined	123,012	109,370	124,241
435,909	544,834	549,272	405,677	393,074	387,131
2,411,844	2,374,582	2,386,111	2,378,949	2,089,470	2,143,483
202,920	180,292	172,480	172,000*	172,000*	174,004
615,702	492,076	431,698	492,049	359,694	281,579
Combined					
818,622	672,368	604,178	664,049	531,694	455,583
256,007	236,280	258,737	254,165	193,869	194,890
122,643	124,106	101,171	116,200	88,202	65,184
473,138	434,834	454,354	480,021	373,683	386,005
851,788	795,220	814,262	850,386	655,754	646,079

Note: *Coffee for 1950 and 1949 estimated

ESTIMATED NUMBER OF CANS WHICH MIGHT HAVE BEEN PRODUCED FROM THE AMOUNT OF STEEL CONSUMED



1948	1949	1950	1951	1952	1953	1954	1955	1956	1957
ACTUAL CANS				37.5		40.5		43.5	42

[fol. 1707] 1956 and 1957 PRODUCTION OF CANS 31999

Based upon the estimated actual number of cans which might have been produced from the amount of steel consumed.

	PER CAPITA		PER HOUSEHOLD
	1957*	1956**	1957*
TOTAL ALL COMMODITIES	246	259	860
FOOD:			
Fruit and Vegetable	82	91	287
Evaporated and Condensed milk	19	20	65
Other Dairy Products	1	1	3
Meat and Poultry	8	9	28
Fish and Seafood	8	8	29
Lard & Shortening	2	2	6
All other food	27	28	93
Total Food	147	159	511
BEVERAGE:			
Coffee	5	5	18
Beer	47	47	165
Soft drink	2	2	8
Total Beverage	54	54	191
PET FOOD	11	11	40
NON-FOOD:			
Oil, open top (1 & 5 qt.)	9	10	32
All other non-food	25	25	86
Total Non-food	34	35	118

Notes

* Based upon an average U.S. population of 171,000,000; and 48,850,000 households.

** Based upon an average U.S. population of 168,000,000.

[fol. 1708] **CONSUMPTION OF TIN IN THE UNITED STATES BY USES**

3290 1952 - 1957 Inclusive

	For All Uses		Consumed by Can Makers	
	Long Tons	%	Long Tons	Of "All Uses"
1957 (Preliminary)				
Tin & Terne Plate	32,327	39%	22,900	71%
Solder	18,940	23%	1,370	7%
Other uses	31,533	38%		
	82,800	100%	24,270	30%
1956				
Tin & Terne Plate	35,050	39%	25,705	73%
Solder	20,582	23%	1,464	7%
Other uses	34,692	38%		
	90,324	100%	27,169	30%
1955				
Tin & Terne Plate	33,872	37%	24,693	73%
Solder	22,230	25%	1,475	7%
Other uses	34,381	38%		
	90,483	100%	26,168	29%
1954				
Tin & Terne Plate	33,420	40%	24,564	74%
Solder	19,389	24%	1,370	7%
Other uses	30,082	36%		
	82,891	100%	25,934	31%
1953				
Tin & Terne Plate	31,970	37%	22,743	71%
Solder	20,173	24%	1,350	7%
Other uses	33,497	39%		
	85,640	100%	24,093	28%
1952				
Tin & Terne Plate	27,896	36%	21,790	78%
Solder	17,923	23%	1,400	8%
Other uses	32,599	41%		
	78,418	100%	23,190	30%

[Hol. 1700] CONSUMPTION OF TIN IN THE UNITED STATES BY USES 3201

1946 - 1951 Inclusive

	For All Uses		Consumed by Can Makers	
	Long Tons	%	Long Tons	Of "All Uses"
1951				
Tin & Terne Plate	31,289	35%	21,320	68%
Solder	19,810	22%	1,400	7%
Other uses	37,070	43%		
	88,169	100%	22,720	26%
1950				
Tin & Terne Plate	36,332	35%	27,260	75%
Solder	27,460	26%	1,550	6%
Other uses	40,672	39%		
	104,464	100%	28,810	28%
1949				
Tin & Terne Plate	30,243	42%	22,790	75%
Solder	15,356	21%	1,000	7%
Other uses	26,807	37%		
	72,406	100%	23,790	33%
1948				
Tin & Terne Plate	32,175	35%	21,410	67%
Solder	21,125	23%	1,200	6%
Other uses	37,488	42%		
	90,788	100%	22,610	25%
1947				
Tin & Terne Plate	31,481	36%	20,430	65%
Solder	20,080	23%	1,225	6%
Pther uses	36,539	41%		
	88,100	100%	21,655	25%
1946				
Tin & Terne Plate	26,573	33%	20,330	77%
Solder	17,116	21%	950	6%
Other uses	37,254	46%		
	80,943	100%	21,280	26%

[fol. 1710] SHIPMENTS OF PLATE FOR THE MANUFACTURE OF CANS

3202 BY THE TIN PLATE MANUFACTURERS

TONS OF PLATE

	1957	1956	1955	1954
TIN & TERNE PLATE:				
Hot dipped	348,882	503,566	581,794	833,622
Electrolytic	3,842,711	3,760,238	3,583,996	2,954,899
Total	4,191,593	4,263,80	4,165,790	3,788,521
BLACK PLATE:	303,843	392,013	397,534	356,159
TOTAL	4,495,436	4,655,817	4,563,324	4,144,680
Can Makers' Consumption	4,606,550	4,785,666	4,483,999	4,143,329

PERCENTAGES

TIN & TERNE PLATE:				
Hot dipped	7.8%	10.8%	12.8%	20.1%
Electrolytic	85.5%	80.8%	78.5%	71.3%
Total	93.3%	91.6%	91.3%	91.4%
BLACK PLATE	6.7%	8.4%	8.7%	8.6%
TOTAL	100.0%	100.0%	100.0%	100.0%

Shipments of Plate - from American Iron and Steel Institute
Can Makers' Consumption - from U.S. Govt., Bureau of the Census

[fol. 1711] SHIPMENTS OF PLATE FOR THE MANUFACTURE OF CANS 3203
BY THE PLATE MANUFACTURERS

TONS OF PLATE

	1957	1956	1955	1954
SANITARY CANS:				
Hot dipped t.p.	300,762	425,224	499,567	716,080
Electrolytic "	2,070,085	2,069,416	1,978,357	1,530,417
Total	2,370,847	2,494,640	2,477,924	2,246,497
Black Plate	18,994	27,266	29,973	24,729
Total Sanitary	2,389,841	2,521,906	2,507,897	2,271,226
GENERAL LINE:				
Hot dipped t.p.	48,120	78,342	82,227	117,542
Electrolytic "	1,772,626	1,690,822	1,605,639	1,424,482
Total	1,820,746	1,769,164	1,687,866	1,542,024
Black Plate	284,849	364,747	367,561	331,430
Total Gen. Line	2,105,595	2,133,911	2,055,427	1,873,454
T O T A L	4,495,436	4,655,817	4,563,324	4,144,680

PERCENTAGES

SANITARY CANS:				
Hot dipped t.p.	12.7%	17.0%	20.2%	31.9%
Electrolytic	87.3%	83.0%	79.8%	68.1%
	100.0%-99.2%	100.0%-98.9%	100%-98.8%	100%-98.9%
Black Plate	.8	1.1%	1.2%	1.1%
	100.0%	100.0%	100.0%	100.0%
GENERAL LINE:				
Hot dipped t.p.	2.6%	4.4%	4.9%	7.6%
Electrolytic	97.4%	95.6%	95.1%	92.4%
	100.0%-86.5%	100.0%-82.9%	100%-82.1%	100%-82.3%
Black Plate	13.5%	17.1%	17.9%	17.7%
	100.0%	100.0%	100.0%	100.0%
SANITARY CANS	53.2%	54.2%	55.0%	54.8%
GENERAL LINE CANS	46.8%	45.8%	45.0%	45.2%

Definition of a Metal Can

A single-walled container constructed wholly of tin plate, terne plate, blackplate or waste plate designed for packing products.

This definition does not include ice cream cans, fluid milk shipping containers or steel pails, defined as single-walled shipping containers having capacities of 1-12 gallons inclusive, that are cylindrically constructed of steel sheet of 29 gauge and heavier.

Coverage

All commercial and captive plants known to be producing metal cans.

Statistics were compiled from reports submitted by the manufacturers to the Bureau of the Census. Data are reported in terms of base boxes of steel consumed, and these base boxes are converted into short tons of steel by the Bureau of the Census, on the basis of conversion factors shown on page 3.

Sources

U.S. Government - Bureau of the Census. "Facts for Industry" series.

U.S. Government - Bureau of Mines. "Mineral Industry Surveys."

American Iron and Steel Institute. Shipments of plate to can and container manufacturers.

By
CAN MANUFACTURERS INSTITUTE, INC.
Alberta L. Rowland, Statistician

[fol. 1713] GOVERNMENT'S EXHIBIT 1205

Explanation for Filling Out GCMI Reporting Form 1-54

1. Classification by Product Groupings

It is desirable to have as accurate a classification by end use as is feasible. The attached schedule (revised 1/30/53), "Glass Container Industry Product Groups", gives a general definition of the product end use groupings. Also, a partial list of specimen products under the various groupings is given as a guide.

2. Differentiation between Narrow Neck and Wide Mouth Containers

The attached schedule, "Designation of Wide Mouth and Narrow Neck Containers", previously issued 11/2/50, should be used as a basis for distinguishing between these two types of containers. The differentiation is based upon the relationship of size of finish to the capacity, and the basic formula has long been used in the industry. Included in the table are examples of containers classified according to the formula.
The table is not applicable to dairy products containers which should continue to be designated as Wide Mouth, as heretofore.

3. Shipment Column

Where containers are manufactured and shipped to another glass container manufacturer the shipment should be reported the same as shipments to a packer or bottler. If your *Summary of Shipments* for the month includes sales of containers *purchased* from another glass container manufacturer, the total of such purchases should be deducted in arriving at your Shipments Total. The shipment figure should be a net figure, i.e., less any returns.

4. Export Shipments

All shipments to points outside of the continental United States and District of Columbia should be reported as one total under line 20, "Export Shipments".

5. Production Column

The production figure should reflect all ware packed. In order not to distort the Pounds Packed figure and Calculation of Average Weight Per Gross the normal adjustments due to losses or gains should be handled under the "Finished Stocks on Hand" column, as set forth below.

6. Finished Stocks on Hand Column

This figure should be adjusted to reflect losses due to ware culleted, various overs and unders, etc. The calculated finished stock figure then will differ from the actual figure reported only to the extent of the net adjustments.

12/16/57

[fol. 1714] Glass Container Industry Product Groups

Narrow Neck Containers

1. Foods

This classification applies to all narrow neck bottles for commercial food packers. Specimen products are:

catsup
edible oils
concentrated beverage syrup
flavoring extracts
fruit juices
syrups
vegetable juices
vinegars

2. Medicinal & Health Supplies

This classification applies to narrow neck containers for products which are primarily intended to improve or maintain the health of human beings or animals. Specimen products are:

Citrate of magnesia
essential oils
extracts for
medicinal purposes
liniments

liquid soaps
nursing bottles
oral preparations—hygienic
peroxide
pharmaceuticals
prescription bottles
proprietary medicines
veterinary supplies

3. Chemical, Household & Industrial

This classification applies to all narrow neck containers for products not used in connection with human or animal bodies. It includes all containers used for manufactured articles such as soap dispensers, as well as for such products as the following:

ammonias
bleaches
bluings
cements
cleaning fluids
disinfectants
dyes
embalming fluids
glues
individual creamers
inks
insecticides
lubricating oils
polishes
protective coatings
refrigerator water bottles
waxes

4. Toiletries & Cosmetics

This classification applies to all narrow neck containers for products intended primarily to improve personal appearance or to impart a pleasing odor. Specimen products are:

[fol. 1715] bath salts and oils
brilliantines
cuticle products

deodorants
hair tonics
lotions
nail polishes
perfumes
powders
toilet waters

5. Beverages * Returnable

This classification applies to all bottles for soft drinks and water, carbonated or not carbonated, designed for multiple-trip use.

6. Beverages * Non-Returnable

This classification applies to all bottles for soft drinks and water, carbonated or non-carbonated, designed for single-trip use.

7. Beer * Returnable

This classification applies to all bottles for alcoholic cereal beverages (beer, ale, porter, etc.) designed for multiple-trip use.

8. Beer * Non-Returnable

This classification applies to all bottles for alcoholic cereal beverages designed for single-trip use.

9. Liquors

This classification applies to all bottles designed for bottling alcoholic beverages except wines and malt beverages. Included are such products as brandies, cordials, gins, rum and distilled spirits.

10. Wines

This classification applies to all bottles designed for bottling all types of wines, whether sparkling or still, and champagnes and vermouths.

Wide Mouth Containers

11. Foods

This classification applies to all wide mouth containers sold to commercial food packers. Specimen products are:

baby foods
candies
coffee
edible oils
fish products
fruits
jams & jellies
mayonnaise & salad dressings
meat products
mustard
peanut butter
pickles & relishes
preserves
shortenings
syrups
vegetables

Also included under this classification are: home canning jars for fruits and jellies, as well as packers tumblers.

[fol. 1716] 12. Medicinal & Health Supplies

This classification applies to all wide mouth containers for products which are intended to improve or maintain the health of human beings or animals. Specimen products are:

capsules
chemicals
pharmaceuticals
prescription ware
proprietary medicines
tablets
veterinary supplies

13. Chemical, Household & Industrial

This classification applies to all containers for products not intended for use in connection with human or animal bodies. It includes all containers used for manufactured articles, such as oil stove reservoirs, as well as such products as the following:

cements
embalming fluids
industrial chemicals
inks
pastes
protective coatings
polishes
snuff
tobacco jars

14. Toiletry & Cosmetics

This classification applies to all wide mouth containers for products intended primarily to improve personal appearance or impart a pleasing odor. Specimen products are:

bath salts
brilliantine
creams (except medicated protective creams)
pomades
talcum powders

15. Dairy Products

This classification applies to all containers used by dairies. It includes milk and cream bottles, and it also includes cottage cheese jars, orange and chocolate drinks when not in narrow neck beverage bottles.

16. Total Domestic

17. Export

This classification applies to any of the above shipped to packers and bottlers outside the continental limits of the United States.

[fol. 1717]

Designation of Wide Mouth and
Based Upon Rel

Size of Finish	For a given size finish, a container if its capacity is less than that sho nated narrow neck if its capacity is	
	Cubic Centimeters	Drams
13	.552	.149
15	1.13	.305
18	2.81	.760
20	4.76	1.288
22	7.67	2.074
24	11.85	3.205
28	25.61	6.927
30	36.15	
33	58.23	
35	78.15	
38	117.89	
40	152.37	
43	218.75	
45	274.57	
48	379.15	
51	513.40	
53	622.30	
58	976.69	
60	1157.05	
63	1476.75	
66	1863.41	
70	2500.98	
75	3531.20	
83	5861.58	
89	8309.08	
100	14880.21	
120	37027.50	

Narrow Neck Containers for GCMI Statistical Reports
ionship of Size of Finish and Capacity
designated wide mouth
a; a container is desig-
reater than that shown.

Fl. Ozs.	Gallons	GCMI Item No.	Examples Overflow Capacity Fl. Ozs.	N/N or W/M
.019		150-10	3	N/N
.038		56-01	¼	N/N
.095		80-02	37/64	N/N
.161		80-07	2⅛	N/N
.259		82-08	1$\frac{3}{32}$	N/N
.401		57-25	8	N/N
.866		80-50	16$\frac{3}{32}$	N/N
1.223		82-16	5-21/64	N/N
1.969		82-22	7$\frac{1}{32}$	N/N
2.642				
3.986		51-85	65⅝	N/N
5.152		17-11	3½	W/M
7.396		82-62	25$\frac{3}{32}$	N/N
9.283		23-11	3¾	W/M
12.819		29-16	5	W/M
17.358		10-14	4¼	W/M
21.04		23-22	7¼	W/M
33.02		22-43	14	W/M
30.12		17-26	8¼	W/M
49.93		21-85	58½	N/N
63.00		10-51	16½	W/M
84.56		15-53	17	W/M
19.39	1.93	11-75	32⅝	W/M
98.18	1.55	26-48	15½	W/M
80.93	2.19	12-96	130½	W/M
03.10	3.93			
51.90	9.78	24-96	130½	W/M

11/2/50.

3211

[fol. 1718] GOVERNMENT'S EXHIBIT 1209

Continental Can Company, Inc.

Notice and Proxy Statement for Special Meeting of Common and Preferred Stockholders To Be Held October 26, 1956

[fol. 1719] 4. Business of Continental

Continental was incorporated under the laws of the State of New York on January 17, 1913. The principal business of Continental and its subsidaries is the manufacture and sale of metal cans and other metal containers. Other products include paper containers, fibre drums, kraft linerboard, flexible packaging materials, crown and vacuum caps, plastic products, and can closing machinery. In addition, as described under the heading "Acquisition of Hazel-Atlas Glass Company", Continental has entered the glass container field. In 1955 sales of cans and other metal containers accounted for between two-thirds and three-fourths of the total sales in dollar volume of Continental. With respect to each of the major lines of products manufactured by Continental, there are several other important suppliers of the same or similar products. Thus, in each case Continental must meet vigorous competition in price, quality and service.

Continental is also engaged in the manufacture of special defense products. Sales of these defense products constituted approximately 5% of the gross sales of Continental in 1955. In general, defense contracts of Continental may be terminated for the convenience of the United States Government. The profits on these sales are comparable to profits on sales of other products manufactured by Continental.

The major portion of the business is conducted directly by Continental. Its principal subsidiaries, all of which are wholly-owned, are The Container Company, Continental Can Company of Canada Limited, Continental Can Corporation, Continental-Shellmar Incorporated, Continental-[fol. 1720] Shellmar International Company, Inc. and White Cap Company. It also has subsidiaries, wholly or partially owned, in Mexico, Colombia, Venezuela, Panama and Brazil. References herein to the business of "Continental" are to the business as conducted by the enterprise as a whole. Continental operates through the following operating Divisions: Metal, Crown and Cork, Paper Container, Fibre Drum, Paperboard, Shellmar-Betner, Canadian, Overseas, Equipment Manufacturing and Hazel-Atlas. Each operating division is headed by either a vice president or a general manager, who is responsible for all phases of the operation

of the particular division. Continental also operates through the White Cap Company, a wholly-owned subsidiary which Continental acquired on January 4, 1956.

Metal Division

Continental manufactures and sells a diversified line of cans and other metal containers and operates 40 plants in the United States for this purpose. It is the second largest manufacturer of such containers in the United States.

The greater portion of the metal container sales consists of cans used for the packaging of a wide variety of food products, such as fruits and fruit juices, vegetables, evaporated and condensed milk, meat, fish, coffee, syrup, lard and beer. The remainder of its metal container sales normally consists of cans and containers used for the packaging of other products, such as motor oil, grease, paint, varnish, polish, wax, drugs, cosmetics, detergents and other products.

The principal materials used for the manufacture of metal cans and containers are tin plate, terne plate and black plate, all requirements of which are purchased from nonaffiliated sources.

Most of the output of metal cans and containers is sold directly through Continental's own sales organization to canners and industrial users. Sales are made mainly under standard forms of contracts which are entered into for a one-year period for all or a portion of the customer's requirements. Such contracts establish prices which are adjustable in the event of changes in prime material costs and certain taxes or customs duties without notice, and changes for other reasons, including wage rates, upon notice.

Crown and Cork Division

This division has five plants for the manufacture of crown caps. The Wilmington plant, in addition to manufacturing crown caps, purchases and grinds cork for Continental's requirements, and also manufactures and sells certain cork products such as washers, gaskets, expansion joints, rods and discs. Continental is the second largest producer of crown caps in the United States. This division also manufactures plastic products in two plants.

Paper Container Division

This division has six plants for the manufacture of paper containers used by the food and dairy industries and in the retail food-dispensing fields, and beverage cups used in coin operated vending machines. Its products include cottage cheese tubs, cold drink cups, hot drink cups and paper plates of various types and sizes. Sales are made both through wholesalers and directly to users.

[fol. 1721] Fibre Drum Division

Continental manufactures various types of fibre drums at six plants. The fibre drums range in size from less than a gallon to 75 gallons, and are principally used for shipping dry products such as chemicals and powdered milk. Continental is the largest producer of fibre drums in the United States. Most sales are made directly to users.

Paperboard Division

Continental operates a paper mill at Hopewell, Virginia, which manufactures kraft linerboard and paper. A considerable part of its production is currently used by Continental's fibre drum plants, the remainder being sold to others. Continental is presently installing a semi-chemical pulp operation in the Hopewell plant which will permit the use of hardwoods available in the area. Continental owns extensive timberlands in Virginia and North Carolina.

Equipment Manufacturing Division

Continental maintains four machine shops which manufacture the greater portion of its can making machinery and which also manufacture can closing machinery which is sold or leased to customers and others.

Shellmar-Betner Division

The Shellmar-Betner Division manufactures and converts flexible packaging materials. It operates eight plants in which it extrudes and laminates polyethylene, and prints and converts into bags and containers various types of films and other materials. This Division offers its customers a great variety of flexible packages and packaging materials including specially designed gravure printed packaging.

White Cap Company

On January 4, 1956, Continental acquired all of the capital stock of the White Cap Company which now operates as a wholly-owned subsidiary. White Cap Company has a modern plant in Chicao, Illinois, and has been highly successful in the manufacture and sale of vacuum type metal closures.

Hazel-Atlas Glass Division

This Division has been organized to carry on and develop the business formerly conducted by Hazel-Atlas Glass Company as described under the heading "Acquisition of Hazel-Atlas Glass Company."

Canadian Division

Continental's operations in Canada are operated through its Canadian Division. This division manufactures and sells metal containers and paper containers, including cold drink cups and hot drink cups, and crown caps of various types and sizes. It operates nine plants.

[fol. 1722] Overseas Division

Foreign activities other than Canadian operations and a can and crown closure plant operated in Cuba by the Metal Division are conducted by the Overseas Division. These include licensee service arrangements with 28 firms in 22 countries in the fields of can, crown caps, flexible packaging, paper container and fibre drum manufacture. Flexible packaging converting plants are operated in Mexico and South America.

Miscellaneous

On June 28, 1956 Continental purchased 50% of the outstanding capital stock of Cochran Continental Container Corporation, a Delaware corporation, recently organized to engage in the manufacture and fabrication of aluminum foil containers. Cochran Foil Company of Louisville, Ky. owns the other 50% of such outstanding capital stock.

Continental maintains an extensive servicing force to provide complete cannery equipment and can handling services for its customers and others.

Continental maintains sales offices throughout the United States. It carries on research and experimental work in connection with its products and the materials used therein,

as well as with respect to the operations of its customers. Several laboratories are maintained for this purpose, two of which, located in Chicago, Illinois, employ approximately 600 persons, including graduate chemists, bacteriologists, engineers and physicists. In all Continental employs approximately 45,000 persons.

In addition to its foreign operations described above, Continental is a shareholder in many of the leading container manufacturing companies in principal foreign markets throughout the world and regularly receives dividends from these investments.

5. Acquisition of Hazel-Atlas Glass Company

On September 13, 1956 Continental acquired all of the assets, properties, business and good will of Hazel-Atlas Glass Company, a West Virginia corporation (herein called "Hazel-Atlas") in exchange for an aggregate of 999,140 shares of Common Stock of Continental and the assumption by Continental of all of the liabilities of Hazel-Atlas, as provided in a Reorganization Agreement and Plan dated June 29, 1956, between Continental and Hazel-Atlas. Hazel-Atlas thereafter commenced proceedings to dissolve and distribute the Common Stock of Continental received by it in liquidation to its stockholders. The Hazel-Atlas operations are now being conducted as a division of Continental.

The Division manufactures glass containers and glassware, including tumblers, tableware and kitchenware and articles of special design for industrial use. It also manufactures metal closures for glass containers. It operates plants at 13 locations and maintains leased warehouses at six [fol. 1723] locations. Its principal customers are manufacturers and packers of cosmetics, medicinal preparations and food and other products and wholesalers and distributors of glass jars for home canning.

The management of Hazel-Atlas believed it to be the third largest glass container manufacturer in the United States in terms of dollar volume of sales, but the leader in the industry had a sales volume several times that of Hazel-Atlas.

Separate financial statements of Hazel-Atlas are included elsewhere in this proxy statement.

On September 10, 1956 the United States of America filed Civil Action 112-387 against Continental and Hazel-Atlas in

the United States District Court for the Southern District of New York alleging in substance that the acquisition by Continental of Hazel-Atlas would have the effect of lessening competition in violation of Section 7 of the so-called Clayton Antitrust Act. On September 13, 1956 the Court denied the Government's request that a temporary restraining order be issued against the acquisition, and the acquisition was consummated on that date. However, the Civil Action remains pending.

HAZEL-ATLAS GLASS COMPANY

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

To the Stockholders of
HAZEL-ATLAS GLASS COMPANY:

Notice is hereby given that a Special Meeting of the Stockholders of Hazel-Atlas Glass Company will be held at the principal office of the Company, 15th and Jacob Streets, Wheeling, West Virginia, at 11 A. M., Eastern Daylight Time, on August 7, 1956, for the following purposes:

(1) To vote upon a proposal (a) to ratify and approve the Reorganization Agreement and Plan, dated June 29, 1956 (herein called the "Plan"), between the Company and Continental Can Company, Inc., a copy of which (without exhibits) is attached hereto as Exhibit A, and to authorize the conveyance, assignment, transfer and delivery of all assets, properties, business and good will of the Company to Continental Can Company, Inc. in exchange for an aggregate of 999,140 shares of Common Stock of Continental Can Company, Inc., and the assumption by that corporation of all of the liabilities of the Company, all as provided in the Plan; and (b) to authorize any and all action necessary to effectuate said Plan. (Proposal 1)

(2) If, and only if, Proposal 1 shall be adopted by the necessary vote of stockholders, to vote upon a proposal that, as provided in the Plan, the Company be liquidated and dissolved and that the shares of Common Stock of Continental Can Company, Inc. be distributed to the stockholders of the Company. (Proposal 2)

(3) To transact such other business as may properly come before the meeting or any adjournments thereof.

In accordance with the provisions of the By-Laws, the Board of Directors has fixed the close of business on July 6, 1956, as the record date for the determination of the holders of Capital Stock entitled to notice of and to Vote at said Special Meeting.

Your attention is directed to the accompanying Proxy Statement.

IN VIEW OF THE FACT THAT PROPOSAL 1 AND PROPOSAL 2 ABOVE REQUIRE THE AFFIRMATIVE VOTE OF THE HOLDERS OF AT LEAST SIXTY PER CENT OF THE OUTSTANDING STOCK OF THE COMPANY, STOCKHOLDERS WHO DO NOT EXPECT TO ATTEND THE MEETING IN PERSON ARE URGED TO COMPLETE, DATE, SIGN AND MAIL THE ENCLOSED PROXY AS PROMPTLY AS POSSIBLE IN THE ENCLOSED STAMPED ENVELOPE.

By order of the Board of Directors.

N. G. Ross, *Secretary.*

Dated, Wheeling, West Virginia,
July 6, 1956.

[fol. 1725] 3220

PROXY STATEMENT

HAZEL-ATLAS GLASS COMPANY

SPECIAL MEETING OF STOCKHOLDERS

August 7, 1956

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1. PURPOSE OF MEETING

The purpose of the meeting is to vote upon the following proposals:

Proposal 1: To ratify and approve the Reorganization Agreement and Plan, dated June 29, 1956 (herein called the "Plan"), between the Company (herein called "Hazel-Atlas") and Continental Can Company, Inc. (herein called "Continental"), and to authorize the conveyance, assignment, transfer and delivery of all assets, properties, business and good will of Hazel-Atlas to Continental in exchange for an aggregate of 999,140 shares of Common Stock of Continental and the assumption by that corporation of all of the liabilities of Hazel-Atlas, all as provided in the Plan, and to authorize any and all action necessary to effectuate said Plan.

Proposal 2: To authorize the liquidation and dissolution of Hazel-Atlas and the distribution of the shares of Common Stock of Continental to the stockholders of Hazel-Atlas, as provided in the Plan.

Proposal 2 will not be considered at the meeting unless Proposal 1 shall be adopted by the necessary vote of stockholders.

Hazel-Atlas has issued and outstanding 2,172,045 shares of Capital Stock, each of which is entitled to one vote. The affirmative votes of the holders of at least sixty per cent of the issued and outstanding shares of Capital Stock will be required for the approval of both Proposal 1 and Proposal 2. If the holders of at least sixty per cent of the Capital Stock vote in favor of both of the Proposals, such vote will be binding upon all the stockholders of Hazel-Atlas.

The Plan was negotiated by the management of the two corporations in order to make it possible for one enterprise to provide a practically complete packaging service. It will permit the stockholders of Hazel-Atlas to become participants in a more fully integrated business, with anticipated economies in administration, financing, manufacturing and merchandising. The number of shares of Continental to be exchanged for the assets of Hazel-Atlas is equivalent to 46/100th share of Continental for each share of Hazel-Atlas, which was approximately the relative market value of the shares of the common stocks of the two companies at the time of the negotiations. In the negotiations, however, consideration was also given to the capital requirements of Hazel-Atlas in the near future and that these requirements would, in all probability, necessitate lower dividends for the next few years at least. The management believes that the Plan is advantageous to the stockholders of Hazel-Atlas and recommends that it be ratified and approved.

THE MANAGEMENT STRONGLY RECOMMENDS A VOTE IN FAVOR OF BOTH PROPOSALS.

[fol. 1726] 2. SUMMARY OF THE PROPOSALS AND OF THE PLAN

The Plan, which it is proposed to ratify and approve, provides that on the Closing Date specified therein, Hazel-Atlas will convey, transfer, assign and deliver to Continental all the assets, properties, business and good will of Hazel-Atlas, and that in consideration of the conveyance and transfer of such assets and properties Continental will issue and deliver to Hazel-Atlas an aggregate of 999,140 shares of its presently authorized but unissued Common Stock of the par value of $20 per share, and will assume all of the liabilities and obligations of Hazel-Atlas outstanding on the Closing Date (Proposal 1). Subject to the provisions of the Plan relating thereto, it is anticipated that the Closing Date will be on or about August 8, 1956. Under the Plan, and as part thereof, Hazel-Atlas will dissolve and distribute all the shares of Common Stock of Continental received by it to its stockholders in complete winding up and liquidation of Hazel-Atlas and complete cancellation or redemption of its stock, such distribution to be made promptly after the receipt by Hazel-Atlas of the certificates representing such shares (Proposal 2). The distribution of the shares of Common Stock of Continental to stockholders of Hazel-Atlas will be at the rate of 46/100 of a share of Common Stock of Continental for each share of Capital Stock of Hazel-Atlas. Fractional shares of Common Stock of Continental will not be issued, but in lieu thereof cash adjustments will be made. The presently issued and outstanding shares of Common Stock of Continental are, and the shares to be distributed to Hazel-Atlas stockholders will be, listed on the New York Stock Exchange. The capitalization of Continental is set out in its Balance Sheet at December 31, 1955 (at page 23), to which reference is made.

The assets to be conveyed by Hazel-Atlas to Continental pursuant to the Plan will include all assets and property owned by Hazel-Atlas on the Closing Date. From and after the Closing Date, Continental will assume and agrees to pay, perform and discharge all debts, obligations and liabilities of Hazel-Atlas and the expenses and costs incurred in connection with the distribution to the stockholders of Hazel-Atlas of the shares of Continental, and in connection with the dissolution and liquidation of Hazel-Atlas. The only obligations of Hazel-Atlas which will exist after the Closing Date will be its obligations to distribute to its stockholders the shares of Continental received by it under the Plan, and to dissolve.

The Plan contains certain representations and warranties by Hazel-Atlas with respect to its due incorporation and existence, its capital stock, statements of its financial position and of income and accumulated earnings, absence of undisclosed liabilities, title to its assets and properties, patents, insurance policies, contracts, litigation, and other matters. In the Plan, Continental also makes certain representations and warranties, among which are representations with respect to its organization and existence, its capital stock, its balance sheet and other financial statements, and to the effect that the shares of Common Stock of Continental deliverable pursuant to the Plan, when issued and delivered, will be validly issued and outstanding shares of Continental, full paid and non-assessable except to the extent provided in Section 71 of the New York Stock Corporation Law in respect of debts, wages or salaries due and owing to Continental's laborers, servants or employees. The representations and warranties of both Hazel-Atlas and Continental will be terminated and extinguished by the closing under the Plan.

The obligations of both companies under the Plan are subject to certain conditions which are set forth therein.

Both Continental and Hazel-Atlas are subject to court decrees rendered in antitrust proceedings brought by the Department of Justice. The Department of Justice has requested from both companies information relating to their businesses and to the proposed transaction; it has specifically stated, however, that such request did not imply that the transaction would violate the antitrust laws or the existing court decrees. Insofar as the information requested is available to the respective companies, it will be furnished to the Department of Justice.

A copy of the Plan (without exhibits) is attached hereto as Exhibit A, to which reference is made for a complete statement of the terms thereof.

Tax Status

In the opinion of counsel for Hazel-Atlas consummation of the Plan will result in a reorganization within the meaning of the Internal Revenue Code of 1954 and will not result in taxable income to Hazel-Atlas, and the stockholders of Hazel-Atlas who will receive shares of Common Stock of Continental in exchange for their stock in Hazel-Atlas will not have any taxable gain or deductible loss pursuant to such exchange other than such gain or loss as will be recognized to the extent that cash adjustments will be made by reason of the sale of fractional interests in Common Stock of Continental for the account of stockholders of Hazel-Atlas.

3. BUSINESS OF HAZEL-ATLAS

Hazel-Atlas is a manufacturer of glass containers and glassware, including tumblers, tableware and kitchenware and articles of special design for industrial use. It also manufactures metal closures for glass containers. It operates plants at 13 locations and maintains leased warehouses at six locations. Its principal customers are manufacturers and packers of cosmetics, medicinal preparations and food and other products and wholesalers and distributors of glass jars for home canning.

In all of its product lines the business of Hazel-Atlas is subject to keen competition. In terms of dollar volume of sales, its management believes it is the third largest glass container manufacturer in the United States, but the leader in the industry has a sales volume several times that of Hazel-Atlas. In recent years, there has been an increasing use of improved automatic machinery in the industry and a considerable part of Hazel-Atlas's products must be made by such machinery. If it is to maintain its relative position in the industry in the next few years, it must make large capital investments in additional machinery and in plants and other equipment.

4. BUSINESS OF CONTINENTAL

Continental Can Company, Inc. was incorporated under the laws of the State of New York on January 17, 1913. The principal business of Continental and its subsidiaries is the manufacture and sale of metal cans and other metal containers, paper containers, fibre drums, kraft linerboard, flexible packaging materials, crown and vacuum caps, plastic products, and can closing machinery. In 1955 sales of cans and other metal containers accounted for between two-thirds and three-fourths of the total sales in dollar volume of Continental. With respect to each of the major lines of products manufactured by Continental, there are several other important suppliers of the same or similar products. Thus, in each case Continental must meet vigorous competition in price, quality and service.

Continental is also engaged in the manufacture of special defense products. Sales of these defense products constituted approximately 5% of the gross sales of Continental in 1955. In general, defense contracts of Continental may be terminated for the convenience of the United States Government. The profits on these sales compare favorably with the profits on sales of other products manufactured by Continental.

The major portion of the business is conducted directly by Continental. Its principal subsidiaries, all of which are wholly-owned, are The Container Company, Continental Can Company of Canada, Limited, Continental Can Corporation, Continental-Shellmar Incorporated, Continental-Shellmar International Company, Inc. and White Cap Company. It also has subsidiaries, wholly or partially owned, in Mexico, Colombia, Venezuela, Panama and Brazil. References herein to the business of "Continental" are to the business as conducted by the enterprise as a whole. Continental operates through the following operating Divisions: Metal, Crown and Cork, Paper Container, Fibre Drum, Paperboard, Shellmar-Betner, Canadian, Overseas and Equipment Manufacturing. Each operating division is headed by either a vice president or a general manager, who is responsible for all phases of the operation of the particular division. Continental also operates through the White Cap Company, a wholly-owned subsidiary which Continental acquired on January 4, 1956.

Metal Division

Continental manufactures and sells a diversified line of cans and other metal containers and operates 40 plants in the United States for this purpose. It is the second largest manufacturer of such containers in the United States.

The greater portion of the metal container sales consists of cans used for the packaging of a wide variety of food products, such as fruits and fruit juices, vegetables, evaporated and condensed milk, meat, fish, coffee, syrup, lard and beer. The remainder of its metal container sales normally consists of cans and containers used for the packaging of other products, such as motor oil, grease, paint, varnish, polish, wax, drugs, cosmetics and other products.

The principal materials used for the manufacture of metal cans and containers are tin plate, terne plate and black plate, all requirements of which are purchased from nonaffiliated sources. A number of the materials used by Continental in the manufacture of metal containers are purchased from producers of steel and steel products who are currently subject to an industry-wide strike. Unless the steel strike is of extreme duration, it is not anticipated that it will have a serious effect upon the business and operations of Continental because with respect to all such materials Continental believes it has acquired sufficient reserves.

Most of the output of metal cans and containers is sold directly through Continental's own sales organization to canners and industrial users. Sales are made mainly under standard forms of contracts which are entered into for a one-year period for all or a portion of the customer's requirements. Such contracts establish prices which are adjustable in the event of changes in prime material costs and certain taxes or customs duties without notice, and changes for other reasons, including wage rates, upon notice.

Crown and Cork Division

This division has five plants for the manufacture of crown caps. The Wilmington plant, in addition to manufacturing crown caps, purchases and grinds cork for Continental's requirements, and also manufactures and sells certain cork products such as washers, gaskets, expansion joints, rods and discs. Continental is the second largest producer of crown caps in the United States. This division also manufactures plastic products in two plants.

Paper Container Division

This division has six plants for the manufacture of paper containers used by the food and dairy industries and in the retail food dispensing fields and beverage cups used in coin operated vending machines. Its products include cottage cheese tubs, cold drink cups, hot drink cups and paper plates of various types and sizes. Sales are made both through wholesalers and directly to users.

Fibre Drum Division

Continental manufactures various types of fibre drums at six plants. The fibre drums range in size from less than a gallon to 75 gallons, and are principally used for shipping dry products such as chemicals and powdered milk. Continental is the largest producer of fibre drums in the United States. Most sales are made directly to users.

Paperboard Division

Continental operates a paper mill at Hopewell, Virginia, which manufactures kraft linerboard and paper. A considerable part of its production is currently used by Continental's fibre drum plants, the remainder being sold to others. Continental is presently installing a semi-chemical pulp operation in the Hopewell plant which will permit the use of hardwoods available in the area. Continental owns extensive timberlands in Virginia and North Carolina.

Equipment Manufacturing Division

Continental maintains four machine shops which manufacture the greater portion of its can making machinery and which also manufacture can closing machinery which is sold or leased to customers.

Shellmar-Betner Division

The Shellmar-Betner Division manufactures and converts flexible packaging materials. It operates eight plants in which it extrudes and laminates polyethylene, and prints and converts into bags and containers various types of films and other materials. This Division offers its customers a great variety of flexible packages and packaging materials including specially designed gravure printed packaging.

White Cap Company

On January 4, 1956, Continental acquired all of the capital stock of the White Cap Company which now operates as a wholly-owned subsidiary. White Cap Company has a modern plant in Chicago, Illinois, and it has been highly successful in the manufacture and sale of vacuum type metal closures.

Canadian Division

Continental's operations in Canada are operated through its Canadian Division. This division manufactures and sells metal containers and paper containers, including cold drink cups and hot drink cups, and crown caps of various types and sizes. It operates nine plants.

Miscellaneous

Continental maintains an extensive servicing force to provide complete cannery equipment and can handling services for its customers and others.

Continental maintains sales offices throughout the United States. It carries on research and experimental work in connection with its products and the materials used therein, as well as with respect to the operations of its customers. Several laboratories are maintained for this purpose, two of which, located in Chicago, Illinois, employ approximately 600 persons, including graduate chemists, bacteriologists, engineers and physicists. In all Continental employs approximately 35,000 persons.

In addition to its Canadian business, Continental has other foreign operations. Its Cuban business is operated through the Metal Division. Its other foreign operations include exporting, rendering technical service and advice under agreements with several foreign manufacturers, and manufacturing, principally flexible packaging materials, in Mexico and South America.

3. PLANTS OF CONTINENTAL

The principal plants of Continental and its subsidiaries are listed below. All plants are well maintained and in good operating condition. Except as indicated, all plants are owned by Continental or its subsidiaries.

METAL DIVISION

Auburndale, Fla.
Baltimore, Md. (2) (one leased)
Birmingham, Ala. (leased)
Chicago, Ill. (6)
Cincinnati, O.
Coffeyville, Kan. (leased)
Denver, Col.
Elwood, Ind.
Gary, Ind. (leased)
Harvey, La.
Houston, Tex.
Hurlock, Md.
Los Angeles, Cal.
Malden, Mass.
Mankato, Minn.
Milwaukee, Wis.
Oakland, Cal.
Oil City, Pa.
Omaha, Neb. (leased)
Passaic, N. J.
Paterson, N. J. (leased)
Pittsburg, Cal. (leased)
Pittsburgh, Pa. (leased)
Portland, Ore. (leased)
Sacramento, Cal. (leased)
San Jose, Cal.
Seattle, Wash.
St. Louis, Mo.
Stockton, Cal.
Syracuse, N. Y.
Tampa, Fla.
Terminal Island, Cal. (leased)
Walla Walla, Wash.
Winter Garden, Fla.

Havana, Cuba

FIBRE DRUM DIVISION

Midland, Mich. (leased)
Pittsburg, Cal.
Reading, Pa. (leased).
St. Louis, Mo.
Tonawanda, N. Y. (leased)
Van Wert, O.

PAPERBOARD DIVISION

Hopewell, Va.

PAPER CONTAINER DIVISION

Chicago, Ill.
Kensington, Conn.
Los Angeles, Cal.
Memphis, Tenn.
Newark, N. J.
Three Rivers, Mich.

CROWN AND CORK DIVISION

Chicago, Ill.
Los Angeles, Cal. (leased)
Milwaukee, Wis.
New Orleans, La. (leased)
Pittsburgh, Pa. (leased)
Santa Ana, Cal. (leased)
Wilmington, Del.

SHELLMAR-BETNER DIVISION

Beaumont, Tex. (leased)
Columbus, Ga.
Devon, Pa.
Mt. Vernon, O.
Newark, O.
Richmond, Va.
South Gate, Cal.
Roosevelt, N. J. (leased)

EQUIPMENT MANUFACTURING DIVISION

Chicago, Ill. (2)
Seattle, Wash.
Syracuse, N. Y.

CANNERY EQUIPMENT AND CAN HANDLING SERVICE

Baltimore, Md.
Chicago, Ill. (2)
Hayward, Cal.

WHITE CAP COMPANY

Chicago, Ill.

CANADIAN DIVISION

Calgary, Alberta
Hamilton, Ont. (2)
Montreal, Que.
New Toronto, Ont. (2)
St. Laurent, Que.
Toronto, Ont.
Vancouver, B.C.

6. DESCRIPTION OF COMMON STOCK OF CONTINENTAL

Continental is authorized by its Certificate of Incorporation, as amended, to issue 150,000 shares of Preferred Stock without par value (herein sometimes called the "Preferred Stock"), 145,650 shares of Second Preferred Stock without par value (herein sometimes called the "Second Preferred Stock" and together with the Preferred Stock herein sometimes collectively called the "Preferred Stocks") and 10,000,000 shares of Common Stock of the par value of $20 per share. The Preferred Stock and the Second Preferred Stock are issuable in series, and the Board of Directors is authorized to fix, with respect to each series, the number of shares and the designation of such series, the annual dividend rate of the particular series and the date from which dividends shall accumulate, the redemption price for the particular series, the terms of any sinking or similar fund, and conversion or exchange rights, if any. There are authorized and issued 150,000 shares of $3.75 Cumulative Preferred Stock without par value. 145,650 shares of Second Preferred Stock without par value are authorized but unissued.

Dividend Rights

Subject to the limitations described under the subheading "Limitations on the Payment of Dividends" and subject to the prior rights of the Preferred Stocks to receive cumulative dividends, holders of Common Stock of Continental are entitled to dividends as declared by its Board of Directors. The current quarterly dividend on the Common Stock is 45¢ per share.

Limitation on the Payment of Dividends

Under the terms of the indenture between Continental and J. P. Morgan & Co. Incorporated, Trustee, dated November 1, 1955, which is the most restrictive of the various indentures or other instruments relating to Continental's debt securities, Continental may not expend for the payment of dividends or the purchase, redemption or retirement of its capital stock amounts which would exceed in the aggregate the sum of the following: (a) $10 million, (b) the net amount of cash received by Continental for the sale or issue of its shares after December 31, 1954, and (c) the consolidated net income of Continental after December 31, 1954 (or minus the consolidated net loss after said date, as the case may be). As of December 31, 1955, after providing for the foregoing test, and after provision for full cumulative dividends on the issued and outstanding $3.75 Cumulative Preferred Stock without par value to said date, Continental had approximately $21,400,000 available for dividends on its Common Stock.

Provisions of the Certificate of Incorporation of Continental, as amended, relating to the Preferred Stocks also impose restrictions upon the payment of dividends on the Common Stock. Such provisions are not, however, as restrictive as the restrictions imposed by the indenture above referred to.

None of the restrictions described above applies to dividends payable on the Common Stock in shares of Common Stock.

Voting Rights

Holders of Common Stock have one vote per share and, except as described below or provided by law, have exclusive voting power.

If at any time dividends on the Preferred Stock are in arrears in an amount equal to four quarterly dividends thereon, holders thereof voting as a class, irrespective of series, have the right to elect three Directors to serve in place of three of the Directors theretofore elected or entitled to be elected by the holders of Common Stock. Under similar circumstances, holders of Second Preferred Stock voting as a class, irrespective of series, have the right to elect three such Directors. In each case, such voting power and the terms of office of such Directors shall terminate upon the payment of all dividends in default on the Preferred Stock or the Second Preferred Stock, as the case may be.

The Certificate of Incorporation, as amended, of Continental, restricts the taking of certain corporate action without the prior consent of the holders of at least 66⅔% in interest of the Preferred Stock and the Second Preferred Stock, respectively, in each case voting as a class, including among other things, the amendment of provisions of the Certificate of Incorporation so as to affect such stocks adversely, the authorization of additional shares of stock ranking prior to or on a parity with the Preferred Stock or the Second Preferred Stock, the sale, lease or conveyance of substantially all of the property of Continental, and, in certain instances, merger into or consolidation with another corporation. The amended Certificate of Incorporation also restricts the taking of corporate action without prior consent of the holders of at least a majority in interest of the Preferred Stock and the Second Preferred Stock, respectively, in each case voting as a class, including, among other things, the creation or issue of any funded debt (except for refunding purposes), the creation of any mortgage, lien or charge upon the assets of Continental (with certain exceptions), the giving of certain guaranties, and, in certain instances, the issuance of stock or funded debt by subsidiaries.

Liquidation Rights

The holders of shares of Preferred Stock of any series are entitled in preference to holders of any class of stock junior thereto, to receive, in the event of involuntary dissolution, liquidation or winding up of Continental, $100 per share, and, in the event of voluntary liquidation $110 per share, plus, in each case, an amount equal to unpaid accrued dividends.

The holders of shares of Second Preferred Stock of any series are entitled in preference to holders of any class junior thereto, to receive in the event of involuntary dissolution, liquidation or winding up of Continental, $100 per share plus accrued dividends, and, in the event of voluntary liquidation an amount equal to the redemption price of such Second Preferred Stock, otherwise than for any sinking or similar fund, on the liquidation date.

Upon any dissolution, liquidation or winding up of Continental, or any proceedings resulting in any distribution of all of its assets to its stockholders, after payment in full to holders of the Preferred Stock and the Second Preferred Stock, of the amounts to which they are entitled, the remaining assets of Continental are to be distributed among the holders of Common Stock, according to their respective interests.

Miscellaneous

The Common Stock has no conversion rights, and there are no redemption or sinking fund provisions applicable thereto. The Common Stock is not liable to assessment or further calls, except to the extent provided by Section 71 of the New York Stock Corporation Law in respect of debts, wages or salaries due and owing to laborers, servants or employees.

The Certificate of Incorporation, as amended, of Continental contains no provision with respect to preemptive rights and, accordingly, the holders of Common Stock are entitled to such preemptive rights as are conferred by the laws of the State of New York. [Section 39 of the New York Stock Corporation Law provides that in the case of the proposed issuance by a corporation of its "equity shares" or of "voting shares" (as therein defined) of any class or any securities convertible into or carrying options to purchase such shares, the holders of equity shares or voting shares shall have the right, if such proposed issuance would adversely affect the unlimited dividend rights and voting rights of such holders, to purchase, at a not less favorable price than such shares are to be offered to others, such shares as nearly as practicable in such number as would, if such preemptive right were exercised, preserve the relative unlimited dividend rights and voting rights of such stockholder. Section 39 also provides that certain shares or securities, such as shares issued to effect a merger or for a consideration other than cash, or shares previously reacquired by the corporation after having been duly issued, shall not be subject to preemptive rights. The Common Stock of Continental constitutes Continental's only equity shares and voting shares as defined in such statute. Holders of Common Stock have no other preemptive rights.]

The by-laws of Hazel-Atlas provide for the election of a full board of directors annually, whereas Continental's directors are elected for a three-year term, and it would thus require a minimum of two years to replace a majority of the directors of Continental. At its last annual meeting of its stockholders, however, Continental announced plans to change the method of electing its directors so that all directors would be elected each year. It is anticipated that this change will be begun in 1957 and completed two years later.

Continental

The following summary shows the net sales and net income, the earnings applicable to Common Stock and the earnings per share of Common Stock of Continental and consolidated subsidiaries for the years 1951 to 1955, inclusive. For further details with respect to the three years ended December 31, 1955 reference is made to the financial statements of Continental and the notes thereto included elsewhere in this proxy statement.

For the Year ended December 31	Net Sales and Operating Revenues*	Cost of Goods Sold and Operating Expenses*	Selling and Administrative Expenses(1)*	Other Income*	Income Deductions*	Income before Income and Excess Profits Taxes*	Provision for Income and Excess Profits Taxes(2)*	Net Income*	Earnings Applicable to Common Stock*	Earnings per share of Common Stock(3)
1951	$460,595	$406,324	$22,075	$3,765	$1,975	$33,986	$18,775	$15,211	$14,582	$2.30
1952	476,885	426,943	23,188	3,227	2,213	27,768	13,380	14,388	13,381	2.11
1953	554,437	492,410	30,332	2,857	3,121	31,431	15,750	15,681	14,833	2.14
1954	616,164	541,238	35,205	3,996	2,780	40,937	20,200	20,737	20,115	2.76
1955	666,266	577,341	39,558	1,893	2,988	48,272	24,100	24,172	23,610	3.22
3 Mos. Ended March 31, 1956 (4)	135,766	134,690	10,094	287	752	10,517	5,488	5,029	4,888	.63

* 000 omitted.

(1) Includes provision for doubtful accounts.

(2) Includes provision for excess profits taxes as follows: $1,975,000 in 1951; $539,000 in respect of subsidiaries in 1952 less a carry-back claim for refund of excess profits taxes in 1952 of $1,150,800; and $425,000 in respect of subsidiaries in 1953.

(3) Based on number of shares outstanding at the end of the periods indicated adjusted to reflect the distribution by Continental on February 15, 1956 of one additional share of its Common Stock for each share then outstanding.

(4) Normally because of seasonal variations Continental does its heaviest volume of business in the second and third quarters of each calendar year. In the first quarter of 1956 the volume of business and net income of Continental were substantially above that of the first quarter of the year 1955.

Hazel-Atlas

The following summary shows the net sales and net income and the earnings per share of Capital Stock of Hazel-Atlas for the fiscal years 1951 to 1955 inclusive, and for the 22 weeks ended June 2, 1956. For further details with respect to the three years and 22 weeks ended June 2, 1956, reference is made to the financial statements of Hazel-Atlas and the notes thereto included elsewhere in this proxy statement.

For the Fiscal Year	Net Sales*	Costs and Operating Expenses*	Selling and Administrative Expenses*	Income Before Taxes on Income*	Provision for Income and Excess Profits Taxes*(1)	Net Income*	Per Share of Stock
1951	$69,884	$57,637	$5,053	$7,402	$4,037	$3,370	$1.55
1952	70,911	59,930	5,334	5,664	2,708	2,956	1.36
1953**	79,250	66,825	6,238	6,580	3,468	3,112	1.43
1954	79,474	63,393	6,662	7,431	3,803	3,629	1.67
1955	79,920	66,610	6,630	6,995	3,602	3,393	1.56
22 weeks ended June 2, 1956 (2)	31,496	27,128	3,065	1,390	725	664	.31

* 000 omitted.

** 53 week year.

(1) Includes excess profits tax of $257,000 in 1951, and a refund of excess profits tax of $250,000 in 1952.

(2) The volume of business and net income of Hazel-Atlas for the twenty-two weeks ended June 2, 1956 were substantially below that of the equivalent period of the preceding year. In part this is attributable to an extraordinarily heavy volume of purchases by customers of Hazel-Atlas during the period preceding January 1, 1956 at which time a previously announced price rise was put into effect by Hazel-Atlas.

Summary of Combined Earnings

The following summary combines the amounts in the foregoing summaries for the years indicated.

	Net Sales*	Cost of Goods Sold and Operating Expenses*	Selling and Administrative Expenses, etc.*	Income Before Taxes on Income*	Provision for Income Taxes, etc.*	Net Income*	Earnings Applicable to Common Stock*	Earnings per Share of Common Stock (1)	Earnings per 40/100ths Share
1951	$530,479	$463,961	$25,338	$41,393	$22,812	$18,581	$17,952	$2.45	$1.13
1952	547,796	486,873	27,708	33,432	16,088	17,344	16,337	2.22	1.02
1953	633,687	559,235	36,834	38,011	19,218	18,793	17,945	2.27	1.04
1954	695,338	606,631	40,651	48,368	24,003	24,366	23,744	2.86	1.32
1955	746,186	643,951	47,283	55,267	27,702	27,565	27,003	3.24	1.49

* 000 omitted.

(1) Based on the number of shares outstanding at the end of the periods indicated, adjusted to reflect the distribution by Continental on February 15, 1956 of one additional share of its Common Stock for each share then outstanding, plus 999,140 shares issuable to Hazel-Atlas pursuant to the Plan.

Comparative and Pro Forma Book Values

The aggregate book value attributable to the Capital Stock of Hazel-Atlas as of December 31, 1955 was $34,973,128 and the per share book value of such stock as of said date was $16.10.

The aggregate book value attributable to the Common Stock of Continental as of December 31, 1955, was $218,280,685 and the per share book value of such Common Stock on said date, adjusted to reflect the distribution by Continental on February 15, 1956 of one additional share of its Common Stock for each share then outstanding, was $29.80.

The pro forma aggregate book value attributable to the Common Stock of Continental as of December 31, 1955 after giving effect to the transactions described in Note 1 to the Pro Forma Balance Sheet of Continental as of said date (at page 18) would be $267,350,063, and the pro forma per share book value of such Common Stock after giving effect to such transactions would be $30.58.

With respect to all information contained under this heading reference is made to the financial statements of Continental and Hazel-Atlas and the notes thereto included elsewhere in this proxy statement.

8. RANGE OF SECURITY PRICES

The Capital Stock of Hazel-Atlas and the Common Stock of Continental are listed on the New York Stock Exchange. The high and low sales prices of such stock on such exchange by quarterly periods during the calendar years 1954 and 1955 and for the first quarter of 1956, as reported in *Bank & Quotation Record*, and for the period from April 1, 1956 to June 22, 1956 were:

Year	Hazel-Atlas Stock		Continental Common	
1954	**Low**	**High**	**Low***	**High***
First Quarter	18⅛	20½	27¼	31
Second Quarter	18¼	20	30 1/16	35 1/16
Third Quarter	19¼	21⅞	34¼	38¾
Fourth Quarter	20	23⅜	34	39⅞
1955				
First Quarter	22	24⅞	36 9/16	41¼
Second Quarter	21¼	24⅜	37 9/16	42½
Third Quarter	21⅜	24¼	36 1/16	40⅞
Fourth Quarter	20¾	22⅞	36⅛	44¼
1956				
First Quarter	20⅝	21⅜	39	44¾
April 1 to June 22	19¾	22⅛	42¾	50

* All prices up to February 15, 1956 are adjusted to give effect to 100% Stock Distribution on outstanding Common Stock of Continental made on that date.

[fol. 1735] 3230 9. INTERESTS OF CERTAIN PERSONS

The table below sets forth the number of shares of Hazel-Atlas Capital Stock beneficially owned as of June 15, 1956 by each Director of Hazel-Atlas, including those Directors who are also officers of Hazel-Atlas. No other active officer owned more than 750 shares of Capital Stock of Hazel-Atlas as of said date.

Directors	Shares of Hazel-Atlas Stock Beneficially Owned As of June 15, 1956
O. P. Decker	1,000
H. W. Gee	3,000
W. W. Holloway	11,425
S. O. Laughlin, Jr.	5,615
H. G. Lewis (1)	500
J. H. McNash (2)	23,400
L. C. Paull	7,700(4)
B. H. Seabright	6,000
K. B. Weaver (3)	1,730

(1) Also Executive Vice-President of Hazel-Atlas.

(2) Also Chairman of the Board and President of Hazel-Atlas.

(3) Also Vice-President—Operations of Hazel-Atlas.

(4) Shares registered in the name of a corporation in which Mr. Paull has a 42% interest.

It is contemplated that the present officers of Hazel-Atlas will become employees of Continental and that their initial salaries as employees of Continental will be substantially the same as their present salaries.

In the event of the consummation of the Reorganization Agreement and Plan, the firm of Goldman, Sachs & Co., 30 Pine Street, New York, N. Y., will be paid a fee by Continental for acting as agents and financial advisers of Continental in connection with the transaction. The amount of this fee is as yet undetermined. Mr. Sidney J. Weinberg, a member of the firm of Goldman, Sachs & Co., is a director of Continental.

10. PROPOSED MERGER OF CONTINENTAL WITH ROBERT GAIR COMPANY, INC.

The Board of Directors of Robert Gair Company, Inc., a Delaware corporation, and the Board of Directors of Continental have approved in principle a merger of the enterprises represented by the two companies and their subsidiaries, subject to satisfactory conclusion of investigations and studies currently in progress on various aspects of the proposed merger. Gair and its subsidiaries manufacture and sell paperboard, folding paperboard cartons, corrugated shipping containers, paper bags and other paperboard and paper products.

The details of the procedure by which the proposed merger of the two enterprises would be effected are among the matters that have not yet been settled, but agreement has been reached as to the major details of the treatment of the several classes of stock of the two companies, as follows:

(1) The holders of the existing Preferred Stock of Gair, of which 238,348 shares are now outstanding, would receive for each share held by them one share of a class of preferred stock of Continental. The Preferred Stock of Gair has a par value of $100 per share. Each share is entitled to preferred dividends at the rate of $4.50 per year and is entitled to one vote on matters submitted to stockholders generally. It is convertible until April 1, 1960 into three shares of Common Stock of Gair. It is redeemable on or after April 1, 1957 at $105 per share plus accrued unpaid dividends. It has a preference in voluntary liquidation of $105 per share and a preference in involuntary liquidation of $100 per share, in either case, plus accrued unpaid dividends. The new preferred stock of Continental to be received in exchange

would have substantially the same terms and provisions as Gair's present Preferred Stock, except that (i) the conversion rate would be 2.4 shares of Common Stock of Continental for each share of its preferred stock; and (ii) the class would be junior to the existing $3.75 Cumulative Preferred Stock of Continental. On the basis of the number of shares of Preferred Stock of Gair currently outstanding, the new preferred stock would be convertible into an aggregate of approximately 572,035 shares of Common Stock of Continental.

(2) The holders of the existing Common Stock of Gair, of which 2,981,962 shares are now outstanding, would receive for each share held by them eight-tenths of a share of Common Stock of Continental, or an aggregate of approximately 2,385,570 shares of Common Stock of Continental.

(3) The holders of the existing $3.75 Cumulative Preferred Stock and the Common Stock of Continental would retain their present securities.

Detailed studies of the various financial, organizational and legal aspects of the proposed merger are now under way and, upon their completion, the proposed transaction will be submitted to the stockholders of Continental and Gair.

For the year ended December 31, 1955, the consolidated net sales of Gair and its subsidiaries were approximately $160,240,000 and their consolidated income for the year, after provision for taxes and minority interests, was approximately $9,320,000. As at December 31, 1955, the aggregate net worth of Gair, as per its books, was approximately $75,254,000.

11. OTHER MATTERS

The enclosed proxy is solicited by and on behalf of the management of Hazel-Atlas and the cost of such solicitation will be borne by Hazel-Atlas. In addition to solicitation by mail, some of Hazel-Atlas's officers and regular employees, without extra compensation, may conduct additional solicitation by telephone, telegraph and personal interviews. In addition, Hazel-Atlas has employed Georgeson & Co., 52 Wall Street, New York, N. Y., to assist in the solicitation at an anticipated cost of approximately $6,000. Hazel-Atlas will also enlist the assistance of banks and brokerage houses in additional solicitation of proxies, particularly from their customers whose stock is not registered in the owners' names.

The management of Hazel-Atlas is not aware of any matter to come before the special meeting other than the consideration of the Reorganization Agreement and Plan and the proposed dissolution of Hazel-Atlas. However, inasmuch as matters of which the management is not now aware may come before the meeting or any adjournment thereof, the proxies confer discretionary authority with respect to acting thereon and the persons named in such proxies intend to vote, act and consent in accordance with their best judgment with respect thereto. Any proxy given pursuant to this solicitation may be revoked by the person executing it at any time before it is exercised. Upon receipt of proxies in the form enclosed and properly signed in time for voting, the shares represented thereby will be voted as indicated thereon and in this proxy statement.

By order of the Board of Directors,

N. G. Ross,
Secretary

Dated, Wheeling, West Virginia,
July 6, 1956.

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In the opinion of management, the financial statements of Hazel-Atlas Glass Company relating to June 2, 1956, and the twenty-two weeks then ended, include all adjustments necessary for a fair presentation of the financial position at June 2, 1956, and the results of operations for the twenty-two-week period then ended. In the preparation of the information included in the Summary of Earnings with respect to Continental Can Company, Inc. for the three months ended March 31, 1956, only normally recurring accruals, in the opinion of that Company, were considered to be necessary for a fair summarization of the results of operations for such period. Such financial statements and information have not been examined by independent certified public accountants and are not covered by the respective accountants' opinions.

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Pro Forma Balance Sheet of Continental Can Company, Inc. and Consolidated Subsidiaries as of December 31, 1955 Giving Effect to the Transactions Described in Note 1

(Unaudited)

ASSETS

CURRENT ASSETS:			
Cash on hand and demand deposits		$ 31,658,019	
U. S. Government securities at current redemption value		6,587,304	
Notes and accounts receivable	$ 46,463,721		
Less reserves	1,826,892	44,636,829	
Inventories at the lower of cost or market	$119,052,813		
Less reserve for obsolescence	540,061	118,512,752	
Total current assets			$201,394,904
INVESTMENTS:			
Investments in subsidiary compan not consolidated:			
Securities (at cost)	$ 14,747,018		
Indebtedness—not current	884,234	$ 15,631,252	
Other investments in and advances to associated companies		5,946,196	21,577,448
PROPERTY, PLANT AND EQUIPMENT:			
Land		$ 6,035,943	
Buildings		79,170,720	
Equipment		202,928,232	
Timberlands		7,932,221	
Other		3,741,189	
Construction in progress		12,109,237	
		$311,917,542	
Less reserves for depreciation and depletion		108,391,133	203,526,409
PREPAID EXPENSES AND DEFERRED ASSETS		$ 6,259,867	
Less reserve for deferred accounts receivable		202,500	6,057,367
DEPOSITS WITH MUTUAL INSURANCE COMPANIES			1,341,647
TOTAL			$433,897,775

The notes to the pro forma balance sheet, on page 18, are an integral part of this pro forma balance sheet.

Pro Forma Balance Sheet of Continental Can Company, Inc. and Consolidated Subsidiaries as of December 31, 1955 Giving Effect to the Transactions Described in Note 1

(Unaudited)

LIABILITIES

CURRENT LIABILITIES:			
Notes payable to banks		$ 1,900,000	
Accounts payable (trade)		29,214,710	
Accrued liabilities:			
Payrolls	$ 12,153,163		
Tax accruals	25,005,401		
Interest on long-term debt	466,381		
Other accruals	1,744,768	39,369,713	
Other current liabilities:			
Dividends declared	$ 140,625		
Other	49,784	190,409	
Total current liabilities			$ 70,674,832
LONG-TERM DEBT:			
3% sinking fund debentures, due December 1, 1965		$ 1,496,000	
3¼% debentures, due October 15, 1976		13,550,000	
3¼%—3¼% sinking fund debentures, due November 1, 1995		39,502,000	
3¾% notes payable, due November 1, 1995		25,000,000	79,648,000
OPERATING RESERVES			1,224,880
CAPITAL SHARES:			
Authorized:			
150,000 shares $3.75 cumulative preferred stock without par value.			
145,650 shares second preferred stock without par value.			
10,000,000 shares common stock $20 par value.			
Issued:			
150,000 shares $3.75 cumulative preferred stock without par value	$ 15,000,000		
8,747,946 shares common stock $20 par value	174,958,920	$189,958,920	
SURPLUS APPROPRIATED FOR COMMON STOCK DISTRIBUTION ON FEBRUARY 15, 1956 (applicable to shares sold after December 31, 1955)		6,440	
CAPITAL SURPLUS (including paid-in surplus)		6,408,375	
EARNINGS RETAINED IN THE BUSINESS:			
Appropriated for excess replacement costs of fixed assets	$ 9,700,000		
Appropriated for inventory price decline or other contingencies	6,170,000		
Unappropriated	70,237,266	86,107,266	
		$282,481,201	
Less common stock in treasury, at cost—5,130 shares		131,138	282,350,063
TOTAL			$433,897,775

The notes to the pro forma balance sheet, on page 18, are an integral part of this pro forma balance sheet.

Notes to Pro Forma Balance Sheet
(Unaudited)

1. The pro forma balance sheet gives effect to the following:

   (a) The acquisition on January 4, 1956 of all of the outstanding capital stock of White Cap Company in exchange for 210,000 additional shares of the Company's common stock.

   (b) The 100% stock distribution on February 15, 1956, except insofar as it affects stock sold to employees subsequent to December 31, 1955.

   (c) The acquisition of the business and assets of Hazel-Atlas Glass Company by Continental Can Company, Inc. in consideration of the issuance of 999,140 shares of common stock of Continental, the assumption by Continental of all of the liabilities of Hazel-Atlas, the merging of the Earnings Retained in the Business and the other adjustments resulting from the Reorganization Agreement and Plan, dated June 29, 1956, all as more fully described elsewhere herein.

   In the preparation of the pro forma balance sheet, the excess, namely $9,122,575, of the par value of the common stock of Continental to be issued over the par value of the capital stock of Hazel-Atlas to be retired has been charged to Capital Surplus.

2. Reference is made to notes to the financial statements of the respective companies included in this proxy statement.

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[fol. 1742] **Combined Statement of Income for the Year Ended December 31, 1955**
of Continental Can Company, Inc. and Consolidated Subsidiaries
and Hazel-Atlas Glass Company
(Unaudited)

GROSS SALES AND OPERATING REVENUES, less discounts, returns and allowances		$756,186,203
COST OF GOODS SOLD AND OPERATING EXPENSES		643,950,953
Gross Operating Profit		$102,235,250
SELLING AND ADMINISTRATIVE EXPENSES	$45,991,989	
PROVISION FOR DOUBTFUL ACCOUNTS	197,1..	46,189,119
		$ 56,046,131
OTHER INCOME:		
Dividends on Securities	$ 534,994	
Interest on Securities:		
Marketable Securities	745	
Other Security Investments	8,268	
Profit on Sales of Securities, Net	145,326	
Profit on Sales of Capital Assets, Net	497,492	
Miscellaneous Other Income:		
Interest Earned	547,152	
Royalties	265,544	
Other, Net	209,609	2,209,130
		$58,255,261
INCOME DEDUCTIONS:		
Interest on Long-Term Debt	$ 1,894,931	
Other Interest and Exchange	1,092,985	2,987,916
INCOME BEFORE PROVISION FOR INCOME TAXES		$ 55,267,345
PROVISION FOR INCOME TAXES:		
Federal Income Taxes	$25,207,065	
State and Foreign Income Taxes	2,495,229	27,702,294
NET INCOME		$ 27,565,051

NOTE—This statement does not include the operations of White Cap Company, acquired on January 4, 1956.

[fol. 1743] 3238

CERTIFICATE OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To the Board of Directors,
Continental Can Company, Inc.,
New York, N. Y.

We have examined the financial statements listed in the index on page 14 under the caption "Continental Can Company, Inc. and Subsidiary Companies". Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying consolidated balance sheet and statements of consolidated income, capital surplus and unappropriated earnings retained in the business present fairly the consolidated financial position of the companies at December 31, 1955 and the consolidated results of their operations for the three years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

HASKINS & SELLS

67 Broad Street,
New York 4, N. Y.
June 18, 1956 as of
February 17, 1956.

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[fol. 1745] 3240

CONTINENTAL CAN COMPANY, INC. AND SUBSIDIARY COMPANIES

Consolidated Balance Sheet—December 31, 1955

ASSETS AND OTHER DEBITS

CURRENT ASSETS:			
Cash on Hand and Demand Deposits		$ 30,246,181	
Notes Receivable (Trade)	$ 1,795,926		
Accounts Receivable (Trade)	37,599,054		
	$ 39,394,980		
Less Reserves	1,776,892	37,618,088	
Inventories at the lower of cost or market (Note B):			
Raw Materials	$ 29,624,788		
Work in Process and Finished Goods	69,386,290		
Supplies	12,244,066		
	$111,255,144		
Less Reserve for Obsolescence	540,061	110,715,083	
Total Current Assets			$178,579,352
INVESTMENTS:			
Investments in subsidiary companies not consolidated:			
Securities (at cost)	$ 650,768		
Indebtedness—not current	884,234	$ 1,535,002	
Other investments in and advances to associated companies		5,946,196	7,481,198
PROPERTY, PLANT AND EQUIPMENT (Note C):			
Land		$ 5,274,010	
Buildings		68,826,749	
Equipment		179,437,692	
Timberlands		7,932,221	
Other		3,741,189	
Construction in progress		11,964,917	
		$277,176,778	
Less Reserves for Depreciation and Depletion (Note C)		88,164,386	189,012,392
PREPAID EXPENSES AND DEFERRED ASSETS (including intangibles—$1,571,951)		$ 5,705,012	
Less Reserve for Deferred Accounts Receivable		202,500	5,502,512
DEPOSITS WITH MUTUAL INSURANCE COMPANIES			1,341,647
			$381,917,101

The Notes to Financial Statements on pages 26 to 29 are an integral part of this balance sheet.

[fol. 1746]

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CONTINENTAL CAN COMPANY, INC. AND SUBSIDIARY COMPANIES

Consolidated Balance Sheet—December 31, 1955

LIABILITIES, CAPITAL SHARES AND SURPLUS

CURRENT LIABILITIES:			
Notes Payable to Banks		$ 1,900,000	
Accounts Payable (Trade)		28,349,744	
Accrued Liabilities:			
Payrolls	$ 10,909,573		
Tax Accruals	24,373,991		
Interest on Long-Term Debt	466,381		
Other Accruals	1,573,438	37,323,383	
Other Current Liabilities:			
Dividends Declared	$ 140,625		
Other	49,784	190,409	
Total Current Liabilities			$ 67,763,536
LONG-TERM DEBT:			
3% Sinking Fund Debentures, due December 1, 1965		$ 1,496,000	
3¼% Debentures, due October 15, 1976		13,650,000	
3¼%-3¾% Sinking Fund Debentures, due November 1, 1995		39,502,000	
3¾% Notes Payable, due November 1, 1995		25,000,000	79,648,000
OPERATING RESERVES			1,224,880
CAPITAL SHARES:			
Authorized:			
150,000 Shares $3.75 Cumulative Preferred Stock without par value			
145,650 Shares Second Preferred Stock without par value			
10,000,000 Shares Common Stock $20 par value			
Issued:			
150,000 Shares $3.75 Cumulative Preferred Stock without par value (Note D)	$ 15,000,000		
3,664,403 Shares Common Stock $20 par value (Notes E and H)	73,288,060	$ 88,288,060	
SURPLUS APPROPRIATED FOR COMMON STOCK DISTRIBUTION ON FEBRUARY 15, 1956 (Note E)		77,494,500	
CAPITAL SURPLUS (including paid-in surplus)		5,634,900	
EARNINGS RETAINED IN THE BUSINESS:			
Appropriated for Excess Replacement Costs of Fixed Assets	$ 9,700,000		
Appropriated for Inventory Price Decline or Other Contingencies	6,170,000		
Unappropriated (Note F)	46,124,363	61,994,363	
		$233,411,823	
Less Common Stock in Treasury, at cost—2,565 shares (Note H)		131,138	233,280,685
CONTINGENT LIABILITIES (Note I)			
COMMITMENTS (Note J)			
			$381,917,101

The Notes to Financial Statements on pages 26 to 29 are an integral part of this balance sheet.

[fol. 1147]

CONTINENTAL CAN COMPANY, INC. AND SUBSIDIARY COMPANIES

Statement of Consolidated Income for the Three Years Ended December 31, 1955

	Years Ended					
	December 31, 1955		December 31, 1954		December 31, 1953	
GROSS SALES AND OPERATING REVENUES, less discounts, returns and allowances		$666,266,408		$616,163,898		$554,436,982
COST OF GOODS SOLD AND OPERATING EXPENSES		577,340,947		541,237,674		492,409,643
Gross Operating Profit		$ 88,925,461		$ 74,926,224		$ 62,027,339
SELLING AND ADMINISTRATIVE EXPENSES	$39,361,541		$35,026,098		$30,118,432	
PROVISION FOR DOUBTFUL ACCOUNTS	197,130	39,558,671	179,039	35,205,137	213,825	30,332,257
		$ 49,366,790		$ 39,721,087		$ 31,695,082
OTHER INCOME:						
Dividends on Securities	$ 531,243		$ 451,744		$ 429,243	
Interest on Securities:						
Marketable Securities	745		747		480,654	
Other Security Investments	8,268		23,307		16,608	
Profit on Sales of Securities, Net (1)	145,326		284,208		—	
Profit on Sales of Capital Assets, Net	495,745		2,530,119		1,377,532	
Miscellaneous Other Income:						
Interest Earned	346,481		317,513		286,808	
Royalties	265,494		202,084		208,519	
Other, Net	100,042	1,893,344	185,823	3,995,545	57,938	2,857,302
		$ 51,260,134		$ 43,716,632		$ 34,552,384
INCOME DEDUCTIONS:						
Interest on Long-Term Debt	$ 1,894,931		$ 1,840,183		$ 1,856,167	
Other Interest and Exchange	1,092,985	2,987,916	939,550	2,779,733	1,265,264	3,121,431
INCOME BEFORE PROVISION FOR INCOME TAXES		$ 48,272,218		$ 40,936,899		$ 31,430,953
PROVISION FOR INCOME AND EXCESS PROFITS TAXES:						
Federal Income Taxes	$21,671,063		$17,862,998		$13,729,229	
Federal Excess Profits Tax (subsidiary companies)	—		—		425,000	
State and Foreign Income Taxes	2,428,935	24,100,000	2,337,002	20,200,000	1,595,771	15,750,000
NET INCOME		$ 24,172,218		$ 20,736,899		$ 15,680,953

(1) Cost of securities sold determined by "identified certificate" method.

The Notes to Financial Statements on pages 26 to 29 are an integral part of this statement.

[fol. 1748] **CONTINENTAL CAN COMPANY, INC. AND SUBSIDIARY COMPANIES**

Statements of Consolidated Capital Surplus and Unappropriated Earnings Retained in the Business

For the Three Years Ended December 31, 1955

	December 31, 1955	December 31, 1954	December 31, 1953
CAPITAL SURPLUS (including paid-in surplus):			
Balance at beginning of year	$ 36,557,547	$31,469,355	$24,449,593
Add:			
Excess of consideration received over the par value of Common Stock sold under the employees stock purchase plans	326,900	984,342	694,170
Premium on Common Stock issued in conversion of $4.25 Cumulative Second Preferred Stock	—	2,068,740	3,564,756
Premium on Common Stock issued in consideration for properties or other assets acquired	—	2,035,110	2,760,836
	326,900	5,088,192	7,019,762
	$ 36,884,447	$36,557,547	$31,469,355
Deduct appropriation for Common Stock distribution on February 15, 1956	31,249,547	—	—
Balance at close of year	$ 5,634,900	$36,557,547	$31,469,355
UNAPPROPRIATED EARNINGS RETAINED IN THE BUSINESS:			
Balance at beginning of year	$ 79,731,263	$69,261,930	$67,398,960
Add Net Income from Statement of Consolidated Income	24,172,218	20,736,899	15,680,953
	$103,903,481	$89,998,829	$83,079,913
Deduct:			
Cash Dividends:			
On $3.75 Cumulative Preferred Stock	$ 562,500	$ 562,500	$ 562,500
On $4.25 Cumulative Second Preferred Stock	—	59,383	235,903
On Common Stock ($3.00 per Share in 1955, $2.70 in 1954, and $2.40 in 1953)	10,971,165	9,645,683	8,069,580
	11,534,165	10,267,566	8,917,983
	92,369,316	79,731,263	74,161,930
Appropriation for Common Stock distribution on February 15, 1956	46,244,953	—	—
Appropriation for Excess Replacement Costs of Fixed Assets	—	—	4,900,000
Balance at close of year	$ 46,124,363	$79,731,263	$69,261,930

The Notes to Financial Statements on pages 26 to 29 are an integral part of these statements.

NOTE A—PRINCIPLES OF CONSOLIDATION AND GENERAL STATEMENTS

The consolidated balance sheet and statements of consolidated income, capital surplus and unappropriated earnings retained in the business include by consolidation the accounts of the Company and all significant subsidiaries.

The Company's equity in the net assets of its subsidiaries consolidated, as shown by the books of the latter as at December 31, 1955, was $13,537,622 in excess of the amount at which the investment in such subsidiaries was carried on the Company's books at that date. On consolidation, this amount has been dealt with by including $13,030,224 in unappropriated earnings retained in the business, $120,000 in retained earnings appropriated for inventory price decline or other contingencies, $567,069 in operating reserves, and $179,671 in deferred assets.

For the purpose of these accounts, fixed assets carried in Canadian currency are converted at exchange rates ruling at the dates of acquisition; other net assets in Canada are taken at the rate of exchange prevailing on December 31, 1955; profit and loss items are converted at appropriate exchange rates ruling during the period. U. S. dollars and Cuban pesos were substantially at parity during the period and for the purpose of these accounts are deemed to have been equivalent.

NOTE B—VALUATION OF INVENTORIES

Inventories are valued at the lower of cost or market. Of the total at December 31, 1955, approximately 29% in value is priced on the basis of "last-in, first-out", and approximately 71% is priced on the basis of standard, average, or actual cost. Raw materials, including materials entering into work in process and finished goods, are priced on the basis of "last-in, first-out", standard cost or average cost. Charges for labor and overhead included in work in process and finished goods are based mainly on standard cost. Machinery and parts manufactured in the companies' machine shops and included in work in process and finished goods or in supplies are charged to inventory accounts at standard cost. Supplies other than machinery and parts referred to above are priced at standard cost, average cost, or last cost.

Opening and closing inventories used in the computation of cost of sales are as follows: December 31, 1952, $80,147,126; 1953, $95,561,570; 1954, $111,369,727; and 1955, $110,715,083.

NOTE C—PROPERTY, PLANT AND EQUIPMENT

The amount at which property, plant and equipment is stated in the balance sheet does not purport to represent present-day or replacement value.

Unless otherwise indicated, properties acquired have been recorded on the books at cost or estimated cost, the latter generally being determined by appraisal.

The provisions for depreciation of physical property of the Company and its principal domestic subsidiaries other than Continental Can Corporation (operating in Cuba), have been calculated, except as to property which is being amortized over five years as permitted by related necessity certificates, on the depreciated values or unrecovered cost (actual and estimated) of the properties, the rates used being based on the estimated service lives of the various classes of property in conformity with U. S. Treasury Decision #4422. The original service lives are approximately as follows: buildings 27-50 years, building mechanicals 10-25 years, closing machine equipment 30 years, machinery and equipment 10-25 years, miscellaneous equipment 2½-20 years, furniture and fixtures 6-20 years, office mechanical appliances 8-10 years, and automobiles and trucks 3-5 years. In the case of property, plant and equipment located in Canada and Cuba the provisions for depreciation have been calculated at the following rates:

Canada (rates based on depreciated cost):	
Buildings	5% and 10%
Automobiles and trucks	30%
Machinery and equipment	20% and 50%
Cuba (rates based on cost):	
Buildings	2%
Automobiles and trucks	15%
Machinery and equipment	5%
Furniture	10%

Depletion of timberlands has been provided on a basis so computed as to amortize the cost of such timberlands by the time the estimated timber supplies will become exhausted.

The Company has elected, for Federal income tax purposes only, to depreciate fixed assets acquired after January 1, 1954 on the sum-of-the-years-digits or double declining balance methods, as permitted by the 1954 Internal Revenue Code. This has had the effect of reducing income taxes for the year 1955 by approximately $750,000 and increasing net income by a like amount. Its effect on 1954 earnings was not significant.

Maintenance and repairs are charged to income. Renewals and betterments are capitalized. With relatively minor exceptions, when fixed assets are retired or otherwise disposed of, the reserve for depreciation is charged with the actual or estimated cost thereof, less sales price, except that, in the case of the disposition of complete units of property or sales of serviceable equipment, the profit or loss is credited or charged to income.

NOTE D—PREFERRED STOCK

The $3.75 Cumulative Preferred Stock is redeemable at the option of the Board of Directors at any time, in whole or in part, at $110 per share plus an amount equal to accrued unpaid dividends.

NOTE E—COMMON STOCK

On January 4, 1956, the Company issued 219,000 additional shares of Common Stock in exchange for all of the outstanding capital stock of White Cap Company. The investment in the capital stock of White Cap Company was recorded on the books of the Company at $14,096,250, of which $4,200,000 was credited to Common Stock and $9,896,250 was credited to Capital Surplus.

On February 15, 1956, the Company distributed an additional 3,874,725 shares to the holders of its Common Stock (record date January 10, 1956) in the ratio of one additional share for each share then outstanding. At December 31, 1955, an amount of $77,494,500 was appropriated for this purpose, obtained partly from Capital Surplus and partly from Unappropriated Earnings Retained in the Business.

The Company plans to issue 999,140 additional shares of common stock in August 1956 in exchange for the net assets of Hazel-Atlas Glass Company, as more fully explained elsewhere in this proxy statement.

NOTE F—SURPLUS RESTRICTIONS

The Company's Certificate of Incorporation, the 3¼% Promissory Notes due November 1, 1995, and the various indentures relating to the Company's debentures limit the amount which may be expended for the payment of dividends and the purchase, redemption, or retirement of the Company's capital stock. At December 31, 1955, under the terms of the most restrictive of these documents, the Company could not apply more than approximately $21,400,000 to such purposes.

NOTE G—PENSION AND GROUP INSURANCE PLANS

There are presently in force two non-contributory pension plans and a supplemental contributory salaried pension plan, which became effective as of June 1, 1950. In general, the non-contributory plans provide monthly payments upon retirement at or after age 65, or upon earlier incapacity, after fifteen years service. For hourly employees the pension is based upon $2.50 per month for each year of service and is in addition to Social Security benefits. For salaried employees the amount of pension depends upon length of service and rate of compensation during the last ten years of employment, subject to allowance for certain Social Security benefits and provisions for minimum monthly pensions. The supplemental contributory salaried pension plan provides additional pensions for eligible salaried employees, computed on that part of their base earnings in excess of $4,800 per year. To participate, such employees must voluntarily contribute at the rate of 5% of their total annual earnings in excess of $4,800, the balance of the pension cost being payable by the companies. Any participating employee who attains age 65 is entitled to receive a supplemental pension, the amount of which will depend upon the number of years he has made contributions and his rate of compensation in excess of $4,800 per year during the last ten years of his membership in the plan. The companies fund their portion of the cost by contributions, sufficient each year to cover the currently accruing cost of benefit credits under the supplemental contributory salaried pension plan not covered by the contributions of participating employees.

The companies have established pension trusts to provide the pensions under each of the pension plans. The companies reserve the right to amend or discontinue the pension plans subject to certain provisions.

The following amounts were provided for the pension trusts during the three years ended December 31, 1955:

Year	United States employees' plans	Canadian employees' plans
		(Canadian dollars)
1955	$5,400,000	$444,000
1954	4,159,000	426,000
1953	3,800,000	373,112

The union-management pension agreement provides that there be paid into the pension trust for hourly-rated employees an amount of money estimated, on an actuarial basis, to be sufficient to pay the pensions which may have been granted during the term of the pension agreements. The method which the companies are presently using more than meets the requirements of the pension agreement. According to a recent actuarial estimate, assuming that the plans are continued without change, the liability for past service benefits for United States and Canadian employees, computed on the basis of a 3¼% interest rate, would amount to approximately $30,400,000. The companies have not determined the period over which such past service cost will be funded, if at all.

There is also in force a group insurance plan which includes sickness, accident, hospitalization and death benefits to all eligible officers and employees. The expense of the plan, which with minor exceptions is borne entirely by the companies, amounted to approximately $5,695,000 in 1955, $4,437,000 in 1954, and $3,787,000 in 1953, after making due allowance in each case for estimated dividends to be received in reduction of related insurance premiums.

NOTE H—EMPLOYEES' STOCK PURCHASE PLANS

An Employees' Stock Purchase Plan approved by stockholders on April 24, 1951 was in effect at December 31, 1955. This plan provides that options to purchase an aggregate of not exceeding 237,650 shares of common stock of the Company, at prices equal to 95% of the last reported sales price on the day the options are granted, may be granted from time to time to eligible executive employees; such options to be exercisable in equal annual installments during the period ending June 21, 1961. At December 31, 1955 there were unexercised options under this plan, as follows:

Date Option Granted	No. of Shares	Option Price		Fair Value at Date Option Granted	
		Per Share	Total	Per Share	Total
June 21, 1951	30,107	$35.00	$1,053,745	$36.75	$1,106,432
December 19, 1951	9,509	$42.75	$ 406,510	$45.00	$ 427,905
June 17, 1953	39,047	$48.25	$1,884,018	$50.75	$1,981,635
December 14, 1955	44,900	$77.50	$3,479,750	$81.50	$3,659,350

The following tabulation gives particulars of the number of shares with respect to which options under this plan became exercisable during the three years ended December 31, 1955:

Date Exercisable	No. of Shares	Option Price		Fair Value at Date Exercisable	
		Per Share	Total	Per Share	Total
June 21, 1955	7,016	$35.00	$245,560	$84.00	$589,344
June 21, 1955	1,455	$42.75	$ 62,201	$84.00	$122,220
June 17, 1955	5,626	$48.25	$271,455	$84.00	$472,584
June 21, 1954	9,109	$35.00	$318,815	$65.75	$598,917
June 21, 1954	1,455	$42.75	$ 62,201	$65.75	$ 95,666
June 17, 1954	5,750	$48.25	$277,438	$66.12	$380,219
June 21, 1953	13,274	$35.00	$464,590	$51.50	$683,611
June 21, 1953	1,455	$42.75	$ 62,201	$51.50	$ 74,933

During the three years ended December 31, 1955 options under this plan were exercised as follows:

	1955	1954	1953
Number of shares:			
At option price of $35.00	12,913	12,719	4,390
At option price of $42.75	1,130	3,211	250
At option price of $48.25	3,786	2,391	
Total shares	17,829	18,321	4,640
Total option price	$682,937	$697,801	$164,338
Aggregate fair value of the shares at the various dates the options were exercised	$1,377,885	$1,269,119	$245,225

Prior to December 31, 1955, all the options granted under another plan approved April 24, 1951, entitling eligible employees to purchase common stock at $33.25 per share at any time prior to December 31, 1957, were exercised. During the three years ended December 31, 1955 options under this plan were exercised as follows:

	1955	1954	1953
Number of shares	41	6,001	15,142
Total option price	$1,363	$199,533	$503,472
Aggregate fair value of the shares at the various dates the options were exercised	$3,191	$413,634	$773,938

Under a 1944 plan, which expired in 1954, 9,311 shares became exercisable during 1954 and 14,192 shares during 1953 at an option price of $35.00 per share (a total option price of $325,885 in 1954 and $496,720 in 1953). The fair value of these shares at the dates exercisable was $63.00 per share, or $586,593 in 1954 and $51.63 per share or $732,733 in 1953. Options were exercised under this plan during 1954 and 1953 as follows:

	1954	1953
Number of shares	44,149	46,278
Total option price	$1,545,215	$1,619,730
Aggregate fair value of the shares at the various dates the options were exercised	$2,680,440	$2,372,213

NOTE H—EMPLOYEES' STOCK PURCHASE PLANS (Continued)

The total of 123,563 shares (which number was adjusted in February 1956 to give effect to the stock distribution described in Note E) issuable under options outstanding at December 31, 1955 may be either authorized but unissued shares or treasury shares.

The excess of the option price of the shares issued for options exercised (other than shares issued from treasury stock) over the par value thereof ($326,900 in 1955, $984,342 in 1954, and $694,170 in 1953) has been credited to capital surplus.

NOTE I—CONTINGENT LIABILITIES

The Company is contingently liable with respect to long-term obligations receivable which, at December 31, 1955 had been sold subject to repurchase under certain conditions.

The Federal income and excess profits tax returns of the Company and its domestic subsidiaries have been examined to and including the year 1948. Income tax returns of foreign subsidiaries remain subject to future examination by taxing authorities. The accumulated reserve for taxes, included under tax accruals on the balance sheet, is estimated to be sufficient to cover additional assessments, if any.

NOTE J—COMMITMENTS

The Company holds leases covering the premises of certain of its plants. Each lease covers a period of from 5 to 25 years after December 31, 1955. The rentals under these leases aggregated approximately $1,420,000 per annum at December 31, 1955. The Company contemplates signing additional leases in 1956 providing for annual rentals of approximately $450,000.

Under an agreement with the United Steelworkers of America the Company is obligated to pay supplemental unemployment benefits commencing October 1, 1956 to eligible hourly employees who become unemployed through no fault of their own. The amount of weekly benefits to be paid by the Company will vary depending on the number of dependents, the amount of state unemployment compensation, and any other earnings which the employee receives. Under this plan the minimum amount to be paid or accrued by the Company is three cents per hour worked by covered employees; the maximum is five cents per hour worked by such employees.

NOTE K—SUPPLEMENTARY INCOME INFORMATION

(All amounts charged directly to income)

	Years Ended December 31		
	1955	1954	1953
Maintenance and repairs—			
Charged to Costs (1)	$14,089,000	$22,778,306	$18,301,805
Depreciation, depletion, and amortization:			
Costs	13,083,801	11,805,307	10,147,125
Other	1,300,202	858,082	703,941
Taxes:			
Real and personal property taxes	3,961,824	3,414,447	3,089,479
Social security taxes	3,678,590	3,514,729	2,926,165
Franchise taxes, sales taxes, etc.	844,918	403,569	563,151
Above taxes charged to:			
Costs	7,945,899	7,310,066	6,552,682
Other	539,433	22,679	26,114
Rents:			
Costs	2,010,399	2,772,899	2,291,224
Other	1,197,095	836,350	698,998
Royalties—charged to costs	134,428	92,848	102,456

(1) Compiled from the books and records of the companies without analysis of the various accounts to which these items were charged as such analysis would cause disproportionate delay and expense. Because of a change made in the classification of accounts during 1955, the cost of adjusting, oiling and cleaning of equipment is not available for that year and therefore has not been included in maintenance and repairs. In 1954, such costs in the amount of $7,662,306 were included in the total of maintenance and repairs.

[fol. 1753] OPINION OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

3248

To the Stockholders of
Hazel-Atlas Glass Company

We have examined the balance sheet of Hazel-Atlas Glass Company as of December 31, 1955, and the related statement of income and accumulated earnings for the three years then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, these statements present fairly the financial position of Hazel-Atlas Glass Company at December 31, 1955, and the results of its operations for the three years then ended, in conformity with generally accepted accounting principles applied on a consistent basis during the period.

PRICE WATERHOUSE & Co.

Pittsburgh, Pa.
Jan. 27, 1956

[fol. 1754] HAZEL-ATLAS GLASS COMPANY 3249

Balance Sheets

(See Notes to Financial Statements)

	December 31, 1955	June 2, 1956 (Not audited)
ASSETS		
Current assets:		
Cash in banks and on hand	$ 1,411,838	$ 2,728,479
U. S. Government securities at current redemption value	6,587,304	3,974,480
Notes and accounts receivable, less allowance of $50,000 for discounts and possible losses	7,018,741	7,199,489
Inventories, at cost or less (Note A)	7,797,669	9,995,547
Total current assets	$22,815,552	$23,897,995
Property, plant, and equipment, at cost:		
Land	$ 761,933	$ 768,534
Buildings	10,343,971	10,398,745
Machinery and equipment	23,490,540	23,787,638
Construction in progress	144,320	2,424,395
	$35,740,764	$37,379,312
Accrued depreciation	20,226,747	20,655,747
	$14,514,017	$16,723,565
Prepaid expenses and other assets	$ 554,855	$ 940,130
	$37,884,424	$41,561,690
LIABILITIES		
Current liabilities:		
Accounts payable—trade	$ 714,256	$ 2,804,375
Withheld from employees for taxes	150,710	417,602
Accrued liabilities:		
Payrolls	243,590	558,875
Estimated vacation wages payable during subsequent year under terms of union contracts	1,000,000	1,236,315
Federal income tax (after deducting U. S. Treasury tax securities of $2,995,807 and $1,405,101 at the respective dates)	290,431	995,337
Other taxes	331,779	363,457
Other accruals	171,330	199,875
Dividend payable	(see below)	651,613
Total current liabilities	$ 2,911,296	$ 7,227,469

Funds for dividend of $651,613 payable January 2, 1956 were held by dividend disbursing agent on December 31, 1955.

Commitments—Note E		
Capital stock:		
Authorized 3,000,000 shares—par value $5 each; issued and outstanding 2,172,045 shares	$10,860,225	$10,860,225
Accumulated earnings used in the business	24,112,903	23,473,996
	$34,973,128	$34,334,221
	$37,884,424	$41,561,690

[fol. 1753] 3250 HAZEL-ATLAS GLASS COMPANY

Statement of Income and Accumulated Earnings

(See Notes to Financial Statements)

	Years ended			22 Weeks ended June 2, 1956 (Not audited)
	Jan. 2, 1954	Jan. 1, 1955	Dec. 31, 1955	
Net sales	$79,250,217	$79,174,492	$79,919,795	$31,495,647
Costs and expenses:				
Labor, materials, maintenance and repairs, and other operating costs	$64,385,618	$62,881,299	$63,781,586	$25,752,605
Taxes, other than federal and state income taxes (Note D)	1,358,618	1,402,418	1,555,415	804,806
Provision for depreciation (Notes C and D)	1,080,496	1,109,146	1,272,705	570,140
Selling and administrative expenses	6,238,010	6,662,041	6,630,448	3,065,033
	$73,062,742	$72,054,904	$73,240,454	$30,192,784
Operating income	$ 6,187,475	$ 7,119,588	$ 6,679,341	$ 1,302,863
Interest, dividends, and other income	392,869	311,705	315,786	86,898
Income before taxes on income	$ 6,580,344	$ 7,431,293	$ 6,995,127	$ 1,389,761
Provision for income taxes:				
Federal normal and surtax	$ 3,389,000	$ 3,720,000	$ 3,536,000	$ 705,000
State income taxes	78,959	82,601	66,294	20,441
	$ 3,467,959	$ 3,802,601	$ 3,602,294	$ 725,441
Net income	$ 3,112,385	$ 3,628,692	$ 3,392,833	$ 664,320
Balance of accumulated earnings at beginning of period	21,798,355	22,304,286	23,326,524	24,112,903
	$24,910,740	$25,932,978	$26,719,357	$24,777,223
Cash dividends, $1.20 per share for 1953, 1954 and 1955 and 60¢ per share in 1956	2,606,454	2,606,454	2,606,454	1,303,227
Accumulated earnings used in the business at end of period	$22,304,286	$23,326,524	$24,112,903	$23,473,996

HAZEL-ATLAS GLASS COMPANY

Notes to Financial Statements

NOTE A—INVENTORIES

	Jan. 2, 1954	Jan. 1, 1955	Dec. 31, 1955	June 2, 1956 (Not Audited)
Inventories were as follows:				
Raw materials and work in process	$2,354,319	$1,981,854	$2,266,247	$2,359,565
Finished products	2,791,650	2,716,171	2,593,746	4,505,359
Maintenance materials and supplies	3,191,963	2,764,762	2,937,676	3,130,623
	$8,337,932	$7,462,787	$7,797,669	$9,995,547

Raw materials, supplies, and work in process are valued at average cost, not in excess of prevailing market. Finished products are valued in part at approximate cost, and in part at prices ascertained by deducting certain percentages from the lowest selling prices in group classifications. The foregoing basis of valuation has been consistently applied throughout the period. Cost of products sold is determined on the inventory basis, i.e., actual operating costs incurred adjusted by physical inventories valued as stated above.

NOTE B—RETIREMENT INCOME PLANS

A Retirement Income Plan for Hourly Rate Employees became effective January 1, 1955; a Retirement Income Plan for Salaried Employees, with provisions for optional contributory benefits, became effective July 1, 1955. Under both plans, eligible employees who retire from employment will receive retirement income from a trust fund established by the company for that purpose. The annual cost (before tax benefits) of both plans, based on the charge for current service and estimated past service charges funded on a 30-year amortization basis, is estimated at $830,000 under present conditions. An amount of $679,400 (also before taxes), representing a full year's requirement under one plan and a half year for the other, was paid to the Trustee and charged to income in 1955, and an amount of $350,000 has been paid to the Trustee during the 22 week period ended June 2, 1956.

NOTE C—DEPRECIATION, ETC.

Provisions for depreciation of buildings and machinery and equipment are computed by the application of annual rates to the cost of the individual units of property. The annual depreciation rates are as follows:

Land Improvements, buildings, and building equipment	3%
Tanks, simplex type lehrs, ovens, piping, etc.	6%
Machinery, individual type lehrs, heating systems, conveyors, etc.	8%
Furniture and fixtures	10%
Automatic lift trucks	12½%
Automobiles	25%

For complete new units of property acquired in 1954 and 1955, these rates have been applied by use of the sum of the years-digits method instead of the straight line method; the effect of this on the aggregate depreciation provision is insignificant.

Maintenance and repairs, and renewals are charged to operating costs as incurred. Replacements of units of physical property are charged to property accounts and the replaced units are retired.

When units of property are retired or otherwise disposed of, the cost and accrued depreciation are removed from the accounts and the net book value, less salvage, is charged or credited to income. Fully depreciated assets remain on the books until disposed of.

[fol. 1757]

HAZEL-ATLAS GLASS COMPANY

Notes to Financial Statements (Continued)

NOTE D—SUPPLEMENTARY INCOME INFORMATION

	Years ended			22 weeks ended June 2, 1956 (Not Audited)
	Jan. 2, 1958	Jan. 1, 1955	Dec. 31, 1955	
(All amounts have been charged directly to income as "Costs" or "Other")				
Maintenance and repairs:				
Costs	$4,021,187	$4,100,593	$3,890,500	$1,700,680
Other	(14,026)	38,353	29,120	15,191
	$4,007,161	$4,138,946	$3,919,620	$1,715,871
Depreciation:				
Costs	$1,040,414	$1,070,476	$1,222,669	$ 548,550
Other	40,082	38,670	50,036	21,590
	$1,080,496	$1,109,146	$1,272,705	$ 570,140
Taxes, other than income taxes:				
Federal old age benefits	$ 411,865	$ 547,748	$ 597,164	$ 283,209
Unemployment insurance	431,567	316,370	412,599	289,448
Property	270,631	287,403	282,525	123,781
Franchise, sales, etc.	244,555	250,897	263,127	108,368
	$1,358,618	$1,402,418	$1,555,415	$ 804,806
Above taxes charged to:				
Costs	$1,077,670	$1,120,773	$1,246,731	$ 661,790
Other	280,948	281,645	308,684	143,016
	$1,358,618	$1,402,418	$1,555,415	$ 804,806
Management and service contract fees	None	None	None	None

Rents and royalties paid during this period were not significant in amount and rentals or obligations under long-term leases are not material.

NOTE E—COMMITMENTS

It is estimated that expenditures of approximately $4,500,000 will be required to complete capital projects authorized but not completed as of June 2, 1956.

[fol. 1758]

EXHIBIT A

REORGANIZATION AGREEMENT AND PLAN, dated June 29, 1956, between CONTINENTAL CAN COMPANY, INC., a New York corporation (hereinafter called Continental), and HAZEL-ATLAS GLASS COMPANY, a West Virginia corporation (hereinafter called Hazel-Atlas).

I. Continental desires to acquire, and Hazel-Atlas desires to transfer to Continental, all the assets, properties, business and good will of Hazel-Atlas in exchange for the issue and delivery by Continental to Hazel-Atlas of shares of Common Stock, par value $20 per share, of Continental to be distributed to the stockholders of Hazel-Atlas in exchange for their stock in Hazel-Atlas, all upon the terms and conditions hereinafter set forth and for the purpose of carrying out a tax-free reorganization within the meaning of the Internal Revenue Code of 1954.

II. Hazel-Atlas desires to provide for the winding up and settling of its affairs in voluntary dissolution and for the distribution to its stockholders of such shares of Common Stock, par value $20 per share, of Continental as hereinafter provided, in complete liquidation and complete cancellation or redemption of its stock.

III. Hazel-Atlas hereby represents and warrants to Continental as follows:

(1) Hazel-Atlas is a corporation duly organized and existing and in good standing under the laws of the State of West Virginia, and it is entitled to own or lease its properties and to carry on its business as and in the places where such properties are now owned, leased or operated or such business is now conducted.

(2) The authorized capital stock of Hazel-Atlas consists of 3,000,000 shares of Capital Stock, par value $5 per share (hereinafter called Common Stock of Hazel-Atlas), of which 2,172,045 shares have been validly issued, are now outstanding and are full paid and non-assessable.

(3) Hazel-Atlas does not have any subsidiaries or affiliated companies of any kind.

(4) Annexed hereto as Exhibit A are balance sheets of Hazel-Atlas as of January 2, 1954, January 1, 1955 and December 31, 1955, and related statements of income and accumulated earnings of Hazel-Atlas for the three years ended December 31, 1955, certified by Messrs. Price Waterhouse & Co., independent public accountants, and an unaudited balance sheet of Hazel-Atlas as of June 2, 1956, and a related unaudited statement of income and accumulated earnings of Hazel-Atlas for the twenty-two weeks then ended. All of the above described statements are consolidated statements of Hazel-Atlas and its subsidiaries for any period during which Hazel-Atlas had subsidiaries. All such statements present fairly the financial position of Hazel-Atlas and its subsidiaries, if any, as of the respective dates of said balance sheets and the results of operations of Hazel-Atlas for the periods indicated in said statements of income and accumulated earnings, subject in the case of said unaudited balance sheet and the related unaudited statement of income and accumulated earnings to audit and usual year-end adjustments. All such statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis.

(5) At June 2, 1956 Hazel-Atlas had no liabilities, absolute or contingent, which are not shown or provided for on the unaudited balance sheet of Hazel-Atlas as of June 2, 1956 (Exhibit A annexed hereto), except as indicated in Exhibit F annexed hereto.

(6) Annexed hereto as Exhibit B is a brief description of all real properties owned by or leased to Hazel-Atlas, including all plants and structures located thereon, and, with

respect to such properties owned by Hazel-Atlas, a statement as of December 31, 1955 (or, if acquired thereafter, as of the date of acquisition thereof) of the gross book value, book reserve for depreciation and net book value thereof (subdivided into land, buildings and equipment) and the basis of valuation and the depreciation and amortization policy in respect thereof. Hazel-Atlas has good and marketable title in fee simple to such owned real properties and owns outright all the equipment in the plants referred to in said Exhibit B, except as otherwise indicated therein, and owns outright all other assets and properties reflected in the unaudited balance sheet of Hazel-Atlas as of June 2, 1956 (Exhibit A annexed hereto), or acquired by it after said date, other than such assets or properties sold or otherwise disposed of in the ordinary course of business subsequent to said date, in each case free and clear of all mortgages, liens, charges or encumbrances of any nature whatsoever, except as stated in said Exhibit B.

(7) Annexed hereto as Exhibit C is a list of all patents, patent applications and trade-mark registrations owned by or registered in the name of Hazel-Atlas or in which it has any rights. Hazel-Atlas owns, or is licensed, under such patents, trade-marks, trade names and copyrights as it deems necessary to conduct its business as now operated by it and is not currently in receipt of any notice of conflict with the asserted rights of others in such patents, trade-marks, trade names and copyrights.

(8) Annexed hereto as Exhibit D is a list and brief description of all policies of fire, liability and other forms of insurance held by Hazel-Atlas.

(9) Except as listed in Exhibit E annexed hereto, Hazel-Atlas is not a party to any written or oral (i) contract for the employment of any officer or individual employee; (ii) contract with any labor union; (iii) continuing contract for the future purchase of materials, supplies or equipment in excess of the requirements for normal operating inventories or for business now booked; (iv) continuing contract for the future sale of products over a period of more than one year from the date hereof; (v) distributor or sales agency contract or advertising contract; (vi) lease under which Hazel-Atlas is lessor; (vii) contract with any subcontractor; (viii) pension, profit-sharing, retirement or stock purchase plan in effect with respect to employees or others; or (ix) material contract not made in the ordinary course of business. Hazel-Atlas has performed all obligations required to be performed by it to date, and is not in default, under any contract, agreement, lease or other document to which it is a party.

(10) Except as indicated in Exhibit F annexed hereto, there are no actions, suits, proceedings or investigations (whether or not purportedly on behalf of Hazel-Atlas) pending or, to the knowledge of Hazel-Atlas, threatened against or affecting Hazel-Atlas, at law or in equity or admiralty or before or by any federal, state, municipal or other governmental department, commission, board, agency or instrumentality, domestic or foreign, which involve the likelihood of any judgment or liability not fully covered by insurance, in excess of $5,000 in any one case or $50,000 in the aggregate, or which may result in any material adverse change in the business, operations, properties or assets or in the condition, financial or otherwise, of Hazel-Atlas; and Hazel-Atlas is not, to the knowledge of any of its officers, in default with respect to any order, writ, injunction or decree of any court or federal, state, municipal or other governmental department, commission, board, agency or instrumentality, domestic or foreign.

(11) To the best of the knowledge, information and belief of its officers, Hazel-Atlas has complied with all laws, regulations and orders applicable to its business.

(12) The amounts set up as provisions for taxes on the unaudited balance sheet of Hazel-Atlas as of June 2, 1956 (Exhibit A annexed hereto), are sufficient for the payment of all accrued and unpaid federal, state, county and local taxes of Hazel-Atlas, whether or not disputed, for the twenty-two weeks ended on said date and for all fiscal

years prior thereto. Federal income tax returns of Hazel-Atlas have been examined by the Internal Revenue Service for all past fiscal years through the fiscal year 1952. All deficiencies proposed as a result of such examinations of the returns through the fiscal year 1952, have been paid and settled.

(13) Since June 2, 1956, Hazel-Atlas has not (i) issued any stock, bonds or other corporate securities; (ii) incurred any obligations or liability (absolute or contingent) except current liabilities incurred, and obligations under contracts entered into, in the ordinary course of business, and except obligations or liabilities entered into or incurred in connection with, or in anticipation of, the execution and performance of this Reorganization Agreement and Plan; (iii) discharged or satisfied any lien or encumbrance or paid any obligation or liability (absolute or contingent) other than obligations or liabilities referred to in (ii) above; (iv) declared or made any payment or distribution to stockholders, except a dividend of 30¢ per share payable on July 2, 1956, to holders of record of Common Stock of Hazel-Atlas on June 15, 1956, or purchased or redeemed any shares of capital stock; (v) mortgaged, pledged or subjected to lien, charge or any other encumbrance, any assets, tangible or intangible; (vi) sold or transferred any tangible assets or canceled any debts or claims, except in each case in the ordinary course of business; (vii) sold, assigned or transferred any patents, trademarks, trade names, copyrights or other intangible assets; (viii) suffered any extraordinary losses or waived any rights of substantial value; or (ix) entered into any transaction other than in the ordinary course of business, except as indicated in Exhibit E annexed hereto.

(14) At June 2, 1956, the estimated cost of completion of capital projects, which were authorized by the Board of Directors of Hazel-Atlas but not completed, was approximately $4,518,878; since that date, the Board of Directors of Hazel-Atlas has not authorized capital projects calling for the expenditure of an aggregate of more than $1,000,000.

(15) Since June 2, 1956, there has been no material change in the condition, financial or otherwise, of Hazel-Atlas as shown in the unaudited balance sheet of Hazel-Atlas as of June 2, 1956 (Exhibit A annexed hereto), other than changes occurring in the ordinary course of business, which changes have not materially adversely affected its business, properties or financial condition.

(16) The accounts receivable of Hazel-Atlas shown on the unaudited balance sheet as of June 2, 1956 (Exhibit A annexed hereto), or thereafter acquired by it prior to the date hereof, have been collected or are collectible in amounts not less than 99% of the book amounts thereof.

(17) The Board of Directors of Hazel-Atlas has duly approved this Reorganization Agreement and Plan and the transactions contemplated herein, subject to the approval thereof by the stockholders of Hazel-Atlas as required under the laws of the State of West Virginia, and has authorized the execution and delivery hereof by Hazel-Atlas.

IV. Continental represents and warrants to Hazel-Atlas as follows:

(1) Continental is a corporation duly organized and existing and in good standing under the laws of the State of New York.

(2) The authorized capital stock of Continental consists of (i) 150,000 shares of $3.75 Cumulative Preferred Stock without par value, all of which have been validly issued and are now outstanding, (ii) 145,650 shares of Second Preferred Stock without par value, none of which has been issued, and (iii) 10,000,000 shares of Common Stock of the par value of $20 per share (hereinafter called Common Stock of Continental), of which, as of May 31, 1956, 7,756,394 shares were validly issued and outstanding and

255,738 shares were reserved for issue pursuant to employees' stock purchase plans and 5,740 shares were reserved for delivery pursuant to deferred compensation agreements.

(3) Annexed hereto as Exhibit G is a consolidated balance sheet of Continental as of December 31, 1955, and statements of consolidated income and consolidated capital surplus and unappropriated earnings retained in the business for the three years then ended, certified by Messrs. Haskins & Sells, independent certified public accountants. Such statements are correct and complete and present fairly the financial condition of Continental as of December 31, 1955, and the results of operations of Continental for the three years then ended. All said financial statements have been prepared in conformity with generally accepted accounting principles.

(4) There has been no material change in the condition, financial or otherwise, of Continental as of December 31, 1955 (Exhibit G annexed hereto), except that on January 4, 1956 Continental acquired all of the issued and outstanding capital stock of the White Cap Company, a Delaware corporation, and except for changes occurring in the ordinary course of business, which changes have not materially adversely affected its business properties or financial condition.

(5) The shares of Common Stock of Continental deliverable pursuant hereto, when issued and delivered as herein provided, will be validly issued and outstanding shares of Common Stock of Continental, full paid and non-assessable except for debts, wages or salaries due and owing to laborers, servants or employees to the extent provided in Section 71 of the Stock Corporation Law of the State of New York.

(6) The Board of Directors of Continental has approved this Reorganization Agreement and Plan and the transactions contemplated herein, and has authorized the execution and delivery hereof by Continent

NOW, THEREFORE, in consideration of the premises and of the respective representations and warranties hereinabove set forth, and of the covenants and agreements herein contained, Continental and Hazel-Atlas hereby agree as follows:

ARTICLE ONE. On the terms and subject to the conditions herein set forth Hazel-Atlas hereby agrees to convey, transfer, assign and deliver to Continental, and Continental agrees to acquire and accept as hereinafter provided, all the assets, properties, business and good will of Hazel-Atlas of every kind and description, wherever located, including, without limitation, all property, tangible or intangible, real, personal or mixed, accounts receivable, bank accounts, cash and securities, claims and rights under contracts of Hazel-Atlas, rights to use the name "Hazel-Atlas Glass Company" and all other names or slogans used by Hazel-Atlas in connection with its business or products and all books and records of Hazel-Atlas relating to its business, all as the same shall exist at the time of closing referred to in ARTICLE FOUR hereof (hereinafter called the Closing Date). The assets and properties to be conveyed, transferred, assigned and delivered to Continental on the Closing Date as herein provided shall, without limitation, include all assets and property of Hazel-Atlas shown on the unaudited balance sheet of Hazel-Atlas as of June 2, 1956 (Exhibit A annexed hereto) and all assets and property thereafter acquired by Hazel-Atlas prior to the Closing Date, except such of those assets and properties of Hazel-Atlas as (i) may have been disposed of prior to the Closing Date in the ordinary course of business or in the payment and discharge of liabilities on or before the Closing Date; (ii) may have been applied prior to the Closing Date to the payment of dividends on the Common Stock of Hazel-Atlas in accordance with the provisions of ARTICLE ELEVEN hereof; and (iii) may have been otherwise disposed of prior to the Closing Date at the request or with the consent in writing of Continental.

Subject to the conditions herein set forth, from and after the Closing Date Continental shall assume and agrees to pay, perform and discharge all debts, obligations, contracts and liabilities of Hazel-Atlas of any kind, character or description whether accrued, absolute,

contingent or otherwise (and whether or not reflected or reserved against on Hazel-Atlas's balance sheets, books of account and records), all as the same shall exist at the Closing Date, and all debts, obligations and liabilities of Hazel-Atlas arising thereafter in connection with the distribution to the stockholders of Hazel-Atlas of the shares of Common Stock of Continental to be issued and delivered to Hazel-Atlas hereunder and in connection with the liquidation and dissolution of Hazel-Atlas; provided, however, that Continental shall not assume the obligation of Hazel-Atlas to distribute to its stockholders such shares of Common Stock of Continental.

The conveyance, transfer, assignment and delivery of the assets and property of Hazel-Atlas to Continental, as herein provided, shall be effected by deeds, bills of sale, endorsements, assignments, drafts, checks and other instruments of transfer and conveyance in such form as Continental shall reasonably request.

Hazel-Atlas agrees that it will, at any time and from time to time after the Closing Date, upon request of Continental, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be required for the better assigning, transferring, granting, conveying, assuring and confirming to Continental, or to its successors and assigns, or for aiding and assisting in collecting and reducing to possession, any or all of the assets or property to be assigned to Continental as provided herein and any or all obligations of Hazel-Atlas hereunder.

ARTICLE TWO. On the terms and subject to the conditions herein set forth, Continental will issue and deliver to Hazel-Atlas on the Closing Date definitive stock certificates, in such authorized denominations and registered in the name of Hazel-Atlas or its nominee or such other names as Hazel-Atlas shall specify in writing, for an aggregate of 999,140 shares of Common Stock of Continental.

ARTICLE THREE. From and after the date hereof, Hazel-Atlas shall afford to the officers and accredited representatives of Continental free access to the properties and records of Hazel-Atlas in order that Continental may have full opportunity to make such investigation as it shall desire of the affairs of Hazel-Atlas.

ARTICLE FOUR. The closing under this Reorganization Agreement and Plan shall take place (i) at the office of Hazel-Atlas, 15th and Jacob Streets, Wheeling, West Virginia, at 11:00 o'clock A. M., Eastern Daylight Time, on the later of (a) August 8, 1956, or (b) the fifth full business day after the expiration of any waiting period which may be required by law following notification of public authorities, or (ii) at such other time and place as the parties hereto shall agree upon.

ARTICLE FIVE. To the extent that the assignment of any contract, license, lease, commitment, sales order or purchase order to be assigned to Continental as provided herein shall require the consent of the other party thereto, this Reorganization Agreement and Plan shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof. Hazel-Atlas agrees that it will use its best efforts to obtain the consent of the other parties to all such contracts, licenses, leases, commitments, sales orders or purchase orders of Hazel-Atlas to the assignment thereof to Continental. If such consent is not obtained, Hazel-Atlas will cooperate with Continental in any reasonable arrangement designed to provide for Continental the benefits under any such contracts, licenses, leases, commitments, sales orders or puschase orders, including enforcement, at the cost and for the benefit of Continental, of any and all rights of Hazel-Atlas against the other party thereto arising out of the breach or cancellation by such other party or otherwise.

Hazel-Atlas agrees that Continental shall have the right and authority to collect, for account of Continental, all receivables and other items which shall be transferred to Con-

tinental as provided herein, and to endorse with the name of Hazel-Atlas any checks received on account of any such receivables or other items. Hazel-Atlas agrees that it will transfer and deliver to Continental any cash or other property that Hazel-Atlas may receive in respect of such receivables or other items.

ARTICLE SIX. Hazel-Atlas will call a meeting of its stockholders to be held on August 7, 1956, for the purpose of authorizing (i) the conveyance, assignment, transfer and delivery of all the assets, properties, business and good will of Hazel-Atlas to Continental upon the terms and conditions provided herein; and (ii) upon the Closing Date the voluntary dissolution of Hazel-Atlas.

Hazel-Atlas agrees that, promptly upon receipt by it of the stock certificates for the shares of Common Stock of Continental to be received by Hazel-Atlas as provided in ARTICLE Two hereof, and in any event on or before December 31, 1956, Hazel-Atlas will distribute all such shares to its stockholders in complete winding up and liquidation of Hazel-Atlas, and that it will not otherwise dispose of any of such shares. Promptly after the Closing Date Hazel-Atlas will deliver to a bank or trust company selected by Hazel-Atlas and satisfactory to Continental the stock certificates for shares of Common Stock of Continental delivered to Hazel-Atlas as herein provided for distribution to the stockholders of Hazel-Atlas in exchange for their certificates for shares of Common Stock of Hazel-Atlas. Each share of Common Stock of Hazel-Atlas will be treated equally in such exchange. Fractional shares of Common Stock of Continental will not be issued in connection with such exchange, but, in lieu thereof, the bank or trust company referred to above, acting as the agent of each stockholder of Hazel-Atlas who would otherwise be entitled to a certificate for a fractional share of Common Stock of Continental in such exchange, will sell such stockholder's fractional interest and remit to him the net proceeds of such sale.

From and after the Closing Date, Hazel-Atlas will not engage in any business or other activity except as required to complete the liquidation and dissolution of Hazel-Atlas as provided herein.

ARTICLE SEVEN. The obligations of Continental hereunder are subject to the conditions that, on or before the Closing Date:

(1) At the meeting of the stockholders of Hazel-Atlas provided for in ARTICLE SIX hereof, the holders of at least sixty per cent of the outstanding shares of Hazel-Atlas entitled to vote thereat shall have voted in favor of the matters specified in clauses (i) and (ii) of said ARTICLE SIX.

(2) All actions, proceedings, instruments and documents required to carry out this Reorganization Agreement and Plan, or incidental thereto, and all other related legal matters, shall have been approved by Messrs. Willkie Owen Farr Gallagher & Walton, counsel for Continental.

(3) Continental shall have received an opinion of Messrs. Paul & Phillips, counsel for Hazel-Atlas, dated the Closing Date, in form and substance satisfactory to Continental, to the effect that (i) Hazel-Atlas is a corporation duly organized and existing and in good standing under the laws of the State of West Virginia and is entitled to own or lease its properties and to carry on its business as and in the places where such properties are now owned, leased or operated or such business is now conducted; (ii) Hazel-Atlas is not a party to any material pending litigation, and such counsel know of no material threatened litigation against Hazel-Atlas, except as indicated in Exhibit F annexed hereto, (iii) Hazel-Atlas has full power and authority to convey, assign, transfer and deliver its assets, properties, business and good will to Continental as herein provided; (iv) all corporate and other proceedings required to be taken by or on the part of Hazel-Atlas to authorize it to carry out this Reorganization Agreement and Plan and so to convey, assign, transfer

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and deliver its assets, properties, business and good will have been duly and properl, taken; and (v) the vote of the stockholders of Hazel-Atlas taken at the meeting provided for in ARTICLE SIX hereof operates (except for directors' action), so far as Hazel-Atlas is concerned, to authorize the conveyance, transfer, assignment and delivery of all the assets, properties, business and good will of Hazel-Atlas to Continental in exchange for shares of Common Stock of Continental upon the terms and conditions provided herein and to bind all stockholders of Hazel-Atlas thereto.

(4) Continental shall have received an opinion of Messrs. Fish, Richardson and Neave, patent counsel for Hazel-Atlas, dated the Closing Date, in form and substance satisfactory to Continental, (i) as to the status of, and title of Hazel-Atlas to, the patents, patent applications and trade-mark registrations owned by or registered in the name of Hazel-Atlas or in which it has any rights and listed in Exhibit C annexed hereto, and (ii) stating the general effect of the judgment dated October 31, 1945 imposed by the District Court of the United States for the Northern District of Ohio, Western Division, in the Civil Action No. 4426, entitled *United States of America* v. *Hartford Empire Company, et al.* in which the original complaint was filed December 11, 1939, on the use of such patents, patent applications, trade-mark registrations and rights.

(5) Hazel-Atlas shall have furnished to Continental legal opinions or other evidence, in form and substance satisfactory to Continental, covering the good and marketable title in fee simple of Hazel-Atlas in and to its real properties, free and clear of all mortgages, liens, charges or encumbrances of any nature whatsoever, except as stated in Exhibit B annexed hereto, and the due authorization, execution and delivery, legal effectiveness in accordance with their respective terms, and sufficiency for purposes of recordation or filing, of the instruments of conveyance, transfer and assignment from Hazel-Atlas to Continental of the assets, properties, business and good will of Hazel-Atlas.

(6) Continental shall have received an opinion of Messrs. Price Waterhouse & Co., dated the Closing Date, in form and substance satisfactory to Continental, to the effect that in their opinion the reserves set up on the books of Hazel-Atlas for taxes for the years 1953, 1954 and 1955 are adequate to cover all tax adjustments which may have to be made for said years.

(7) Continental shall not have discovered any material error, misstatement or omission in the representations and warranties made by Hazel-Atlas in Recital III hereof, and all the terms and conditions of this Reorganization Agreement and Plan to be complied with and performed by Hazel-Atlas on or before the Closing Date shall have been complied with and performed.

(8) The business and properties of Hazel-Atlas shall not have been adversely affected in any material way as a result of any fire, accident or other casualty or act of God or the public enemy.

(9) The representations and warranties made by Hazel-Atlas herein shall be correct, on and as of the Closing Date, with the same force and effect (except as affected by the transactions contemplated herein and changes occurring in the ordinary course of business) as though such representations and warranties had been made on and as of the Closing Date, and Hazel-Atlas shall have delivered to Continental a certificate to such effect and also as to the compliance by Hazel-Atlas, as of the Closing Date, with the terms and conditions hereof, such certificate to be signed by a duly authorized officer of Hazel-Atlas under its corporate seal and to be in form satisfactory to Continental.

(10) An investigation to be made by Continental shall show that there have been no developments in Hazel-Atlas business since June 2, 1956, which would have a materially adverse effect on the value of its business.

ARTICLE EIGHT. The obligations of Hazel-Atlas hereunder are subject to the conditions that, on or before the Closing Date:

(1) All actions, proceedings, instruments and documents required to carry out this Reorganization Agreement and Plan, or incidental thereto, shall have been approved by Messrs. Paul & Phillips, counsel for Hazel-Atlas.

(2) Hazel-Atlas shall have received an opinion of Messrs. Willkie Owen Farr Gallagher & Walton, counsel for Continental, dated the Closing Date, in form and substance satisfactory to Hazel-Atlas, to the effect that (i) Continental is a corporation duly organized and existing and in good standing under the laws of the State of New York; (ii) all corporate and other proceedings required to be taken by or on the part of Continental to authorize it to carry out this Reorganization Agreement and Plan and to issue and deliver the shares of Common Stock of Continental deliverable pursuant hereto as provided herein have been duly and properly taken; and (iii) said shares of Common Stock of Continental will, on delivery thereof to Hazel-Atlas in accordance with the terms hereof, be duly and validly issued, full paid and non-assessable, except for debts, wages or salaries due and owing to laborers, servants or employees to the extent provided in Section 71 of the Stock Corporation Law of the State of New York.

(3) Hazel-Atlas shall not have discovered any material error, misstatement or omission in the representations and warranties made by Continental in Recital IV hereof, and all the terms and conditions of this Reorganization Agreement and Plan to be complied with and performed by Continental on or before the Closing Date shall have been complied with and performed.

(4) The business and properties of Continental shall not have been adversely affected in any material way as a result of any fire, accident or other casualty or act of God or the public enemy.

(5) An investigation to be made by Hazel-Atlas shall show that there have been no developments in Continental's business since December 31, 1955, which would have a materially adverse effect on the value of its business.

ARTICLE NINE. Continental and Hazel-Atlas agree that the representations and warranties contained in Recitals III and IV hereof shall expire with, and be terminated and extinguished by, the closing under this Reorganization Agreement and Plan on the Closing Date, such closing to be conclusive evidence that each party is fully satisfied with the facts constituting the basis of the representations and warranties of the other party.

ARTICLE TEN. The respective obligations of Continental and Hazel-Atlas hereunder are subject to the further condition that, on the Closing Date, Continental and Hazel-Atlas shall have received an opinion of Messrs. Willkie Owen Farr Gallagher & Walton, counsel for Continental, dated the Closing Date, to the effect that (1) registration under the Securities Act of 1933 of the shares of Common Stock of Continental deliverable pursuant hereto is not required and (2) said shares of Common Stock of Continental have been duly listed, subject to official notice of issuance, on the New York Stock Exchange and on any other exchange on which the Common Stock of Continental is then listed.

ARTICLE ELEVEN. Between the date hereof and the Closing Date Continental shall not authorize or make any split-up of its capital stock, and neither Continental nor Hazel-Atlas shall declare or pay any dividends on their respective Common Stocks except (i) a dividend to holders of Common Stock of Hazel-Atlas of not exceeding 30¢ per share payable on July 2, 1956, (ii) a dividend to holders of Common Stock of Continental of not exceeding 45¢ per share to be payable in September, 1956, and (iii) such other dividends to holders of Common Stock of Continental as may be declared provided that if any such other dividend is declared,

or if said September, 1956 dividend of Continental shall not be declared with respect to the shares of Common Stock of Continental to be delivered to Hazel-Atlas hereunder, Hazel-Atlas shall have a corresponding right to declare dividends to holders of its Common Stock in an amount per share equivalent to 46/100 of the amounts per share declared by Continental.

ARTICLE TWELVE. If the transactions contemplated hereby shall not be consummated, each party hereto shall pay its own expenses incident to preparation for carrying this Reorganization Agreement and Plan into effect and consummating said transactions.

ARTICLE THIRTEEN. Continental hereby waives compliance by Hazel-Atlas with the provisions of any applicable Bulk Sales Law.

ARTICLE FOURTEEN. This Reorganization Agreement and Plan shall not be assignable by either party, except with the written consent of the other. Nothing in this Reorganization Agreement and Plan, expressed or implied, is intended to confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Reorganization Agreement and Plan.

ARTICLE FIFTEEN. The parties hereto may by written agreement (a) change the time for performance of any of the obligations or acts of the parties hereto, including changes of the Closing Date, (b) waive any inaccuracies in the representations contained in this Reorganization Agreement and Plan or in any documents delivered pursuant hereto, and (c) waive compliance with or modify any of the covenants herein contained and waive or modify performance of any of the obligations of the parties hereto; provided, however, that no modification shall be made in the number of shares of Common Stock of Continental to be delivered hereunder.

ARTICLE SIXTEEN. Any notice, request, instruction or other document to be given hereunder by either party hereto to the other shall be in writing and delivered personally or sent by registered mail, postage prepaid, if to Continental, addressed to Continental, attention of its Secretary and Treasurer, at 100 East 42nd Street, New York 17, N. Y., and if to Hazel-Atlas, addressed to Hazel-Atlas, attention of its Executive Vice President, at 15th and Jacob Streets, Wheeling, West Virginia.

ARTICLE SEVENTEEN. This instrument contains the entire agreement between the parties hereto with respect to the transactions contemplated herein.

IN WITNESS WHEREOF, Continental Can Company, Inc., and Hazel-Atlas Glass Company have caused this Reorganization Agreement and Plan to be executed in their respective corporate names by their respective officers thereunto duly authorized and their respective corporate seals to be hereunto affixed and duly attested as of the day and year first above written.

CONTINENTAL CAN COMPANY, INC.

[CORPORATE SEAL]

By L. WILKINSON
Vice-President

Attest:

L. R. DODSON
Secretary

HAZEL-ATLAS GLASS COMPANY

[CORPORATE SEAL]

By H. G. LEWIS
Executive Vice-President

Attest:

N. G. ROSS
Secretary

CONTINENTAL CAN COMPANY, INC.

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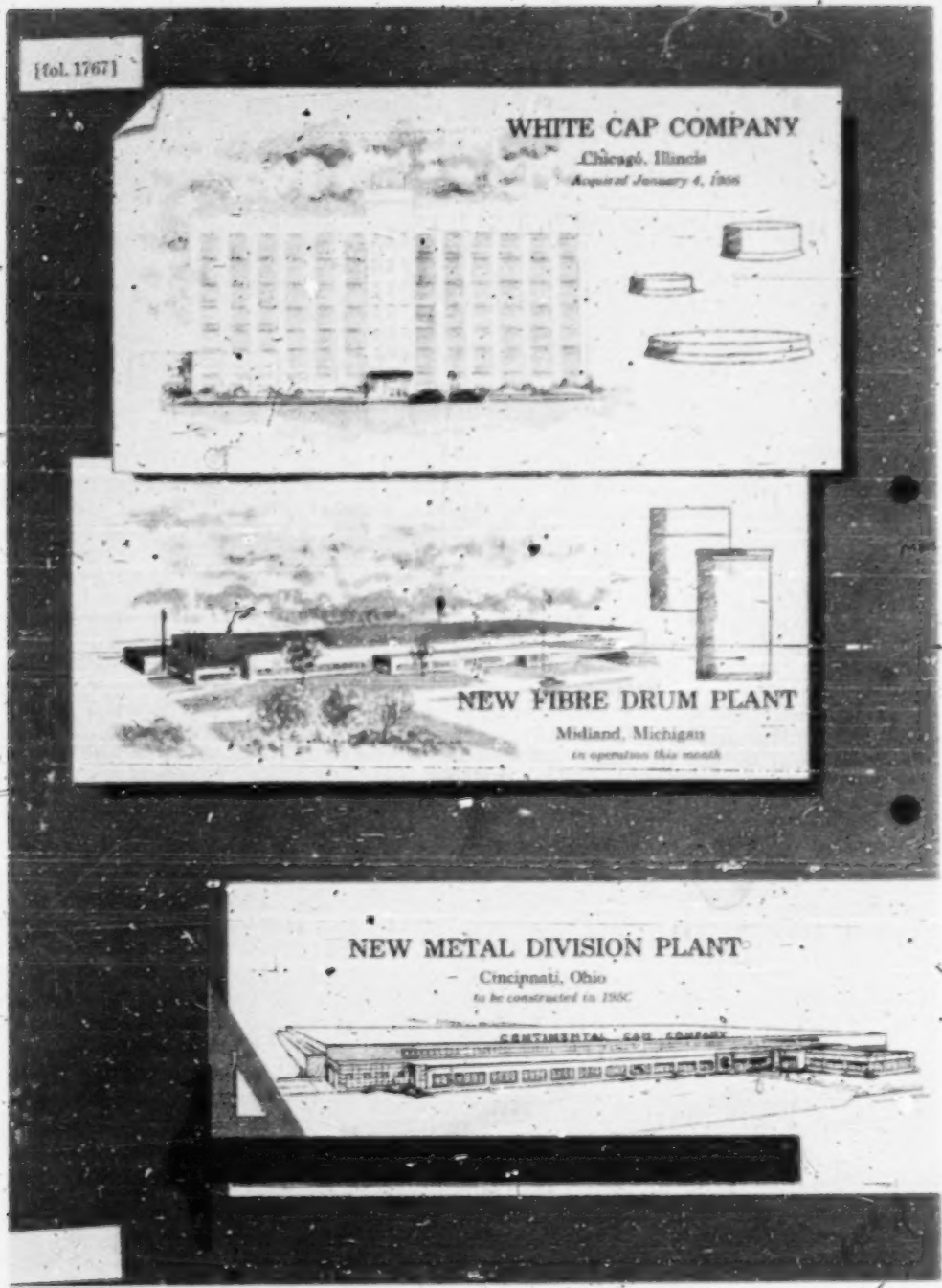
1955

SERVING INDUSTRY . . . SERVING AMERICA

[fol. 1767]


WHITE CAP COMPANY
Chicago, Illinois
Acquired January 4, 1956
NEW FIBRE DRUM PLANT
Midland, Michigan
in operation this month
NEW METAL DIVISION PLANT
Cincinnati, Ohio
to be constructed in 1956
CONTINENTAL CAN COMPANY

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Continental Can Company, Inc.

ANNUAL REPORT 1955

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ANNUAL MEETING

The Annual Meeting of the Shareholders will be held at the Biltmore Hotel, Madison Avenue and 43rd Street, New York City, on April 24th, 1956. Proxies and proxy statements for such meeting will be mailed to each Common shareholder on or about March 16th, 1956.

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HIGHLIGHTS OF THE YEAR

SALES HIT NEW PEAK—
exceeding 1954 by $50 million or 8%.

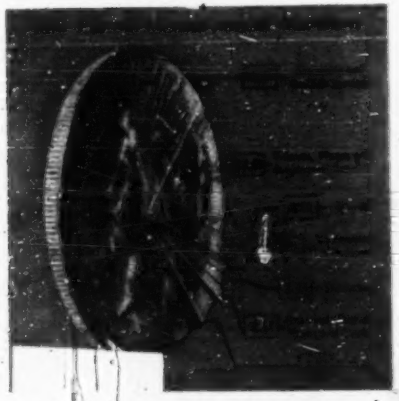
EARNINGS AT RECORD LEVEL—
up 18% before and 16% after income taxes.

DECLARED 100% STOCK DIVIDEND—
payable February 15, 1956.

ESTABLISHED 20% HIGHER CASH DIVIDEND—
effective March 15, 1956 on increased shares after stock dividend

BORROWED $25 MILLION ON 3¼% 40-YEAR NOTES
notes dated November 10, 1955.

REFUNDED $39.5 MILLION OF DEBENTURES DUE IN 1965—
exchanged for new 3¼% 40-year debentures.



	1954	1955
NET SALES	$616.2 million	
NET EARNINGS		
Per Common share	$4.52	
Before income taxes	$ 40.9 million	
% of sales	6.6%	
After income taxes	$ 20.7 million	
% of sales	3.4%	
COMMON DIVIDENDS		
Per Common share	$ 9.6 million	
	$2.70	
EARNINGS RETAINED IN BUSINESS	$ 10.5 million	
Per Common share	$2.87	
GROSS CAPITAL EXPENDITURES		
Land	$ 2 million	
Buildings	5.2 million	
Equipment and Miscellaneous	26.3 million	
	$ 31.7 million	
NET WORKING CAPITAL		
Current Assets	$163.0 million	
Current Liabilities	80.7 million	
Net Working Capital	$ 82.3 million	
COMMON SHARES		
Number Issued	3,646,533	
Number of Holders	28,482	

MANAGEMENT'S REVIEW . . . . . and the OUTLOOK

The year 1955 was an exceptional year in the history of the Continental Can Company, as it was our fiftieth anniversary and fittingly was also our most successful year.

SALES AND EARNINGS – Our sales of $666.3 million represented an 8 per cent increase from the preceding year, and our earnings on these sales of $48.3 million before and $24.2 million after income taxes were the highest in our history, exceeding the earnings of the preceding year by 18 per cent and 16 per cent, respectively. Earnings per Common share amounted to $6.44 on 3,564,403 shares as compared with $5.52 in 1954 on 3,546,533 shares. Our principal sales gains came from increased sales of metal cans for beer, fruits, dairy products, coffee, oil, pet food, paint and liquid detergents, paperboard, paper containers; crown caps; and flexible packaging.

OPERATIONS – Our manufacturing operations were conducted throughout the year at the highest rate of manufacturing efficiency yet attained – another record year for your Company.

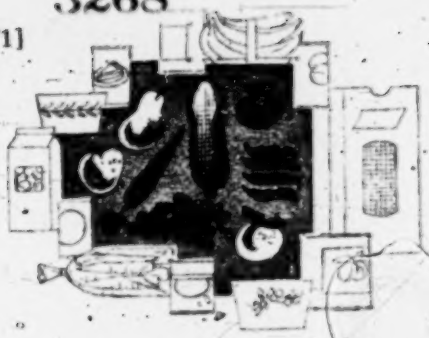
CAPITAL IMPROVEMENTS – During the year our expenditures for capital improvements amounted to $28.4 million. In addition, a new fibre drum plant at Midland, Michigan, and a new research and equipment development building at Chicago for the Metal Division were built under lease-back arrangements with pension trusts.

As we look ahead, we foresee a continuing need for capital improvements of approximately $30 million a year to maintain our position in the packaging industry and to enable us to properly service our customers.

We are engaged now in installing a semi-chemical pulp operation in our Hopewell, Virginia, paper mill, which will permit us to use hardwoods available in the area. This year the Hopewell paper plant proved to be a substantial earner for the Company, as our previous capital expenditures gave us maximum utilization for the first time. In addition to the semi-chemical pulp operation at Hopewell, we expect to build a new can plant in Cincinnati, Ohio, and at least two other can plants in locations not yet determined. We will also build a new paper container plant during the year.

During 1955 the Company purchased the patents and production facilities of Vaporized Metal Coatings, Inc., of Roosevelt, New Jersey, whose process for the high-speed coating of metal on materials such as cellophane, pliofilm, etc., offers promise. Our present limited output has resulted in orders beyond our ability to produce and new machines are being built to increase output.

A major acquisition of your Company, agreed to in October, 1955 and which became effective on January 4, 1956, was the exchange of 210,000 shares of our Common stock for the capital stock of the White Cap Company. We are impressed with the management of this company, which has been highly successful in the manufacture and sale of metal closures, principally for glass jars, and we propose to continue its operation under its existing management as a separate subsidiary. It should add over $25



million to our sales volume for 1956. It further diversifies our packaging operations while its manufacturing processes and procedures are closely allied to those in which we are now engaged.

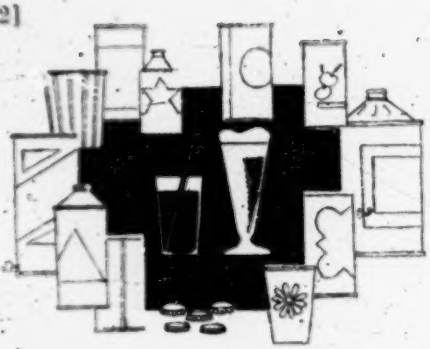
FINANCING – In view of the continuing demand for funds for capital improvements, during the year we undertook a refinancing of previous bond issues together with the raising of $25 million of new capital. To do this, we sold $25 million 3¼ per cent forty-year notes of the Company to the Metropolitan and New York Life insurance companies and exchanged $39.5 million of our 3 per cent and 3⅛ per cent Sinking Fund Debentures maturing on December 1, 1965, for forty-year debentures due November 1, 1995, bearing interest of 3¼ per cent to November 1, 1965, and 3¾ per cent thereafter. This will decrease our annual amortization charges for the immediate future while supplying us with the additional capital which we need for the next several years.

EMPLOYEE RELATIONS – During the year we signed a new master agreement with the United Steelworkers of America (C.I.O.) which became effective October 1, 1955, and runs until September 30, 1957, except for a wage re-opening provision on October 1, 1956. Under this agreement the principal adjustments included a general wage increase, improved pension provisions under an agreement which lasts for five years, and a supplemental unemployment benefits plan to be effective over the next three years. These adjustments represented an increase equivalent to about 9% of the straight-time average hourly rate. This master contract covers approximately half of our hourly employees. Other labor contracts were also renewed satisfactorily.

If we are to be competitive with other products, continuous effort must be made to increase productivity, improve quality and lower costs. We believe that union leadership has recognized its own interest in these factors and will cooperate with your Management to obtain these objectives. Mr. David J. McDonald, President of the United Steelworkers of America, joined your chairman in joint meetings in several parts of the country attended by both plant managers and their staffs and by local union presidents and other union officials. During these meetings our common objectives were discussed freely and frankly and it is our hope and belief that better understanding has resulted.

RESEARCH AND ENGINEERING – One of the principal reasons for our progress during the last five years has been the improved research and engineering made possible by the expenditures of $36.7 million for the purpose as compared with $15.3 million in the previous five-year period. During the year we started the move of the metal can research and engineering activities into our new research and development building in Chicago, where for the first time they will have adequate facilities consolidated in a single building. In addition, a competent Company research and development group has been assembled to assist the several divisions of the Company in their research and development work and to explore new fields.

Emphasis is being placed on the design and development of new packages and the possible use of new materials becoming available in the market. Packaging in this country is becoming of increasing importance, particularly as the part it plays in selling products is being recognized more and more. Our diversification and our position in the packaging field depend on the effectiveness of our research and development programs, and these programs are receiving the personal attention of Management. Recognizing the potential value of the broad new field of nuclear science, your Company has joined



with other companies in a joint venture to establish a research nuclear reactor which will enable us to increase our studies in the possible application of atomic energy to our products.

MANAGEMENT – Two of our senior officers, Hans A. Eggerss, President, and Sherlock McKewen, Vice President, Pacific Metal Division, retired on December 31, 1955, under the Company's retirement plan. They have given the Company many years of valued and loyal service and have contributed substantially to its success. As a result of these retirements, Thomas C. Fogarty, formerly Executive Vice President, Metal Division, has become President. Reuben L. Perin, formerly Vice President, Metal Division, Eastern, has become Executive Vice President, Metal Division, and has been succeeded by Orren R. McJunkins, former General Manager of the Southeastern District, Metal Division. Mr. McKewen has been succeeded by Horace M. Blinn, former General Manager of the California District, Metal Division. Your Management considers one of its major tasks to be the development of personnel for high executive positions in your Company. It is satisfied that these new officers have outstanding qualifications to fill the positions to which they have been promoted and that your Company can be proud of this management team.

While the White Cap Company is to be continued as a separate subsidiary under its own officers, Philip O'C. White, its president, has also been elected a Vice President of Continental Can Company.

OUTLOOK – We believe that the general business outlook for 1956 continues satisfactory and that it provides a favorable climate for the further growth of the packaging industry. Our diversified position in this industry, the trend toward individual packages as an aid to selling and to consumer convenience, and the rapid growth of population combine to make the immediate future most encouraging. Canned fruit and vegetable inventories are in excellent shape and large packs are anticipated in 1956. The use of metal cans for established products continues to grow, and can markets such as soft drinks, liquid detergents, and cosmetics in aerosol cans offer additional possibilities. Likewise, we see a continuing growth in paper containers, flexible packaging and other product lines.

We have confidence that present administration of Government will continue to encourage sound economic projects. Thus we look for 1956 to be another year of growth for your Company and we are optimistic with respect to the year ahead. We have an efficient and enthusiastic organization which we believe capable of meeting the problems certain to arise, with enthusiasm and determination. We commend this organization to you.

By order of the Board of Directors

T. C. Fogarty

President

Lucius Clay

Chairman of the Board

March 9, 1956

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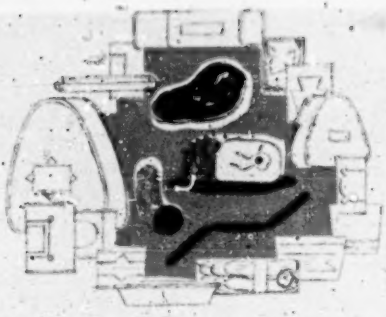

1955 IN BRIEF

What we received and what we did with it

	1955 Total (Millions)	1954 Total (Millions)	Increase Over 1954 (Millions)	1955 Per Common Share	1954 Per Common Share
INCOME					
Net amount billed to customers and other income	$668.2	$620.1	$48.1	$182.35	$170.07
EXPENSES					
For salaries and wages to employees	146.9	144.5	2.3	40.06	39.64
For employees' benefits – (vacations, pensions, social security, rest periods, etc.)	32.2	28.6	3.6	8.79	7.84
For materials and outside services	419.5	387.3	32.2	114.48	106.22
For taxes of all kinds (except on purchases and for social security)	28.9	24.2	4.7	7.89	6.64
For wear and tear on plants and tools	13.6	12.0	1.6	3.71	3.28
For interest on money borrowed and exchange	3.0	2.8	.2	.82	.76
Total	644.0	599.4	44.6	175.75	164.38
BALANCE NET INCOME	24.2	20.7	3.5	6.60	5.69
Used for dividends to Preferred shareholders	.6	.6		.16	.17
Available after payment of Preferred dividends	23.6	20.1	3.5	6.44	5.52
THIS WAS USED FOR					
Dividends to Common shareholders [1] $3.00 per share 1955 [2] 2.70 per share 1954	11.0	9.6	1.4	3.00	2.65
Reinvestment in the business	12.6	10.5	2.1	3.44	2.87
	$ 23.6	$ 20.1	$ 3.5	$ 6.44	$ 5.52

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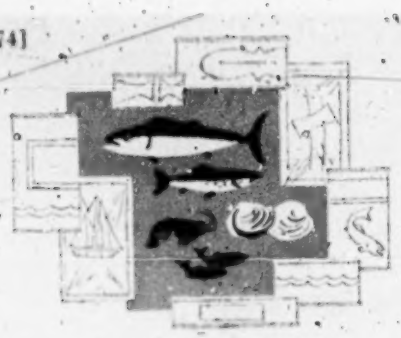


What we had to work with at end of year

	1955 Total (Millions)	1954 Total (Millions)	Increase Over 1954 (Millions)	1955 Per Common Share	1954 Per Common Share
OUR WORKING CAPITAL					
Money	$ 30.3	$ 17.7	$12.6	$ 8.27	$ 4.86
Amount due from customers and others	37.6	33.9	3.7	10.26	9.30
Materials and products for use or sales	110.7	111.4	.7*	30.21	30.54
In terms of cash, the above amounted to	178.6	163.0	15.6	48.74	44.70
Against this, we owed for bank borrowings, current bills, payrolls, taxes, dividends, etc.	67.8	80.7	12.9*	18.50	22.12
After paying what we owed currently, the amount of working capital left to run the business was	110.8	82.3	28.5	30.24	22.58
OUR TOOLS AND OTHER ASSETS					
Land, buildings and equipment, after allowance for wear and tear	189.0	181.2	7.8	51.57	49.68
Investments, advances and other assets	14.3	13.9	.4	3.90	3.81
TOTAL OF WHAT WE HAD TO WORK WITH	314.1	277.4	36.7	85.71	76.07
Against this, we owed long term debt payable over the next 40 years	79.6	55.6	24.0	21.72	15.25
THE REMAINING BALANCE representing the shareholders' interest in the business was	234.5	221.8	12.7	63.99	60.82
Of the above, the Preferred shareholders' investment was	15.0	15.0	—	4.09	4.11
THIS LEFT AS THE VALUE OF THE COMMON SHAREHOLDERS' INTEREST in the Company, including operating reserves	$219.5	$206.8	$12.7	$59.90	$56.71

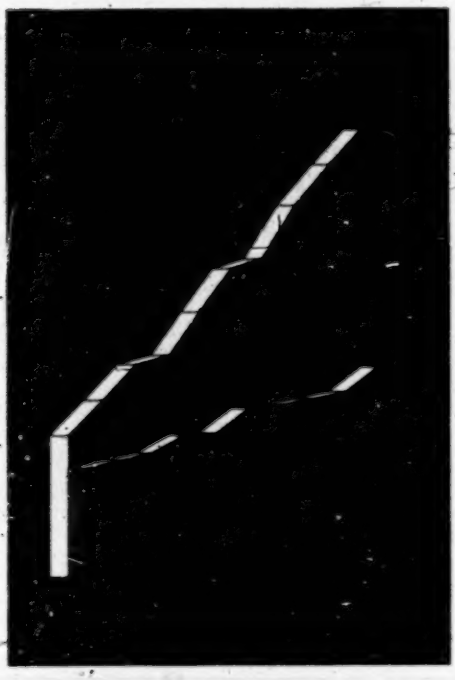
* Decrease.

FINANCIAL AND OPERATING REVIEW

SALES – Again net sales have established a new high record totaling $666,266,408 compared with $616,163,898 in 1954 – an increase of $50,102,510 or 8.1%. Physical volume was up about 7%.

EARNINGS – After income taxes and other charges, net earnings amounted to $24,172,218 or 3.6% on sales. This compared with $20,736,899 or 3.4% on sales in 1954. After Preferred dividends, earnings were equivalent to $6.44 per share on 3,664,403 shares of Common stock, as against $5.52 on 3,646,533 shares in 1954.

Earnings before income taxes in 1955 amounted to $48,272,218 or 7.2% on sales compared with $40,936,899 or 6.6% on sales in 1954.

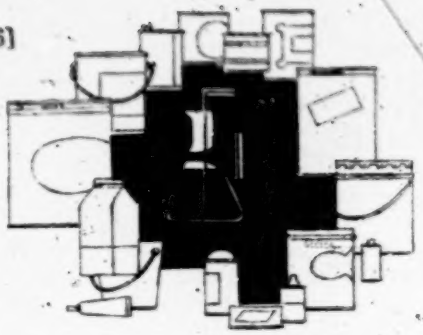


The over-all improvement in earnings over 1954 is particularly significant in that it was achieved despite a decline of $2,310,384 in non-operating net income. Reduced profits on sales of capital assets including sales of equipment formerly leased to customers, and higher interest charges were the principal items resulting in the lower non-operating net income.

Income from foreign operations and investments in other countries, except Canada and Cuba, is reflected only as received in dollars in the United States. At the present time, accumulated dividends and interest funds arising in Argentina prior to June 30, 1955, are blocked. All other funds are unrestricted.

Provision for taxes on income amounted to $24,100,000. This compares with $20,200,000 provided in 1954. All other taxes, exclusive of those on purchases and for social security, were $4,806,550 as against $4,012,815 in 1954.

Salaries and wages increased to $146,803,770 from a total of $144,538,467 in 1954. Employee benefits – including social security taxes, insurance benefits, rest periods and pension fund contributions – amounted to $32,236,112 as compared with $28,581,724 in 1954. The combined compensation and benefits averaged $5,562 per employee, compared with $5,263 per employee in 1954.



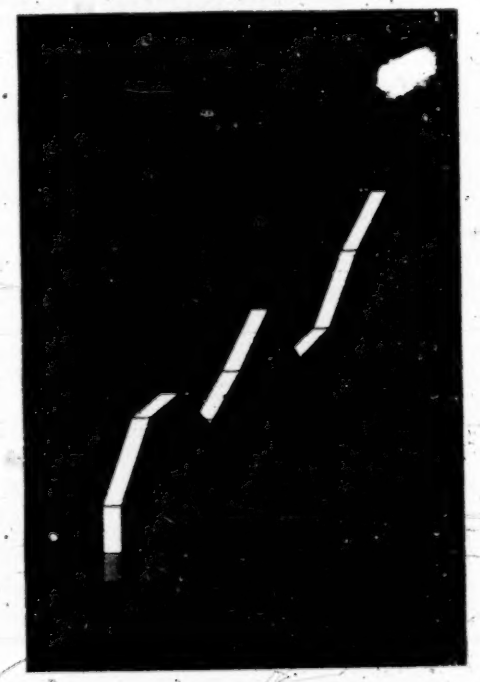
Depreciation and depletion provided out of operating income amounted to $13,606,857 in 1955, against $11,971,425 in 1954. Accelerated depreciation under approved Necessity Certificates included in these totals, amounted to $1,306,291 in 1955 and $1,148,460 in 1954. For tax purposes, but not for book purposes, capital expenditures since January 1, 1954, have been depreciated on "the sum of the years-digits" or "declining balance" methods. This has had the effect of reducing income taxes for the year 1955 by approximately $750,000.

DIVIDENDS – After dividends of $11,534,165 there remained net earnings of $12,638,053 or 52.3%, which were reinvested in the business. In addition to regular dividends on the $3.75 Cumulative Preferred stock, regular quarterly dividends of 75¢ per share were paid on the Common stock on March 15, June 15, September 15 and December 15. The annual dividend rate of $3.00 per share compares with a total of $2.70 per share paid in 1954. At the meeting of the Board of Directors on December 21, 1955, a 100% stock distribution was declared payable February 15, 1956, to holders of record on January 10, 1956. At the regular dividend meeting of the Board in January, 1956, a quarterly dividend of 45¢ per share on the new shares was established. This is equivalent to an annual rate on the old shares of $3.60 per share as compared with the $3.00 paid in 1955.

WORKING CAPITAL – The ratio of current assets to current liabilities on December 31, 1955, was 2.6 to 1, which compares with a ratio of 2 to 1 at December 31, 1954. Current assets totaled $178,579,352 and current liabilities totaled $67,763,536. Working capital increased during the year from $82,330,380 to $110,815,816. This resulted largely from the borrowing of $25,000,000 on 40 year, 3¾% notes on November 10, 1955.

Inventories are valued at the lower of cost or market. Cost, for this purpose, represents standard, average, or actual cost with respect to 71% of the 1955 inventories (70% in 1954) and "Last in – first out" (LIFO) cost as to the remaining 29% (30% in 1954). This latter method was initially applied in 1946 to the stock of raw paper of one of the Company's subsidiaries and to the Company's tin-plate in 1947.

Federal income and excess profits tax returns of the Company and its domestic subsidiaries have been examined by the Internal Revenue Service through 1948. The tax accruals of $24,373,991 at December 31, 1955 are considered adequate to cover any assessments which may result from examination of returns for other years.



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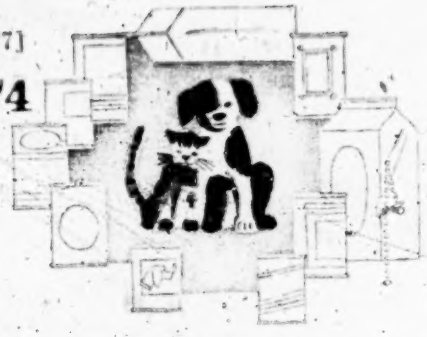

INVESTMENTS – Investments In and Advances To Associated Companies and Subsidiaries Not Consolidated, amounting to $7,481,198 at December 31, 1955, are recorded at cost. Included in this amount is $3,404,314 representing investments in securities regularly quoted on stock exchanges, the market quotation value of which, at December 31, 1955, was approximately $10,440,000.

FIXED ASSETS – Property, Plant and Equipment, at cost, amounted to $277,176,778 at December 31, 1955, compared with $259,427,581 at the end of 1954, reflecting an increase of $17,749,197 for the year. After Reserves for Depreciation and Depletion, the net book value of these Fixed Assets was $189,012,392 on December 31, 1955, and $181,170,956 on December 31, 1954.

Gross capital expenditures during 1955 totaled $24,444,550. This included completion of the metal can installations at Omaha and additional can lines and lithograph equipment, which were installed at various plants in the United States and Canada for the manufacture of containers for beer, other beverages, shortening, soluble coffee, meats and detergents. It also included single-wrap paper cup lines added at Los Angeles; equipment for rounding out of paper product lines at Kensington, Connecticut, Three Rivers, Michigan and Chicago, Illinois; the equipment for the new fibre drum plant at Midland, Michigan; and the purchase of timberlands to augment the Company's supply of pulp wood for its Hopewell, Virginia, paper mill.

Necessity Certificates, which allow for accelerated tax write-offs covering a value of $15,091,790, have been issued to the Company over the past five years. These permit write-offs, varying from 25% to 65% of the new investment, over a five-year period.

SOURCE AND USE OF FUNDS

(Expressed in millions of Dollars)

SOURCE	Year 1955	5 Years 1951-1955
Net income before income taxes	$48.3	$182.4
Increase in reserve for depreciation and depletion	9.9	28.5
Sale of debentures and long term notes	25.0	45.0
Sale of Common stock to employees	.7	5.6
Sale of Second Preferred stock	—	10.5
Common stock issued for acquisitions	—	7.3
Sale of subsidiary	—	6.0
	$83.9	$285.3
USE		
Income taxes	$24.1	$ 92.3
Dividends	11.5	44.9
Plant and equipment additions (net)	17.7	88.3
Redemption of debentures	.9	11.9
Increase in investments	.1	1.2
Increase in other assets and reserves (net)	1.1	6.1
Increase in working capital	28.5	40.6
	$83.9	$285.3

EMPLOYEES AND EMPLOYEE BENEFITS – During 1955 an average of 32,187 men and women were employed by the Company, compared with 32,892 in 1954. More than half of our employees have been with the Company over 5 years. About one-fourth are women.

Employees, and to some extent their dependents, are covered by a comprehensive non-contributory group insurance plan. The net cost to the Company of this group insurance for the policy year ending June 30, 1955, was $5,066,380, increasing from $3,669,081 for the previous policy year. At December 31, 1955, a total of $258,316,325 of life insurance was in force for 31,689 employees (including $5,274,725 for 817 retired employees), compared with a total of $236,372,100 at the end of 1954. During the latest policy year, total claims paid by the insurance company to

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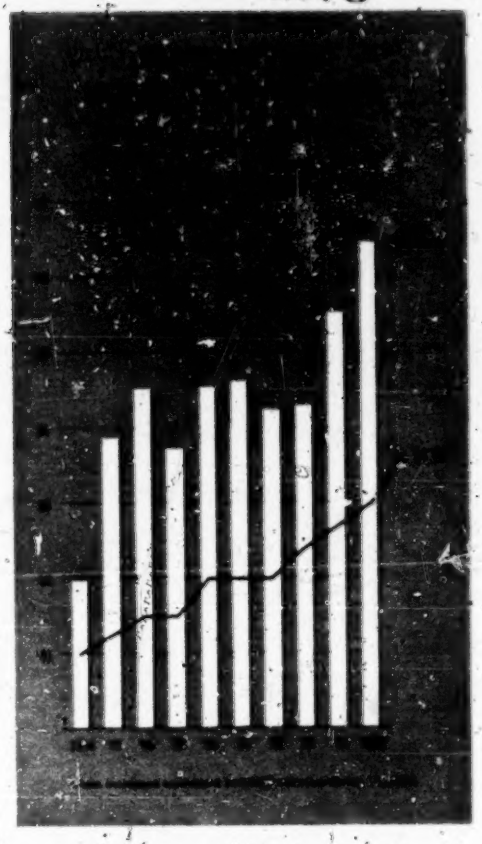

employees and dependents amounted to $4,644,909, of which $1,247,500 was for death claims.

As of December 31, 1955, there were 490 employees retired and receiving monthly pensions under the Company's retirement plans. This represented a net increase of 131 persons during the year. During 1955 the Company provided $5,400,000 for the pension fund for U. S. employees and $444,000 (Canadian) for Canadian employees. Comparable 1954 figures were $4,159,000 and $426,000 (Canadian), respectively.

The Non-Contributory Pension Plans were revised in the negotiations with the United Steelworkers of America last fall. Under the new provisions, effective for the most part January 1, 1956, minimum pensions were substantially increased for eligible employees, those with 15 years of service or more. The pension is now based on $2.50 per month for each year of service and is an addition to Social Security benefits. Disability pensions will be determined at the rate of $3 per month for each year of service with a minimum of $90 per month.

According to a recent actuarial estimate, which gives effect to improved pensions as referred to above, the liability for past service benefits under the plans, assuming they are continued without change, would amount to approximately $30,400,000. The Company has not determined the period over which such past service cost will be funded, if at all.

During the last quarter, initial accruals were made for the cost of the Supplemental Unemployment Benefits Plan which was also the result of negotiations last fall with the United Steelworkers of America. This plan provides limited income protection after October 1, 1956 for eligible hourly employees who become unemployed through no fault of their own. To be eligible an employee must have had 2 years of continuous service with the Company, not less than 4,500 total hours of work, and a minimum of 3,000 hours during the 36 months preceding any layoff. The amount of weekly benefits to be paid by the Company will vary depending on the amount of state unemployment compensation and any other earnings which the employee receives. Under this plan the maximum income for an employee with two dependents is $55.00 per week, including the items mentioned above. These weekly benefits may be paid to an employee having maximum eligibility for as long as 52 weeks.

During the year, a total of 17,870 shares of the authorized but unissued Common stock was sold to 69 employees under the various Employees' Stock Purchase Plans previously approved by the shareholders.

At December 31, 1955, 96 key employees held options to purchase a total of 123,563 shares (247,126 shares after 100% stock distribution of February 15, 1956) of Common stock under the existing plan. Of this total, 30,107 shares were granted in June, 1951, at a price of $35.00 per share, 9,509 shares in December, 1951, at a price of $42.75 per share, 39,047 shares in June, 1953, at a price of $48.25 per share, and 44,900 shares in December, 1955, at a price of $77.50 per share. All of these options are exercisable in equal annual installments from the date granted and expire on

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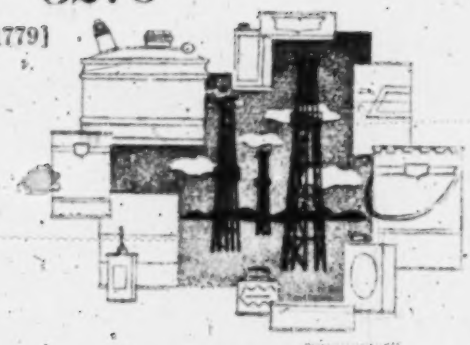

June 21, 1961. The price of the shares in each case is approximately 95% of the market price on the date the option was granted.

OUR SHAREHOLDERS – On December 31, 1955, there were 1,260 holders of the outstanding 150,000 shares of $3.75 Cumulative Preferred stock and 27,981 holders of the outstanding 3,664,403 shares of Common stock, of which 29 shares are represented by fractional scrip certificates.

On November 25, 1955, the record date of the last 1955 Common dividend, the Common shares were distributed as follows:

Shares Held By:	Number of Holders	%	Shares Held	%	Average No. Shares Per Holder
Men	10,202	36.5	715,054	19.5	70
Women	11,620	41.6	650,026	17.7	56
Joint Tenants	2,428	8.7	85,412	2.3	35
Fiduciaries	2,275	8.1	223,917	6.1	98
Brokers	211	.8	239,380	6.6	1,135
Nominees	471	1.7	1,319,134	36.0	2,801
Institutions and Foundations	259	.9	108,886	3.0	420
Corporations, Insurance Companies, Investment Trusts, etc.	475	1.7	322,559	8.8	679
TOTAL	27,941	100.0	3,664,368	100.0	

Of the total number of shareholders shown in the table above, 263 holding 39,356 shares were located in foreign countries; 7,363 or 26% held 10 shares or less, and 3,593 or 13% owned over 100 shares each.

Charles B. Stauffacher

Vice President – Finance

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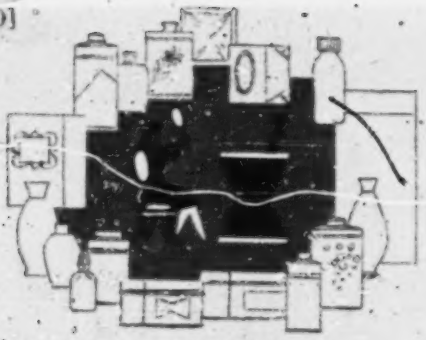

PACKAGING – and its Expanding Markets

From the day a baby is born, he is a new and important customer for the packaging industry. Milk, formula, medicinals, powders, oils, clothing – literally dozens of new packaged products are essential to satisfy his manifold needs. And from infancy to old age, he continues to use packaged products, many times a day, *every day of his life*.

Of special interest, then, is our increasing population – from 151 million in 1950 to an estimated 165 million in 1955 and an anticipated 190 million in 1965. Men now live 18 years longer than they did in 1910, and women, about 20 years. The population factor alone provides an ever-expanding base for the packaging industry. This is added to daily by the new demands for packaging service.

Another characteristic of the packaging industry is that it serves the consumers in all economic levels. A low-income family may buy cheaper foods, but they will buy almost as much and, regardless of price, these foods are usually packaged. This is true not only of foods but also of cosmetics, tobacco, coffee, and hundreds of other commodities.

Our American way of life, hence, is a packaged way of life. As a matter of taste, convenience and necessity, we demand packaging if it is at all possible. And our economic system of mass production and mass distribution depends very largely upon packaging to protect, to help sell, to provide more satisfaction in the goods contained.

When we consider our high American standard of living, we usually think in terms of *goods*. Perhaps we should first think of *packaging*. For more often than not it is the science of packaging that has turned luxuries into commonplace necessities, and thus has provided for year-round abundance. In every field, new products, and old products in quest of a competitive advantage, turn to packaging for better consumer acceptance.

Continental stands broadly astride this ever-expanding market. Some 15 years ago, your Company was literally a "can" company. Today, Continental's position in the growing metal container industry is stronger than ever before. But paralleling this growth of the Metal Division has been a lateral expansion into new packaging fields. In flexible packaging; paper plates, paper cups and containers; fibre shipping drums; bottle caps and jar closures; plastic squeeze bottles and tubes – and in scores of subdivisions of these product groupings – the Company is probing new markets, finding new opportunities for growth and expansion and constantly increasing its production facilities to keep pace with the increasing demands.

Peter F. Wojtul

Vice President – Sales

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[fol. 1781]

Continental Can Company, Inc.

COMPARATIVE CONSOLIDATED BALANCE SHEET

ASSETS	DECEMBER 31, 1959		DECEMBER 31, 1958	
CURRENT ASSETS:				
Cash		$ 30,246,181		$ 12,703,139
Accounts and Notes Receivable	$ 39,394,980		$ 35,618,197	
Less Reserves	1,776,892	37,618,088	1,695,887	33,922,310
Inventories, at the lower of cost or market:				
Raw Materials	29,624,788		28,762,590	
Work in Process and Finished	69,386,290		69,426,348	
Supplies	12,244,066		13,603,072	
	111,255,144		111,792,010	
Less Reserve for Obsolescence	540,061	110,715,083	422,283	111,369,727
TOTAL CURRENT ASSETS		178,579,352		162,995,176
INVESTMENTS IN AND ADVANCES TO ASSOCIATED COMPANIES AND SUBSIDIARIES NOT CONSOLIDATED		7,481,198		7,371,589
DEPOSITS WITH MUTUAL INSURANCE COMPANIES		1,341,647		1,486,287
FIXED ASSETS (at cost):				
Land	5,274,010		5,272,372	
Buildings and Equipment	248,264,441		230,770,116	
Construction in Progress	11,964,917		12,949,806	
Other	11,673,410		10,435,287	
	277,176,778		259,427,581	
Less Reserves for Depreciation and Depletion	88,164,386	189,012,392	78,256,625	181,170,956
PREPAID EXPENSES AND DEFERRED ASSETS		5,502,512		4,916,404
		$381,917,101		$357,940,412

See Notes on Page 18

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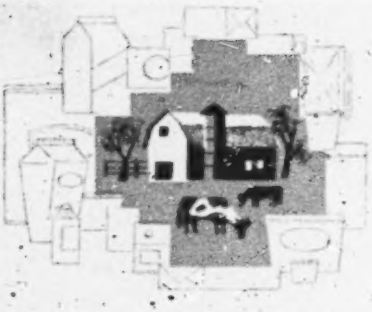

LIABILITIES	DECEMBER 31, 1955		DECEMBER 31, 1954	
CURRENT LIABILITIES:				
Bank Loans		$. 1,900,000		$ 17,650,000
Accounts Payable and Accrued Expenses		41,489,545		37,445,432
Sinking Fund Debentures and Premium thereon, due within one year		—		2,999,438
Tax Accruals		24,373,991		22,569,926
TOTAL CURRENT LIABILITIES		67,763,536		80,664,796
OPERATING RESERVES		1,224,880		1,495,102
PREMIUM ON 3% SINKING FUND DEBENTURES, LESS EXPENSES		—		227,182
LONG TERM DEBT:				
3% Sinking Fund Debentures, due 12/1/65	$ 1,496,000		$ 37,815,000	
3½% Sinking Fund Debentures, due 12/1/65	—		3,680,000	
3¾% Debentures, due 10/15/76	13,650,000		14,100,000	
3¾%-3¾% Sinking Fund Debentures, due 4/1/95	39,502,000			
3¼% Promissory Notes, due 11/1/95	25,000,000	79,648,000	—	55,595,000
SHAREHOLDERS' EQUITY:				
$3.75 Cumulative Preferred Stock (without par value) (Note A):				
Authorized and Issued 150,000 shares	15,000,000		15,000,000	
Common Stock ($5.50 par value):				
Authorized Shares: 1955 — 10,000,000; 1954 — 5,000,000				
Issued shares (Note B): 1955 — 3,664,403; 1954 — 3,646,533	73,288,060		72,930,660	
Surplus Appropriated for Common Stock Distribution on February 15, 1956 (Note B)	77,494,500			
Capital Surplus (Note C)	5,624,900		36,857,547	
Earnings Retained in the Business:				
Appropriated for Excess Replacement Costs of Fixed Assets	9,700,000		9,700,000	
Appropriated for Inventory Price Decline or Other Contingencies	6,170,000		6,170,000	
Unappropriated (Note D)	46,124,363		29,731,263	
	233,411,823		220,089,470	
Less Common Stock in Treasury, at cost — 2,565 shares	131,138	233,280,685	131,138	219,958,332
		$381,917,101		$357,930,412

See Notes on Page 16

[fol. 1783]

Continental Can Company, Inc.

COMPARATIVE CONSOLIDATED STATEMENTS

INCOME	YEAR 1955		YEAR 1954	
Net Sales and Operating Revenues		$666,266,408		$616,163,898
Cost of Goods Sold and Operating Expenses		577,340,947		541,237,674
Gross Operating Income		88,925,461		74,926,224
Selling and Administrative Expenses	$39,361,541		$35,026,098	
Provision for Doubtful Notes and Accounts	197,130	39,558,671	179,039	35,205,137
Net Operating Income		49,366,790		39,721,087
Income from Sales of Capital Assets and Securities	641,071		2,871,969	
Dividends and Interest on Securities and Investments	540,256		475,798	
Other Income and Interest	712,017	1,893,344	647,778	3,995,545
		51,260,134		43,716,632
Interest and Exchange	1,092,985		939,550	
Interest on Long Term Debt	1,894,931	2,987,916	1,840,183	2,779,733
		48,272,218		40,936,899
Provision for Taxes on Income		24,100,000		20,200,000
Net Income		$ 24,172,218		$ 20,736,899

Note: Provision for Depreciation and Depletion amounted to $13,606,857 in 1955 and $11,977,425 in 1954.

See Notes on Page 18

[fol. 1784]

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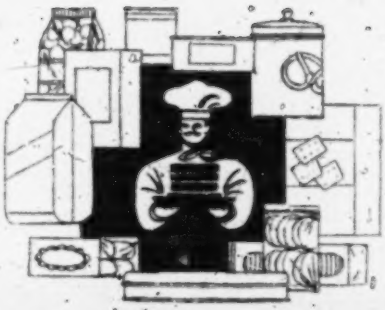

[redacted]

UNAPPROPRIATED EARNINGS RETAINED IN THE BUSINESS

[redacted]

	YEAR 1954	
Net Income for the Year		$20,736,899
Dividends on Preferred Stocks:		
$3.75 Cumulative Preferred	$562,500	
$4.25 Cumulative Second Preferred	59,383	621,883
Net Income Applicable to Common Stock ($6.44 per share 1955 – $5.52 per share 1954)		20,115,016
Dividends on Common Stock ($3.00 per share 1955 – $2.70 per share 1954)		9,645,683
Earnings Retained from Net Income for the Year		10,469,333
Unappropriated Earnings Retained in the Business, January 1		69,261,930
		79,731,263
Appropriated for Common Stock Distribution on February 15, 1956 (Note B)		—
Unappropriated Earnings Retained in the Business, December 31		$79,731,263

See Notes on Page 18

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Notes to FINANCIAL STATEMENTS

A

At December 31, 1955, the Company also had authorized but not issued 145,650 shares of Second Preferred stock (without par value).

B

On January 4, 1956, the Company issued 210,000 additional shares of Common stock in exchange for all of the outstanding capital stock of White Cap Company. The investment in the capital stock of White Cap Company was recorded on the books of the Company at $14,096,250, of which $4,200,000 was credited to Common stock and $9,896,250 was credited to Capital Surplus.

On February 15, 1956, the Company distributed an additional 3,874,725 shares to the holders of its Common stock (record date January 10, 1956) in the ratio of one additional share for each share then outstanding. At December 31, 1955, an amount of $77,494,500 was appropriated for this purpose, obtained partly from Capital Surplus and partly from Unappropriated Earnings Retained in the Business.

C

Capital Surplus decreased during the year by $30,922,647, reflecting a $326,900 excess of consideration received over the par value of Common stock sold under the Employees' Stock Purchase Plans and an appropriation of $31,249,547 for the Common stock distribution on February 15, 1956.

D

The Company's Certificate of Incorporation, the 3¾% Promissory Notes due November 1, 1995, and the various indentures relating to the Company's debentures limit the amount which may be expended for the payment of cash dividends and the purchase, redemption, or retirement of the Company's capital stock. At December 31, 1955, under the terms of the most restrictive of these documents, the Company could not apply more than approximately $21,400,000 to such purposes.

E

Reference should be made to the indicated sections of the text of this Annual Report for information as to the following matters: Valuation of Inventories, page 9 ("Working Capital"); Tax Provisions and Accruals, pages 8 ("Earnings") and 9 ("Working Capital"); Investments, page 10; Employees' Pensions, and Employees' Stock Purchase Plans, page 10 ("Employees and Employee Benefits").

[fol. 1786]

HASKINS & SELLS
CERTIFIED PUBLIC ACCOUNTANTS

AUDITORS' REPORT

[illegible] BROAD STREET
NEW YORK 4

February [illegible], 1956.

To The Board of Directors and Shareholders,
Continental Can Company, Inc.:

We have examined the consolidated balance sheet of Continental Can Company, Inc. and its subsidiary companies consolidated as of December 31, 1955 and the related consolidated statements of income and unappropriated earnings retained in the business for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying consolidated balance sheet and consolidated statements of income and unappropriated earnings retained in the business present fairly the consolidated financial position of the companies at December 31, 1955 and the consolidated results of their operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Haskins & Sells

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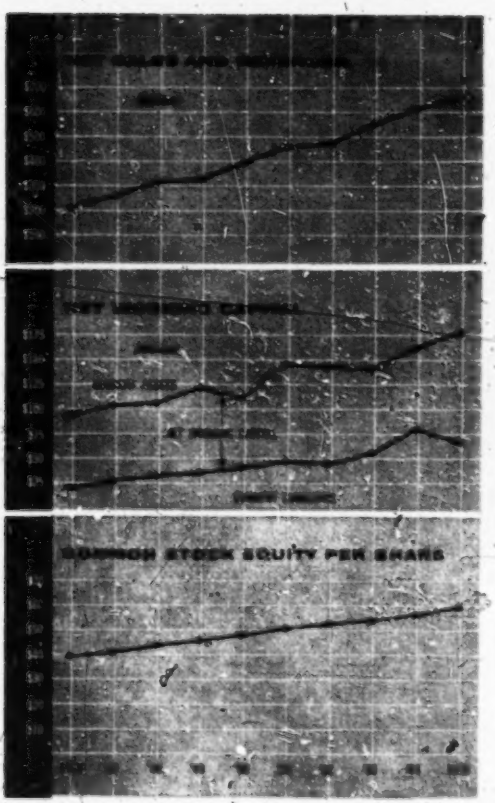
[fol. 1787]



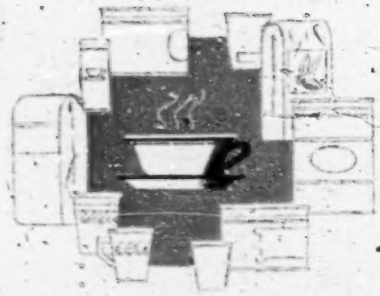
INCOME STATISTICS

$000 OMITTED	1968
Net Sales and Operating Revenues	$ 646,[illegible]
Net Earnings before Income Taxes	$ 48,272
Per cent on sales	7.5%
Net Earnings after Income Taxes	$ 24,172
Per cent on sales	3.6%
Net Earnings applicable to Common	$ 23,610
Per share	$ [illegible]
Preferred Dividends	$ [illegible]
Common Dividends	$ [illegible]
Per share	$ 3.00
Net Earnings Retained	$ 12,[illegible]
Appropriated for contingencies	$ —
Depreciation and depletion	$ 13,[illegible]

BALANCE SHEET STATISTICS

$000 OMITTED	1968
Current Assets	$ [illegible]
Current Liabilities	$ 67,[illegible]
Net Working Capital	$ 110,816
Ratio Current Assets to Current Liabilities	2.6–1
Plant and Equipment - Net	$ [illegible]
Long Term Debt	$ [illegible]
Preferred Stock	$ [illegible]
Common Stock Equity (Includes Reserves)	$ [illegible]
Per shares	$ [illegible]
Number of Common Shares	[illegible]

[fol. 1788]



1954	1953	1952	1951	1950	1949	1948	1947	1946
616,16	554,437	[illegible]	460,595	397,844	331,495	319,722	266	212,924
40,937	31,431	27,768	33,986	26,198	19,553	23,713	20,560	9,763
6.6%	5.7%	5.8%	7.4%	6.6%	5.9%	7.4%	7.7%	4.6%
20,737	15,681	14,388	15,211	14,877	12,351	14,812	12,810	6,163
3.4%	2.8%	3.0%	3.3%	3.7%	3.7%	4.6%	4.8%	2.9%
20,115	14,833	13,381	14,582	14,311	11,788	14,249	12,247	5,600
5.52	4.29	4.22	4.61	4.53	3.73	4.51	3.88	1.96
622	848	1,007	629	563	563	563	563	563
9,646	8,070	6,251	6,291	[illegible]	4,738	4,738	3,874	2,861
2.70	2.40	2.00	2.00	2.00	1.50	1.50	1.25	1.00
10,469	6,763	7,100	8,291	7,992	7,050	9,511	8,373	2,740
								1,200
11,971	10,378	8,548	8,280	7,328	6,789	6,113	5,699	5,262

* Before appropriation for contingencies.

DECEMBER 31

1954	1953	1952	1951	1950	1949	1948	1947	1946
162,995	141,439	144,009	146,336	112,569	122,913	106,565	104,307	94,159
80,665	55,546	46,367	48,329	42,227	36,253	34,282	22,514	21,133
82,330	85,893	97,638	98,007	70,242	86,160	72,283	76,273	73,026
2.0–1	2.5–1	3.1–1	3.0–1	2.7–1	3.3–1	3.1–1	3.8–1	4.5–1
181,321	166,244	148,711	142,558	129,309	108,988	105,226	94,228	81,982
55,595	50,480	61,565	63,100	46,635	51,500	32,200	32,900	33,600
15,000	18,849	25,451	25,453	15,000	15,000	15,000	15,000	16,000
206,812	187,620	169,495	161,575	153,609	145,500	139,630	130,452	113,200
56.71	54.25	88.43	51.08	48.60	46.06	44.21	41.31	39.55
3,646,533	3,458,529	3,172,242	3,163,247	3,160,101	3,158,601	3,158,601	3,157,781	2,862,434

Figures restated as in 1950 Annual Report.

THE BOARD OF DIRECTORS

Stephen D. Bechtel
President of Bechtel Corporation, San Francisco, Calif., engineers and constructors

Paul C. Cabot
President of State Street Investment Corporation, Boston, Mass.

Arthur G. Chase
Chairman of the Board of Precision Castings Company, Inc., Fayetteville, N. Y., manufacturers of die castings

Lucius D. Clay
Chairman of the Board of Directors of the Company

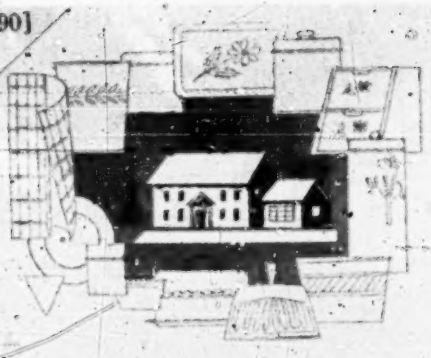
Carle C. Conway
Chairman of the Executive Committee and Consultant to the Company

George P. Edmonds
President of Wilmington Trust Company, Wilmington, Delaware

Hans A. Eggerss
President of the Company from December, 1946 to December 31, 1955, date of retirement

Francis L. Elmendorf
Senior Vice President of Robert Heller & Associates, Inc., Cleveland, Ohio, management consultants

[fol. 1790]



H. Bartow Farr
Attorney, partner in law firm of Willkie Owen Farr Gallagher & Walton, New York, N. Y.

Thomas C. Fogarty
President of the Company

John M. Franklin
President of United States Lines, New York, N. Y.

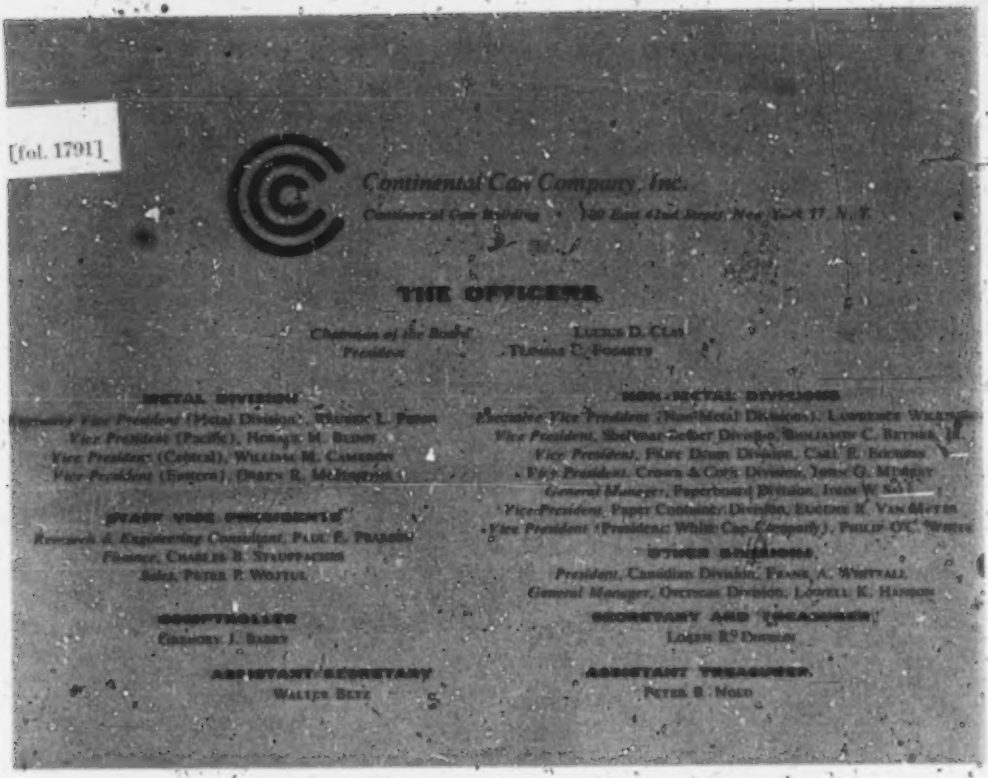
John L. Johnston
Director of Phillips Petroleum Company and Manufacturers Trust Company

Junius S. Morgan
Director and Member of the Executive Committee of J. P. Morgan & Co., Incorporated, New York, N. Y.

William I. Myers
Dean of the New York State College of Agriculture at Cornell University, Ithaca, N. Y.

Sidney J. Weinberg
Partner in Goldman, Sachs & Co., New York, N. Y., investment bankers

[fol. 1791]



Continental Can Company, Inc.

Continental Can Building · 633 East 42nd Street, New York 17, N. Y.

THE OFFICERS

Chairman of the Board — Lucius D. Clay
President — Thomas C. Foggett

METAL DIVISION

Executive Vice President (Metal Division) — Walter L. Fiser
Vice President (Pacific) — Horace M. Bleiler
Vice President (Central) — William M. Cameron
Vice President (Eastern) — Orren R. McIntyre

STAFF VICE PRESIDENTS

Research & Engineering Consultant — Paul E. Peabody
Finance — Charles B. Stauffacher
Sales — Peter P. Woitul

COMPTROLLER

Gregory J. Barry

ASSISTANT SECRETARY

Walter Betz

NON-METAL DIVISIONS

Executive Vice President (Non-Metal Divisions) — Lawrence Wilkins
Vice President — Sherman Zeller Division — Benjamin C. Betner
Vice President — Fibre Drum Division — Carl E. Roberts
Vice President — Crown & Cork Division — John G. Murray
General Manager — Paperboard Division — Irwin W. Saltz
Vice President — Paper Container Division — Eugene R. Van Meter
Vice President (President: White Cap Company) — Philip O. C. White

OTHER DIVISIONS

President, Canadian Division — Frank A. Whitsell
General Manager, Overseas Division — Lowell K. Hanson

SECRETARY AND TREASURER

Louis R. Dreier

ASSISTANT TREASURER

Peter B. Nold

OPERATING SUBSIDIARIES

Continental Can Company of Canada, Ltd.
Montreal, Canada

Continental Can Corporation
Havana, Cuba

The Container Company
Van Wert, Ohio

Wallace Container Company
Santa Ana, California

White Cap Company
Chicago, Illinois

[illegible] George P. White

[illegible] Philip O. White

Vice President Walter L. Fiser

Vice President Lucius D. Clay

Vice President and Secretary, Thomas C. Foggett

Treasurer, J. H. Farrell

TRANSFER AGENTS

Bankers Trust Company
New York, N. Y.

National Trust Company, Limited
Toronto and Montreal, Canada

REGISTRARS

Bankers Trust Company
New York, N. Y.

Canadian Bank of Commerce
Toronto and Montreal, Canada

[fol. 1792]

METAL DIVISION

FIBRE DRUM AND PAPERBOARD DIVISIONS

PAPER CONTAINER DIVISION

CROWN AND CORK DIVISION

SHELLMAR-BETNER DIVISION

EQUIPMENT MANUFACTURING

CANNERY EQUIPMENT AND CAN HANDLING SERVICE

WHITE CAP COMPANY

CANADIAN DIVISION

METAL DIVISION

Auburndale, Fla.
Baltimore, Md.
Birmingham, Ala.
Chicago Ill. (2)
Cincinnati, O.
Collierville, Tenn.
Denver, Col.
Elwood, Ind.
Gary, Ind.
Harvey, Ill.
Havana, Cuba
Houston, Tex.
Midland, Mich.
Pittsburg, Cal.
Hayward, Cal.
Los Angeles, Cal.
Malden, Mass.
Muskegon, Mich.
Milwaukee, Wis.
Oakland, Cal.
Old City, Pa.
Omaha, Neb.
Passaic, N. J.
Paterson, N. J.
Pittsburg, Cal.
Pittsburgh, Pa.
Portland, Ore.
Sacramento, Cal.
San Jose, Cal.
Seattle, Wash.
St. Louis, Mo.
Stockton, Cal.
Syracuse, N. Y.
Tampa, Fla.
Terminal Island, Cal.
Walla Walla, Wash.
Weirton, W. Va.
Wenatchee, Wash.
Weslaco, Tex.

FIBRE DRUM DIVISION

Reading, Pa.
St. Louis, Mo.
Tonawanda, N. Y.
Van Wert, O.

PAPERBOARD DIVISION

Hayward, Cal.

PAPER CONTAINER DIVISION

Los Angeles, Cal.
Memphis, Tenn.
Newark, N. J.
Three Rivers, Mich.

CROWN AND CORK DIVISION

Chicago, Ill. (Morgan Park)
Los Angeles, Cal.
Milwaukee, Wis.
New Orleans, La.
Pittsburgh, Pa.
Santa Ana, Cal. (Wallace)
Wilmington, Del.

SHELLMAR-BETNER DIVISION

Bonnieont, Tex.
Columbus, Ga.
Dover, Pa.
Mt. Vernon, O.
Newark, O.
Richmond, Va.
South Gate, Cal.
Roosevelt, N. J.

EQUIPMENT MANUFACTURING

Chicago, Ill. (2)
Seattle, Wash.
Syracuse, N. Y.

CANNERY EQUIPMENT AND CAN HANDLING SERVICE

Hayward, Cal.
Kalamazoo, Mich.
Chicago, Ill.

WHITE CAP COMPANY

Chicago, Ill.

CANADIAN DIVISION

Calgary, Alberta
Hamilton, Ont.
New Toronto, Ont.
St. Laurent, Que.
Toronto, Ont.
Vancouver, B. C.

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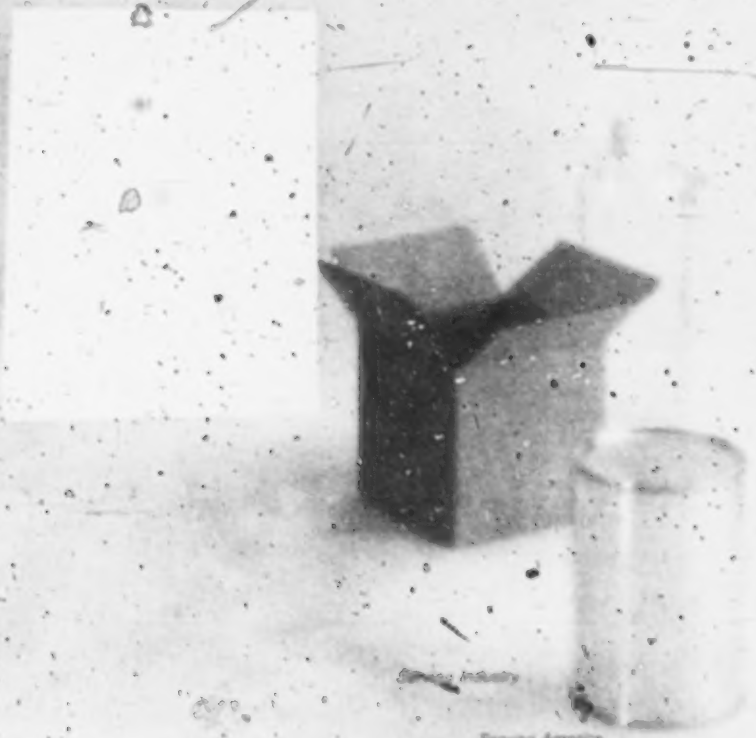
[Vol. 1795] GOVERNMENT'S EXHIBIT 1212

ANNUAL REPORT 1956

CONTINENTAL CAN COMPANY, INC.



[Vol. 1794]

The Board of Directors

The Officers

Metal Operations Group

Glass and Plastics Operations Group

Robert Gair Paper Products Group

Other Operations

Staff Vice Presidents

Comptroller	Secretary and Treasurer
Assistant Treasurers	Assistant Secretary

*Position announced May 1 by Vice Chairman of the Board.

(Also responsible for the Plant of Diversey S.A. de Mantenimiento of Southern Paperboard Corporation, a 49% owned subsidiary, and its wholly-owned subsidiary, Gair Packaging Corporation.)

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[fol. 1795]

ANNUAL REPORT 1956

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Plant Locations, Operating Subsidiaries
Transfer Agents and Registrars — 36-Inside Back Cover

CONTINENTAL CAN COMPANY, INC.

Continental Can Building, 100 East 42nd Street, New York 17, N. Y.

The cover picture symbolizes the three principal product groups of the Company: metal, glass and plastic, and paper

Annual Meeting The Annual Meeting of the shareholders will be held at the Biltmore Hotel, Madison Avenue and 43rd Street, New York City, on Tuesday, April 23rd, 1957, at 11 o'clock, A.M., New York City time. Proxies and proxy statements for such meeting will be mailed to each Common shareholder on or about March 19th, 1957.

[fol. 1796]

Sales pass billion dollar mark for first time

Broader Horizons in packaging through mergers — Hazel Atlas Glass, White Cap and Robert Gair Company

Earnings continue improvement—reach new high levels

1957 outlook – favorable.

HIGHLIGHTS OF THE YEAR

NET SALES
$1,010.3 million

Exceeded by $90.9 million or 8.7% combined 1955 sales of merged companies.

Up $344 million from sales of $666.3 million reported by Continental in 1955.

NET EARNINGS
$3.71 per Share

Compares with $3.22 per share (after 100% Stock dividend) reported by Continental in 1955 and $3.34 per share for the combined companies on a comparable basis.

$68.9 million
before income taxes

Increased $7.2 million from 1955 on combined basis and $40.6 million from amount reported by Continental in 1955.

Represented 6.8% on sales vs. 7.2% reported by Continental in 1955.

$43.1 million
after all charges

[illegible] and $4.3 million from 1955 on combined basis and $18.9 million from amount reported by Continental in 1955.

Represented 4.3% on sales vs. 3.6% reported by Continental in 1955.

COMMON DIVIDENDS
$1.80 per Share

Increased [illegible] $4.50 per share (adjusted for 100% Stock dividend) paid in 1955. On a combined basis Common dividends totalled $20.6 million, compared with $18.5 million in 1955.

The merged companies reinvested 48.5% of the combined net earnings, after all charges, in 1956 and 48.8% in 1955.

EARNINGS RETAINED IN BUSINESS
$60.9 million

PROPERTY, PLANT AND EQUIPMENT (NET)
$245.4 million

Total for combined companies increased $53.7 million from 1955. Increased $134.4 million from total reported by Continental in 1955, including increase of $25 million in timberlands.

NET WORKING CAPITAL
$139.8 million

On a combined basis, working capital declined $10 million from 1955. Compared with the amount reported by Continental in 1955, it showed an increase of $29 million.

PAPERBOARD AND PAPER PRODUCTION
1,018,400 tons

Combined tonnage increased 39,600 tons.

NUMBER OF EMPLOYEES
53,700 average

Compares with average of 53,832 for combined companies in 1955.

TOTAL ASSETS
$998.7 million

Up $62.9 million from combined amount at December 31, 1955.

Represented an investment of $11,762 per employee.

COMMON SHARES
11,174,805 Shares

Represented [illegible] of 1,343,929 shares over shares reported by Continental at December 31, 1955, after adjustment for 100% Stock Dividend.

83,809 Holders

Reduced from 87,981 Holders reported by Continental in 1955.

[fol. 1797] MANAGEMENT'S REVIEW...AND THE OUTLOOK

Once again your Company has established new high records for both sales and earnings, both as it was constituted at the first of 1956, as well as after its mergers with the Hazel-Atlas Glass Company and with the Robert Gair Company. The highlights of the year are shown on the opposite page while a more detailed Financial and Operating Review follows on pages 21 to 25.

On September 13, the Hazel-Atlas Glass Company, an important manufacturer of glass containers, glassware, and metal closures was merged into Continental Can Company; and the merger with the Robert Gair Company, a leading producer of folding cartons, shipping containers, paperboard, and other paper products was consummated on October 26. The operations of these companies for the full year of 1956 have been added to those of the Continental Can Company as it existed prior to the mergers and, where noted, figures for the prior year have been restated for comparative purposes.

We have made every effort to present this information in a form which will enable you to clearly see the effect the addition of these companies has had.

Sales and Earnings

The combined sales for the year were in excess of one billion dollars, amounting to $1,010.3 million. Earnings were $88.9 million before income taxes and $43.1 million after all charges, up 8.8 percent and 11.5 percent from the previous year. These earnings per Common share basis were $3.71 in 1956 as compared to $3.34 per Common share on a comparable basis earned in 1955.

Miscellaneous Acquisitions

During the year your Company also acquired the White Cap Company, manufacturer of metal closures, principally for glass jars, and the Canadian Crown Cork Co., Limited, which makes beer and beverage crown caps. On June 28, your Company entered into a modest investment on an equal basis with the Cochran Foil Company of Louisville, Kentucky, in a plant to manufacture aluminum foil containers.

Your Company started a program of diversification in packaging with the acquisition of a small paper container business in Utica, N. Y. in 1942. Subsequently, companies engaged in the manufacture of crowns, fibre drums, specialty bags, flexible packaging, paper cups, paper plates, and plastic bottles were acquired as a part of the diversification program. These acquisitions were not made merely to increase volume, because it is not the objective of your Management to become big just for the sake of bigness. They fitted into a program designed to give Continental Can Company a well-rounded operation; able to offer quality and competitive service in the broad fields of packaging. The importance of packaging to our economic life, the revolution in packaging methods in recent years, and the continuing

[fol. 1798]

evolution of new materials and new packages convinced us we must be represented in all fields if we hope to satisfactorily serve our customers who, in turn, serve the American consumer. We are well established in the several packaging fields although we are not the largest producer in any major field.

We feel confident of our ability to compete successfully in this dynamic, rapidly growing industry and to apply our research and engineering development to ensure that in the future we shall continue to produce better containers, more efficiently. We do not believe that a container manufacturer can be restricted to the use of a particular material in an economy in which new materials are being developed constantly, and in which old materials are being applied to new and different purposes.

We have tried to point out on pages 8 to 20 of this report the facilities and products which result from these mergers and have presented our philosophy in developing them to produce the packaging of the future.

The government brought suit to stop our acquisition of the Hazel-Atlas Glass Company alleging violation of the anti-trust laws. The courts refused to stop the merger, and the government anti-trust action is still pending. Later, on October 30, following the merger of the Robert Gair Company into your Company, the government brought an anti-trust action in New York, claiming that the merger lessened competition and created a competitive advantage in violation of Section 7 of the Clayton Anti-trust Act. Your Management and its general counsel believe these mergers violate neither the letter nor the spirit of the anti-trust laws. On the contrary, we believe that we bring into the packaging industry a heightened spirit of competition which will benefit both our customers and the consumer.

Management

Four former directors of the Robert Gair Company – George E. Dyke, Raymond F. DeVoe, Robert L. Fitts, and Parker Newhall – were named directors of your Company, with Mr. Dyke also being elected Vice Chairman of the Board. Mr. DeVoe, along with Norman F. Greenway, a senior Vice President of Gair, and Howard G. Lewis, Executive Vice President of Hazel-Atlas Glass Company, became Vice Presidents of your Company. Mr. Fitts also was elected a Vice President, but due to ill-health resigned last month both as an officer and a director. It was with much regret that we accepted his resignation and in his place as Vice President, we appointed John C. Michaud. Arthur G. Chase, a valued director of your Company for many years, now beyond the age limit for directors, resigned as an active director to be designated as an honorary director. Other changes in Management are set forth on page 25 of the Financial and Operating Review of this report.

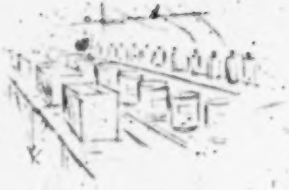
Labor Relations

Our contract negotiations with the United Steelworkers of America (C.I.O.) resulted in the establishment of a three-year agreement on wages with provision for automatic increases on October 1, 1957 and October 1, 1958. We have also entered into three-year agreements with several other unions in our paper container and printing operations. We believe that these three-year con-

tracts will result in further improvement in Labor-Management relations. On the whole, these relations were good in 1956 and contributed materially to the excellent financial showing for the year. We propose to continue our efforts to improve understanding between Labor and Management. We are confident that the people who work for Continental Can Company want to contribute to its progress and that they have a real interest in efficient production.

Capital Expenditures

Your Company spent $80.5 million for capital improvements in 1956, including $6.9 million spent by Hazel-Atlas, $2.5 million by White Cap, and $22.5 million by Robert Gair. In addition to these capital expenditures, $12.1 million were spent for land and buildings on lease-back arrangements.



New plants in process during the year include metal can plants in Cincinnati and in the Metropolitan New York area; a new paper container plant in Three Rivers, Michigan; and a new glass plant in Plainfield, Illinois. Extensive improvements are also being made at the Hopewell, Virginia, and Hodge, Louisiana, paper mills. Your Company continued to acquire woodlands throughout the year to support its several paper mill operations.

We plan to spend $170 million in capital improvements over the next few years exclusive of some additional facilities to be financed on lease-back arrangements. We believe these expenditures are necessary to provide facilities for the expanding markets for our products, and to reduce costs through the introduction of faster and more efficient equipment.

Outlook

We believe that the country will enjoy a high level of economy in 1957, in which there will be continued growth in all segments of your Company's operations. Our plants and facilities are in excellent shape, and with labor peace assured we anticipate another good year. The full advantages of our recent mergers will only begin to show in 1957, as the full savings in overhead to be derived from them must be attained gradually. Nevertheless, we anticipate that these recent acquisitions will contribute their proportionate share to the sales and earnings of your Company in 1957 and even more in the years ahead. Your Management believes the Continental Can Company to be an alert and capable organization which, with the broadened base of products and materials for packaging, expanded research and engineering development, is prepared as never before to meet the ever-changing needs of our customers, for in serving them well we are fulfilling our objective as a company of "Serving Industry – Serving America".

By order of the Board of Directors.

President *Chairman of the Board*

March 11, 1957

3297

[f.l. 1800]

THE FINANCIAL YEAR

What we received and what we did with it

	1966 Total (Millions)	1965 Combined† Total (Millions)	1965 As Previously Reported † Total (Millions)	1966 Per Common Share	1965 As Previously Reported Per Common Share*
Income					
Net amount billed to customers and other income	$1,013.1	$932.1	$668.2	$90.66	$91.18
Expenses					
For salaries and wages to employees	251.6	228.8	146.8	22.52	20.03
For employees' benefits – (vacations, pensions, social security, rest periods, etc.)	53.7	46.2	32.2	4.81	4.39
For materials and outside services	582.1	542.4	419.5	52.09	57.24
For taxes of all kinds (except on purchases and for social security)	52.8	48.3	28.9	4.72	3.95
For wear and tear on plants and tools	23.4	22.2	13.6	2.09	1.86
For interest on money borrowed and exchange	5.5	4.2	3.0	.49	.41
Total	969.1	892.1	644.0	86.72	87.88
Minority Interest in Income of Subsidiary	.9	1.3	—	.08	—
Balance (Net Income)	43.1	38.7	24.2	3.86	3.30
Used for dividends to Preferred shareholders	1.6	1.4	[redacted]	.15	.08
Available after payment of Preferred dividends	41.5	37.3	[redacted]	3.71	3.22
This Was Used For					
Dividends to Common shareholders	20.6	18.4	11.0	1.84	1.50
Reinvestment in the business	20.9	18.9	12.6	1.87	1.72
	$ 41.5	$ 37.3	$ 23.6	$ 3.71	$ 3.22

†See note 1 on page 31

*Adjusted for 100% Stock Dividend

[fol. 1801]

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1956 IN BRIEF

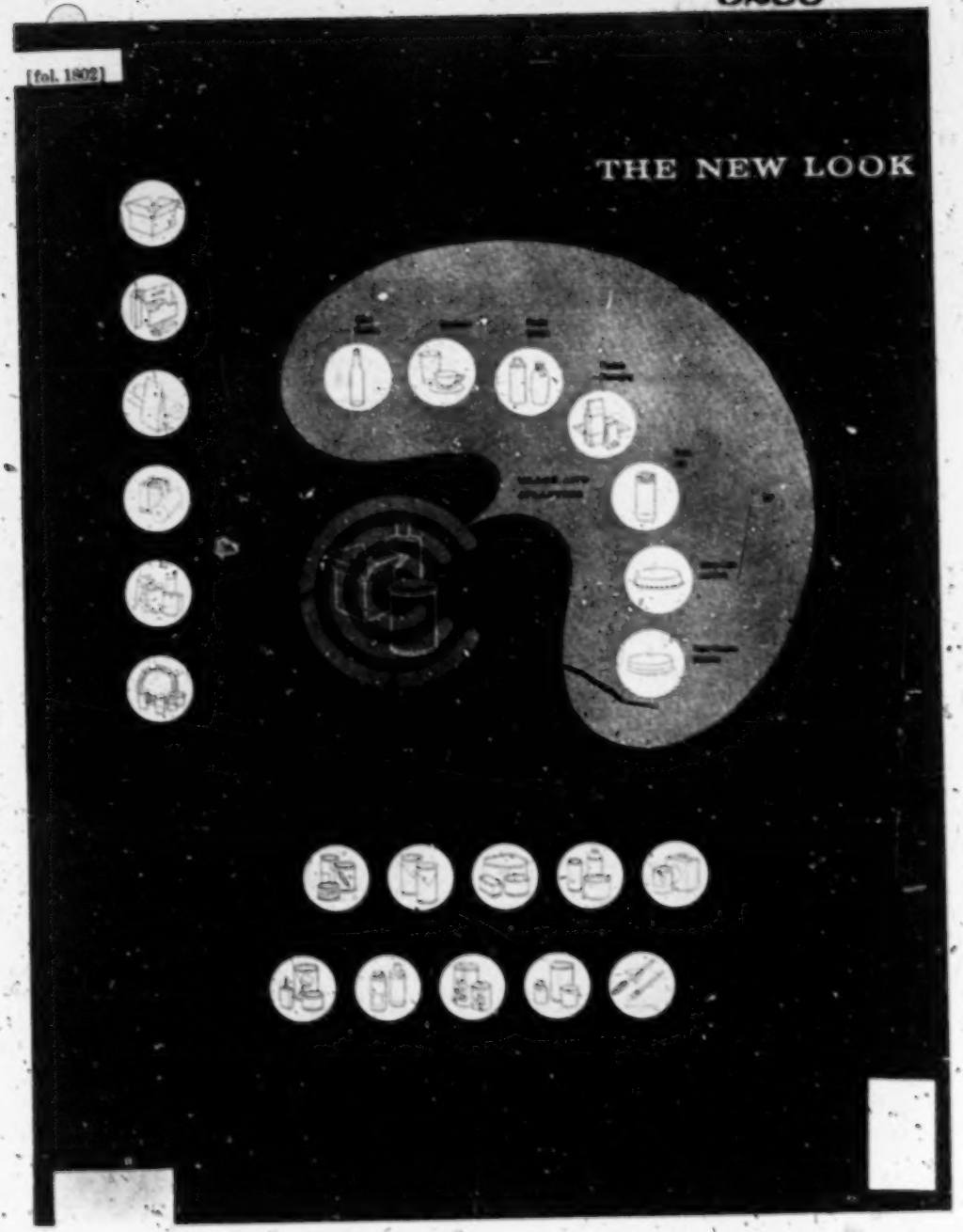
What we had to work with at end of year

	1956 Total (Millions)	1955 Combined* Total (Millions)	1955 As Previously Reported Total (Millions)	1956 Per Common Share	1955 As Previously Reported Per Common Share*
Our Working Capital					
Money and short term securities	$ 39.9	$ 61.0	$ 30.3	$ 3.37	$ 4.13
Amount due from customers and others	72.8	57.9	37.6	6.51	5.13
Materials and products for use or sales	158.9	141.3	110.7	14.22	15.11
In terms of cash, the above amounted to	271.6	260.2	178.6	24.30	24.37
Against this, we owed for bank loans, commercial paper, bills, payrolls, taxes, dividends, etc.	131.8	90.3	67.8	11.79	9.25
After paying what we owed currently, the amount of working capital left to run the business was	139.8	169.9	110.8	12.51	15.12
Our Tools and Other Assets					
Land, buildings and equipment, after allowance for wear and tear	343.4	289.7	189.0	30.73	25.79
Investments, advances and other assets	18.7	19.0	14.3	1.68	1.95
Total of What We Had to Work With	501.9	478.6	314.1	44.92	42.86
Against this, we owed long-term debt	116.4	115.4	79.6	10.42	10.86
Minority Interest in Subsidiary	8.8	8.3	—	.79	—
The Remaining Balance representing the shareholders' interest in the business was	376.7	354.9	234.5	33.71	32.00
Of the above, the Preferred shareholders' investment was	38.4	38.8	15.0	3.44	2.05
This Left as the Value of the Common Shareholders' Interest in the Company, including operating reserves	$338.3	$316.1	$219.5	$30.27	$29.95

*See note 1 on page 31

*Adjusted for 100% Stock Dividend

[fol. 1802]



AT CONTINENTAL

The many different types of packages on the preceding page show—at a brief glance—the 'new look' that Continental presented to its Shareholders and customers at the end of 1956.

Many of Continental's Shareholders, customers and friends have known the Company for years. But there are also many newcomers, particularly among the owners of the Company, who are not acquainted with the nature and breadth of our product lines. We believe a review of our products and the place which they hold both in today's markets and in the projected markets of tomorrow will be of interest.

The "WHY" of Packaging's Growth

The packaging industry reflects the dynamic forces which have provided the progress and prosperity which our economy enjoys today. Among the more basic of these are marked population growth, rapid industrial expansion, and the ever-increasing variety of goods and services offered to the American consumer. As our "horn of plenty" becomes more abundant, our need for more and better packaging expands.

This economic growth has been accompanied and aided by strong competitive forces. In the packaging industry the competitive situation can thus spell opportunity for the alert package manufacturer, or hardship for one who fails to recognize and adapt to new developments. For the dominant characteristic of packaging demands today is their variety. At the same time, they call for improvement in quality and manufacturing methods. The focus of these demands is an ever-shifting one—on new merchandising advantages; on low-cost, convenient and more attractive ways of presenting packaged goods.

This process of competitive growth is not new. Just as the railroads shattered the dreams of the canal-builders, just as horses and mules were replaced with the advent of gasoline-powered vehicles, similar changes have taken place, and will continue to take place, in packaging. Half-bushel baskets, cloth bags, wooden barrels—to name just a few, largely have been supplanted by other packages. Consider all the new packaged products that have appeared within less than a generation—detergents, soluble coffee, frozen foods—to mention a few. Consider how differently motor oil, beer, coffee, citrus products, bakery goods and many other commodities were packaged for consumer use 25 years ago.

In keeping with its motto – "Serving Industry – Serving America" – Continental has long pursued a policy of both improving and diversifying its product lines in order to service its varied and ever-broadening customer fields. At the same time it has sought to establish itself among the leaders in each of its packaging fields.

The result of these policies has been a dramatic growth for Continental. Equally dramatic, however, has been the growth of the packaging industry – and more basically, the rise of the American economy and our standard of living. Thus Continental's ten-fold increase in packaging sales during the past two decades has enabled it to do little more than keep pace with the growth of the packaging industry.

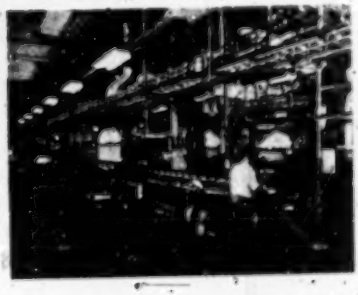
Continental's Present Position

In 1956 Continental became by far the most comprehensive packaging company with the acquisitions of the White Cap Company, the Hazel-Atlas Glass Company and the Robert Gair Company. Continental, as a result, can now supply American industry with a broad line of packaging products and services. It can now meet packaging demands, whether the container required is made of metal, paper, fibre, plastic, glass or composite materials.

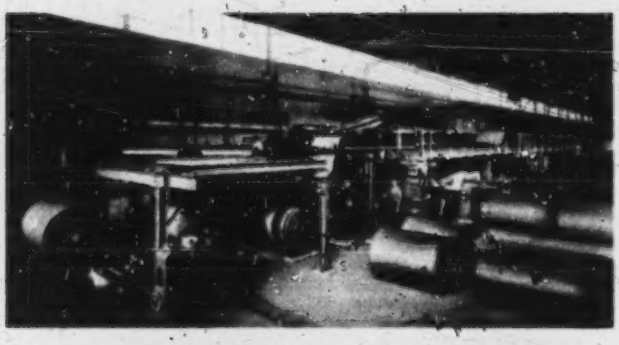
To complement the Company's philosophy of product improvement and diversification, an organization policy of decentralization has been pursued and effected. Leadership in each of the packaging fields is sought by providing individual attention to their respective service and quality needs. Each operating division within Continental performs the sales, manufacturing and research functions in its particular field. Each is an effective industry competitor and equipped to provide the highest quality and service. In addition, the Company is uniquely equipped to deal with the packaging industry as a whole through its broad base of trained personnel, research, and manufacturing knowledge.

Continental's gradual development to its present position has been the result of a long-term Management philosophy stemming from a belief in America's economic expansion and the natural corollary of industry's increasing need for better and more varied packaging. This philosophy and the

In a Continental equipment manufacturing division plant, many types of machines are built for our can manufacturing plants.



The can body forming and side seam soldering operations are made on one machine in a can plant, after which the cans are conveyed at right for flanging of tops and bottoms.



On this combiner at Gair Company of Canada Limited's Toronto Container Plant, liners are heated from three separate reels as they are brought together to form a single web of corrugated board for shipping containers.

development it has fostered also serves to protect and improve the shareholders' position. The assets of the Company represent a strategically located group of facilities to produce a range of product lines which can meet packaging problems where and when they occur. Most important, they represent a breadth of knowledge and a devotion to research and development, both of which are essential in serving America's packaging needs.

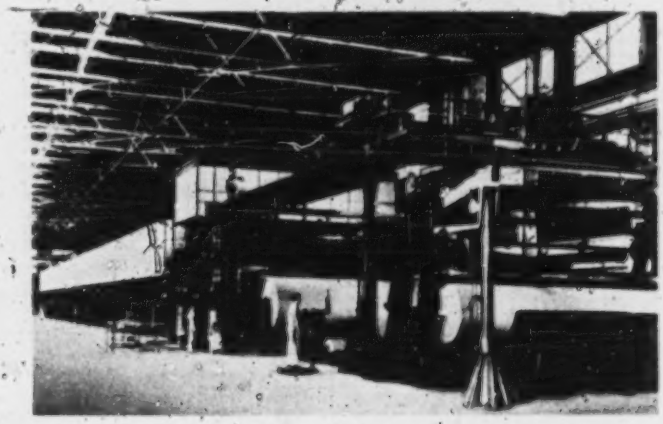
Of prime importance to the Company and its shareholders are the many customers and, in turn, their customers who are the final arbiters of packaging progress. The Management feels that its own growth is evidence that Continental's philosophy in the packaging field is in the best interest of its customers.

Importance of the Gair Merger

The Robert Gair Company is a major producer of folding cartons, shipping containers and kraft bags and gives Continental a broadened product scope in the paper field. Gair facilities include a total of 37 plants in the United States and Canada. Of this number, 26 are in the United States, 10 producing folding cartons and 14 producing shipping containers. All of these plants are strategically located to serve major consuming areas. The Gair Company also brought to Continental two mills, one at Hodge, Louisiana, and the other at Port Wentworth, Georgia. Both are substantial producers of container board. In addition the Hodge mill produces kraft paper. A substantial bag fabricating operation is also carried on at that location. The merger increased Continental's timberland resources so that Continental's operations are now supported by about one million acres of timberland. Forest management thus has become a major activity of the Company. More than 18 million seedlings are being planted during the 1956-57 season to protect and improve these valuable woodland assets.

The Robert Gair Company began its long history just after the Civil War when a young man from Scotland, who gave his name to the firm and became an important influence in the new field, founded the Company in Manhattan.

This 430-foot Fourdrinier kraft paperboard machine at the subsidiary Southern Paperboard Corporation's Port Wentworth, Georgia, mill turns out a continuous sheet of board 20 feet wide at speeds of fourteen hundred feet a minute.



A roll of boxboard is moved from the dry end of a cylinder paperboard machine at the Tonawanda, New York, boxboard mill to a rewinder, where it will be cut into smaller rolls.

In those days of wooden barrel packaging and ancient merchandising systems, Mr. Gair found plenty of room for new ideas. In 1879 he devised a system to produce folding cartons economically and this played an important part in revolutionizing the ability of packers to ship their wares efficiently and over wider areas. About the turn of the century, with the folding carton a success, Gair began producing shipping containers and, as demands for modern packaging increased, so did the demand for raw material. Therefore, Gair began acquiring paperboard mills and more fabricating plants and later its own timberlands. More recently, it began producing kraft bags and wrapping papers.

The Gair product line has been well adapted to the very rapid growth in demand for paper and paperboard packaging products in recent years. Highlights of recent Gair developments in the product field include the introduction of the Jak-Et-Pak, a new multiple-pack can carrier, together with a high-speed machine for the package assembly; a new stabilized boxboard giving protection against rancidity and a special boxboard that inhibits corrosion of metal parts.

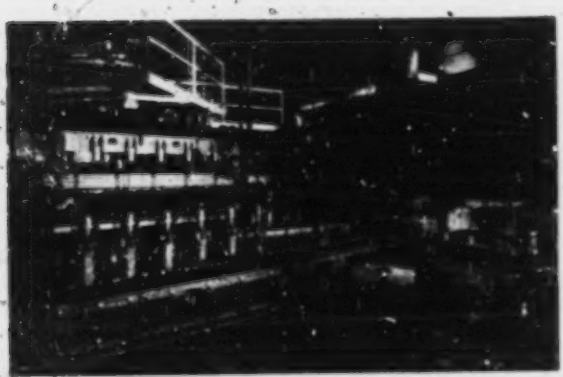
Our Entry Into the Glass Field

Glass containers and glassware were added to the Continental product line by the Company's recent acquisition of the Hazel-Atlas Glass Company. The packages produced by Hazel-Atlas complement, rather than compete with, Continental's previous product lines. Continental proposes to promote vigorously the sale of glass containers and to strengthen the historical position which Hazel-Atlas has enjoyed in the glass container industry. Continental now can also provide an extensive line of glassware and industrial items.

Hazel-Atlas' present facilities include 14 plants spotted from coast to coast. One of the most modern plants in the industry was just placed in operation by the division at Plainfield, Illinois.

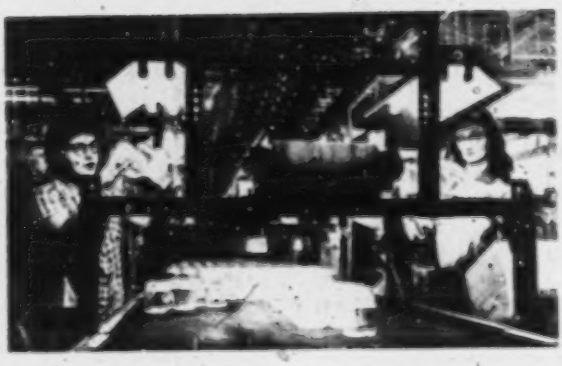
A program for modernization and improvement is currently under way. The program includes entry into new container fields, erection of new plants, enlargement and modernization of existing plants and installation of the latest glass-making equipment.

The White Cap Company, acquired early in 1956, is the foremost producer of metal vapor-vacuum closures and has pioneered the vapor-vacuum closing method. Outstanding in recent developments by this company is the new twist-off cap. Such developments promise to maintain White Cap's leadership position.



A modern, high speed machine forms the necks and then blows out six containers to their precise shape. The containers then are carried to the lehr (oven) at right for annealing.

Sand, limestone, and other raw materials flow from the batch mixer through automatic feeders into a glass furnace.



Two inspectors visually check quality of finished glass containers as they are carried from the lehr on a lighted conveyor.

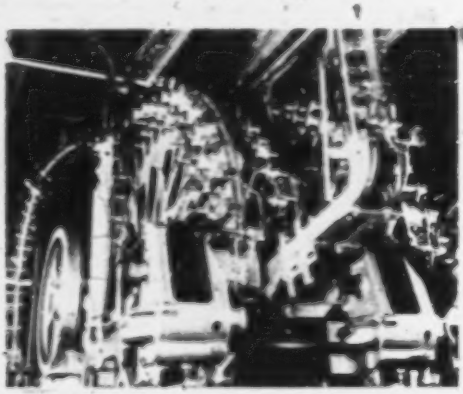
Progress in Metal Cans

The dramatic appeal of diversification of the product line may cause some observers to lose sight of the real and substantial progress made by Continental's older divisions during 1956.

The metal can was by far our most important product in 1956, as it has been in every year since the Company opened its first plant in Syracuse, New York, in 1905. Our metal operations again demonstrated their leadership this year through a marked increase in volume, and the contribution of a number of advances in production and container technology. Among the latter, the year saw wide acceptance in the beverage industry of the "Cushion Seal" can end, which provides positive protection against metal exposure for beer and other beverages. The new "Savorlock" can, which features both a tamper-proof seal and firm reclosure, demonstrated its advantages for the marketing of powdered products. The "Gripstrip" self-tracking rip strip quickly became a standard feature of key-opening cans for such items as coffee and meat. The new outside-curled paint can for water-base and latex-base paints received wide acceptance. Also the merchandising advantages of, and the market for, aerosol cans were broadened by the first successful side seam striping, which makes possible a uniform color over the can's entire surface.

Continental's ability to generate an ever-increasing flow of new and improved cans, together with the machinery to produce and close them, received real impetus during the year with the opening in Chicago of the world's largest integrated research and development center for metal cans. The year also saw the completion nearby of a new research and engineering center devoted to basic research covering the entire packaging field. These two centers, employing about 700 scientists and technicians, serve as active symbols of Continental's determination to provide leadership in each of its packaging fields while contributing those advances which can spring only from an intimate knowledge of all fields. Thus the one center is devoted entirely to the metal field and is closely geared – as is each of our division research operations – to the materials, machinery and containers used by or produced by the division. The other center looks to the future and is free to roam the frontiers of packaging.

The double seaming machine is fed with can ends by an operator and assembles the bottoms to the can bodies as they are hermetically sealed.



A rotary air tester is used to make sure there are no leaks in the cans. Test cans with minute holes are sent through periodically for protection against machine failure.

Progress in Other Products

As in the case of metal cans, diversification into glass and paper products did not diminish the vigor of facility and product improvement in the divisions which comprised the Continental of 1955. In each of these divisions, Continental had entered a packaging field by the acquisition of a relatively small company, but its growth in each field has been mainly through internal expansion and development of equipment and facilities.

The Company's Paper Container Division has for several years been a major producer of drinking cups and paper tubs. Recently it added a line of plastic coated paper plates and paper containers with metal lids. Last year its "Bondware" line of paper plates and cups was augmented by a new "Silver Service" line of foil-laminated plates and by various "Bonded Finish" products having the appearance of fine china. New lines of plastic cups and containers for dairy products and other foods were added during the year. In 1957 this division will begin operation of its new Three Rivers, Michigan, plant, one of the most modern in the industry.

The Company's fibre drum business dates from December, 1942, when it acquired a company with one plant in production. Since that time, five additional plants have been established to take care of the growing demand for this package for use in the shipment and storage of dry chemicals and other dry products. The division's newest plant was put in operation last summer at Midland, Michigan. The recent addition of the "Liquipak" fibre drum to its line, which is suitable for the packaging of many liquid products, resulted from Continental's research work.

The Crown and Cork Division operates six plants. Its products have been expanded in recent years to include plastic "squeeze" bottles, molded and vacuum-formed plastic containers and "Conolite", a plastic laminate used for surface coverings, electrical insulation and other purposes. A new line of "short-skirt" crowns introduced by the Company last year marked a major development in this field. These caps use less steel, require less storage space and are made with either a plastic or cork lining.

The Company's Shellmar-Betner Division started in 1953 as a combination of the flexible packaging business acquired from Shellmar Products Corporation and the bag business acquired from the Benjamin C. Betner Company. Eight plants are now in production on this line of products which includes the extrusion of polyethylene and the lamination, printing and conversion into bags and containers of various types of papers, foils and films. One of the most recent additions to its product line is "Conomet", a metalized yarn produced under the Company's process of applying vaporized metals to mylar and other materials. The recent trend to individual packaging of meats, vegetables, foil packaging for frozen foods and bakery products and transparent bags for textile products has added to the division's products.

Aluminum foil containers were added to the Company's product line through a joint venture started last year with Cochran Foil Company of Louisville, Kentucky through the formation of the Cochran Continental Container Corporation.

Future Plans

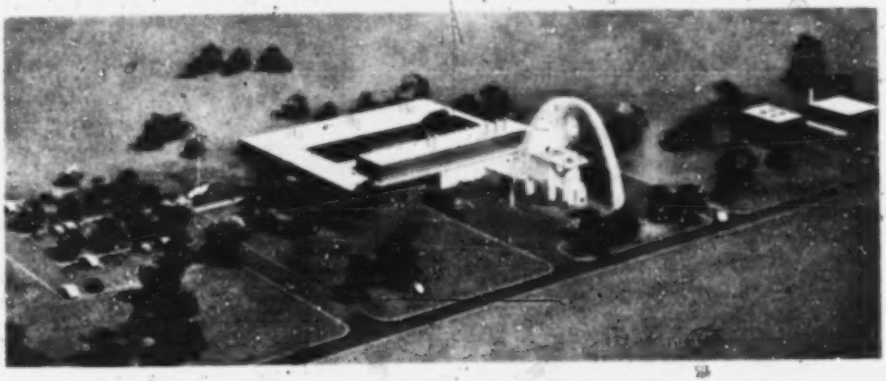
The foregoing pages have reviewed some phases of the Continental of 1956. There is no safe way to predict the exact composition of the Continental of 1966 or 1976. No one knows precisely how large the population will become in the next 20 or even the next 10 years, how the country's economic growth will fare, or what scientific and technological developments will affect our consuming habits. Most "experts" who guess at these trends have revised their figures upward from earlier projections. As in the past, Continental's future is closely tied with that of the general economy. The Company continues to have faith in that future and in the new merchandising trends that will take place with scientific research unveiling new ways to bring products to the American public more economically and efficiently. Again, as in the past, these varied forces of change present opportunities for progress as well as challenges to tradition.

Looking to this future, the Company has joined with nine other companies in varied industries to begin construction this year of a nuclear reactor at Plainsboro, New Jersey. Continental's scientists will use the facility to make long-range studies of how gamma rays affect packaging materials and how radiation can best preserve foodstuffs and other products. This is an area of activity that poses many problems and much potential.

The Company will continue constantly to seek out opportunities to improve and broaden its services to customers. Besides research activity devoted to the discovery and creation of better materials and improved methods for packaging, the Company will search for opportunities to extend present day packaging to products still sold in bulk and to promote the packaging of new products as they come on the market—always in whatever way consumers may prefer.

We are confident that the demand for the Company's products will more than keep pace with the country's expanding economy. The Company expects to continue to develop leadership in packaging with its eyes firmly on the future in "Serving Industry—Serving America."

Continental will research the broad effects of radioactive preservation of foods at this nuclear reactor, shown in model form, being constructed this year at Plainsboro, New Jersey



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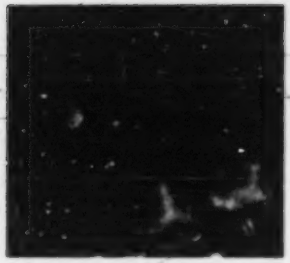
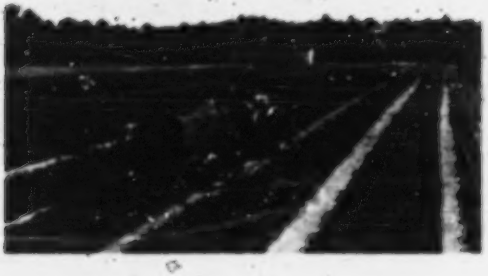
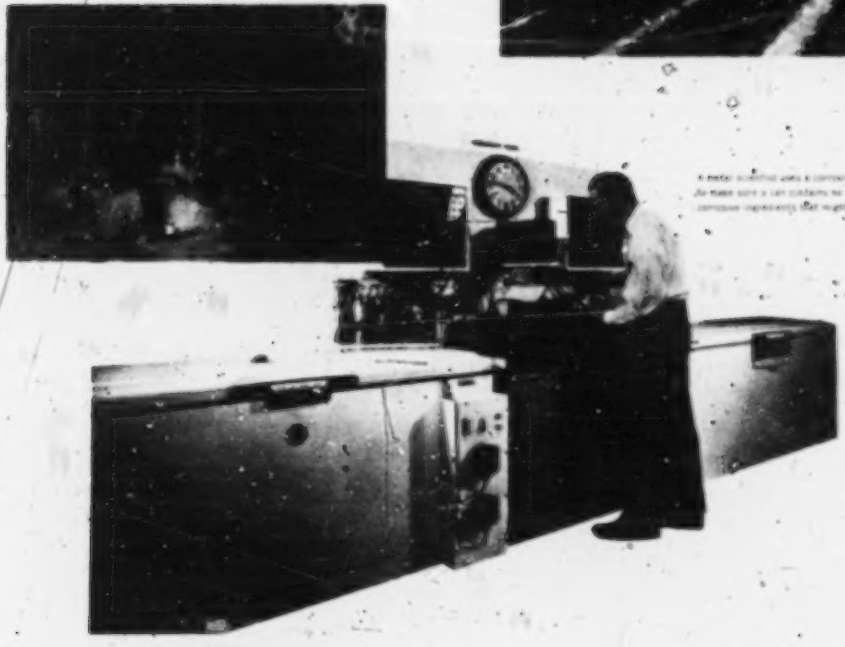


A machine operator checks grass containers as they come from the forming machine.

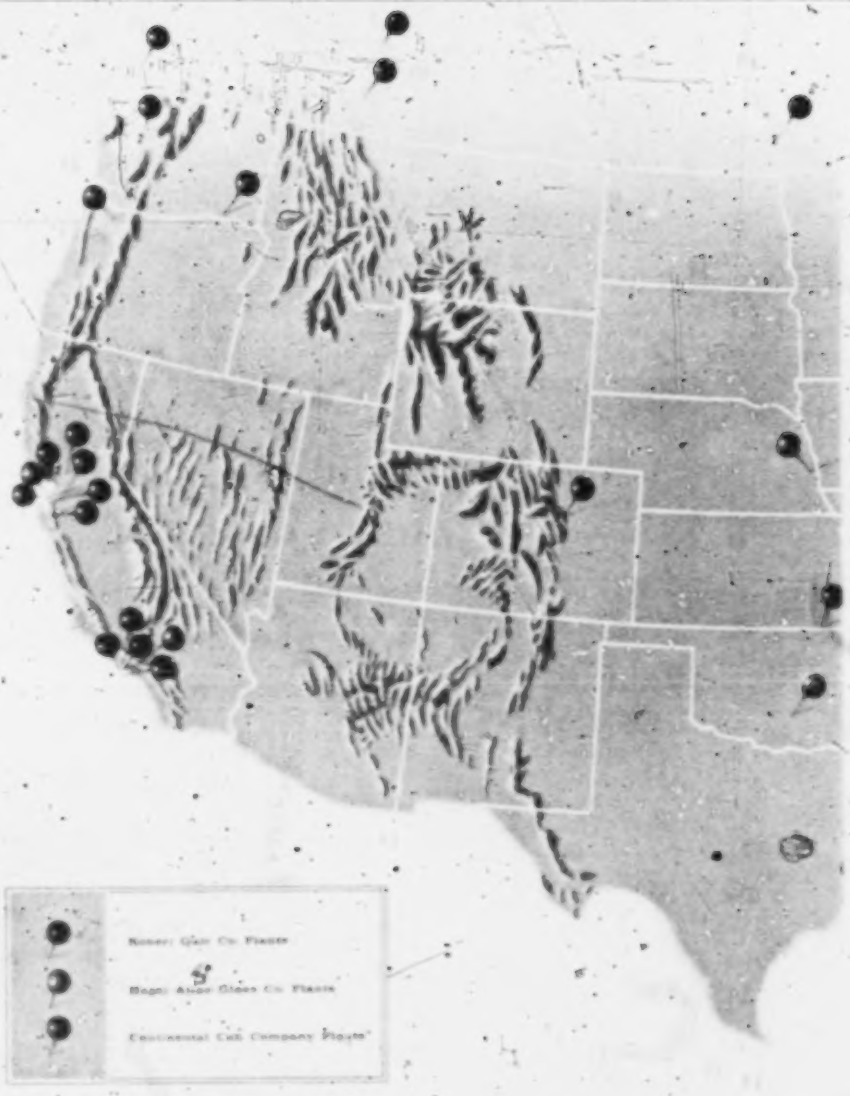
Continental's forest nurseries, with a combined capacity of 20 million pine trees a year, provide seedlings for reforestation and tree distribution to smart landowners near the mills.



Harvesting [illegible] takes place in one of Continental's [illegible] which totes nearly a mile of acres in [illegible] states.



A metal [illegible] uses a [illegible] laser to make sure a can contains no corrosive ingredients that might harm products.

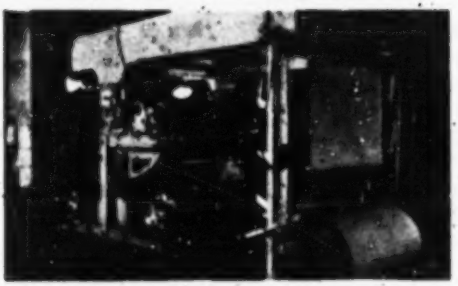

Libbey-Owens Glass Co. Plants
Hoge Auto Glass Co. Plants
Centennial Cut Company Plants

The accompanying map shows at a glance the additional plant facilities by location which were brought to the Company through its mergers with Ha[illegible]-Atlas Glass Co. and Robert Gair Co. As indicated, the Company's 139 plants are strategically located throughout the United States, Canada, and Cuba.

[fol. 1814]

At this new $7,000,000 Metal Research and Development center at Chicago, scientists in this laboratory can discover any foreign or natural substance in any canned product.

Pressman at the Hodge, Louisiana, kraft bag and paper plant adjusts a press which prints kraft paper and feeds it directly into a bag machine.



A plant packing plant in the Metal Research ... and Development headquarters is equipped to pack any product for test purposes. Continental Plan can aid any customer with packing problems.

...cartons are created at the Can Group's Fivehpint, New York, folding carton plant

FINANCIAL AND OPERATING REVIEW

Sales and Earnings

Sales and earnings broke all records both before and after giving effect to the mergers with Hazel-Atlas Glass Company, Robert Gair Company, and White Cap Company. Net sales totaled $1,010,268,000, compared with $929,428,000 in 1955 for the merged companies—an increase of $80,840,000 or 8.7 per cent.

As shown in the table below, all product groups contributed to the increase.

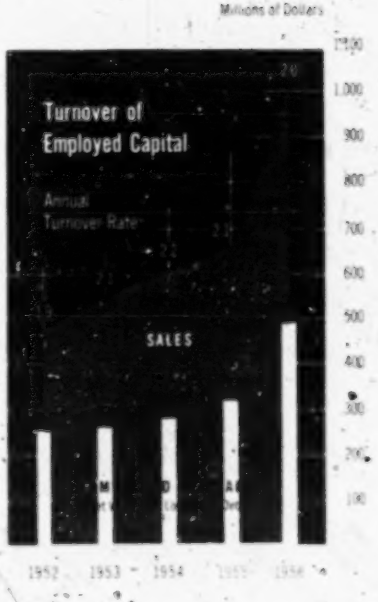
Sales by Product Groups (Expressed in Millions of Dollars)

Product Group	1956 Total	1956 % of Total	1955 Total	1955 % of Total
Metal Operations	$ 533.5	52.8	$478.4	51.5
Glass and Plastic Operations	160.2	15.9	156.0	16.8
Paper Operations	261.2	25.9	241.0	25.9
Other Operations	55.4	5.4	54.0	5.8
Total	$1,010.3	100.0	$929.4	100.0

After income taxes and minority interest in income of a subsidiary, net earnings amounted to $43,143,000 or 4.3 per cent on sales compared with $38,693,000 or 4.2 per cent on sales in 1955. After preferred dividends, earnings were equivalent to $3.71 per share on 11,174,805 shares of common stock, as against $3.34 on 11,115,515 shares in 1955, after adjustment for the 100 per cent stock dividend distribution by Continental on February 15, 1956, and the shares issuable in connection with the above mergers.

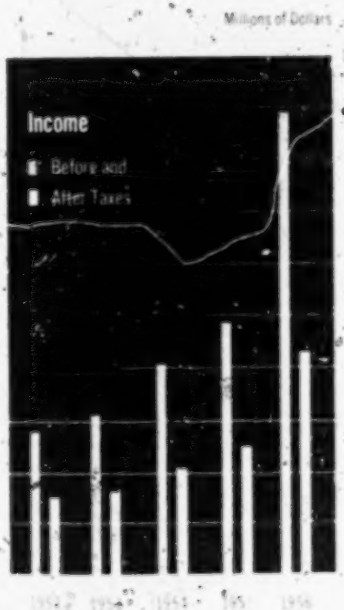
Earnings before income taxes in 1956 amounted to $88,861,000 or 8.8 per cent on sales, compared with $81,649,000 or 8.8 per cent on sales in 1955.

Depreciation and depletion provided out of operating income amounted to $23,421,000 in 1956, against $22,195,000 in 1955. Accelerated depreciation under approved Necessity Certificates, included in these totals, amounted to $1,329,000 in 1956 and $1,306,000 in 1955. For tax purposes, but not for book purposes, capital expen-



ditures since January 1, 1954, have been depreciated on "the sum of the years–digits" or "declining balance" methods. This has had the effect of reducing income taxes for the year 1956 by approximately $1,300,000 and for the year 1955 by about $750,000.

Dividends paid by the merged companies on the Preferred stock issues amounted to $1,628,000 and on their respective common shares totaled $20,596,000. After providing for these dividends there remained $20,919,000 or 48.5 per cent of total net earnings, which were reinvested in the business. In addition to regular dividends on the $3.75 Cumulative Preferred stock and on the Second Preferred stock ($4.50 cumulative), regular quarterly dividends of $.45 per share were paid on the Common stock on March 15, June 15, September 15, and December 15. A 100 per cent stock distribution was also paid on February 15, 1956, to holders of Continental Can shares of record on January 10, 1956.



The ratio of current assets to current liabilities on December 31, 1956, was 2.1 to 1, which compares with the ratio of 2.9 to 1 on December 31, 1955. Current assets totaled $271,630,000 and current liabilities $131,807,000. Working capital of the merged companies decreased during the year from $169,863,000 to $139,823,000. This was due principally to the large capital investments in new and improved facilities and timberland additions.

Gross capital expenditures during 1956 totaled $80,524,000. Of this amount $6,851,000 represented expenditures of Hazel-Atlas Glass Company prior to its merger with Continental Can Company and $22,516,000 represented expenditures of Robert Gair Company prior to its merger with Continental. The expenditures of Continental included the acquisition of land in southern Michigan as a future metal can plant site; increase in facilities for the production of metal cans for beer, fruits and vegetables, coffee, oil, shortening, meat, and detergents and lithograph equipment at various plants in the United States and Canada; the erection of new warehouses at Los Angeles and Chicago; improvements to the Central Research and Engineering buildings at Chicago; expansion of the flexible packaging operations at Mount

Vernon, Ohio, and installation of new gravure color presses, laminator equipment, and bag machines at various locations. The expansion of the Company's Hopewell, Virginia paper mill to include a semi-chemical pulp operation was completed during the year and is now in production.

The expenditures of Hazel-Atlas Glass included the construction of a new warehouse at Ada, Oklahoma, the equipping of its new glass plant at Plainfield, Illinois and the installation of new high speed forming machines, decorating equipment, and other glass-making equipment at various locations.

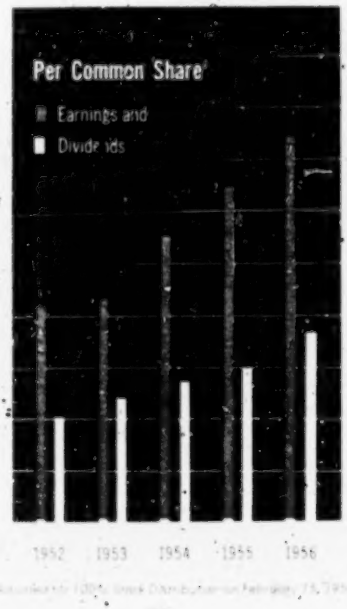
The expenditures of Robert Gair included carrying forward the program of improvements at the Hodge, Louisiana, pulp and paper mill, substantial additions to timberlands, particularly in the area immediately adjacent to Hodge and the erection of a new corrugated box plant at Cleveland, Ohio, to replace one formerly operated in rented property.

Organization Changes

In addition to the organization changes referred to in the Management Review section of this report on page 4 affecting the directors and certain officers of the acquired companies, the following additional changes in the Management have also occurred: Carl E. Eggerss, Vice President, Fibre Drum Division, and Paul E. Pearson, Research and Engineering Consultant, retired during the year under the Company's retirement plan. Mr. Eggerss was succeeded by Peter P. Wojtul, formerly Vice President-Sales, who became Vice President and General Manager of the new Fibre Drum and Corrugated Box Division, and Raymond G. Fisher became Director of Sales Research and Promotion. Lawrence Wilkinson was designated as Executive Vice President of the Glass and Plastic Operations Group and George E. Dyke, Vice Chairman of the Board, was placed in charge of the Robert Gair Paper Products Group. Benjamin C. Betner, Jr., formerly Vice President, Shellmar-Betner Division, was appointed as Vice President, Sales—Glass and Plastic Operations Group. Raben C. Schenk, formerly Control Officer, as General Manager, Shellmar-Betner Division; and Howard T. Heun as Control Officer. James J. Donahue, former Sales Manager, General Line (Eastern Metal Division), became General Manager of Sales for the Hazel-Atlas Glass Division. John N. Carty and Ernest Meyer, former treasurer of Robert Gair, were appointed Assistant Treasurers. Harold von Hasslacher, former assistant comptroller of Robert Gair, was appointed an Assistant Comptroller.

Statement of Cash Flow

	Millions of Dollars
Source	
Cash and U.S. Government securities of combined companies January 1, 1956	$ 61.0
Net income, before income taxes	88.9
Depreciation and depletion	23.4
Increase in bank loans and commercial paper	16.2
Increase in other current payables	25.3
Increase in long term debt, less redemptions	1.0
Sale of Common stock to employees	.9
Sale of fixed assets	3.4
Decrease in other assets and reserves (net)	2.3
	222.4
Use	
Income taxes	$ 44.8
Minority interest in income	.9
Dividends on Preferred stocks	2.6
Dividends on Common stocks	20.6
Increase in receivables	14.9
Increase in inventories	17.6
Increase in land, buildings, equipment, etc.	67.8
Increase in timberlands	12.7
Increase in investments	1.5
	182.4
Cash and U.S. Government securities of combined companies December 31, 1956	$ 40.0



Employee Group Insurance and Pensions

Under the Company's group insurance plan, employees, and to some extent their dependents, are covered by a comprehensive non-contributory group insurance program including hospitalization, surgical, health and accident, physicians' attendance, and life insurance benefits. The net cost per year to Continental of this group insurance for its employees for the policy year ending June 30, 1956, prior to the effective date of the mergers, was $5,813,742 compared with $5,066,380 for the previous policy year. On December 31, 1956, a combined total of $364,122,800 of life insurance was in force for 53,991 employees of the merged companies (including $7,164,425 for retired employees). During the latest policy year, the total claims paid by insurance companies to employees and dependents of the merged companies amounted to $6,805,391, of which $1,654,934 was for death claims.

At year-end there were 1172 employees retired and receiving monthly pensions under the various retirement plans of the merged companies. This represented a net increase of 389 persons during the year. During 1956 a total of $6,000,000 was provided for the Continental Pension Fund for United States employees and $492,000 (Canadian) for employees of Continental Can Company of Canada, Limited. This compared with 1955 figures of $5,400,000 and $444,000 (Canadian), respectively. In addition, a total of $2,340,042 was provided in 1956 for the pensions of Hazel-Atlas, White Cap and Robert Gair employees.

Stock Option Plan

On March 14, 1956, options to purchase 16,200 shares of Common stock at a price of $40.25 per share were granted to nine key employees under the existing plan approved by the Shareholders in 1951. During the year, a total of 31,444 shares of the authorized but unissued Common stock was sold to 68 employees upon exercise of purchase options under the plan, including shares issued to cover the adjustment for the 100 per cent stock distribution of February 15, 1956.

At December 31, 1956, 101 key employees held options to purchase a total of 228,100 shares of Common stock under the plan after giving effect to the 100 per cent stock distribution of February 15, 1956, where applicable. Of this total, 42,556 shares were granted in June, 1951, at a price of $17.50 per share, 16,164 shares in December, 1951, at a price of $21.375 per share, 65,728 shares in June, 1953, at a price of $24.125 per share, 88,336 shares

in December, 1955, at a price of $38.75 per share, and 15,376 shares in March, 1956, at a price of $40.25 per share. All of these options are exercisable in equal annual instalments from the date granted and expire on June 21, 1961. The price of the shares in each case is approximately 95 per cent of the market price on the date the option was granted after adjustment for the 100 per cent stock distribution mentioned above, where applicable.

Our Shareholders

On December 31, 1956, there were 1,206 holders of the outstanding 150,000 shares of $3.75 Cumulative Preferred stock, 2,288 holders of the outstanding 234,380 shares of Second Preferred stock and 53,809 holders of the outstanding 11,174,805 shares of Common stock, of which 34 shares are represented by fractional scrip certificates.

On December 3, 1956, the record date of the last 1956 Common dividend, the Common shares were distributed as follows:

Shares Held By	Number of Holders	%	Shares Held	%	Average No. Shares Per Holder
Men	19,578	36.5	2,471,095	22.4	126
Women	21,595	40.2	2,214,126	19.8	103
Joint Tenants	7,270	13.6	405,584	3.6	56
Fiduciaries	3,057	5.7	1,037,339	9.3	339
Brokers	328	.6	894,229	8.0	2,726
Nominees	643	1.2	3,153,353	28.2	4,904
Institutions and Foundations	369	.7	195,309	1.8	529
Corporations, Insurance Companies, Investment Trusts, etc.	807	1.5	803,258	7.2	995
TOTAL	53,647	100.0	11,174,293	100.0	

Of the total number of shareholders shown in the table above, 469 holding 87,520 shares were located in foreign countries; 7,280 or 14% held 10 shares or less, and 11,845 or 22% owned over 100 shares each.

Charles B. Stauffacher

Vice President-Finance

[fol. 1820]

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CONTINENTAL CAN COMPANY, INC.

Comparative Consolidated

In Thousands of Dollars

Assets	December 31 1956	December 31, 1955 Combined (Note 1)	December 31, 1955 As Previously Reported
CURRENT ASSETS			
Cash and U. S. Government Securities	$ 39,925	$ 60,966	$ 30,246
Accounts and Notes Receivable, Less Reserves	72,815	59,945	37,618
Inventories (Note 2):			
Raw Materials and Supplies	66,948	61,906	41,707
Work in Process and Finished	91,942	69,351	69,008
TOTAL CURRENT ASSETS	$271,630	$260,168	$178,579
FIXED ASSETS (at cost):			
Land	$ 8,668	$ 8,250	$ 5,274
Buildings and Equipment	439,368	407,776	248,264
Timberlands	32,945	20,516	7,932
Construction in Progress	40,514	12,709	11,965
Other	4,712	4,128	3,741
	$526,207	$453,379	$277,176
Less Reserves for Depreciation and Depletion	182,831	163,694	88,167
NET FIXED ASSETS	$343,376	$289,685	$189,009
INVESTMENTS IN AND ADVANCES TO ASSOCIATED COMPANIES AND SUBSIDIARIES NOT CONSOLIDATED (Note 3)	$ 9,364	$ 7,881	$ 7,481
DEPOSITS WITH MUTUAL INSURANCE COMPANIES	1,702	1,388	1,342
PREPAID EXPENSES AND DEFERRED ASSETS	7,634	9,728	5,503
	$633,706	$568,850	$381,917

See Notes on Pages 11 and 12.

Balance Sheet

In Thousands of Dollars

	December 31 1956	December 31 1955 Combined (Note 1)	December 31 1955 As Previously Reported
Liabilities			
CURRENT LIABILITIES			
Bank Loans and Commercial Paper	$ 18,103	$ 1,900	$ 1,900
Accounts Payable and Accrued Expenses	71,305	53,872	41,489
Debentures and Notes Payable Within One Year	1,836	263	—
Tax Accruals	40,563	34,270	24,374
TOTAL CURRENT LIABILITIES	$131,807	$ 90,305	$ 67,763
OPERATING RESERVES	2,180	1,225	1,225
LONG TERM DEBT (NOTE 4)	116,346	115,344	79,648
MINORITY INTEREST IN SUBSIDIARY	8,794	8,295	—
SHAREHOLDERS' EQUITY			
$3.75 Cumulative Preferred Stock (without par value) Authorized and Issued – 150,000 shares	$ 15,000	$ 15,000	$ 15,000
Second Preferred Stock ($100 par value) Authorized, December 31, 1956 – 234,380 shares Issued, $4.50 Cumulative – December 31, 1956 – 234,380 shares	23,438	23,435	—
Common Stock ($10 par value) Authorized, December 31, 1956 – 15,000,000 shares Issued, December 31, 1956 – 11,174,805 shares	111,748	74,517	73,288
Surplus Appropriated for Common Stock Distribution on February 15, 1956	—	38,747	77,495
Capital Surplus	60,666	58,785	5,639
Earnings Retained in the Business (Note 5)	163,878	142,959	61,994
	$374,730	$353,837	$233,412
Less Common Stock in Treasury, at Cost – 5,493 Shares in 1956	151	156	[illegible]
TOTAL SHAREHOLDERS' EQUITY	$374,579	$353,681	$233,281
	$633,706	$568,850	$381,917

See Notes on Pages 11 and 12

CONTINENTAL CAN COMPANY, INC.

Statement of Consolidated Income

For the Year Ended December 31, 1956

In Thousands of Dollars

	Year 1956	Year 1955 Combined (Note 1)	Year 1955 As Previously Reported
Net Sales and Operating Revenues	$1,010,268	$929,428	$666,266
Cost of Goods Sold and Operating Expenses	851,756	780,875	577,341
Gross Operating Income	$ 158,512	$148,553	$ 88,925
Selling and Administrative Expenses	66,999	65,396	39,558
Net Operating Income	$ 91,513	$ 83,157	$ 49,367
Other Income			
Income from Sales of Capital Assets and Securities	$ 1,187	$ 710	$ 641
Dividends and Interest on Securities and Investments	916	952	540
Other Income and Interest	726	1,038	712
	$ 2,829	$ 2,700	$ 1,893
	$ 94,342	$ 85,857	$ 51,260
Income Deductions			
Interest on Long Term Debt	$ 3,922	$ 3,115	$ 1,895
Other Interest and Exchange	1,559	1,093	1,093
	$ 5,481	$ 4,208	$ 2,988
	$ 88,861	$ 81,649	$ 48,272
Provision for Taxes on Income	44,800	41,643	24,100
	$ 44,061	$ 40,006	$ 24,172
Minority Interest in Income of Subsidiary	918	1,313	
Net Income	$ 45,143	$ 38,693	$ 24,172

Note: Provision for depreciation and depletion amounted to $23,421,000 in 1956, $22,195,000 in 1955 combined, and $13,607,000 in 1955 as previously reported.

See Notes on Pages 31 and 32

Statement of Earnings Retained in the Business

For the Year Ended December 31, 1956 — *In Thousands of Dollars*

	Year 1956		Year 1955 Combined (Note 1)	
Net Income for the Year		$ 43,143		$ 38,693
Dividends on Preferred Stocks:				
Continental Can Company, Inc.:				
$3.75 Cumulative Preferred	$ 563		$ 563	
$4.50 Second Preferred	264			
Robert Gair Company, Inc. $4.50 Cumulative (before merger)	801	1,628	804	1,367
Net Income Applicable to Common Stock ($3.71 per share 1956—$3.34 per share 1955)		$ 41,515		$ 37,326
Dividends on Common Stock:				
Continental Can Company, Inc.	$15,495		$10,972	
($1.80 per share 1956—$1.50 per share 1955)				
Merged Companies (before mergers)	5,104	20,596	7,479	18,451
Earnings Retained from Net Income for the Year		$ 20,919		$ 18,875
Earnings Retained in the Business, January 1:				
Continental Can Company, Inc. (See note below)	$61,994		$95,601	
Merged Companies	80,965	142,959	74,893	170,494
		$163,878		$189,369
Appropriated for Common Stock Distribution on February 15, 1956			$46,245	
Expenses Applicable to Mergers, Less Portion Charged to Capital Surplus			165	46,410
Earnings Retained in the Business, December 31		$163,878		$142,959

NOTE: Retained earnings as of January 1 of each year includes $9,700,000 appropriated for excess replacement costs of fixed assets and $6,170,000 appropriated for inventory price decline or other contingencies.

See Notes on Pages 11 and 12.

CONTINENTAL CAN COMPANY, INC.

Statement of Consolidated Capital Surplus

For the Year Ended December 31, 1956

		In Thousands of Dollars
Balance, January 1, 1956		$58,635
Restatement of January 1, 1956 Balance to give effect to mergers during 1956, as follows:		
(a) Capital Surplus of company acquired on merger basis, as of January 1, 1956—White Cap Company	$ 306	
(b) Reduction in Par Value of Common Stock from $20 to $10 per share approved in connection with Robert Gair Company, Inc. merger	36,644	
(c) Reduction in amount appropriated in 1955 for 100% Stock Distribution resulting from above reduction in Par Value of Common Stock	38,747	
	$75,697	
(d) Less—Excess of Par Value of shares of Continental Can Company, Inc. Common Stock ($10 per share) over aggregate Par Value of shares of merged companies exchanged therefor	22,547	53,150
Balance, January 1, 1956, as Restated		$58,785
Surplus arising from reduction in Par Value from $20 to $10 per share applicable to 210,000 shares of Common Stock issued in exchange for White Cap Company Capital Stock	$ 2,100	
Excess of consideration received over Par Value of Common Stock sold under the Employees' Stock Purchase Plans	437	
Excess of Par Value of Second Preferred Stock converted during the year over Par Value of Common Stock issued in exchange therefor	302	
	$ 2,839	
Less-Expenses in connection with mergers	958	1,881
Balance, December 31, 1956		$60,666

[fol. 1825]

Notes to Financial Statements

Note 1

During 1956, the Company acquired, on a merger basis, all the outstanding stock of White Cap Company and the net assets of Hazel-Atlas Glass Company and Robert Gair Company, Inc. The accompanying statements of income and earnings retained in the business include the results of the 1956 operations of the merged companies for the entire year, with comparative 1955 combined figures. The combined balance sheet as at December 31, 1955 has been compiled for comparative purposes as if the mergers had taken place at that date. Earnings per share are expressed in terms of the number of shares outstanding (as restated in 1955) at the respective year-ends.

Note 2

Inventories are stated at the lower of cost or market. Cost for this purpose represents standard, average, or actual cost with respect to 77% of both the 1956 and 1955 combined inventories and "last-in, first-out" (LIFO) cost as to the remaining 23%.

Note 3

Investments are stated at cost, which is less than value based on market quotations.

(Continued)

Note 4

Long Term Debt comprises the following:

In Thousands of Dollars

	December 31, 1956	December 31, 1955 Combined (Note 1)	December 31, 1955 As Previously Reported
3½% promissory note due May 25, 1961	$ 2,993	$ —	$ —
3½% promissory notes due May 3, 1963	6,769	8,000	
3½% sinking fund debentures due December 1, 1965	1,496	1,496	1,496
3¼% debentures due October 15, 1976	13,200	13,650	13,650
3¼-3½% sinking fund debentures due November 1, 1995	39,502	39,502	39,502
3¼% promissory notes due November 1, 1995	25,000	25,000	25,000
4% first mortgage loan due July 1, 1962	186	696	
4½% promissory notes due July 1, 1982	27,000	27,000	
	$116,346	$115,344	$ 79,648

Note 5

The Company's Certificate of Incorporation and various promissory notes and indentures relating to the Company's debentures limit the amount which may be expended for the payment of cash dividends and the purchase, redemption, or retirement of the Company's capital stock. At December 31, 1956, under the terms of the most restrictive of these documents, the Company could not apply more than approximately $41,300,000 to such purposes.

Note 6

Reference is made to the indicated sections of the text of this Annual Report for information as to the following: Tax Provisions and Accruals, pages 21 and 22; Employees' Pensions, page 24; and Employees' Stock Option Plan, page 24.

[fol. 1827]

Auditors' Report

HASKINS & SELLS

February 16, 1951.

To The Board of Directors and Shareholders,
Continental Can Company, Inc.:

We have examined the consolidated balance sheet of Continental Can Company, Inc. and its subsidiary companies consolidated as of December 31, 1950 and the related statements of consolidated income and earnings retained in the business for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying consolidated balance sheet and statements of consolidated income and earnings retained in the business present fairly the consolidated financial position of the companies at December 31, 1950 and the consolidated results of their operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Haskins & Sells

(fol. 1828)

TEN YEARS IN REVIEW

Income Statistics

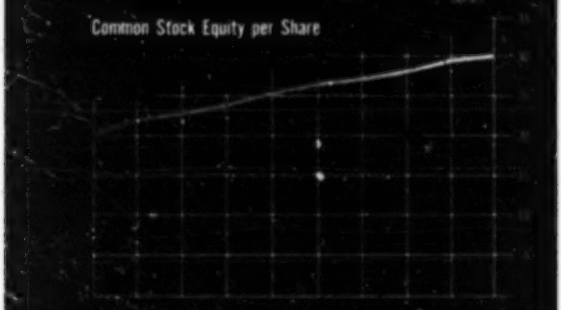
In Thousands of Dollars

	1956
Net Sales and Operating Revenues	$1,010,268
Net Earnings before Income Taxes	$ 88,861
Per cent on sales	8.8%
Net Earnings after Income Taxes	$ 43,143
Per cent on sales	4.3%
Net Earnings applicable to Common	$ 41,515
*Per share	$ 3.71
Preferred Dividends	$ 1,628
Common Dividends	$ 20,596
*Per share	$ 1.80
Net Earnings Retained	$ 20,919
Depreciation and depletion	$ 23,421

Balance Sheet Statistics

In Thousands of Dollars

	1956
Current Assets	$ 271,656
Current Liabilities	$ 131,807
Net Working Capital	$ 139,825
Ratio Current Assets to Current Liabilities	2.1–1
Plant and Equipment - Net*	$ 343,376
Long Term Debt	$ 116,346
Preferred Stock	$ 18,438
Common Stock Equity (Includes Operating Reserves)	$ 336,321
*Per share	$ 30.27
*Number of Common Shares	11,174,805



*Figures adjusted where required to give effect to 100% Stock Distribution on February 15, 1956

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[fol. 1829]

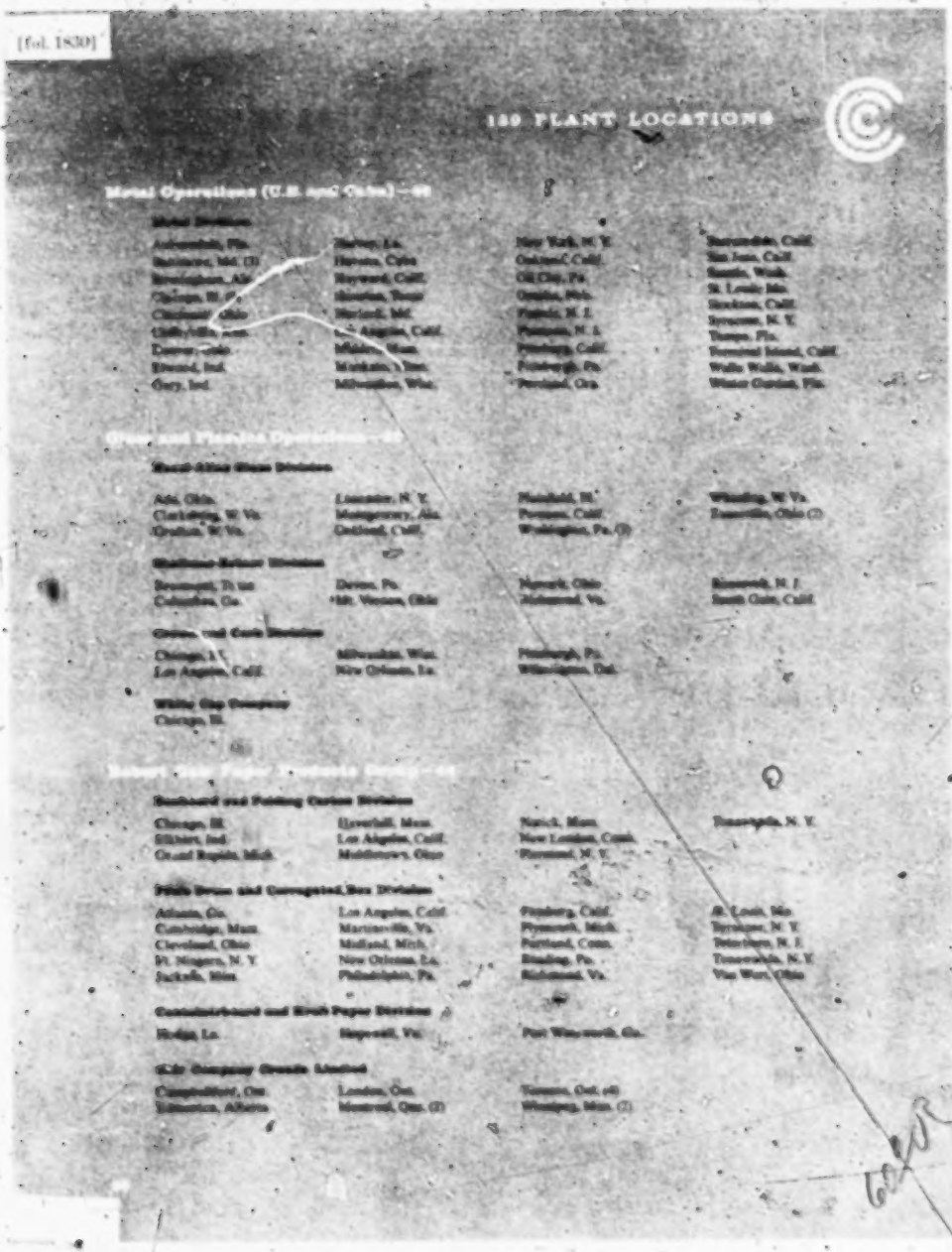
1955	1954	1953	1952	1951	1950	1949*	1948	1947
666,266	616,164	554,437	476,885	460,595	397,864	337,495	319,722	266,432
48,272	40,937	31,431	27,768	33,986	26,198	19,553	23,212	20,560
7.2%	6.6%	5.7%	5.8%	7.4%	6.6%	5.9%	7.4%	7.7%
24,172	20,737	15,881	14,388	15,211	14,873	12,351	14,812	12,810
3.6%	3.4%	2.8%	3.0%	3.3%	3.7%	3.7%	4.6%	4.8%
21,610	20,115	4,833	15,381	14,582	14,311	11,788	14,249	12,247
3.22	3.26	2.15	2.11	2.31	2.27	1.87	2.26	1.94
563	622	848	1,007	629	563	563	563	563
10,972	9,646	8,070	6,281	6,291	6,319	4,738	4,738	3,874
1.50	1.35	1.20	1.00	1.00	1.00	.75	.75	.625
12,638	10,469	6,763	7,130	8,291	7,992	7,050	9,511	8,373
13,607	11,971	10,378	8,548	8,286	7,328	6,789	6,113	5,699

(December 31)

1955	1954	1953	1952	1951	1950	1949*	1948	1947
178,579	162,995	141,439	144,005	146,336	112,569	122,913	106,565	104,307
67,763	80,665	55,546	46,367	48,329	42,327	36,753	34,282	27,734
110,816	82,330	85,893	97,638	98,007	70,242	86,160	72,283	76,573
2.6–1	2.0–1	2.5–1	3.1–1	3.0–1	2.7–1	3.3–1	3.1–1	3.8–1
189,012	181,171	166,244	148,711	142,558	129,309	108,588	105,228	94,228
79,648	55,595	58,580	61,565	64,300	46,635	51,500	32,200	32,900
15,000	15,000	18,849	25,451	25,451	15,000	15,000	15,000	15,000
219,509	206,812	187,620	169,895	161,575	153,606	145,506	139,630	130,452
29.95	28.35	27.12	26.71	25.54	25.30	23.03	22.40	20.65
7,328,806	7,293,066	6,917,058	6,344,484	6,326,494	6,320,202	6,317,202	6,317,202	6,315,562

*Figures restated as in 1950 Annual Report.

[fol. 1830]



139 PLANT LOCATIONS

Metal Operations (U.S. and Cuba)—66

Metal Division

Ashtabula, Ohio
Baltimore, Md. (2)
Birmingham, Ala.
Chicago, Ill. (2)
Cincinnati, Ohio
Cleveland, Ohio
Dayton, Ohio
Elwood, Ind.
Gary, Ind.
Harvey, La.
Havana, Cuba
Hayward, Calif.
Houston, Texas
Howard, Md.
Los Angeles, Calif.
Malden, Mass.
Markham, Ont.
Milwaukee, Wis.
New York, N. Y.
Oakland, Calif.
Oil City, Pa.
Omaha, Neb.
Passaic, N. J.
Pittsburg, Calif.
Pittsburgh, Pa.
Portland, Ore.
Sacramento, Calif.
San Jose, Calif.
Seattle, Wash.
St. Louis, Mo.
Stockton, Calif.
Syracuse, N. Y.
Tampa, Fla.
Terminal Island, Calif.
Walla Walla, Wash.
Water Gordon, Pa.

Glass and Plastics Operations—43

Hand Glass Ware Division

Ada, Ohio
Clarksburg, W. Va.
Crenshaw, W. Va.
Lancaster, N. Y.
Montgomery, Ala.
Oakland, Calif.
Plainfield, Ill.
Pomona, Calif.
Washington, Pa. (2)
Wheeling, W. Va.
Zanesville, Ohio (2)

Machine Ware Division

Brockport, N. Y.
Columbus, Ga.
Dixon, Pa.
Mt. Vernon, Ohio
Newark, Ohio
Richmond, Va.
Roosevelt, N. J.
South Gate, Calif.

Glass and Cork Division

Chicago, Ill.
Los Angeles, Calif.
Milwaukee, Wis.
New Orleans, La.
Pittsburgh, Pa.
Wilmington, Del.

Utility Cup Company

Chicago, Ill.

Paperboard and Packaging Products Operations—28

Paperboard and Folding Carton Division

Chicago, Ill.
Elkhart, Ind.
Grand Rapids, Mich.
Haverhill, Mass.
Los Angeles, Calif.
Middletown, Ohio
Natick, Mass.
New London, Conn.
Piermont, N. Y.
Tuscaloosa, N. Y.

Fibre Drum and Corrugated Box Division

Atlanta, Ga.
Cambridge, Mass.
Cleveland, Ohio
Ft. Niagara, N. Y.
Jackson, Miss.
Los Angeles, Calif.
Martinsville, Va.
Midland, Mich.
New Orleans, La.
Philadelphia, Pa.
Fitzburg, Calif.
Plymouth, Mich.
Portland, Conn.
Reading, Pa.
Richmond, Va.
St. Louis, Mo.
Syracuse, N. Y.
Tuscaloosa, N. Y.
Van Wert, Ohio

Coated Interlaid and Kraft Paper Division

Hodge, La.
Hopewell, Va.
Port Wentworth, Ga.

Kalle Company Canada Limited

Campbellford, Ont.
Edmonton, Alberta
London, Ont.
Montreal, Que. (2)
Toronto, Ont. (4)
Winnipeg, Man. (2)

[fol. 1831]

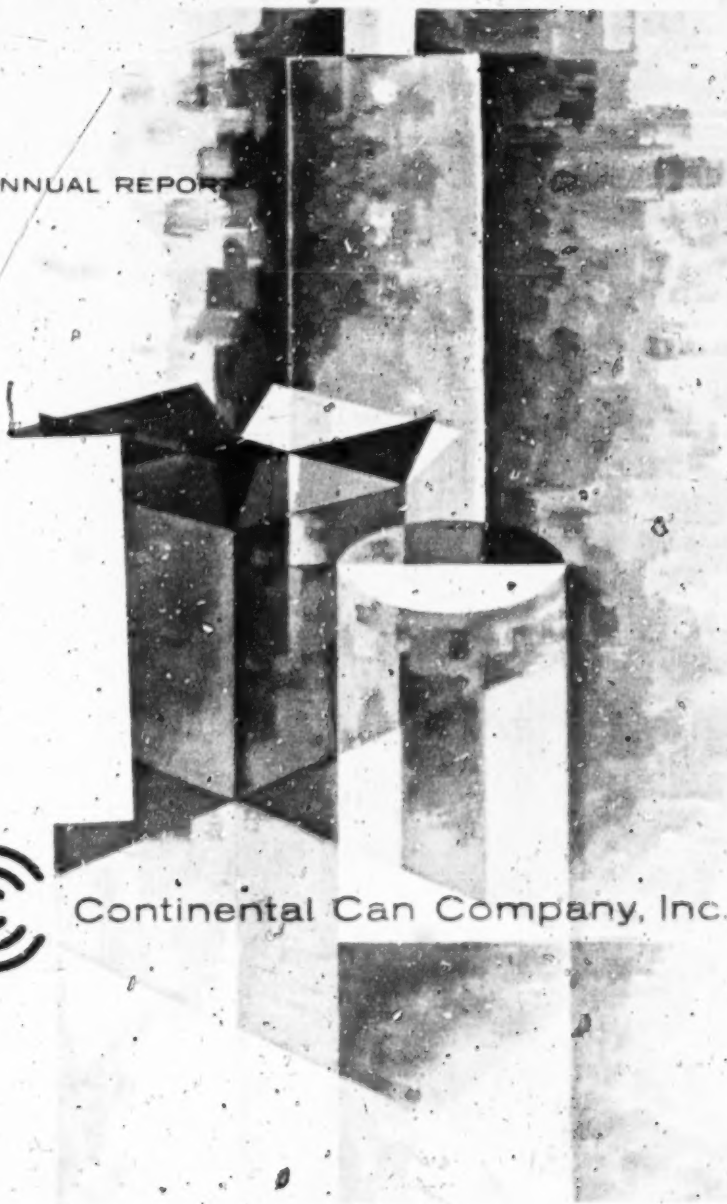
CONTINENTAL CAN COMPANY, INC.

Other Operations—20

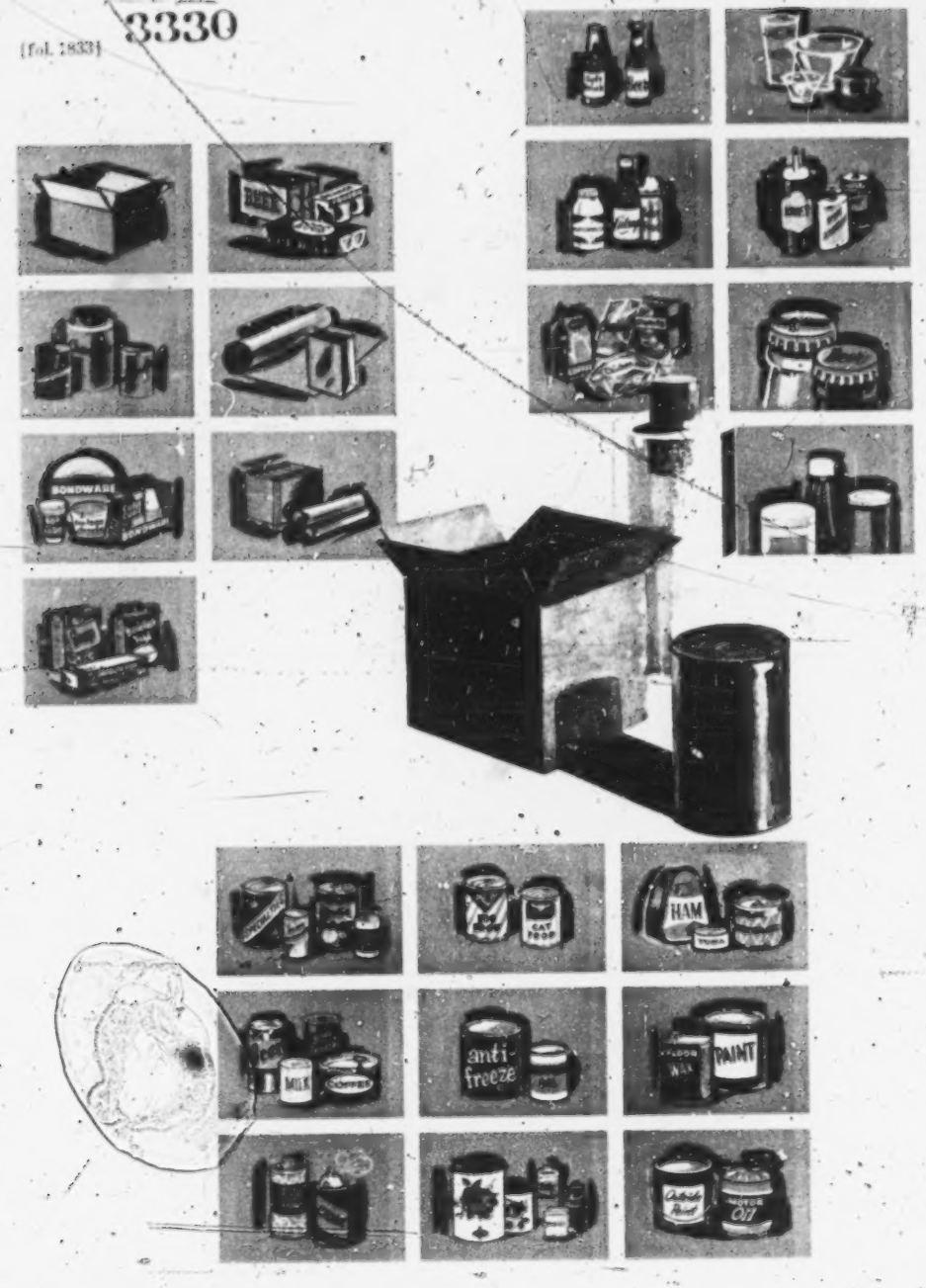
Operating Subsidiaries

Transfer Agents and Registrars

1957 ANNUAL REPORT



Continental Can Company, Inc.



1957 ANNUAL REPORT

Continental Can Company, Inc.

Continental Can Building, 100 East 42nd Street, New York 17, New York

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NOTICE OF MEETING

The Annual Meeting of the Shareholders will be held at the Biltmore Hotel, Madison Avenue and 43rd Street, New York City, on Tuesday, April 22nd, 1958, at 11 o'clock A.M., New York City time. Proxies and proxy statements for such

Management's Review . . . and the Outlook

While we entered into 1957 with confidence that it would prove our best year, we had to be satisfied with our second best performance. This resulted in part from the slowdown in business activities during the latter part of the year, which made our growth less than expected, and also in part from the integration of two companies merged with us in 1956. The integration, largely completed, promises well for future operations.

OPERATIONS

Metal sales accounted for a little more than half of our operations in 1957. However, physical volume, expected to establish new records, was below estimate due primarily to smaller seasonal packs in many of the fruit and vegetable growing areas. New can plants were completed serving the Metropolitan New York and Cincinnati areas. These are now in production.

The Paper Container Division, producing paper and plastic drinking cups; paper tubs; paper, plastic and foil-laminated plates, opened a new atmosphere-controlled plant at Three Rivers, Michigan, during the last quarter of 1957. Operations formerly conducted at the Memphis, Tennessee, plant were transferred to the new plant.

During 1957 your Management concentrated its efforts to improve and to integrate the operations of its new businesses. Marginal plants and product lines were discontinued, studies were made to permit facilities and technological skills to be more profitably employed, and new facilities and equipment were provided and programmed to bring all plants up to date.

A particularly large equipment replacement program was completed in the Hazel-Atlas Glass Division and a new glass plant at Plainfield, Illinois, was brought into production. To enable this division to compete in markets which could not be supplied by its existing production facilities, modern and more

[fol. 1836]

Dollar sales hit new peak of $1,096 million — up $36 million from 1956
Physical volume down slightly

Net Income of $81.3 million before income taxes and $41 million after all charges compared with $88.9 million and $43.1 million, respectively in 1956

Net Earnings equal $3.52 per Share vs. $3.71 in 1956

flexible equipment was installed at various plant locations. Twenty-four of these new lines are now in operation and gradually reaching a satisfactory performance record. In addition, existing equipment was renovated to make it more efficient, and a marginal plant was converted to a research and development laboratory. These activities threw a heavy burden on the Hazel-Atlas organization and resulted in a substantial reduction in operating income. However, these changes were essential for it to become competitive, and your Management is confident that half-way measures would have cost more in the long run.

J. Gordon King was appointed general manager of the division to succeed Howard G. Lewis, who retired. Mr. King has been long identified with the glass and plastic industry. We believe that the revitalized Hazel-Atlas Division will soon begin to contribute its share of Company income.

The White Cap Company, a wholly-owned subsidiary acquired early in 1956, had a most successful year following its introduction of the new twist-off cap for jars and bottles. To reduce overhead and improve efficiency, the Crown and Cork Division was combined with White Cap to form the new White Cap and Bond Crown Division. Philip O'C. White, president of the subsidiary and a vice president of the Company, was appointed general manager of the new division.

The Robert Gair Paper Products Group did not escape from the common experience of paper and paperboard producers in having a lesser production in 1957 than in 1956. However, the diversity of the packaging products of this group enabled it to improve its profit margin so that earnings held fairly close to 1956 income. A substantial modernization and expansion program was completed at the kraft bag and paper plant in Hodge, Louisiana, with the installation of a fourth Fourdrinier paper machine and auxiliary equipment. A new folding carton plant was completed at Winnipeg, Manitoba, and a corrugated box plant at Cleveland, Ohio.

George E. Dyke, vice chairman of the board and acting executive vice president of the Robert Gair Paper Products Group, resigned from these offices at the end of the year and will give us the benefit of

[fol. 1837] 3334

Profit margin on sales 7.8% before income taxes and 3.9% after all charges, compared with 8.8% and 4.3% for 1956.

Common dividends of $1.80 per share totalled $20.1 million, compared with $20.6 million in 1956.

Earnings reinvested in the business of $19.3 million represented 47.0% of net earnings, compared with 48.5% in 1956.

his broad experience as a consultant during 1958. Norman F. Greenway, vice president and general manager of the Boxboard and Folding Carton Division, assumed the position of executive vice president of the Gair Group. He was in turn succeeded by William H. Caddoo, formerly general manager of manufacturing for the division.

William M. Allin, former general sales manager of the Containerboard and Kraft Paper Division, was appointed vice president and general manager of the division, succeeding John [illegible] Michaud, who resigned. This division operates three kraft paper mills, two wholly owned and one majority owned, and our woodlands. Forest holdings located in Virginia, the Carolinas, Georgia, Florida, and Louisiana increased by almost 67,000 acres during the year. Tracts comprising about 63,000 acres in Arkansas, beyond reasonable transportation costs to our mills, were sold at a profit. At the end of the year, we held in fee or on long-term leases approximately 970,000 acres.

We will plant about 25 million trees during the 1957-58 season, of which 21 million will come from our forest nurseries in Georgia and Louisiana, and the remainder from various state nurseries. A new nursery with a capacity of 10 million seedlings a year is now under construction in Virginia.

CAPITAL PROGRAM

Our capital expenditures during the year totalled $62.3 million, while an additional $13.7 million was spent on "sale and lease-back" arrangements for land and buildings. This compared with $80.5 million capital expenditures and $12.1 million on "sale and lease backs" during 1956 for the combined companies. Our program for 1958 calls for expenditures of $40 to $45 million, making a total for the three-year period of over $200 million.

To replenish working capital, in December the Company borrowed $20 million from several banks on

[fol. 1838] *Capital expenditures totalled $62.3 million, including $3.0 million for timberlands*
Net value of Property, Plant and Equipment increased $33.4 million to $376.8 million at end of 1957

Timberlands owned or leased amounted to 970 thousand acres at end of 1957

Paperboard and paper production of 989 thousand tons in 1957, compared with 1,028 thousand tons in 1956

4½ per cent notes, of which $10 million is payable April 15, 1959, and $10 million is payable January 16, 1961. Also, arrangements started in August were concluded on November 15, 1957, for the borrowing from three insurance companies of $35 million at 5 per cent, due in 1980 and available in future installments of $15 million on April 10, 1958, $10 million on April 9, 1959, and $10 million on January 7, 1960.

Although this latter financing is not specifically ear marked, the funds as provided will approximate the progressive cost of constructing a new bleached paperboard mill over the next three years as programmed.

RESEARCH AND ENGINEERING

Central Research and Engineering, now housed in its new and well equipped building, built up its research staff during the year to about three-fourths of planned strength. It is now carrying out applied research and engineering investigations of longer range and more fundamental nature than those conducted by the research and development departments of the product divisions.

Combined, these research and engineering groups are budgeted to spend over $15 million during 1958. They utilize the services of more than seven hundred scientists and engineers engaged in improving the packaging products which we offer to the public. Without them, we could not progress.

During the year, Continental combined with Armour and Company, Food Machinery and Chemical Corporation, and General Foods Corporation to bid on and receive a contract from the Army Quartermaster Corps to participate in setting up the world's first food radiation center. Irradiated Products, Inc., which is the name of this joint venture, is charged with assisting the Quartermaster Corps in plans for the U.S. Army Ionizing Radiation Center, construction of which will start in 1958.

The research reactor and laboratories of Industrial Reactor Laboratories, Inc., a cooperative project in which Continental is working with nine other companies and Columbia University, are expected to be

[fol. 1839]

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Net Working Capital increased $3.2 million to $143.1 million at December 31, 1957

Total assets increased $30.4 million to $664.1 million at December 31, 1957

Number of employees increased during 1957 from an average of 53,756 to 53,886

At the end of 1957, 11,202,778 common shares were held by 53,127 shareholders, compared with 11,174,805 shares and 53,809 holders at December 31, 1956

completed in the third quarter of 1958. Continental's scientists will use these facilities to study the effe of radiation on various forms of packaging and their contents.

C. L. Adcock, director of technical development, retired during the year and was succeeded by J G. Murray, who had been vice president and general manager of the Crown and Cork Division. Mr. Mur also continues as a vice president of the Company.

EMPLOYEE RELATIONS

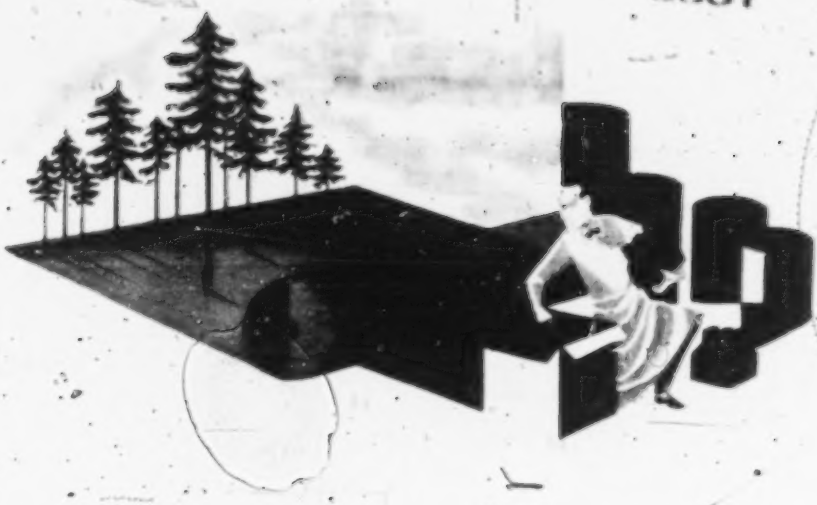
As a result of the three-year agreements signed in 1956 with the United Steel Workers of America other unions, we have had excellent relations with our employees throughout 1957. The one exception a twelve-week strike at one of the plants of the Robert Gair Paper Products Group. Industry-wide nego tions in the glass container field were satisfactorily concluded with a two-year contract which, like o multi-year agreements, will provide for automatic wage increases this year for members of the two un involved.

PRODUCT DEVELOPMENT

In early 1958 we delivered the first deep-drawn aluminum cans to be used in this country for proce meat products. In addition to these and conventional three-piece aluminum cans, which we can now duce commercially, we will market aluminum cans formed by impact extrusion later this year. Your M agement does not view aluminum as a substitute for tinplate, but rather as a material which will ex the metal container line of products.

Aerosol or pressure-dispensing cans continued to grow in favor during 1957 as new valves and pellants were developed. A still faster growth is expected in 1958.

[fol. 1840]



During the year, we accelerated development programs to broaden our line of composite containers those in which two or more different materials are used, such as cans with plastic bodies and metal ends. Substantial progress has been made in the use of various paper, plastic, and metal laminates.

Other types of packages which the Company believes of promise include biodegradable milk packs for cans and bottles; large multi-wall bags, which we will begin to market in 1958, and flexible packaging, which is finding wider acceptance for bakery goods, meats, and produce.

THE OUTLOOK

In its planning for the future, your Management has taken cognizance of the present state of our economy and has shaped its policies on capital expenditures and other long range commitments accordingly. The key elements affecting the outlook for packaging are consumer income and expenditures for packaged goods, both of which are expected to continue at high levels in 1958. The expanding population and the trend to better packaging are encouraging factors.

For these reasons, we believe that your Company will gain in sales volume even in the present period of lessened general business activity. We expect 1958 to be a good year and if, as we believe, business picks up in the second half of the year, it may be a very good year.

By Order of the Board of Directors

President

Chairman of the Board

March 10, 1958

[fol. 1843] 3338

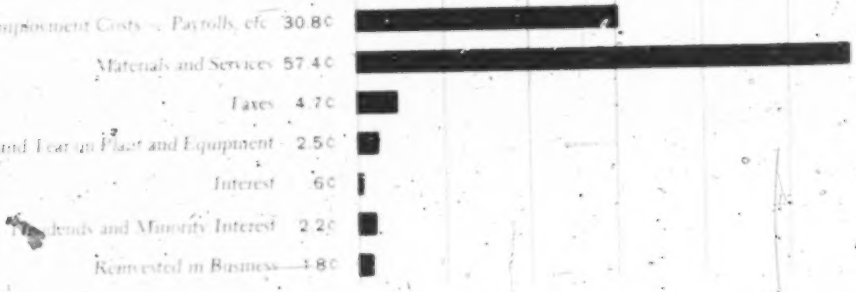
The Financial Year 1957 in Brief...

WHAT WE RECEIVED AND WHAT WE DID WITH IT

	1957 Total (Millions)	1956 Total (Millions)	1957 Increase Over 1956 (Millions)	1957 Per Common Share	1956 Per Common Share
1. **Income:**					
Sales to customers and other income	[redacted]	$1,013.1	$38.1	$93.83	$90.66
2. **Outgo:**					
Employment Costs:					
Payrolls, including vacation & holiday pay	[redacted]	265.4	13.4	24.58	23.76
Social security and unemployment taxes, contributions to pension funds, etc.	[redacted]	39.9	4.9	4.00	3.57
Materials and services purchased	[redacted]	582.1	21.5	53.88	52.09
Taxes of all kinds (except on purchases and for social security)	[redacted]	52.8	3.9	4.36	4.72
Wear and tear on plant and equipment	[redacted]	23.4	2.9	2.35	2.09
Interest on money borrowed	[redacted]	5.5	1.3	.61	.57
	1,209.2	969.1	40.1	90.08	86.72
3. **Minority Interest in Income of Subsidiary**	1.0	.9	.1	.09	.08
4. **Total Charges Against Income**	1,010.2	970.0	40.2	90.17	86.80
5. **Net Income** (Item 1 less Item 4)	41.0	43.1	2.1*	3.66	3.86
Used for dividends to Preferred shareholders	1.6	1.6	—	.14	.15
6. **Available After Payment of Preferred Dividends**	$ 39.4	$ 41.5	$ 2.1*	$ 3.52	$ 3.71
7. **This Was Used As Follows:**					
Dividends to Common shareholders	$ 20.1	$ 20.6	$ .5*	$ 1.80	$ 1.84
Reinvestment in the business, increasing equity of Common shareholders	19.3	20.9	1.6*	1.72	1.87
	$ 39.4	$ 41.5	$ 2.1*	$ 3.52	$ 3.71

* Decrease

HOW THE 1957 INCOME DOLLAR WAS SPENT



[fol. 1842]

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CONTINENTAL CAN COMPANY, INC.

WHAT WE HAD TO WORK WITH AT END OF YEAR

	1957 Total (Millions)	1956 Total (Millions)	1957 Increase Over 1956 (Millions)	1957 Per Common Share	1956 Per Common Share
1. **Working Capital:**					
Cash	$ 41.1	$ 39.9	$ 1.2	$ 3.67	$ 3.52
Amounts due from customers and others	74.1	72.8	1.3	6.61	6.51
Materials for use and finished products for sale	152.7	158.9	6.2*	13.63	14.22
In terms of cash, the above amounted to	267.9	271.6	3.7*	23.91	24.30
Less: Amount owed for bank loans, commercial paper, bills, payrolls, taxes, dividends, etc.	124.8	131.8	7.0*	11.14	11.79
After paying what we owed currently, the amount of working capital left to run the business was	143.1	139.8	3.3	12.77	12.51
2. **Our Tools and Other Assets:**					
Land, buildings and equipment, after allowance for wear and tear	376.8	343.4	33.4	33.63	30.73
Investments and other assets	19.4	18.7	.7	1.73	1.68
3. **Working Assets Used to Run Business** (Item 1 plus Item 2)	539.3	501.9	37.4	48.13	44.92
4. **Deduct:**					
Reserve (deferred taxes and foreign exchange)	2.3	1.5	.8	.20	.13
Amounts borrowed on long term basis	133.3	116.4	16.9	11.90	10.42
Minority interest in subsidiary	9.3	8.8	.5	.83	.79
Total deductions	144.9	126.7	18.2	12.93	11.34
5. **Shareholders' Equities** (Item 3 less Item 4)	$ 394.4	$ 375.2	$ 19.2	$35.20	$33.58
6. **Above Represented By:**					
Preferred shareholders' investment	$ 38.0	$ 38.4	$ .4*	$ 3.39	$ 3.44
Common shareholders' equity	356.4	336.8	19.6	31.81	30.14
	$ 394.4	$ 375.2	$ 19.2	$35.20	$33.58

* Decrease

[fol. 1843] **3340**

Continental and the Packaging Industry

The concept of a packaging industry is something new. As little as twenty years ago, use of the word "package" as a verb was relatively rare. Products were "packed" in cans, jars, bags or boxes. The people who consumed them had a certain amount of interest in where the product came from, but they took the packaging for granted.

Today most Americans are keenly aware of packaging, and the verb is a part of their everyday language. There is a reason for this change: the function of packaging has become very important to them. Packaging has had a tremendous impact on the economy — and on the way people live. It has been a big factor in the evolution of mass distribution, one of the signal elements of the American way of life.

The packaging industry, in which Continental is the first company to span every important field, is now a distinct part of the economy. Industry sales are more than $10 billion a year. They have increased fivefold since 1939. Part of this growth, of course, represents the effects of inflation and population growth. But actual volume of packages sold has approximately tripled in the past twenty years, while the population has increased by less than one-third. And every indication is that the growth the packaging industry has seen in this period will be greatly exceeded in the next twenty years.

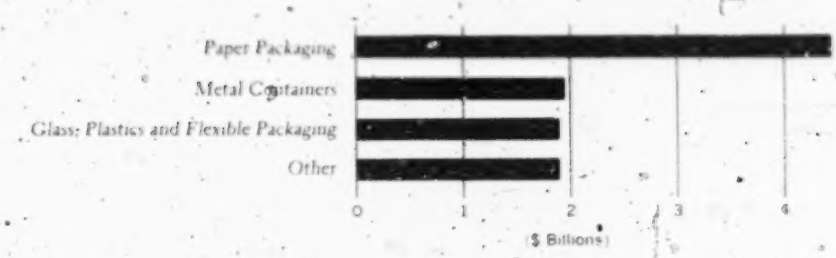
A NEW APPROACH TO PACKAGING

The packaging industry leaped to maturity almost overnight to supply the beachheads of World War II. Never before had packaging in so many complex and specialized forms been so urgently needed. In preceding years there had been a can industry, a glass industry, a paperboard industry, and others concentrating in their own forms of packaging. But for the most part they had never had much incentive to venture across industry lines into other forms of packaging, or to exchange packaging techniques from industry to industry.

The demands of the global war not only created that incentive but made it a powerful stimulus. This developed a pattern of alertness, inventiveness and imaginative approach to packaging problems that provided the base for the packaging industry's tremendous postwar growth. Along with this inter-industry exchange of techniques came major improvements within the industries themselves.

At the war's end the new industry turned its inventive energy to adapting its new capabilities to wide peacetime use. It found an eager market. The feats of industrial productivity that had helped win the war had made possible, in the peacetime economy, a vast advance in the standard of living. Simultaneously,

[fol. 1844] THE TEN-BILLION DOLLAR U. S. PACKAGING INDUSTRY (1957 Sales)



the high level of employment accompanying the higher living standards raised the cost of personal services and thereby created a void which packaging surged to fill.

SELF-SERVICE SELLING

The economies made possible by these new developments in packaging were quickly recognized in industry, agriculture and transportation. But the substitution of packaging services for personal services reached its most dramatic pitch in the supermarket. Its beginnings, of course, antedated the war, for self service grocery stores came into being in the mid-1930's. Its real growth, however, came in the postwar years of rising wage rates and relatively scarce labor. The functions of the package were extended to include not only making self service as easy as possible but merchandising the contents of the package to the shopper. It did this by catching her eye with bright, colorful printed designs, often showing the product in use or ready to serve, and then triggering her recognition by flashing to her the name or trademark.

The magnitude of this shift is in part reflected in the increase in dollar sales volume per employee in the average grocery store. In 1939, when supermarkets were already widely established but packaging was only partially geared to their requirements, the average grocery clerk sold approximately $16,500 worth of merchandise in the course of a year. By 1956, with his functions more and more restricted to stocking the shelves and manning the check out counter, his sales volume had tripled to $49,000 a year. Of course the 1956 dollar didn't buy as many groceries as the pre war dollar, but the actual volume of groceries sold per employee still was up very substantially.

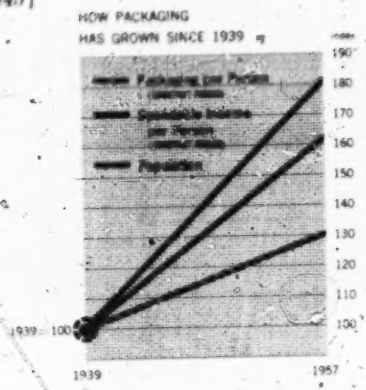
CONVENIENCE PACKAGING IN MODERN LIVING

While the package as a labor saver can be seen most dramatically in the supermarket, its utility to the customer has been an important factor in the growth of the packaging industry since the first mass production of metal cans — and its importance is continuing to grow.

In inverse proportion to the decreasing number of grocery clerks, the number of housewives with outside employment has been steadily growing. According to a recent government report there were 5 million of them in 1940. By 1952 their number had grown to 7.5 million, and in 1957 it was 13 million.

[fol. 1845]

3342



Most Americans today have incomes which entitle them to a living standard that only the well-to-do could afford in pre-war years, even after adjusting for inflation. But because so many of us have shared in this rise of living standards, there are few left to perform the tasks that maids, cooks and other servants performed for the well-off a scant generation ago.

This means the housewife has to do a number of routine but time-consuming things which, in her grandmother's day, would probably have been done for her. However, even though she can't afford a cook or maid, she can easily afford to buy the great variety of hidden services that have been built into almost every packaged product on the market. If she is one of the growing number of part time housewives, accustomed to putting a dollar-and-cent value on her time, she welcomes the opportunity to pay two or three pennies more for a packaged convenience that saves her ten times that outlay in time.

The production line, therefore, has taken a large part of the drudgery out of her life. Thanks to the package, ingredients can be mixed and weighed for her, in exact proportions, by somebody she never sees. They reach her in such form that they need a minimum of processing on her part. By pushing the button on an aerosol can, she can bandage a cut finger, paint a piece of furniture, lubricate the vacuum cleaner or baste a barbecue.

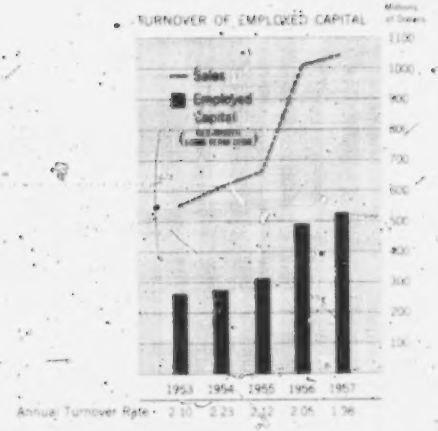
THE RIGHT PACKAGE

This review of what the packaging industry is and what has made it grow provides a frame of reference for Continental's role in the industry.

For every product that is packaged, there is one most suitable package against which other forms of packaging can compete only at a disadvantage. On that premise, Continental by 1957 had become the first company in the industry which could offer every customer the best package for his product, rather than the one or two in which it happened to specialize.

Having attained this objective, Continental will continue to develop new packages as new requirements appear, improve existing forms of packaging, and extend the utility and convenience of packaging to many products which heretofore have not been packaged. These achievements, like Continental's growth and diversification in the past two decades, will benefit its customers, the American consumer, and the national economy as a whole — as well as Continental's stockholders and its employees.

[fol. 1846]



SALES

Net sales of $1,046,267,000 again established a record high in 1957, compared with $1,010,268,000 in 1956. Physical volume, however, was down slightly, so the dollar gain resulted from increases in the prices of our products.

Sales by product groups, expressed in millions of dollars, were divided as follows:

Product Group	1957		1956	
	Total	Per Cent	Total	Per Cent
Metal	$ 561.2	53.6	$ 533.5	52.8
Paper	258.7	24.7	261.2	25.9
Glass and Plastics	165.0	15.8	160.2	15.9
Other	61.4	5.9	55.4	5.4
Total	$1,046.3	100.0	$1,010.3	100.0

EARNINGS

After income taxes and minority interest in income of a subsidiary, net earnings amounted to $41,040,000 or 3.9 per cent on sales. This compared with $43,143,000 or 4.3 per cent on sales in 1956. After preferred dividends, earnings were equivalent to $3.52 per share of Common stock on 11,202,778 shares outstanding, as against $3.71 on 11,174,595 shares in 1956.

Earnings before income taxes amounted to $81,324,000 in 1957 or 7.8 per cent on sales, compared with $88,861,000 or 8.8 per cent on sales in 1956. This included $2,936,000 of capital gains, realized for the most part through the sale of timberlands in Arkansas which were too distant from any of the Company's kraft mills to be useful as a source of pulpwood. In 1956, capital gains totalled $1,187,000.

PRICES AND COSTS

Profits were squeezed due to rising costs of labor, materials, freight, etc., without compensating price increases. At the same time, most divisions suffered from the slowdown in activity in the last quarter. In the case of metal cans, which represent about half of our sales volume, this decrease was accented by the advance buying in 1956 to beat a price increase of November 1, 1956. A portion of this 1956 sales bulge was borrowed from 1957 sales. An increase in metal can prices, announced for March 10,

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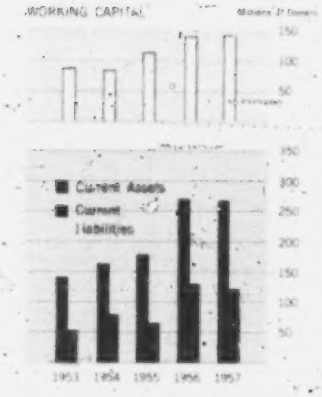
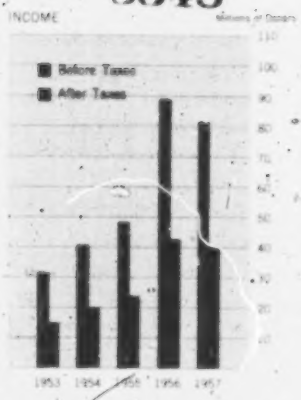




1958, is expected to help offset some of the increased costs that we have been absorbing since the previous increase of May 1, 1957.

During November, prices of both glass containers and fibre drums were increased to offset higher costs. Also, in February, 1958, recognition of higher costs was reflected in increased prices for crown caps. Higher prices for screw caps, vacuum twist-off and side seal caps have been announced for April 1, 1958.

DEPRECIATION AND DEPLETION

Provisions out of operating income for depreciation and depletion amounted to $26,278,000 in 1957, compared with $23,421,000 in 1956. Accelerated depreciation under approved Necessity Certificates, included in these totals, was $1,207,000 in 1957 and $1,329,000 the year previous.

For tax purposes, but not for book purposes, capital expenditures since January 1, 1954, have been depreciated on "the sum of the years – digits" or "declining balance" methods. For 1957, this reduced income taxes by approximately $2,368,000, of which amount $1,335,000 was set aside in a reserve for deferred income taxes, leaving about $1,033,000 added to net income for the year. In 1956, the corresponding amount added to net income was approximately $1,300,000. We expect to provide a reserve in 1958 for the full amount of any similar tax savings for that year.

DISPOSITION OF EARNINGS

After dividends of $21,739,000 there remained $19,391,000, or 47 per cent of total net earnings, which were reinvested in the business.

In addition to regular dividends on the $3.75 Cumulative Preferred Stock and the Seventh Preferred Stock ($4.50 Cumulative), regular quarterly dividends of $.45 per share were paid on the Common Stock on March 15, June 15, September 14 and December 14.

WORKING CAPITAL

The ratio of current assets to current liabilities on December 31, 1957, was 2.1 to 1, unchanged from that of December 31, 1956. Current assets totalled $267,911,000 and current liabilities $124,845,000. Working capital increased during the year from $139,823,000 to $143,066,000.

In the past two years, Receivables and Inventories increased by over $27 million and Net Fixed Assets by over $87 million. These increases were largely responsible for the increase in short term bank loans and other current liabilities of almost $35 million, long term debt $18 million, and the decline in cash of $20 million during the period.

To replenish our working capital, $20 million was borrowed in December from banks on 4½ per cent notes. Of this amount, $10 million is payable on April 15, 1959, and $10 million on January 16, 1961. This borrowing ties in with our basic program of replenishing working capital from earnings and other internal sources over the next few years.

Also, to supplement our cash flow and to meet the construction costs of a new bleached paperboard mill over the next three years, loans totalling $35 million were arranged last fall through three insurance companies on 5 per cent notes due in 1980, the proceeds to be available in installments of $15 million in April, 1958, $10 million in April, 1959, and $10 million in January, 1960.

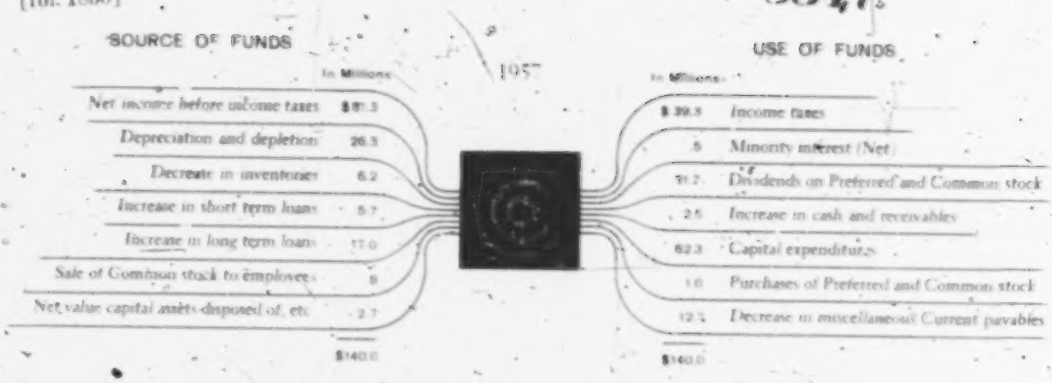
CAPITAL EXPENDITURES

Gross capital expenditures totaled $62,300,000 in 1957 exclusive of amounts expended for land and buildings on "sale and leaseback". In the Metal Operations Group this represented the completion and equipping of new can plants in the Metropolitan New York and Cincinnati areas, the acquisition of a building in Milton, Pennsylvania, which has been equipped as a can plant, the construction of a warehouse in Cuba, the installation of a coil stock line in Chicago, the acquisition of a metal can plant site at Merced, California, and an additional facility at San Leandro, California. The Glass and Plastics Group during the year completed the equipping of a new glass plant in Plainfield, Illinois, installed new and more flexible production equipment in several of the older glass plants, and installed equipment for the manufacture of a new type of twist-off cap for glass containers at the subsidiary White Cap Company in Chicago. The Robert Gair Paper Products Group acquired 66,670 additional acres of timberlands to back up its kraft paper operations in the South, purchased a site for a new corrugated box plant in Tyler, Texas, completed a new folding carton plant at Winnipeg, Manitoba and a corrugated box plant at Cleveland, and completed the installation of a fourth paper machine and auxiliary equipment at the kraft paper mill in Hodge, Louisiana.

EMPLOYEE GROUP INSURANCE AND PENSIONS

All employees and, to some extent, their dependents are covered by comprehensive group insurance programs which provide hospitalization, surgical, health and accident, and life insurance benefits. The net cost of these coverages to Continental for the latest applicable policy year was $8,800,858 compared with $5,813,742 for the previous policy year, prior to the Gair and Hazel Atlas mergers. On December 31, 1957, $436,176,986 of life insurance was in force for 57,965 employees, including $8,727,768 for 1,790 retired employees. During the latest applicable policy years, total claims paid by insurance companies amounted to $8,470,068, of which $2,114,267 represented death claims.

At the end of the year 1,513 retired employees were receiving monthly pensions under the several retirement plans in force, compared with 1,172 a year previous. During 1957, $8,738,660 was contributed to the pension fund for United States employees, compared with $6,131,464 for the previous year, and $623,240 (Canadian) for Canadian employees, compared with $680,578 for the previous year.



OUR SHAREHOLDERS

On December 31, 1957, there were 1,207 holders of record of the outstanding 147,000 shares of $3.75 Cumulative Preferred stock, 2,392 holders of the outstanding 232,818 shares of Second Preferred stock and 53,127 holders of the outstanding 11,202,778 shares of Common stock, of which 26.4 shares are represented by fractional scrip certificates.

On November 22, 1957, the record date of the 1957 Common dividend, the Common shares were distributed as follows:

Shares Held by	No. of Holders	%	Shares Held	%	Average No. Shares Per Holder
Male	18,936	33.7	2,405,228	20.6	126
Female	21,164	40.0	2,169,683	19.3	102
Joint Tenants	7,561	14.3	445,707	4.0	59
Fiduciaries	3,190	6.0	1,049,941	9.4	328
Brokers	250	.5	861,170	7.7	3,445
Nominees	706	1.3	3,350,801	29.9	4,746
Institutions and Foundations	493	.9	246,335	2.2	500
Corporations, Insurance Companies, Investment Trusts, etc.	692	1.3	773,366	6.9	1,118
Total	52,992	100.0	11,202,231	100.0	

Of the total number of shareholders shown in the table above, 454 holding 84,078 shares were located in foreign countries; 7,495 or 14% held 10 shares or less, and 11,426 or 22% owned over 100 shares each.

Charles B. Stenfels

Vice President—Finance

[fol. 1851] 3348

Comparative Consolidated Balance Sheet

In Thousands of Dollars

ASSETS	—DECEMBER 31, 1957—		—DECEMBER 31, 1956	
CURRENT ASSETS				
Cash		$ 41,119		$ 39,92
Accounts and Notes Receivable (after allowances for doubtful accounts)		74,136		72,8
Inventories (Note 2):				
Raw Materials and Supplies	$ 57,529		$ 66,948	
Work in Process and Finished Goods	95,127	152,656	91,942	158,8
TOTAL CURRENT ASSETS		$267,911		$271,6
FIXED ASSETS (at cost)				
Land	$ 8,985		$ 8,668	
Buildings and Equipment	508,091		439,368	
Timberlands	35,029		32,945	
Construction in Progress	24,256		40,514	
Other	4,867		4,712	
	$581,228		$526,207	
Less Accumulated Depreciation and Depletion	204,457	376,771	182,831	343,3
INVESTMENTS IN AND ADVANCES TO ASSOCIATED COMPANIES AND SUBSIDIARIES NOT CONSOLIDATED (Note 3)		9,441		9,3
DEPOSITS WITH MUTUAL INSURANCE COMPANIES		3,312		1,7
PREPAID EXPENSES AND DEFERRED ASSETS		6,690		7,6
		$664,125		$633,3

See Notes on Pages 22 and 23

[fol. 1852]

CONTINENTAL CAN COMPANY, INC.

In Thousands of Dollars

LIABILITIES	— DECEMBER 31, 1957 —		— DECEMBER 31, 1956 —	
CURRENT LIABILITIES				
Bank Loans and Commercial Paper		$ 23,750		$ 15,103
Accounts Payable and Accrued Expenses		69,200		71,305
Debentures and Notes Payable Within One Year		1,836		1,836
Tax Accruals		30,059		40,563
TOTAL CURRENT LIABILITIES		$124,845		$131,807
RESERVES (principally for deferred federal income taxes and foreign exchange)		2,922		2,180
LONG-TERM DEBT (Note 4)		133,328		116,346
MINORITY INTEREST IN SUBSIDIARY		9,277		8,794
SHAREHOLDERS' EQUITY				
$3.75 Cumulative Preferred Stock (without par value)				
Authorized — 150,000 Shares				
Outstanding — 1957, 147,000 Shares	$ 14,700		$ 15,000	
Second Preferred Stock — ($100 par value) (Note 5)				
Authorized and Outstanding $4.50 Cumulative — 1957, 282,818 Shares	23,282		23,438	
Common Stock ($10 par value) (Note 5)				
Authorized — 15,000,000 Shares				
Issued — 1957, 11,202,778 Shares	112,028		111,748	
Capital Surplus (Paid in) (Note 6)	61,132		60,666	
Earnings Retained in the Business (Note 7)	183,179		163,878	
	$394,321		$374,730	
Less Common Stock in Treasury, at Cost — 16,236 Shares in 1957	618	393,703	151	374,579
		$664,125		$633,706

See Notes on Pages 22 and 23

[fol. 1853] 3350

Statement of Consolidated Income

In Thousands of Dollars

	YEAR 1957		YEAR 1956 (Note 1)	
Net Sales and Operating Revenues		$1,046,267		$1,010,268
Cost of Goods Sold and Operating Expenses		896,747		854,931
Gross Operating Income		$ 149,520		$ 155,337
Selling and Administrative Expenses		66,246		63,824
Net Operating Income		$ 83,274		$ 91,513
Other Income				
Income from Sales of Capital Assets and Securities	$2936		$1,187	
Dividends and Interest on Securities and Investments	865		916	
Other Income and Interest	1,101	4,902	726	2,829
		$ 88,176		$ 94,342
Income Deductions				
Interest on Long Term Debt	$3,905		$3,922	
Other Interest and Exchange	2,947	6,852	1,559	5,481
		$ 81,324		$ 88,861
Provision for Taxes on Income		39,300		44,800
		$ 42,024		$ 44,061
Minority Interest in Income of Subsidiary		984		918
Net Income		$ 41,040		$ 43,143

Note: Provision for depreciation and depletion amounted to $26,278,000 in 1957 and $23,421,000 in 1956.

See Notes on Pages 22 and 23

[fol. 1854]

CONTINENTAL CAN COMPANY, INC.

Statement of Earnings Retained in the Business

In Thousands of Dollars

	YEAR 1957		YEAR 1956	
Net Income for the Year		$ 41,040		$ 43,143
Dividends on Preferred Stocks:				
$3.75 Cumulative Preferred	$ 557		$ 563	
$4.50 Second Preferred (including in 1956 Dividends on $4.50 Cumulative Preferred Stock of Merged Company)	1,051	1,608	1,065	1,628
Net Income Applicable to Common Stock ($3.52 per share 1957 — $3.71 per share 1956)		$ 39,432		$ 41,515
Dividends on Common Stock				
Continental Can Company, Inc. ($1.80 per share)	$20,131		$15,495	
Merged Companies (before mergers)	—	20,131	5,101	20,596
Earnings Retained from Net Income for the Year		$ 19,301		$ 20,919
Earnings Retained in the Business, January 1		163,878		142,959*
Earnings Retained in the Business, December 31		$183,179		$163,878

*Includes $30,965,000 applicable to companies merged during 1956 and $15,870,000 earnings appropriated

See Notes on Pages 22 and 23

Notes to Financial Statements

NOTE 1 GENERAL

During 1956, the Company acquired, on a merger basis, all the outstanding stock of White Cap Company and the net assets of Hazel Atlas Glass Company and Robert Gair Company, Inc. The accompanying statements of income and earnings retained in the business include the results of operations of the merged companies for the entire year 1956. Certain 1956 expenses have been restated for comparability with 1957. Earnings per share are expressed in terms of the number of shares outstanding at the respective year-ends.

NOTE 2 INVENTORIES

Inventories are stated at the lower of cost or market. Cost for this purpose represents standard, average, or actual cost with respect to approximately 79% of the 1957 inventory (77% in 1956) and "last in, first out" (LIFO) cost-and-the remaining 21% (23% in 1956).

NOTE 3 INVESTMENTS

Investments are stated at cost, which is less than value based on market quotations.

NOTE 4 LONG TERM DEBT

Long Term Debt comprises the following:

	In Thousands of Dollars	
	DECEMBER 31, 1957	DECEMBER 31, 1956
3% promissory note due May 25, 1961	$ 4,966	$ 2,993
3% promissory notes due May 3, 1963	5,538	6,769
3¼% sinking fund debentures due December 1, 1965	1,496	1,496
3½% debentures due October 15, 1976	12,750	13,200
3¼% — 3¾% sinking fund debentures due November 1, 1995	39,502	39,502
3¼% promissory notes due November 1, 1995	25,000	25,000
4% promissory note due July 6, 1962	76	386
4% promissory notes due July 1, 1958	27,000	27,000
4½% promissory notes due April 15, 1959	10,000	—
4½% promissory notes due January 16, 1961	10,000	—
	$133,328	$116,346

The terms of the notes and indentures require the Company to apply toward retirement of the principal of the indebtedness not less than approximately $1,800,000 per annum during the years 1958 through 1962 in addition to repaying the promissory notes due in 1959 and 1961. The principal covenants and restrictions under the notes and indentures were amended in 1957 to make them consistent with each other. See also "Working Capital" in the text of this Annual Report for a description of arrangements for future borrowings.

NOTE 5 COMMON STOCK

At December 31, 1957, 558,764 shares of the authorized but unissued Common Stock were reserved for conversion of the Second Preferred Stock (at the rate of 2.4 shares of Common for each share of Second Preferred). In addition, 383,185 shares of Common Stock (either unissued or treasury shares) are reserved for sale under employees stock option plans or for deferred compensation requirements.

NOTE 6 CAPITAL SURPLUS

Capital surplus increased in 1957 by $466,285, arising principally from excess of consideration received over the par value of Common Stock sold under employees' stock purchase plans and from excess of par value of Second Preferred Stock converted during the year over par value of Common Stock issued in exchange therefor.

[fol. 1856]

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NOTE 7 EARNINGS RETAINED IN THE BUSINESS

The Company's Certificate of Incorporation and various promissory notes and indentures limit the amount which may be expended for the payments of cash dividends and the purchase, redemption or retirement of the Company's capital stock. At December 31, 1957, under the terms of the most restrictive of these documents, the Company may not apply more than $40,000,000 to such purposes.

NOTE 8. STOCK OPTION PLANS

The Company has two plans for the issuance to employees of options to buy its Common Stock at prices from 90 per cent to 95 per cent of the market value when the options were issued. On June 12, 1957, 343,250 shares of stock were offered employees under Plan 1 at an option price of $42 per share. Of 50,020 employees eligible, 12,671 submitted elections to purchase a total of 142,260 shares, and on December 31, 5,341 shares had been paid for in full and delivered under the June 1957 offering. Plan 1 will end when all of the shares have been purchased, or on June 19, 1961, whichever is earlier. On May 14, 1957, options to purchase 52,775 shares at a price of $45 per share were granted to 50 employees under Plan 2. During the year, a total of 14,227 shares of the authorized but unissued stock was sold to 70 employees upon exercise of purchase options under this plan. At December 31, 1957, 170 members of management held options to purchase a total of 246,855 shares of Common Stock at prices ranging from $17.63 a share for those granted in June 1951 to $45.00 a share for those granted in May 1957. All these options are exercisable in equal annual installments from the date granted and expire on June 21, 1961.

NOTE 9 ANTI-TRUST SUITS

Two anti-trust suits brought against the Company in 1956 by the Department of Justice claiming violation of the Clayton Act in connection with the mergers into the Company of the Hazel Atlas Glass Company and the Robert Gair Company, Inc. are still pending. The Company has filed answers denying the material allegations of the complaints.

NOTE 10 MISCELLANEOUS

Reference is made to the indicated sections of the text of this Annual Report for information as to: Capital Program, pages 4 and 16; Federal Income Taxes, page 15; "Depreciation and Depletion", Non-recurring Capital Gain, page 14 ("Earnings"), and Employees Group Insurance and Pensions, page 16.

Auditors' Report

To The Board of Directors and Shareholders,
Continental Can Company, Inc.:

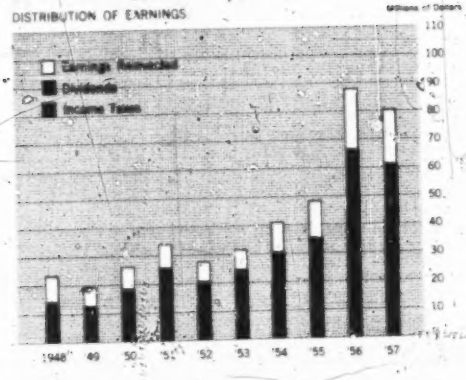
We have examined the consolidated balance sheet of Continental Can Company, Inc. and its subsidiary companies as of December 31, 1957 and the related statements of consolidated income and earnings retained in the business for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

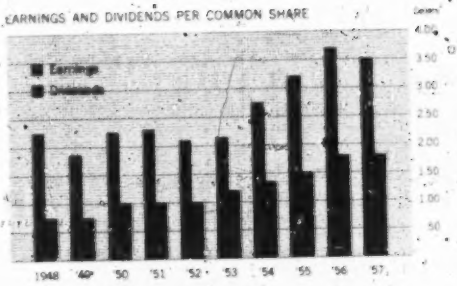
In our opinion, the accompanying consolidated balance sheet and statements of consolidated income and earnings retained in the business present fairly the consolidated financial position of the companies at December 31, 1957 and the consolidated results of their operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

NEW YORK, N. Y.
February 14, 1958

Haskins & Sells

[fol. 1857] 3354



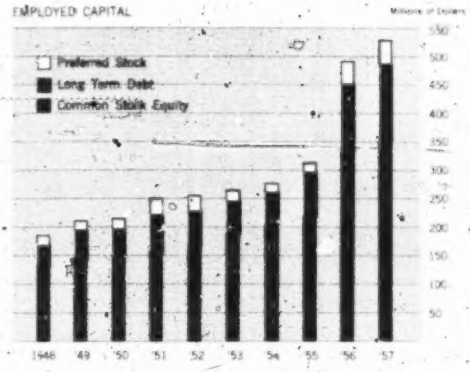


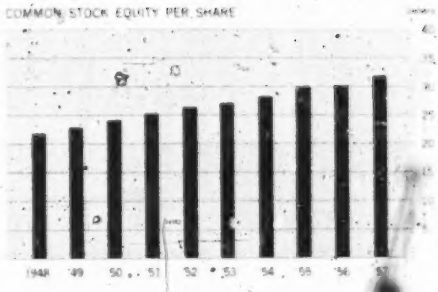
Ten Years in Review . . . 1948 to 1957

INCOME STATISTICS *In Thousands of Dollars*	1957
Net Sales and Operating Revenues	$1,046,267
Net Earnings before Income Taxes	$ 81,324
Per cent on sales	7.8%
Net Earnings after Income Taxes	$ 41,040
Per cent on sales	3.9%
Net Earnings applicable to Common	$ 39,432
*Per share	$ 3.52
Preferred Dividends	$ 1,608
Common Dividends	$ 20,131
*Per share	$ 1.80
Net Earnings Retained	$ 19,301
Depreciation and depletion	$ 26,278

BALANCE SHEET STATISTICS (DECEMBER 31) *In Thousands of Dollars*	1957
Current Assets	$ 267,981
Current Liabilities	$ 124,845
Net Working Capital	$ 143,066
Ratio Current Assets to Current Liabilities	2.1 to 1
Plant and Equipment – Net	$ 376,771
Long Term Debt	($ 133,328)
Preferred Stock	$ 37,982
Common Stock Equity (Includes Equity Reserves)	$ 356,435
*Per share	$ 31.81
*Number of Common Shares	11,202,778

*Figures adjusted where required to give effect to 100% Stock Distribution on February 15, 1956





1956*	1955	1954	1953	1952	1951	1950	1949†	1948
1,010,268	666,266	616,164	554,437	476,885	460,595	397,864	331,495	319,722
88,861	48,272	40,937	31,431	27,768	33,986	26,198	19,553	23,712
8.8%	7.2%	6.6%	5.7%	5.8%	7.4%	6.6%	5.9%	7.4%
43,143	24,173	20,737	15,681	14,388	15,211	14,873	12,351	14,812
4.3%	3.6%	3.4%	2.8%	3.0%	3.3%	3.7%	3.7%	4.6%
41,515	23,610	20,115	14,833	13,351	14,552	14,311	11,788	14,249
3.71	3.22	2.76	2.15	2.11	2.31	2.27	1.87	2.26
1,628	568	622	848	1,007	629	563	563	563
20,596	10,972	9,646	8,070	6,281	6,291	6,319	6,735	4,738
1.80	1.50	1.35	1.20	1.00	1.00	1.00	.75	.75
20,919	12,638	10,469	6,763	8,100	8,291	7,992	7,050	9,511
23,421	13,607	11,971	10,978	8,548	8,286	7,328	6,782	6,113

1956*	1955	1954	1953	1952	1951	1950	1949†	1948
271,630	178,579	162,995	141,439	144,005	146,736	112,569	122,919	106,565
131,807	67,763	80,665	55,546	46,367	48,329	42,327	36,753	34,282
139,823	110,816	82,330	85,893	97,638	98,007	70,242	86,160	72,283
2.1–1	2.6–1	2.0–1	2.5–1	3.1–1	3.0–1	2.7–1	3.3–1	3.1–1
343,370	189,012	181,171	166,244	148,711	142,558	129,399	108,588	105,226
116,346	79,648	55,595	58,580	61,565	64,100	46,635	51,500	32,200
38,438	15,000	15,000	18,849	25,451	25,453	15,000	15,000	15,000
336,520	218,939	205,956	186,852	167,334	159,913	152,596	144,190	137,954
30.14	29.87	28.24	27.01	26.37	25.85	24.14	22.82	21.84
13,174,805	7,328,806	7,293,066	6,917,058	6,344,484	6,326,924	6,320,202	6,317,202	6,317,202

*Includes merged companies
†Figures restated as in 1950 Annual Report

[fol. 1859]

The Board of Directors

Term

1951 STEPHEN D. BECHTEL
President of Bechtel Corporation
San Francisco, California

1951 PAUL G. CADY
President of State Street
Investment Corporation
Boston, Massachusetts

1952 LUCIUS D. CLAY
Chairman of the Board of The Company

1953 CARLE C. CONWAY
Chairman of the Executive Committee
of the Company and Consultant

1958 RAYMOND F. DAVIS
Vice President of the Company

1958 GEORGE S. DYER
Consultant and former Chairman
of the Board and President of
Robert Gair Company, Inc.

1949 GEORGE F. ROGERS
President of Wilmington Trust Company
Wilmington, Delaware

1947 FRANCIS L. HAMMERSLY
Senior Vice President of
Arthur Hafer & Associates, Inc.
Cleveland, Ohio

1956 H. BARTOW FARR
Attorney, partner in law firm of
Willkie Farr Gallagher Walton & FitzGibbon
New York, New York

1951 THOMAS C. POGARTY
President of the Company

1957 JOHN M. FRANKLIN
President of United States Lines
New York, New York

1941 JOHN L. JOHNSTON
Director of Phillips Petroleum Company
and Manufacturers Trust Company

1945 JUNIUS S. MORGAN
Director and Member of
Executive Committee of
J. P. Morgan & Co. Incorporated
New York, New York

1947 WILLIAM I. MYERS
Dean of the New York State College of
Agriculture at Cornell University
Ithaca, New York

1950 PARKER NEWHALL
Attorney, partner in law firm of
Kelley, Drye, Newhall & Maginnes
New York, New York

1958 JOSEPH L. PERIN
Executive Vice President
(Metal Operations) of the Company

1950 SIDNEY J. WEINBERG
Partner in Goldman, Sachs & Co.
New York, New York

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Executive Staff

LUCIUS D. CLAY, Chairman of the Board

THOMAS C. POGARTY, President

STAFF VICE PRESIDENTS

BENJAMIN C. METHEL, JR., Glass and Plastics Group Sales

RAYMOND F. DAVIS, Financial and Corporate Consultant

JOHN G. MURRAY, Director of Technical Development

CHARLES S. STANDFACHER, Patents

DIRECTOR OF SALES RESEARCH & PROMOTION
RAYMOND G. FISHER

GENERAL MANAGER, INDUSTRIAL RELATIONS
WARREN A. LACEY

GENERAL MANAGER, INDUSTRIAL ENGINEERING
JAMES R. LYNCH

COMPTROLLER
GREGORY J. BARRY

CONTROL OFFICER
HOWARD T. HEHN

SECRETARY AND TREASURER
LOREN S. DUNCAN

ASSISTANT SECRETARY
WALTER RITZ

ASSISTANT TREASURERS
JOHN S. CARTY
ERNEST MEYER
PETER S. NOLD

Transfer Agents and Registrars

	TRANSFER AGENTS	REGISTRARS
COMMON STOCK	Bankers Trust Company New York, N.Y.	Irving Trust Company New York, N. Y.
	National Trust Company, Limited Toronto and Montreal, Canada	Eastern Trust Company Toronto and Montreal, Canada
$4.50 CUMULATIVE PREFERRED STOCK	Bankers Trust Company New York, N. Y.	Irving Trust Company New York, N. Y.
SECOND PREFERRED STOCK	Manufacturers Trust Company New York, N. Y.	Chemical Corn Exchange Bank New York, N. Y.

[fol. 1869]

Operations

METAL OPERATIONS GROUP

REUBEN L. PERIN
Executive Vice President

HORACE M. BLINN
Vice President, Pacific Division

WILLIAM M. CAMERON
Vice President, Central Division

OREN G. McJUNKIN
Vice President, Eastern Division

ROBERT GAIR PAPER PRODUCTS GROUP

NORMAN F. GREENWAY
Executive Vice President

WILLIAM M. ALLEN*
Vice President,
Containerboard & Kraft Paper Division

PETER P. WOJTUL
Vice President
Fibre Drum & Corrugated Box Division

WILLIAM H. CADWG
General Manager
Boxboard & Folding Carton Division

DAVID H. ROSS
General Manager
(President, Gair Company Canada (Limited))

GLASS AND PLASTICS OPERATIONS GROUP

LAWRENCE WILKINSON
Executive Vice President

EUGENE R. VAN METER
Vice President, Paper Container Division

PHILIP O'C. WHITE
Vice President, White Cap & Bond Crown Division

J. GORDON KING
General Manager, Hand-Held Glass Division

KARSEN C. SCHENK
General Manager, Shallow-Bowl Division

OTHER OPERATIONS

LOWELL E. HANSEN
General Manager, Overseas Division

AUBREY W. VAUGHAN, JR.
General Manager,
Equipment Manufacturing Division

FRANK A. WHITTALL
General Manager
(President, Continental Can Company of Canada, Limited)

*Also responsible to the Board of Directors for the Management of Southern Paperboard Corporation, a 60% owned subsidiary.

[fol. 1861]

139 Plant Locations—indicating the diversification and scope

METAL OPERATIONS (U. S. AND CUBA)—50

◆ Metal Division

Auburndale, Fla.
Baltimore, Md.
Birmingham, Ala.
Chicago, Ill.
Cincinnati, Ohio
Cleveland, Ohio
Coffeyville, Kan.
Denver, Colo.
Elwood, Ind.
Harvey, La.
Havana, Cuba
Hayward, Calif.
Houston, Texas
Hurlock, Md.
Los Angeles, Calif.
Malden, Mass.
Mankato, Minn.
Milton, Fla.
Milwaukee, Wis.
New York, N. Y.
Oakland, Calif.
Old City, Pa.
Omaha, Neb.
Pagan, N. J.
Paterson, N. J.
Pittsburg, Calif.
Pittsburgh, Pa.
Portland, Ore.
Sacramento, Calif.
San Jose, Calif.
San Leandro, Calif.
Seattle, Wash.
St. Louis, Mo.
Stockton, Calif.
Syracuse, N. Y.
Tampa, Fla.
Terminal Island, Calif.
Walla Walla, Wash.
Winter Garden, Fla.

GLASS AND PLASTICS OPERATIONS—33

▲ Hazel-Atlas Glass Division

Mt. Olive
Clarksburg, W. Va.
Grafton, W. Va.
Lancaster, N. Y.
Montgomery, Ala.
Oakland, Calif.
Plainfield, Ill.
Pomona, Calif.
Washington, D. C.
Wheeling, W. Va.
Zanesville, Ohio

Shellmar-Betner Division

Beaumont, Texas
Columbus, Ga.
Dixon, Pa.
Milwaukee, Wis.
Mt. Vernon, Ohio
Newark, Ohio
South Gate, Calif.

▲ White Cap and Bond Crown Division

Chicago, Ill.
Los Angeles, Calif.
Milwaukee, Wis.
New Orleans, La.
Pittsburgh, Pa.
Wilmington, Del.

▲ Paper Container Division

Chicago, Ill.
Kensington, Conn.
Los Angeles, Calif.
Newark, N. J.
Three Rivers, Mich.

ROBERT GAIR PAPER PRODUCTS GROUP—44

● Boxboard and Folding Carton Division

Chicago, Ill.
Elkhart, Ind.
Haverhill, Mass.
Los Angeles, Calif.
Middletown, Ohio
Natick, Mass.
New London, Conn.
Piermont, N. Y.
Tonawanda, N. Y.

Fibre Drum and Corrugated Box Division

Atlanta, Ga.
Cambridge, Mass.
Cleveland, Ohio
Ft. Niagara, N. Y.
Jackson, Miss.
Los Angeles, Calif.
Martinsville, Va.
Midland, Mich.
New Orleans, La.
Philadelphia, Pa.
Pittsburgh, Calif.
Plymouth, Mich.
Portland, Conn.
Reading, Pa.
Richmond, Va.
St. Louis, Mo.
Scranton, N. Y.
Gretchen, N. J.
Tonawanda, N. Y.
Tyler, Texas
Van Wert, Ohio
*Under Construction

● Containerboard and Kraft Paper Division

Hodge, La.
Hopewell, Va.
Port Wentworth, Ga.

● Gair Company Canada Limited

Campbellford, Ont.
Edmonton, Alberta
London, Ont.
Montreal, Que.
Toronto, Ont.
Winnipeg, Man.

[fol. 1662]

of our 1957 operations

OTHER OPERATIONS – 12

- Equipment Manufacturing Division — Seattle, Wash. — Chicago, Ill. (2) — Syracuse, N. Y.
- Continental Can Company of Canada, Limited — Calgary, Alberta; Hamilton, Ont.; Montreal, Que. — New Toronto, Ont. (2); St. Laurent, Que.; Toronto, Ont. — Vancouver, B. C.

OPERATING SUBSIDIARIES

Continental Can Company of Canada, Limited
Montreal, Que., Canada
FRANK A. WHITTALL, *President*

Gair Company Canada Limited
Toronto, Ont., Canada
DAVID H. BOK, *President*

Continental Can Corporation
Havana, Cuba
CLARE A. VALENTINES, *General Manager*

Gair Woodlands Corporation
Savannah, Georgia
THEODORE W. EARLE, *President*

Southern Paperboard Corporation
Port Wentworth, Georgia
WILLIAM M. JELLIS, *President*

White Cap Company
Chicago, Illinois
PHILIP O'C. WHITE, *President*

SERVING INDUSTRY . . . SERVING AMERICA

Continental Can Company, Inc.

[fol. 1864] DEFENDANT'S EXHIBIT J

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Proceedings for the Reorganization of a corporation

No. 21680

In the Matter of:
NEVILLE ISLAND GLASS COMPANY, INC. Debtor

PETITION OF DISTINTERESTED TRUSTEE FOR DIRECTION AS TO FORM AND MANNER OF SUBMISSION OF TRUSTEE'S REPORT AND STATEMENT UNDER SECTION 167 (5) OF CHAPTER X OF THE BANKRUPTCY ACT AND RELATED MATTERS.

(Trustees' Petition No. 8)

To the Honorable The Judges of Said Court:—

The petition of Joseph H. Bialas respectfully represents:

First: On March 1, 1948 petitioner was appointed as the disinterested trustee in this matter and at the same time R. M. Marshall was appointed as the operating trustee. Said trustees duly qualified and have been acting in such capacity.

Second: Thereafter on March 15, 1948 petitioner and the co-trustee reported pursuant to Section 167 (1) of Chapter X of the Bankruptcy Act, recommending discontinuance of operations for the reasons set forth and, order of court was entered accordingingly.

Third: Pursuant to Section 167 (5) of said Act (11 USCA 567), petitioner has prepared in detail "report and statement of trustee" reflecting his investigation of the property, liabilities and financial condition of the debtor, the de-[fol. 1865] sirability of the continuance thereof and causes of action available to the debtor. As stated therein (p. 22) the final preparation thereof for submission was contingent upon the outcome of matters pending with Hartford Empire Company which were finally adjudicated by decree entered on September 10, 1948.

Fourth: Petitioner submits herewith said "report and statement of trustee" having attached thereto as Exhibit

"A" report of auditors as made to the trustees and as Exhibit "B" statement of cash transactions by the trustees. Request is made that your Honorable Court approve said report as to form and substance and order that the same be filed as part of the record herein.

Fifth: Petitioner requests authorization to have said "report and statement of trustee" printed and then direction that in such printed form said "report and statement of trustee" be sent by ordinary mail to all creditors and stockholders of debtor, to the Colonial Trust Company of Pittsburgh, Pa. as indenture trustee, to the Securities and Exchange Commission, to Frank W. Stonecipher, Esq. record counsel for the Protective Committee for Unsecured Creditors and to Messrs. Koontz, Fry, Staley & Meyer, counsel of record for certain stockholders, each said printed copy to contain on the first cover page notice in the following form.

Notice

To the creditors and stockholders, indenture trustee, the Securities and Exchange Commission and other persons interested in the matter of Neville Island Glass Company, Inc. debtor.

[fol. 1866] Notice is hereby given that the creditors and stockholders of Neville Island Glass Company, Inc., the above named debtor, may submit to me at my office, 2610 Grant Building, Pittsburgh 19, Pa., on or before December 1, 1948 suggestions for the formulation of a plan for the reorganization of the debtor or proposals relative to the form of plan for the reorganization of the debtor.

Joseph H. Bialas, Trustee.

T. F. Ryan, Attorney for Trustees, 2610 Grant Building, Pittsburgh 19, Pa.

Dated at Pittsburgh, Pa., November, — 1948".

Sixth: Relative to said report of auditor's attached as Exhibit "A" to the foregoing "report and statement of trustee" petitioner represents that printing of the extensive notes and schedules forming part thereof would serve

to make the cost of such printing excessive if not prohibitive and that in said "report and statement of trustee" petitioner calls attention to this situation and to the fact that the original of the auditor's report is of record and open for inspection. Furthermore it is believed that considerable of the data contained in said notes and schedules has been already summarized by petitioner in the "report and statement of trustee". Therefore petitioner believes it proper and advisable to print only the following portions of said auditor's report, viz;

	Page
Certificate	1
Exhibit "A" balance sheet March 1, 1948	2
Exhibit "B" statement of income, profit and loss year ending December 31, 1947 and period January 1 to March 1, 1948	3
[fol. 1867]	
Exhibit "C" statement of earned surplus deficit, statement of paid in surplus March 1, 1948	4
Note B at page 5, last two paragraphs without accompanying table;	
Note C on page 6, except second sentence of first paragraph, reference to note J in third paragraph, entire fourth paragraph and reference to note 1 in fifth paragraph;	
Note E starting at page 6, first three sentences of first paragraph and last two sentences of second paragraph;	
Note F (without the accompanying table) commencing on page 8 with the exception of the seventh and eighth paragraphs thereof;	
Note P on page 15, first paragraph including subdivisions (a) to (f);	
Schedule No. 4	39
Schedule No. 5	40
Schedule No. 6	41
Schedule No. 7	42
Schedule No. 10	45

Therefore petitioner submits all the foregoing to your Honorable Court and prays for due authority and direction in the premises. Furthermore petitioner prays that your Honorable Court fix December 1, 1948 as the date by which time parties in interest shall submit to petitioner suggestions for reorganization and also that your Honorable Court fix the date by which time petitioner shall file a plan of reorganization.

Joseph H. Bialas.

[fol. 1868] Commonwealth of Pennsylvania
County of Allegheny, ss:

Before me, a Notary Public in and for said County and Commonwealth, personally appeared Joseph H. Bialas, petitioner herein, who being duly sworn according to law, deposes and says that the allegations contained in the foregoing petition are true and correct as he verily believes.

Joseph H. Bialas.

Sworn to and subscribed before me this 3rd day of November 1958.

Vera Skelley, Notary Public.
My commission expires, March 11, 1949.

[fol. 1869] Order of Court

And now, to-wit, this 4th day of November 1948 the within petition presented in open court and upon consideration thereof it is hereby ordered, adjudged and declared as follows:

1. The "report and statement of trustee" attached to the foregoing petition as Exhibit No. 1 be and the same is hereby approved as to form and substance and the same is ordered to be filed so as to become part of the record herein.

2. As an administration cost in this proceeding said report shall be printed, including the portions of the auditor's report attached thereto as Exhibit "A" which are indicated in the within petition together with statement attached to the "report and statement of trustee" as Exhibit "B", and such printed copy thereof shall be sent by ordinary mail to

each creditor and stockholder of debtor as appearing on its books and records; to Colonial Trust Company of Pittsburgh, indenture trustee; to the Securities and Exchange Commission; to Frank W. Stonecipher, Esq., counsel of record for Protective Committee for Unsecured Creditors; and to Messrs. Kountz, Fry, Staley and Meyer, counsel of record for certain stockholders.

3. December 1, 1948 is fixed as the last date by which bondholders, creditors, stockholders and other parties in interest may mail to the disinterested trustee suggestions for a plan of reorganization or proposals relative thereto, same to be in typewritten form and the first cover page of such printed copy of the "report and statement of trustee" [fol. 1870] shall contain notice addressed and in the form as indicated in the within petition relative to submission of suggestions for the formulation of a plan of reorganization of the debtor.

4. Proof of mailing shall be filed of record not later than December 1, 1948.

5. The trustees shall file a plan of reorganization on or before December 31, 1948.

6. Copy of this order of court shall in printed form be sent to each party in interest with the printed copy of the "report and statement of trustee" under Section 167(5) of Chapter X of the Bankruptcy Act.

R. M. Gibson, D.J.

[fol. 1871] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Proceedings for the Reorganization of a corporation

No. 21680

In the Matter of NEVILLE ISLAND GLASS COMPANY, INC., Debtor

Report and Statement of Trustee

(Pursuant to Section 167 of Chapter X of the Bankruptcy Act)

Introduction

By decree entered on March 1, 1948 the Honorable Robert M. Gibson, Judge of the District Court of the United States for the Western District of Pennsylvania, approved the voluntary petition of Neville Island Glass Company, Inc. (hereinafter some times referred to as "Company" or "debtor") for reorganization pursuant to Chapter X of the Bankruptcy Act and thereupon appointed Joseph H. Bialas as disinterested trustee and R. M. Marshall as operating trustee. This report is submitted by said disinterested trustee under and in accordance with Section 167 of that Act for the purpose of informing the Court and all parties in interest relative to the property, liabilities and financial condition of the debtor, the operation of its business, available causes of action and other information upon the basis of all of which a plan of reorganization may be susceptible of formulation.

Formation of Debtor

Walkerman D. Dugan, who became president and director of the Company, originally conceived the idea of locating a new glass-container manufacturing plant in the Pittsburgh area, the basis being such claimed attractions as potential [fol. 1872] volume of business, proximity of sources of supply and abundance of skilled labor. His first association with

this industry was as a certified public accountant and later he became active in an executive capacity as president of Olean Glass Company, Olean, N. Y., of which City he became mayor.

His first approach was to New York underwriters in 1945 relative to plans for financing such a company. Also he consulted Frazier-Simplex Inc. of Washington, Pa., engineers of national repute in the design and construction of glass plants, and in the course of discussion plant site and construction costs were estimated at about $1,000,000.00. Frazier-Simplex Inc. put Mr. Dugan in touch with Pittsburgh Coke & Chemical Company on Neville Island which was desirous of having such a glass plant nearby to use its by-product gas as an available source of unfailing fuel supply.

The plan for financing the Company finally proposed by the underwriters called for the issuance of $700,000.00 in first mortgage bonds and a like amount in stock. Pittsburgh Coke & Chemical Company indicated its willingness to take the bonds if the Company would purchase an adjoining tract on Neville Island as the site of its plant to use said gas and provided that Mr. Dugan was successful in having the underwriters take the stock.

On the basis of such understandings the Company was incorporated on February 14, 1946 under the laws of Pennsylvania to engage in the business of manufacturing glass containers and glass products generally.

[fol. 1873] The articles of incorporation list the first directors of the Company as being

Walkerman D. Dugan	(who became president)
Charles D. Franchot	(of counsel for Company)
Allan L. Melhado	(with one of the underwriters)
Richard M. Marshall	(One of the trustees here and president and director of Pittsburgh Coke & Chemical Company).
Ralph C. Baker	(with one of the underwriters)

On March 16, 1946 Mr. T. W. Kirkpatrick (secretary and director of the Pittsburgh Coke & Chemical Company) was elected a director. On June 17, 1946 Mr. John J. Connell

(with one of the underwriters) was elected a director. On June 19, 1947 Mr. H. R. Mustard (treasurer and director of Pittsburgh Coke & Chemical Company) was elected vice-president in charge of finance.

Due action was taken to confirm the above recited preliminary arrangements and to authorize the bond and stock issues. A tract of 5.216 acres on Neville Island adjoining the plant of Pittsburgh Coke & Chemical Company was acquired from the latter at $5,000.00 per acre or $26,080.00. Pittsburgh & Ohio Valley Railroad Company (a wholly owned subsidiary of Pittsburgh Coke & Chemical Company) extended its tracks to the property line and the Company paid $12,200.00 for construction of railroad siding on its own land.

Registration statement was filed with the Securities and Exchange Commission on June 3, 1946 and the prospectus made puble offering of the stock issues. Those documents indicated the speculative nature of this enterprise.

[fol. 1874] Capitalization of Debtor

Under the articles of incorporation and amendments thereto or by corporate action duly taken capital issues were authorized as follows:

Class A Stock—70,000 shares of the par value of $1.00 each, entitled to dividends of 60 cents per annum payable quarterly—annually cumulative from January 1, 1948 (and prior thereto net profits permitting) with provision that one thereof is exchangeable for two shares of common stock, that each class A share is redeemable on call at $11.00 and that each thereof is entitled to $10.00 in dissolution or other liquidation. Although originally without vote each share of class A stock was later given one vote with the further provision that if cumulative dividends should remain unpaid for eight consecutive quarters the holders thereof as a class have the right to elect two directors of the Company.

Common Stock—600,000 increased to 920,000 shares of the par value of 10 cents per share, each entitled to one vote, to dividends after payment of all accumulations on the class A stock and to share in dissolution

or other liquidation only after holders of class A stock have received $10.00 per share as aforesaid and accumulated dividends.

Bonds—By trust indenture of mortgage dated April 1, 1946 but acknowledged and recorded on May 29, 1946 in mortgage book vol. 2802, page 30, to Colonial Trust Company as trustee, bonds to the total of $1,200,000.00 [fol. 1875] face amount were authorized to be issued in series from time to time. The initial issue was $500,000.00 face amount of class A bonds (non-convertible) and $200,000.00 face amount of class B bonds (convertible). Attached to said recorded mortgage indenture is part of an agreement dated May 29, 1946 with Pittsburgh Coke & Chemical Company whereby the latter agreed to buy said initial issue on or before August 1, 1946 provided that $437,460.00 received from sales of class A and common stock together with $700,000.00 of bond proceeds be deposited with the trustee as plant construction fund. First supplement to said mortgage indenture is dated June 25, 1947 which was acknowledged and recorded the same day in mortgage book vol. 5882, page 8, reciting that plant construction costs have exceeded estimates and providing for $250,000.00 face amount of series C bonds to be dated June 25, 1947 and to mature September 25, 1947. Second supplement to said mortgage indenture is dated August 1, 1947 which was acknowledged and recorded on August 2, 1947 in mortgage book vol. 2904, page 6, providing for $500,000.00 face amount of series D bonds to be dated August 1, 1947, the purpose thereof being to redeem series C bonds and to pay construction costs remaining in the amount of $211,812.16.

[fol. 1876] Disposition of Capital Issues

The Company sold to underwriters 60,000 shares of class A stock and 60,000 shares of common stock for public offering in units of one share of class A stock and one share of common stock at $10.10 per unit which was done in August 1946. The discount to underwriters was $1.50 per unit, resulting in net proceeds of $8.60 per unit to the Company or a total of $516,000.00 with a cost to the public of $606,000.00.

In April 1946 sales were made to Walkerman D. Dugan, president and director of the Company, totalling 10,000 shares of class A stock and 10,000 shares of common stock on the basis of $8.60 per unit (the same net as above), thus proucing $86,000.00. In addition there were sales of common stock to him and to underwriters to the extent of 270,000 shares at the par value of 10 cents each or $27,000.00. On September 3, 1947 the Company sold to Pittsburgh Coke & Chemical Company 320,000 shares of common stock at the par value of 10 cents per share of $32,000.00.

Thus 70,000 shares of class A and 660,000 shares of common stock were issued and the net proceeds of sales thereof amounted to $661,000.00 ($602,000.00 for 70,000 units at $8.60 per unit and $59,000.00 for 590,000 shares of common at 10 cents each). There were reserved 260,000 shares of common stock to meet the conversion privileges of 70,000 shares of class A stock and of $200,000.00 of class B bonds (hereinafter stated).

Schedule of said net proceeds from sale of capital stock is as follows:

[fol. 1877]

	April 1946			
Class A	W. D. Dugan	10,000 Shs.	$ 85,000.00	$ 85,000.00
Common	W. D. Dugan	160,000 Shs.	16,000.00	
	A. L. Melhado	30,000 Shs.	3,000.00	
	C. P. Franchot	20,000 Shs.	2,000.00	
	W. B. Dessner	10,000 Shs.	1,000.00	
	C. G. Wray	12,000 Shs.	1,200.00	
	Amott, Baker & Company	32,000 Shs.	3,200.00	
	Buckley Bros.	8,000 Shs.	800.00	
	Herrick, Waddell & Company, Inc.	8,000 Shs.	800.00	28,000.00
				$113,000.00
	August 1946			
Class A	Amott, Baker & Company	20,000 Shs.	$170,000.00	
	Buckley Bros.	20,000 Shs.	170,000.00	
	Herrick, Waddell & Company, Inc.	20,000 Shs.	170,000.00	
			510,000.00	
Common	Amott, Baker & Company	20,000 Shs.	$ 2,000.00	
	Buckley Bros.	20,000 Shs.	2,000.00	
	Herrick, Waddell & Company, Inc.	20,000 Shs.	2,000.00	
			6,000.00	$516,000.00
	September 3, 1947			
Common	Pittsburgh Coke & Chemical Company	320,000 Shs.	$ 32,000.00	32,000.00
				$661,000.00

The authorized funded indebtedness was divided into $1,000,000.00 first mortgage 4½ percent non-convertible bonds (due April 1, 1956) and $200,000.00 first mortgage 4½ percent bonds (due April 1, 1956) convertible into 120,000 shares of common stock. On August 13, 1946 the Company sold to Pittsburgh Coke & Chemical Company $500,000.00 of Series A bonds and $200,000.00 of Series B bonds for $700,000.00 cash plus interest accrued thereon after April 1, 1946. The initial proceeds to the Company from stock and bond sales thus were as follows:

[fol. 1878]

Proceeds from sale of stocks to promoters	$ 113,000.00
Proceeds from sale of stocks to public (not including September 3, 1947 sale to Pittsburgh Coke & Chemical Company for $32,000.00)	516,000.00
Proceeds from sale of bonds	700,000.00
Total	$1,329,000.00

The proposed application of the foregoing proceeds as shown on the Prospectus was as follows:

Estimated cost of plant	$1,163,540.00
Estimated organization expenses	36,000.00
Estimated interest and salaries prior to operation	25,250.00
Balance for working capital	105,210.00
Total	$1,329,000.00

The Company later sold to Pittsburgh Coke & Chemical Company $250,000.00 of Series C bonds at par on June 24, 1947 and on September 3, 1947 sold to the same purchaser $500,000.00 of Series D bonds at 90 or $450,000.00, retiring the $250,000.00 of Series C bonds out of said proceeds.

Upon acquisition of plant site and commencement of plant construction the relative voting power and equity investments appeared to be as follows:

	Before Conversion		After Conversion		Cash Equity Investment	
	Votes	%	Votes	%	Amount	%
Promoter group	290,000	71	300,000	50	$113,000	12
Pittsburgh Coke & Chemical Company	—	—	120,000	20	200,000	22
Public	120,000	29	180,000	30	606,000	66
	410,000	100	600,000	100	919,000	100

After sale of 320,000 shares of common stock to Pittsburgh Coke & Chemical Company on September 3, 1947 the foregoing table reflected the following:

[fol. 1879]

	Before Conversion Votes	%	After Conversion Votes	%	Cash Equity Investment Amount	%
Promoter group	290,000	40	300,000	33	$113,000	12
Pittsburgh Coke & Chemical Company	320,000	44	440,000	48	232,000	24
Public	120,000	16	180,000	19	606,000	64
	730,000	100	920,000	100	$951,000	100

Assets of Debtor

The books show that for $26,080.00 the Company purchased from Pittsburgh Coke & Chemical Company a tract of land on Neville Island in addition to which it deposited the sum of $1,137,460.00 with Colonial Trust Company, the mortgage indenture trustee, for disbursement on engineers' certificates covering construction of plant estimated to cost with land and site improvements the amount of $1,163,540.00. However final construction costs including purchase of molds, the installation of equipment and other items amounted to considerably more than the above estimate.

The plant is erected on a rectangular—U—shaped tract of land consisting of slightly more than five acres on Neville Island with railroad siding and with access to paved road at each horn of the U. Enclosed within said horns is a tract of over three acres abutting on the paved road, which lot debtor has the option to purchase at $16,985.00 within ten years from the date the plant is placed in operation and upon which debtor erected a one-story concrete block building used by it for offices. The plant building is steel clad on solid concrete foundation and houses (1) a single furnace or tank of brick construction for the production of molten glass, (2) bins or silos for raw materials, (3) system or [fol. 1880] equipment for transfer of raw materials to furnace, (4) large air compressor unit, (5) six production [illegible] (6) mold shop with molds, tools, etc. and [illegible] space for storing cartons and finished prod[illegible]

Debtor's books reflect the construction costs at [illegible] 899.70 as an opening asset entry.

All equipment comprising the six production lines (six each of feeders, forming machines, lehrs and stackers with auxiliary equipment) is owned by Hartford Empire Company under patents and debtor had entered into lease-license agreements with said patent owner on the basis of payment of license fees and certain production or minimum royalties. The license fees paid in cash by debtor amounted to $161,000.00 in addition to which installation and engineering costs increased the investment of debtor therein to $255,948.42 as an asset value on its books included in the total plant cost aforesaid.

Said plant has a capacity of about 150 tons daily production of finished ware. One criticism of the plant layout is that the warehouse space and facilities are inadequate which resulted because of insufficient funds to extend warehouse construction as originally planned on land owned and available therefor. Once the furnace is started, operations must be continuous around the clock with three shifts of personnel. Thus considerable warehouse space is required for storage of finished ware for periodic shipments to customers and economy of operation demands the longest possible runs on one type of product into storage so as to obviate expensive delays incident to mold changes.

[fol. 1881] On March 1, 1948 the books of debtor reflected current assets totalling $322,724.81 made up of cash, accounts receivable and inventories. All assets as carried on the books at the total of $2,146,134.14 are shown in detail by report of auditors attached hereto and made part hereof as Exhibit "A". Extensive notes, schedules and analyses accompany said report as filed of record in this proceeding with the original hereof which are open for any inspection but all thereof are not printed to save excessive cost. (The trustees were authorized by the Court in the interest of considerable savings to employ as auditor D. G. Sisterton & Company of Pittsburgh, Pa., who had acted in such capacity for debtor and who had made substantial audit of its affairs to December 31, 1947. D. G. Sisterton & Company act as tax advisers for Pittsburgh Coke & Chemical Company).

Liabilities of Debtor

Bonds in the face amount of $1,200,000.00 are secured by trust indenture of mortgage to Colonial Trust Company trustee, dated April 1, 1946, which recorded encumbrance constitutes a first lien on the land, plant and equipment. All outstanding bonds are held by Pittsburgh Coke & Chemical Company as aforesaid.

Notes payable to Pittsburgh Coke & Chemical Company as of March 1, 1948 were in the net amount of $73,828.18. These notes are secured by assignments of trade accounts receivable under the following arrangements.

On May 14, 1947 the Company borrowed $50,000.00 from Pittsburgh Coke & Chemical Company upon the basis of assignment of specific accounts receivable. This [fol. 1882] was later changed to a revolving collateral fund, so that when payment of a pledged account was received by Pittsburgh Coke & Chemical Company it advanced a like amount to Neville Island Glass Company Inc. upon receipt of an additional assigned account or accounts receivable. In this way the total amount of said loan was increased by $11,653.79 cash advanced against customer's checks which were later returned "unpaid".

Commencing February 1, 1948 a new arrangement was entered into whereby the revolving collateral fund was discontinued and the Company immediately discounted current invoices by assigning and pledging the same to Pittsburgh Coke & Chemical Company for cash advances equal to approximately eighty percent of the face amount thereof, each advance being evidenced by demand note.

In regard to all the foregoing assignments it would appear that there was adequate compliance with the Pennsylvania Act of July 31, 1941 P.L. 606 (69 Purdon's Statutes sec. 561) by making due entry of each thereof on the books and records of debtor. Duplicate original of each invoice contained stamped notation of assignment and was furnished to the assignee; indication of such assignment was stamped on the retained office copy of invoice; and appropriate notation of assign-

ments was stamped opposite respective invoice numbers on the accounts receivable ledger.

[fol. 1883] During February 1948 payments were received on account of assignments in the revolving collateral fund whereby the indebtedness thereunder was reduced to $6788.83. Under said arrangement for discounting invoices the advances during the month of February 1948 totalled $122,300.00 and as each assigned invoice was paid, Pittsburgh Coke & Chemical Company made application to the respective note and remitted the balance to the Company, thus reducing said indebtedness to $67,039.36.

In addition to the foregoing the books of debtor show that Pittsburgh Coke & Chemical Company made unsecured cash advances totalling $190,791.47 including $9,591.47 for freight bills due Pittsburgh & Ohio Railroad Company, a subsidiary of Pittsburgh Coke & Chemical Company, as follows:

Date	Amount
Sept. 24, 1947	$ 25,000.00
Oct. 21, 1947	29,200.00
Nov. 12, 1947	6,000.00
Nov. 19, 1947	15,000.00
Dec. 3, 1947	30,000.00
Dec. 12, 1947	7,000.00
Dec. 22, 1947	15,000.00
Dec. 24, 1947	10,000.00
Jan. 19, 1948	17,500.00
Jan. 21, 1948	6,500.00
Jan. 27, 1948	10,000.00
Jan. 30, 1948	10,000.00
Feb. 29, 1948	9,591.47
	$190,791.47

Also there is due it and subsidiaries the sum of $195,141.38 on open account as follows:

[fol. 1884]

Company	Description		Amount
Neville Concrete Pipe Company	Concrete Block	—	$ 1,756.38
Pittsburgh Coke & Chemical Company	Gas	$182,872.60	
	Electric power and water	3,386.65	
	Miscellaneous materials and services	6,608.40	
			192,867.65
Pittsburgh & Ohio Valley Railway Company	Demurrage, etc.	—	517.35
			$195,141.38

Trade accounts payable in the total amount of $354,704.37 represent chiefly raw materials, supplies, services, royalties and other items (to Hartford Empire Company), balances due on contracts relative to erection of building and installations therein and a substantial amount of carton materials. All of them are unsecured items with the possible exception of two mechanics liens totalling about $2,500.00. Income taxes withheld from employees but unremitted, payroll taxes and accrued real estate taxes are indicated as being liens or preferential items.

[fol. 1885] Business of Debtor

There was considerable expansion in the glass-container manufacturing industry following outbreak of the European war in 1939. After the United States became involved such expansion grew tremendously and continued after cessation of hostilities. Production during 1946 was almost three times that of 1938. To a great extent this was caused by priorities on tin for other uses, thus relegating consumers thereof to glass containers. It would appear that the Company was conceived in an era of tremendous expansion of this industry which continued through 1946 into the first quarter of 1947.

Plant construction and installation of equipment and machinery progressed to such a point that on March 31, 1947 the furnace was lit and operations were started. As a newcomer the Company was confronted with keen competition and its products had to meet severe tests before acceptance thereof under possible contracts therefor. Considerable business tentatively in prospect did not materialize. For a short period the price structure in this industry remained firm and demand continued good. After four or five weeks there were sharp declines in price but nevertheless demand fell off considerably (for example, finished ware of a particular size selling at say $10.00 a gross later commanded only $3.00 to $4.00 per gross).

Examination of the books and records of debtor indicates an amazing amount of overtime throughout its payrolls. Among the reasons advanced are that plant employees were "green", that there was almost constantly a large labor turnover, that inspection was inefficient which resulted in the packing and shipping of bad product and that inade-

[fol. 1886] quate warehouse storage facilities led to considerable rehandling and repacking.

The majority of sales were to distributors at a discount under the market price. Some of these distributors had made cash advances (as hereinafter mentioned) against future supply to them of finished product. Overshipments to these and other customers set up artificial accounts receivable and resulted in losses due to storage charges and forced sales.

As of June 10, 1947 a report was made to Pittsburgh Coke & Chemical Company by Arthur W. Schmid & Company, Pittsburgh, Pa., engineers in the design and operation of glass plants. The express purpose of said report was to estimate "the possibilities and amount of profit that might reasonably be expected from future operations" of the Company's plant. In attempting to forecast the commercial possibilities of said plant the report analyzes cost of raw materials and of operations. There is indication that construction of the plant was in the face of many adverse conditions of material and labor supply with the result that the premium for obtaining the various items in order to complete the plant is estimated at $200,000.00, in addition to which there was a substantial rise in prices during the period of construction. It is pointed out that the Company has a reliable year around supply of fuel in the by-product gas of Pittsburgh Coke & Chemical Company and that the additional capital investment required for installation of gas equipment is balanced by the overall cost of said fuel. There were no predictions as to future sales or prices and the report concludes with the statement "that the Company has a modern well located plant and a capable manufacturing and sales staff; and should prove to be a profitable enterprise".

[fol. 1887] Increased construction costs left the Company without adequate working capital. Competition forced it to accept business in less desirable and less profitable lines. Production and overhead costs exceeded the market price of finished ware. Operations resulted in losses each month averaging $60,000.00 to $70,000.00 during the eleven months of actual operation prior to March 1, 1948. These conditions broadly indicate some of the reasons for this proceeding.

Various Problems

Discontinuance of Operations—Immediately upon their appointment the trustees made thorough inquiry and investigation into the assets and affairs of the Company particularly with a view to deciding upon continuance of operations. As a first precaution notice of layoff was given to all employees with the exception of the office force and a few key personnel in the plant. To date no upward trend of price or demand has occurred in this industry to warrant any change in that conclusion. A study of market prices against production costs served to convince the trustees that continuance of operations pointed to certainty of substantial losses. Upon the basis of available data it appeared that production of one ton of finished ware would cost in excess of $70.00 against an apparent selling price averaging only about $55.00 to $60.00 per ton. Therefore the trustees concluded that it was most inadvisable to continue operations and so recommended to the Court in record submission accordingly, upon which an order was entered approving the recommendation of the trustees. Suppliers of materials on current order were notified to discontinue shipments forthwith.

[fol. 1888] The plant was closed down and watchmen were employed to guard the plant twenty-four hours daily as required by the insurance policies. Office personnel were continued for some weeks during which time the trustees put forth efforts to collect accounts receivable and to liquidate assets for which any market was available. During this period the books and records of debtor were examined by accountants for the trustees pursuant to order of court and were also examined by accountants representing the Committee for Unsecured Creditors as well as by representatives of the Securities and Exchange Commission. Presently the trustees have in their employ only the watchmen aforesaid with the exception of Mr. John W. Adams, bookkeeper of debtor, whose services are required occasionally.

Wages—On February 28, 1948 the Company issued checks covering payroll for the period ending February 21, 1948 and in advance thereof the Company had transferred to payroll account funds to meet said checks. However prac-

tically none of these checks had cleared at bank on March 1, 1948 and immediately upon their appointment the trustees became legally vested with all funds and property rights of debtor by reason of which the bank could not honor said payroll checks. The result was considerable hardship and embarrassment to the employees whose commitments for daily living expenses were based upon receipt of wages. Inasmuch as wages earned within three months constitute a preference under the law and in consequence of many frantic pleas to them the trustees presented that entire situation to the Court and decree was entered authorizing and directing the trustees to make payment of wages constituting legal preferences including wages earned and accrued from Feb-
[fol. 1889] ruary 21, 1948 to March 1, 1948, whereby the trustees paid out a total of $24,173.34. Of course salaries to officers were not included nor were commission accounts to salesmen although the latter may be items for preferential consideration.

Lease-License Equipment—Debtor installed in its plant six production lines consisting of equipment for automatic operation, viz. six feeders, six forming machines, six lehrs and six stackers with auxiliary equipment. All thereof were under lease-license agreements between debtor and Hartford Empire Company, the owner of patents covering said equipment. Under said agreements debtor paid in cash about $161,000.00 as license fees and in addition thereto paid out considerable funds for engineering and installation costs, so that the cash investment therein amounted to $255,948.42 on its books and records. Fixed production royalties were required to be paid and certain minimum royalties during non-operation.

Said lease-license equipment is vital and essential to any operation of debtor's plant as without same it would be a mere shell. Early realizing this the trustees contacted representatives of Hartford Empire Company. The situation was that as of March 1, 1948 debtor owed Hartford Empire Company $21,803.70 for production royalties due and unpaid for the months of September through December 1947 and for January and February 1948. Debtor was also indebted to Hartford Empire Company to the extent of about $26,000.00 on open account for various service and engineering costs which had accrued after installation of said equipment and

prior to March 1, 1948. The lease-license agreements contained provision for revocation and termination thereof upon default in payment of royalties as well as upon bankruptcy or receivership of Neville Island Glass Company, Inc. [fol. 1890] As of May 5, 1948 Hartford Empire Company finally proposed its willingness to permit retention of said equipment by the trustees to September 1, 1948, later to December 31, 1948, provided the trustees make payment of the defaulted production royalties aforesaid amounting to $21,803.70 and of certain minimum royalties after March 1, 1948. The trustees submitted that matter to the Court by petition for instructions and in several hearings considerable objection was raised that the item of $21,803.70 was an open and unsecured account but was being converted into a preferential claim for immediate payment as an administration expense. On June 29, 1948 the Court entered an order refusing to approve said proposal and in opinion rendered at the same time it was held that the Reorganization Court and the trustees should have a reasonable period to determine whether or not a plan of reorganization is possible, during which time Hartford Empire Company should not be permitted to remove said equipment. Also in said order of court the trustees were authorized to pay to Hartford Empire Company minimum royalties on said equipment at $1262.50 monthly from and after March 1 to December 31, 1948. However the result thereof was as follows:—

> The trustees promptly rendered payment to Hartford Empire Company for the months of March through July 1948. By registered letter dated July 22, 1948 and received by the trustees before July 26, 1948 Hartford Empire Company rejected said payment and served upon the trustees notice of revocation and termination of said lease-license agreements, which notice would be effective after the expiration of thirty days from receipt thereof.
>
> [fol. 1891] As a licensee under said lease-license agreements debtor had the option to request cancellation of the lease-license agreements and to make outright purchase of all said equipment at a price arrived at in accordance with formulae set up in final decree

by the United States District Court for the Northern District of Ohio, Western Division, in Civil Action No. 4426, between United States of America and Hartford Empire Company, which is often referred to as the "Toledo judgment". The trustees were informed that thereunder the cost for outright acquisition of all said lease-license equipment approximated a little more than $291,000.00 plus any existing indebtedness.

The trustees realized that to permit said notice of revocation and termination to become effective would mean the end of said lease-license agreements and the loss of the option aforesaid, a result plainly calamitous. Accordingly they presented their petition to the Court to restrain Hartford Empire Company from effectuating said notice of revocation and termination and hearing was fixed for August 19, 1948, thus in advance of the expiration of the thirty day period. Several days before August 19, 1948 counsel for Hartford Empire Company opened discussion with the trustees relative to any possibility of settling all matters involved by declaration and definition of the rights of the parties. Of a consequence in open court on August 19, 1948 the hearing was continued to August 26, 1948 and again on the latter date was continued upon motion made in open court to [fol. 1892] September 10, 1948 for the purpose of permitting settlement negotiations, all without prejudice and with full retention of the status in the meanwhile.

Final settlement agreement was submitted to and approved by the Court on September 10, 1948, whereby the trustees and any entity emerging from this reorganization proceeding have the option of purchasing and acquiring said lease-license equipment on or before December 31, 1948 for the sum of $302,589.23 made up of $21,803.70 defaulted production royalties and $280,589.23 as basic purchase price, both said sums being required under the "Toledo judgment", with further provision that in the event any plan of reorganization filed before December 31, 1948 contains provision for the outright purchase of said equipment at the price aforesaid or for the continued leasing thereof the trustees have the option accordingly and acceptance and approval of such plan by March 31, 1949 is automatic exer-

cise thereof. Such continuance of leasing requires under the "Toledo judgment" outright purchase of some of said equipment (no longer available under lease) at a cost of $77,174.55 plus payment of the defaulted royalties amounting to $21,803.70 or a total of $98,978.25. Upon failure to finally exercise any of said options Hartford Empire Company is entitled to repossess said equipment which shall in the meanwhile remain in the Nexille Island Glass Company, Inc. plant at the risk of Hartford Empire Company.

(It may be stated that the continuing uncertainty relative to said lease-license equipment rendered it inadvisable to file this report earlier).

[fol. 1893] Elevator Contract—During the construction of the plant Frazier-Simplex Inc. as agent of the Company issued purchase order to Marshall Elevator Company in approval of its quotation for the installation of a freight elevator at a cost of $12,252.00, one of the terms of which provided current billings up to seventy percent of materials delivered. The Company requested extensions of time for installation of said elevator but some of the material had been delivered and Marshall Elevator Company had billed debtor $6425.00 on account thereof. Following appointment of the trustees herein Marshall Elevator Company's petition for reclamation was allowed by the Court after full hearing.

Compressor Unit—On February 14, 1947 the Company entered into a contract with Ingersoll Rand Company (of New York) for an additional compressor unit complete with accessory equipment to cost $30,831.00 on account of which advance payments were made to the extent of $10,790.55. In the meanwhile a trade account payable to Ingersoll Rand Company arose for materials and replacement parts on open credit in the amount of $1,973.39. Following their appointment the trustees approached Ingersoll Rand Company to ascertain its reaction to cancellation of said contract and received advices that the cancellation charge would be $18,139.00 so that after application of the $10,790.55 an unsecured claim of $7,348.45 would result which together with the $1,973.39 would total $9,321.84. In the light thereof the trustees by letter to Ingersoll Rand Company stated that acceptance or rejection of said contract must be held in abeyance so that consideration may be given thereto in any plan of reorganization.

[fol. 1894] Executory Contracts—On petition of the trustees filed April 23, 1948 the Court approved the action of the trustees in terminating all contracts for current supplies of materials and supplies to debtor and the time was extended for acceptance or rejection of certain executory contracts including lease-license agreements with Hartford Empire Company, the elevator contract with Marshall Elevator Company, the option agreement with Pittsburgh Coke & Chemical Company for acquisition of additional land and the agreement with it for supply of gas fuel. At the same time hearing was fixed as to rejection of other contracts and by order entered April 29, 1948 the trustees were authorized to reject the employment agreements between debtor and Walkerman, D. Dugan, president, Herbert C. Abrahamson vice-president in charge of sales, Raymond A. Senkbiel vice president in charge of production, Herbert H. Sommers sales agent and Robert M. Ross sales agent.

Claims Available to Debtor

Accounts Receivable—The trustees have proceeded to collection of accounts receivable as reflected on the books and records of debtor including the assigned accounts. In quite a few instances they were met with assertions that Neville Island Glass Company, Inc. had accepted complaints of unsatisfactory product but no credit memoranda were found and nothing in the records of debtor substantiated such assertions. Inquiries developed the likelihood of oral allowances in some instances and where the claimed setoffs appeared reasonable on the basis of such information to the trustees they made settlement and collection of net balances accordingly. In other instances the trustees rejected such claimed setoffs and it may be that suits will be required to [fol. 1895] establish certain of the accounts receivable.

There is attached hereto and made part hereof as Exhibit "B" a brief statement of all cash transactions by the trustees to date.

Customers' Advances—(1) The sum of $150,000.00 was received from Pittsburgh Glass Containers Inc. (of New York) as "advance payment" for the entire output of one production line for a period of two years under an arrangement entitling it to deduct semi-monthly 1/24th of said ad-

vance against current invoices. Apparently there was some difficulty in collecting the balances over and above said deductions and as of December 23, 1947, the date of last shipment, the books of debtor indicate an account receivable approximating $71,000.00 against a remaining balance of said "advance payment" of about $53,000.00: Under one aspect the trustees might demand payment of the $71,000.00, thus relegating the depositor to whatever its legal position might be in regard to the balance of said "advance payment". The trustees are informed that there is serious question about collecting such account and inasmuch as "advance payment" would appear to mean exactly that the practical as well as the legal solution was reached whereby the remaining balance of said "advance payment" was applied to the $71,000.00 item so that the account receivable was reduced to $18,000.00.

(2) The sum of $100,000.00 cash was advanced by Glass Sales Corporation (of Chicago) under an arrangement for "return" at the rate of $6250.00 in each twenty day period thereafter. It would appear that the Company made no actual repayments but that M. Jacob & Son of Detroit, a [fol. 1896] subsidiary of depositor, took periodic credits of $6250.00 against current invoices to it. As of March 1, 1948 the balance of said deposit was $12,500.00; M. Jacob & Son owed about $3400.00 and National Bottling Company of Chicago, another subsidiary of depositor, owed about $9200.00; and both those subsidiaries assert the right of credit pro tanto against the $12,500.00. The trustees believe that Glass Sales Corporation should be relegated to the position of unsecured creditor for the remaining $12,500.00 and that suits be instituted to collect the accounts receivable aforesaid.

(3) Metropolitan Bottle Company (of New York) late in 1947 deposited $5,000.00 as "advance payment" to be credited against current invoices at the rate of $1000.00 per month. As of March 1, 1948 the accounts receivable against it approximated $11,000.00 after crediting against the deposit $1000.00 in January and a like sum in February 1948. The trustees have applied the $3000.00 balance of said deposit against the $11,000.00 account receivable so that the net amount of the latter is $8000.00, collection of which apparently must result from suit.

Overshipments—In some instances it was found that debtor, by reason of inadequate warehouse storage facilities, made shipments to customers in the hope of acceptance by the latter but upon refusal the Company had to place the goods in public storage. To every extent possible the trustees have made sale of such goods either subject to or upon payment of the storage charges.

Management of Debtor—When operation of the plant was started on March 31, 1947 it was an established fact that the cost of construction exceeded original estimates by about $500,000.00. At that time the only apparent working capital [fol. 1897] consisted of the deposits or advance payments by customers to such extent as they may not have been applied on account of construction costs. Although prospects then seemed bright on the basis of attractive price structure and continuing demand the Company was not basically solvent.

Hindsight decision now might indicate a conclusion one way but failure then to commence operations surely would have resulted in immediate bankruptcy. It would appear that all parties were most sanguine and optimistic about the success of this enterprise.

It is inconceivable that the directors did not become aware of practically continuous operating losses throughout the year 1947. On one or more occasions that subject matter came up for discussion in board meetings and in each instance corporate officers advanced convincing explanations with strong representation of betterment in the light of anticipated increase in sales and promised economies of operation. Again it is certain that bankruptcy would have resulted upon a shut down.

In so far as ascertained the officers and directors were actuated by what they thought were the best of motives. President Dugan appears throughout as a confirmed optimist and there was considerable reliance upon his reputation, experience and standing in the industry. Aside from contract salaries and commissions to certain officers (at perhaps rather high rates), there is no evidence to suggest misapplication of funds or any personal benefit whatsoever.

Whether or not there was such culpable negligence as to [fol. 1898] constitute the basis of any cause of action is still open for investigation and decision.

Subordination—There has been exhaustive investigation to ascertain if any facts exist which might raise the question as to whether or not any or all the claims of Pittsburgh Coke & Chemical Company should be subordinated to those of creditors and possibly of stockholders. The result thereof is briefly summarized as follows:—

Following incorporation and organization of the Company proceeds of bond and stock sales to the extent of $1,137,460.00 were deposited with Colonial Trust Company, trustee under the mortgage indenture, against disbursements upon engineers' certificates for construction costs. As hereinbefore set forth said construction costs considerably exceeded estimates and Pittsburgh Coke & Chemical Company advanced a net total of $450,000.00 additional cash for $500,000.00 face amount of bonds under the following circumstances:—

Mr. Dugan had been most optimistic that said excess of plant construction cost could be financed over a reasonable period of time out of operations. It soon became manifest that this was impossible because of severe price declines and reduction in demand. Needing immediate cash the Company approached Pittsburgh Coke & Chemical Company to purchase $250,000.00 of Series C bonds maturing in ninety days to be redeemed out of the proceeds of $500,000.00 of Series D bonds to be sold at 90.

[fol. 1899] Pittsburgh Coke & Chemical Company further assisted in financing operations by advancing $50,000.00 cash on May 14, 1947, against pledge of accounts receivable which later became the revolving collateral fund hereinbefore detailed. It had received nothing on account of by-product gas being furnished and from time to time thereafter it made unsecured cash advances to Neville Island Glass Company, Inc. As shown on Exhibit "A" hereto the unsecured trade accounts payable to it and its subsidiaries are $195,141.38 and the unsecured cash advances are $190,179.47. In addition to the bonds it is secured by pledged or discounted accounts to the extent of $73,828.18.

Whether or not any facts exist calling for subordination is still open for investigation and decision.

Committee and Other Representations

Early in the course of this proceeding there was organized a Protective Committee for Unsecured Creditors with Frank W. Stonecipher, Esq. of Pittsburgh, Pa., as its counsel who petitioned the Court that said Committee receive all notices as part of the record which has been done. On several occasions the trustees have met with that committee and its counsel to discuss the business, assets and affairs of debtor and at all times there has been on both side the proffer of every cooperation.

Several individual stockholders represented by A. E. Kountz, Esq. of Messrs. Kountz, Fry, Staley and Meyer, Pittsburgh, Pa., petitioned the Court to receive notices and [fol. 1900] there has been compliance accordingly.

It should be freely stated that counsel and accountants representing the Securities and Exchange Commission have throughout been indefatigable and constantly solicitous for the public interest. They have withheld no effort in regard to the most extensive inquiry, investigation and correspondence. Counsel has been present in Court at and participated actively in various hearings.

Matters for Consideration

Before any operations can be resumed it will be necessary to reline the furnace with fire brick at an estimated cost of $57,583.33 as shown on Exhibit "A". There should be adequate extension of warehouse facilities, the cost of which might well run from $100,000.00 to $300,000.00 according to the ultimate extent thereof. Outright acquisition of the lease-license equipment from Hartford Empire Company will require $302,589.23 or in the alternative continued leasing of said equipment will require the immediate outlay of $98,978.25.

So far as the trustees have learned the glass-container industry over the country is set up at a high rate of over productive capacity. The business generally is in a greatly depressed condition and it has come to the attention of the trustees that certain large manufacturers have closed down some of their plants and reduced their operations to a bare minimum. Presently there is no indication of demand which

would to any extent equal or approach the productive capacity existing in this industry.

[fol. 1901] The real problem involved in any suggestion for a plan of reorganization relates to obtaining new money to provide funds necessary for immediate outlay, such as plant rehabilitation, warehouse extension and lease-license equipment as well as to furnish a fair and reasonable amount of working capital.

In submitting these matters for consideration it is not the purpose or intention of the trustees to preclude any suggestion which the parties in interest may care to offer. Serious consideration should be given by all parties in interest to a plan of reorganization and suggestions should be freely made leading to the best possible plan. These suggestions must be forthcoming immediately in view of the December 31, 1948 dead line under the Hartford Empire Company agreement aforesaid.

Joseph H. Bialas, Trustee.

T. F. Ryan, Attorney for Trustees, 2610 Grant Building, Pittsburgh 19, Pa.

[fol. 1902] United States of America
Western District of Pennsylvania, ss:

I, James H. Wallace, Jr., Clerk of the United States District Court for the Western District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and full copy of the original Report Of Trustee as to Examination Under Sections 21(a) and 167 of the Bankruptcy Act, Report of Special Master, Statement of Investigation by Trustees, Petition, Order of Court, Petition of Joseph H. Bialas, Trustee, To Compromise and Terminate This Reorganization Proceeding, Petition for Allowance of Compensation to Joseph H. Bialas, Trustee, Petition of Disinterested Trustee for Direction as to Form and Manner of Submission of Trustee's Report and Statement Under Section 167(5) of Chapter X of The Bankruptcy Act and Related Matters. In re: In the Matter of Neville Island Glass Company, Inc. In Proceedings for the Reorganization of a corporation—No. 21680, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Pittsburgh this Sixth day of April, A.D. 1960.

James H. Wallace, Jr. Clerk. By Robert Marcinowski, Deputy Clerk.

[fol. 1903] Clerk's Note

Defendants' Exhibit K appears as Government's Exhibit 364, which is printed at p. 917, supra.

[fol. 1904] Defendants' Exhibit N

S-14A

Estimates

Ammonia	All or substantially all in glass
Antiseptics	All or substantially all in glass in consumer size
Baby Foods	80% glass; 20% cans
Beer and ale	39% cans; 6½% non-returnable glass; balance returnable glass
Brilliantines	All or substantially all in glass in liquid form and some collapsible tubes with different formulation.
Catsup	All or substantially all in glass in consumer size—Institutional all or substantially all in cans—plastic film or containers for individual servings—very small
Cheese spreads	90% glass; balance aluminum tumblers, plastic tubes and film, collapsible metal tubes, foil, crocks and paper; no cans
Chile sauce	All or substantially all in glass
Cider	All or substantially all in glass
Citrus segments, chilled	All or substantially all in glass
Citrus segments, non-refrigerated	95-100% cans

Coffee, ground	Less than 1% in glass; balance in cans and paper bags
Coffee, soluble	99% glass; 1% cans
Cologne	95-100% glass—some aerosols of glass, metal and plastic
Corn	All or substantially all in cans
Corned beef hash	95% cans
Cosmetic creams	90% glass; 5% plastic; 5% collapsible tubes
Crabmeat	All or substantially all in cans
Cranberry sauce	All or substantially all in cans
Cream, whole	50% glass; 50% paper—no cans
Cured ham	All or substantially all in cans
Distilled spirits	All or substantially all in glass
[fol. 1905] Drugs, ethical in liquid form	All or substantially all in glass
Flavoring extracts	All or substantially all in glass
Food sauces other than tomato sauce	All or substantially all in glass
Fruit spreads and preserves	More than 95% in glass for home consumption
Green beans	95% cans; 5% glass
Hair lacquer	All or substantially all in metal
Hair tonic	More than 95% in glass
Hominy	All or substantially all in cans
Horse radish	All or substantially all in glass
Juices, concentrated and frozen	All or substantially all in cans
Lard	All or substantially all in cans; a little paper
Lighter fluid	90% cans—10% glass
Lima beans	All or substantially all in cans
Liquid bleach	All or substantially all in glass
Liquid shoe polish	All or substantially all in glass
Lubricating grease	All or substantially all in cans
Luncheon meat	All or substantially all in cans
Machine oil	Substantially all in cans
Maraschino cherries	All or substantially all in glass; in consumer size
Mayonnaise	All or substantially all in glass in consumer size

Milk, whole	55% paper—45% glass
Mineral oil	All or substantially all in glass
[fol. 1906] Motor oil	All or substantially all in cans
Mouth wash	All or substantially all in glass
Mustard, prepared (consumer size)	95% glass—5% plastics
Nail polish	All or substantially all in glass
Nail polish remover	All or substantially all in glass
Olives, green	All or substantially all in glass
Olives, ripe	90-95% cans; balance glass
Paint, oil base (household, interior and exterior)	None in glass
Paint, polyvinyl acetate base (household, interior and exterior)	None in glass
Paint, rubber base (household, interior and exterior)	None in glass
Paste shoe polish	All or substantially all in cans
Peaches	95% cans—5% glass
Peanut butter (consumer size)	90% glass—5% plastic and 5% cans
Pears	95% cans—5% glass
Peas	All or substantially all in cans
Perfume	All or substantially all in glass
Pickles	Over 95% glass for household use—balance between cans and plastic film
Pineapple	All or substantially all in cans
Proprietary medicine in liquid form	95% glass—5% plastics
Prune juice	All or substantially all in glass
Pumpkin	All or substantially all in cans
Relish (consumer size)	All or substantially all in glass
Salad and cooking oils (consumer size)	85% glass; 15% cans
Salad dressings	100% glass for retail
Salmon	All or substantially all in cans
[fol. 1907] Sardines	All or substantially all in cans
Single strength blended orange and grapefruit juice	Over 95% cans

Single strength grapefruit juice	90-95% cans; balance glass
Soft drinks	98½% glass; balance cans (1% is one way bottle)
Solid and semi-solid shortening	All or substantially all in cans
Soup (Liquid form)	All or substantially all in cans
Squash	All or substantially all in cans
Starch (Liquid form)	All or substantially all in glass
Sweet Potatoes	All or substantially all in cans
Syrup, chocolate	95% cans—5% glass
Toilet water	All or substantially all in glass
Tomato juice	Over 95% in cans
Tomato paste	All or substantially all in cans
Tomato puree	All or substantially all in cans
Tomato sauce	All or substantially all in cans
Tomatoes, stewed	All or substantially all in cans
Tomatoes, whole	All or substantially all in cans
Tuna fish	All or substantially all in cans
Vinegar	All or substantially all in glass consumer size
Wax beans	Over 95% cans—balance glass
Wet pack pet foods	90-95% cans; balance glass
Wine	All or substantially all in glass
Writing ink	All or substantially all in glass except refill cartridges

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[fol. 1908] DEFENDANTS' EXHIBIT O

Ammonia
Antiseptics
Apple Juice
Apple Sauce
Apricots
Asparagus
Automobile paste and liquid polish
Baby Foods
Baby Oil
Baked beans
Beer and Ale

Beets
Blended fruit juices
Brake Fluid
Brilliantines
Catsup
Cheese spreads
Chili Con Carne
Chili Sauce
Cider
Citrus segments, chilled
Citrus segments, non-refrigerated
Coffee, ground
Coffee, soluble
Cologne
Corn
Corned beef hash
Cosmetic creams
Crabmeat
Cranberry Sauce
Cream, whole
Cured ham
Distilled Spirits
Drugs, Ethical in liquid form
Drugs, Ethical, in pill or capsule form
Flavoring extracts
Floor wax and polish
Food colorings
Food sauces other than tomato sauce
Fruit base drinks
Fruit cocktail
Fruits for salad
Fruit spreads and preserves
Furniture polish
[fol. 1909] Green Beans
Hair lacquer
Hair tonic
Hominy
Honey
Horse Radish
Ice Cream
Industrial chemicals
Juices, concentrated and frozen

Laboratory chemicals
Lard
Lighter fluid
Lima beans
Liquid bleach
Liquid shoe polish
Lubricating grease
Luncheon meat
Machine oil
Maraschino cherries
Mayonnaise
Meat Stew
Milk, liquid evaporated or condensed
Milk, whole
Mineral oil
Motor oil
Mouth wash
Mushrooms
Mustard, prepared
Nail polish
Nail polish remover
Olives, green
Olives, ripe
Paint, Artists
Paint, oil base
Paint, polyvinyl acetate base
Paint, rubber base
Paste shoe polish
Peaches
Peanut butter
[fol. 1910] Pears
Peas
Perfume
Pickles
Pigs feet
Pineapple
Pipe tobacco
Pork and Beans
Proprietary Medicine in liquid form
Proprietary Medicine in pill or capsule form
Prune juice
Pumpkin

Radiator anti-freeze
Relish
Salad and cooking oils
Salad dressings
Salmon
Sardines
Shaving cream and lather
Single strength blended orange and grapefruit juice
Single strength grape fruit juice
Single strength grape juice
Single strength orange juice
Soft drinks
Solid and semi-solid shortening
Soup
Spaghetti & Macaroni
Squash
Starch
Sweet Potatoes
Syrup, cane, maple and/or corn
Syrup, chocolate
Toilet water
Tomato juice
Tomato paste
Tomato puree
Tomato sauce
Tomatoes, stewed
Tomatoes, whole
Transmission fluid
Tuna fish
Vinegar
Vitamins
Wave set lotion
Wax beans
Wet pack pet foods
Wine
Writing ink

[fol. 1911] DEFENDANTS' EXHIBIT P

The Billion Dollar Glass Container Business

Richard L. Cheney, Executive Director of the Glass Container Manufacturers Institute, on a recent visit to the West Coast spoke before meetings of Security Analysts in San Francisco and Los Angeles. The accompanying article liberally quotes from the addresses made by Cheney. For example, note his remarks anent the "cryers of doom" which, at this time, are particularly apropos. He also pointed out that in 1957, for the third straight year, U.S. shipments of new glass containers reached an all-time high bringing the glass container business into the billion-dollar category for the first time.

GCMI advertisements in leading consumer magazines are reproduced in full color and have ideal potential for classroom use. "The ad that shows a child getting milk from a glass bottle (above) stimulated our food-and-health studies" said a Maryland school teacher. She further added that the fresh pure white of the milk seen through the glass made the children "feel thirsty."

The current recession has not adversely affected the glass container business. In recent speeches before The Security Analysts of San Francisco and Los Angeles, Richard L. Cheney, Executive Director pointed to figures released by the Department of Commerce to prove that point.

Shipments of new glass containers in the first four months of '58 were 6.3 billion units, 2.4% over the figure for the comparable four months in '57. Most of the increase in '58 was in the end-use categories of bottles and jars for soft drinks, food and beer, Cheney noted.

These figures continued the trend of the past several years. In '57 the glass container business became a billion-dollar industry—$784 million in containers and $284 million in closures. Last year the industry shipped 20.2 billion new units, said Cheney, or enough to supply every person in the U.S. with 118 bottles and jars.

For those who see "doomsday" approaching as new competition comes along, the following remarks by Cheney seem quite pertinent:

"Because of the ancient history associated with glass containers, people have tended to "kill-off" this business every time a new competitor of glass has come along. And there have been several! We can only say with Mark Twain that 'reports of our death have been grossly exaggerated'.

"Let's go back to about 1939 when the paper milk carton was introduced on a volume basis in supermarkets. 'This is the beginning of the end,' many people gloomily predicted in speaking of the faithful old milk bottle. But was it? How many had milk delivered at their door this morning in paper cartons? Probably very few, because home delivery is 90% in glass. In point of fact, we are selling today just as many milk bottles as we did in 1939, and our market studies in leading cities indicate that glass is even returning to supermarkets!

"Next the beer can came along. Again many people read what they thought was very plain handwriting on the wall. Beer bottles, they said, were finished. Shortly thereafter, however, we were able to develop the economies of quart beer bottles as well as the no-deposit, no-return beer bottles —with the result that today 65% of packaged beer is bottled in glass, and we are selling five times as many beer bottles as we were twenty years ago when the beer can was introduced. This, of course, is by reason of the growing use of

the disposable no-deposit bottle in place of the returnable bottle which averages 21 trips.

"The post-war boom in plastics, however, had the grave-diggers busy again. 'Plastics will make glass obsolete' they warned. Yet in the packaging of cosmetics—where plastics (largely squeezable containers) have had great growth—glass containers are currently enjoying their fastest rate of growth.

"Despite everything, the fact of the case is that this year—1958—the glass container business is steadily growing and constitutes an important part of America's dynamic packaging industry."

Cheney also made the following interesting comment on the historical developments of the glass container industry in California:

"In California, the history of bottle-making goes back to 1890 when the Abramson-Heunisch Co. established the State's first glass container plant in San Francisco. Prior to that, Abramson-Heunisch bought bottles from Eastern makers, reselling them to local packers and bottlers. The high cost of shipping bottles, coupled with increasing demand, led Abramson-Heunisch to open California's first glass container factory.

"In those early days there was a scarcity of the raw materials from which glass is made. Silica deposits had not as yet been developed, and it was necessary to bring soda ash in by ship, first around Cape Horn, and later through the Panama Canal.

"Shortly after 1900, the Illinois Glass Co. bought an interest in California's pioneer glass container plant, and the name was changed to Illinois-Pacific Glass Co. While one or two other companies came and went around the turn of the century, it was not until about 1920 that bottle-making really got underway in California and gave any indication of its present size and stability."

Today, with 13 of the 15 important manufacturing units on the West Coast, California has more glass container plants than any other state except one, and accounts for a sizable portion of the total output of glass containers.

GCMI
M R & P DIV.
#354—8/11/58

[fol. 1912] DEFENDANTS' EXHIBIT V

This Inquiry is Authorized by Act of Congress (13 U.S.C. 181) Which Requires that You File Report.

Budget Bureau No. 41-R7 11.9
Approval Expires January 31, 1959

Form M34D
(1-15-57)
(Formerly M75D)

U.S. Department of Commerce
Bureau of the Census

(Please correct if name or address has changed)
Form M34D (Formerly M75D)

Metal Cans

To: Bureau of the Census, Washington 25, D.C.
Attn: Industry Division

Retain This File Copy

Instructions

I—Mailing

This form is to be used in reporting metal can shipments covering each month of 1957. The report will be due within 15 days following the end of each month. It will be mailed back to you each month for the preceding month's figures. Return this form in the enclosed envelope which requires no postage. For your record, post each month's figures on the file copy which was sent to you with the initial mailing.

II—Who Should Report

All manufacturers of metal cans should submit reports, including those producing for their own use as well as those producing for sale to the trade. A manufacturer producing metal cans for use by plants of an affiliate, subsidiary or parent company should report transfers of metal cans from the producing plant to the consuming plant as "own use" shipments. A manufacturer with more than one plant producing cans should submit separate reports for each of his plants.

If you ship cans exclusively for your own use as defined above, check the box below marked "For own use" and complete your report. If you ship cans exclusively for sale to the trade, check the box marked "For sale," and complete your report. If you ship cans both for own use and for sale, make out two separate reports, one showing shipments for own use, the other shipments for sale. The appropriate box, viz. "For own use" or "For sale," should be marked on each of these reports.

III—What to Report

Shipments should be reported by the type of product packed in terms of the base boxes of steel consumed in the manufacture of cans. In all cases, the company actually manufacturing the cans should report its total shipments, including those made to other can manufacturers. Can manufacturing companies purchasing cans from other manufacturers should exclude from their reports the cans which they purchase and should limit their figures to shipments of cans of their own manufacture. Separate figures should be submitted for shipments for your own use and shipments to the trade.

IV—Metal Cans Defined

Metal cans covered by this report are defined as single-walled containers constructed wholly of tin plate, terneplate, black plate, or waste plate designed for packing products. This term includes all pails and drums manufactured from steel sheets of 29 gauge or lighter but does not include those produced from steel sheets of heavier than 29 gauge. Also excluded from the scope of the definition are ice cream cans and fluid milk shipping containers.

☐ For own use ☐ For sale

Remarks—Explain in this section, indicating the month and column number, any changes in the types of cans shipped and confirm any exceptional month-to-month shifts in production.

Name and address of person who should be contacted if questions arise regarding this report.

Telephone No.

To: Bureau of the Census, Washington 25, D.C.
Attn: Industry Division

Retain This File Copy

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☐ For own use ☐ For sale

Remarks—Explain in this section, indicating the month and column number, any changes in the types of cans shipped and confirm any exceptional month-to-month shifts in production.

Name and address of person who should be contacted if questions arise regarding this report. Telephone No.

Certification—The undersigned certifies that the information contained in this report is correct and complete to the best of his knowledge and belief.

Signature of authorized official Name of company

Title Date Address of company

This inquiry is authorized by law. Your report is accorded confidential treatment, subject to the provisions of law. Your Census report cannot be used for purposes of taxation, investigation or regulation.

Fill in form on reverse side

Comm-DC 47844

[fol. 1913]

3400

Company or Plant Identification No. State Code ☐ For own use ☐ For sale

Metal Cans Shipments During 1957, by Month

(Report in base boxes of steel consumed in the manufacture of cans)

Month	Fruit and vegetable cans (Including juice cans)	Evaporated milk and condensed milk cans	Other dairy products cans	Meat cans (Including poultry cans)	Fish and seafood cans	Coffee cans	Lard and shortening cans	Soft drink cans for carbonated beverages	Soft drink cans for non-carbonated beverages[1]	Beer cans	Pet food cans	Oil cans (Open top 1-quart and 5-quart)	All other food cans (Including soup and baby food cans)	All other non-food cans	Total
	1	2	4	5	6	7	8	14	15	10	11	12	9	13	
1957															
January															
February															
March															
Census use															
April															
May															
June															
Census use															
July															
August															
September															
Census use															
October															
November															
December															
Census use															
Census use															

[1] Include cans for still drinks sold as soft drinks.

Form M34D (1-15-57) Please sign on face of form Comm-DC 47844

[fol. 1914] DEFENDANTS' EXHIBIT X

Interrogatory 6.

6. (a) Give the names and addresses and the sales volume, in dollars and in units, for each of the years 1953 to 1956, inclusive, of the manufacturers of metal cans which are claimed to be the largest such manufacturer and the third largest such manufacturer, respectively, in the United States. (paragraph 8)

(b) Give the total sales, in dollars and in units, of metal cans sold in the United States for each of the years 1953 to 1956, inclusive. (paragraph 8)

[fol. 1915] Answer to Interrogatory No. 6 (b).

6. (b) The total sales in dollars and in units of metal cans sold in the United States for each of the years 1953 to 1956, inclusive:

	Dollars	Units
1953	N.A.	N.A.
1954	$1,292,570,000 (a)	N.A.
1955	1,387,262,000 (a)	39,190,151,000 (b)
1956	1,540,000,000 (a)	41,826,721,000 (b)

N.A.—Not available.

(a) These totals are value of shipments based upon the Annual Surveys of Manufacturers published by the Bureau of the Census, Department of Commerce.

(b) Steel consumption converted into the number of #2 cans which might have been produced from the amount of steel consumed. These figures were estimated and published by the Can Manufacturers Institute, Inc. and the plaintiff has no way of verifying their accuracy.

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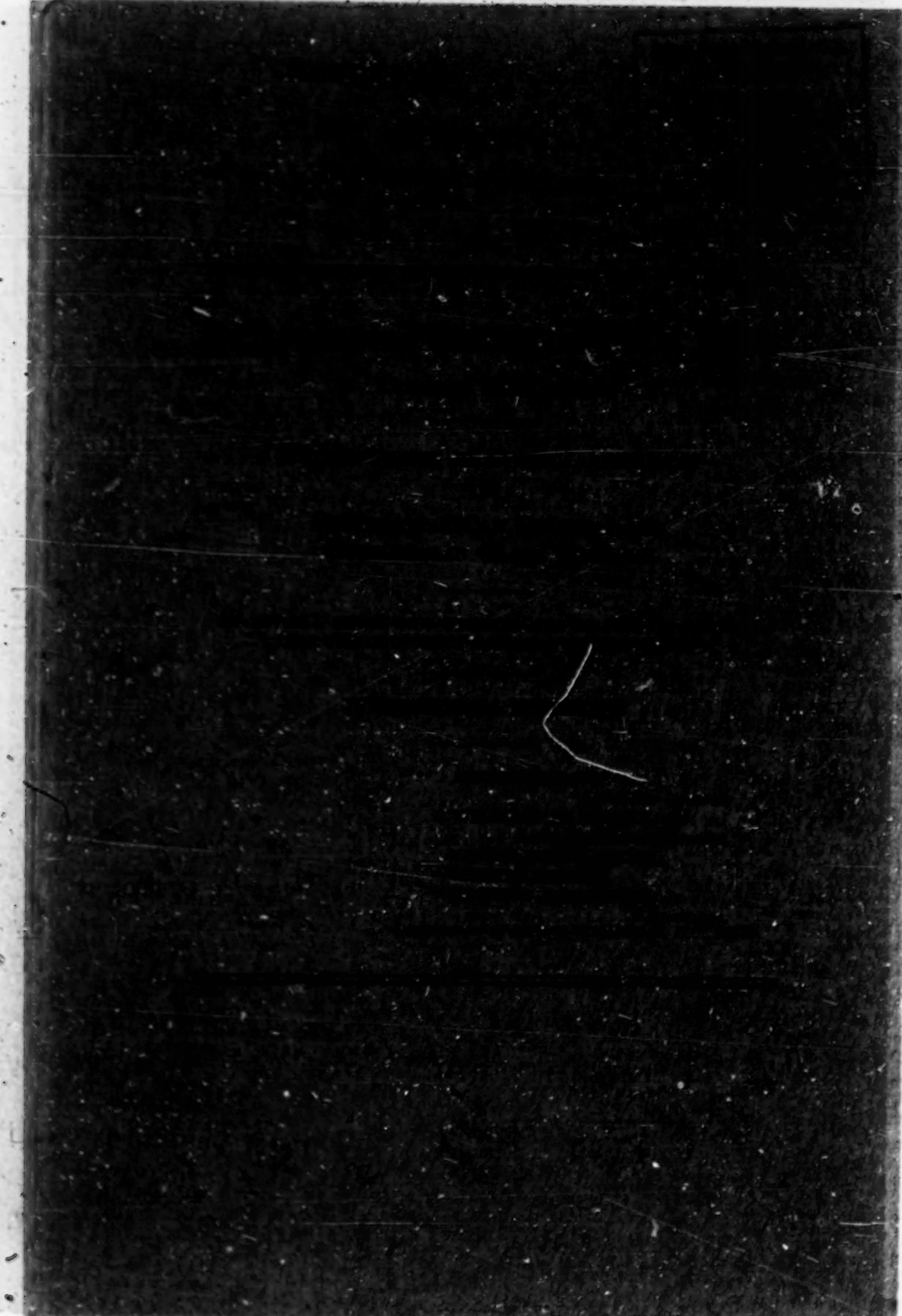

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5 Moore's *Federal Practice* (2d ed.), pp. 1044–1046 6

696-226—63——1

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. ----

UNITED STATES OF AMERICA, APPELLANT

v.

CONTINENTAL CAN COMPANY AND

HAZEL-ATLAS GLASS COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the district court, comprising its findings of fact and conclusions of law (Appendix, *infra*), is not yet reported.

JURISDICTION

The judgment of the district court was entered on April 16, 1963. The notice of appeal was filed by the United States on June 14, 1963. The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29. *United States* v. *du Pont & Co.*, 353

U.S. 586; *United States* v. *Columbia Steel Co.*, 334 U.S. 495.

QUESTIONS PRESENTED

The ultimate question presented is whether the government's evidence showed a violation of Section 7 of the Clayton Act so that the district court erred in dismissing the complaint at the close of the government's case.

This question involves three subsidiary questions of law:

1. Whether mergers eliminating "interindustry" competition are subject to Section 7 of the Clayton Act.

2. Whether, in order to prove that a merger may substantially lessen competition, the government must in every case use statistical evidence of market shares in a defined product market; and

3. Whether the district court erred in concluding that the government had failed to show that this merger would substantially lessen competition in the market for containers for food-canning.

STATUTE INVOLVED

Section 7 of the Clayton Act, 38 Stat. 731, as amended, 64 Stat. 1125, 15 U.S.C. 18, provides in pertinent part:

> No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another cor-

poration engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

STATEMENT

1. THE MERGING COMPANIES

Continental, a New York corporation organized in 1913 through the merger of three metal container manufacturers (GX 786),[1] has since acquired 24 other companies in that same field and many more in other aspects of the packaging line. The latter group includes seven producers of flexible packaging; one manufacturer of polyethylene bottles and similar plastic containers; 14 companies producing paper containers and paperboard, including fibre drums, folding boxes, and corrugated shipping containers; four (including Hazel-Atlas) making closures for glass containers; seven producing a miscellany of products; and one, Hazel-Atlas, producing glass containers. By 1955, Continental had total assets of $382 million and operated 72 domestic plants, of which 30 had been obtained through acquisitions (GX 785, 786, 900, 1211, 1213; App. 9a–11a).

In 1955 Continental shipped approximately 33 percent of all metal containers sold in the continental United States and was the second largest company

[1] These companies were Continental Can Company, a New Jersey corporation; Export and Domestic Can Company, a New York corporation; and Standard Tin Plate Company, a Pennsylvania corporation.

in the field. The leading producer, American Can Company, shipped 37 percent so that Continental and American together shipped approximately 71 percent of all metal containers. The third largest, National Can Company, shipped approximately 5 percent. Between 75 to 90 other companies shared the remaining 24 percent of the market (Tr. 1006; GX 800–803; App. 19a–20a).

Hazel-Atlas, a West Virginia corporation organized prior to 1900, had operated 13 plants located throughout the country before the acquisition. It had net sales in 1955 of more than $79 million, and assets in excess of $37 million. It had always operated at a profit and had not missed a dividend since 1907 (Tr. 835). Hazel-Atlas shipped approximately 9.6 percent of the glass containers in the continental United States, exceeded only by Owens-Illinois Glass Company (34.2 percent) and Anchor-Hocking Glass Company (11.6 percent). The remaining 44.6 percent of the market was split among at least 39 others (App. 12a, 22a).

A few weeks after its acquisition of Hazel-Atlas in September 1956, Continental acquired the Robert Gair Company, Inc., a leading manufacturer of paper and paperboard products.[2] Earlier in 1956, Continental

[2] Gair had net sales in 1955 of $160.2 million and assets of $134.9 million. Its products included corrugated shipping containers used extensively in the shipment and packaging of glass and metal containers. On October 30, 1956, the government filed another complaint against Continental which alleged that its acquisition of the Robert Gair Company violated Section 7 of the Clayton Act. Pursuant to order of the court, all proceedings in the *Robert Gair* case were stayed pending determination of the *Hazel-Atlas* case.

had also acquired the White Cap Company, a leading producer of vacuum-type metal closures for glass food containers (GX 1211, 1212; App. 10a).[3] As a result of these three mergers, Continental's net sales and operating revenues rose from $666 million in 1955 to more than $1 billion in 1956. Its assets rose from $382 million to more than $633 million (App. 11a).

2. THE MERGER AND THE DECISION BELOW

On learning of Continental's plans to acquire Hazel-Atlas, the government sought to prevent the merger under the terms of a 1950 consent judgment (in a suit aimed at price-fixing and lease tie-in arrangements) which barred Continental from acquiring any more "container" manufacturers. In August of 1956, the district court in California, finding that the term "container" as used in the judgment did not encompass glass containers, held that the consent decree did not cover the proposed acquisition (App. 1a, 2a).[4]

The United States thereupon filed the complaint in this action on September 10, 1956, and its request for a temporary restraining order was denied three days later. On that day, Continental acquired all of the assets, properties, business, and goodwill of Hazel-Atlas in exchange for 999,140 shares of Continental

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[3] White Cap produced approximately 18.5 percent of all types of metal closures made from tin plate in that year. Two years later, when such figures became available, it was determined that White Cap had approximately 60 percent of the production and shipment of all vacuum closures made from tin plate (GX 800–803; App. 28a).

[4] *United States* v. *Continental Can Company*, 143 F. Supp. 787 (N.D. Cal.).

common stock and the assumption by Continental of all the liabilities of Hazel-Atlas (App. 2a; Answer).

After extensive discovery proceedings by both parties, the trial began in June 1960. The government called 78 witnesses and introduced more than 1,200 exhibits. At the conclusion of the government's case, defendants moved to dismiss under Rule 41(b) of the Federal Rules of Civil Procedure, claiming that on the law and the facts, defendants were entitled to final judgment on the merits.[5] The district court on December 8, 1960, decided to grant the motion in a brief oral statement which indicated that the written findings and opinion, as well as the judgment, would follow. Since no opinion or findings had been rendered when this Court, on June 25, 1962, announced its decision in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, the government requested the district court to reconsider its oral decision in the light of that opinion (App. 3a).

On April 15, 1963, the district court issued its written opinion incorporating findings of fact and conclusions of law, and granting defendant's motion for final judgment (Appendix). The court identified three classes of products produced by Continental and Hazel-Atlas which it considered to be relevant to the merger (metal, glass and plastic containers)[6] and

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[5] On such a motion in a case being tried without a jury, the district court must weigh and evaluate all the evidence then presented and determine whether or not plaintiff's proof warrants the relief sought. (F.R. Civ. P. 41(b); see 5 Moore's *Federal Practice* (2d ed.), pp. 1044–1046).

[6] We do not here challenge the district court's ruling that closures (devices used to close and seal various containers) are not a separate line of commerce.

characterized each as being produced by a separate industry (App. 13a, 18a–27a, 35a). While the court found that there existed "substantial and vigorous inter-industry competition between these three industries and between various of the products which they manufactured" (App. 35a), such competition was held insufficient to make such "products from separate and distinct industries" (App. 37a) a single line of commerce under Section 7. It followed, the court held, that this merger was a "conglomerate merger * * * [which] does not result in the elimination of a competitor but merely substitutes the competition of the acquiring company for that of the acquired company in the lines of commerce in which the acquired company was formerly engaged" (App. 47a–48a).

Turning to the 10 lines of commerce which the government contended would suffer anticompetitive effects from this merger,[7] the district court accepted only three: the metal container industry (App. 53a–58a); the glass container industry (App. 58a–63a); and containers for the beer industry (App. 65a–70a), and found no anticompetitive effects in each.[8] In reject-

[7] The lines of commerce advanced by the government were considered by the court below as follows: the packaging industry (App. 50a); the metal container industry (App. 53a); the glass container industry (App. 58a); metal closures (App. 63a); containers for the beer industry (App. 65a); containers for the soft drink industry (App. 70a); containers for the canning industry (App. 76a); containers for the toiletries and cosmetic industry (App. 83a); containers for the medicine and health industry (App. 83a); containers for the household and chemical industry (App. 83a).

[8] The district court held that the relevant geographic market was the United States as a whole (App. 32a). We accept that finding for the purposes of this appeal.

ing the others, the court found that they failed to qualify as relevant submarkets within the criteria suggested in *Brown Shoe Co., supra* (*e.g.*, App. 37a–38a), and further held (App. 92a):

> Moreover, even assuming that any such product markets existed, I have found that there was no proof of any reasonable probability of substantial anti-competitive effects or tendency to monopoly as a result of the acquisition in any of them.

THE QUESTIONS ARE SUBSTANTIAL

This appeal in a major antitrust case presents substantial questions as to the basic standards for applying Section 7 of the Clayton Act to a merger of principal producers of highly competitive but physically distinct goods—in this case metal and glass containers. These competing products are, as the district court recognized (App. 35a–36a), the subject of "substantial and vigorous inter-industry competition" by manufacturers "seeking to enlarge their sales to the thousands of packers of hundreds of varieties" of goods of every sort (App. 35a). "Hazel-Atlas and Continental were part of this overall industry pattern" (App. 35a) and, as we shall show below, their roles in this competition were extremely substantial.

Competition between producers of such physically distinct goods is fully protected by Section 7. The district court, however, held otherwise (see App. 35a–40a). Finding that the production of metal cans and of glass containers was "each * * * a recognized separate industry producing distinct products" (App.

35a), the court concluded that diminution of competition between such industries was not generally judicially cognizable and held that therefore no consequence forbidden by Section 7 could be assumed to follow from even an unjustified elimination of the "inter-industry or inter-product competition" the government had shown (App. 36a–37a). In the court's view, the fact that the government had sought to combine separate and distinct products from separate and distinct industries into single product markets" (App. 37a) indicated that this was not "a horizontal combination" of competitors, but a "conglomerate combination" of noncompeting firms in separate industries for purposes of diversification (App. 38a–39a).

But Section 7 of the Clayton Act draws no distinction between competition within a single "industry" and that between different "industries." A merger violates Section 7 if it has the proscribed anticompetitive effects in "the area of effective competition,"[9] and the purpose of an inquiry into lines of commerce is "to recognize competition where, in fact, competition exists" (*Brown Shoe Company* v. *United States*, 370 U.S. at 326). Here the government proved and the district court found that "substantial and vigorous interindustry competition exists" between metal and glass containers and that "Hazel-Atlas and Continental were part of this overall industry pattern." This finding makes unavoidable an appraisal of the effects of the merger on this competition. Certainly

[9] *United States* v. *Philadelphia National Bank*, No. 83, Oct. Term, 1962, slip op. p. 37; *Brown Shoe Co.* v. *United States*, 370 U.S. at 324; *United States* v. *E. I. du Pont & Co.*, 353 U.S. at 593.

such an appraisal is not rendered unnecessary by a conclusion that the competition is "inter-industry."[10]

In the present case the government established, in two independent ways, that the merger between Continental and Hazel-Atlas would tend substantially to lessen competition. We shall discuss each of these in turn.

1. The competition involved in the present case was well described by the court below (App. 35a–36a):

> Concededly there was substantial and vigorous inter-industry competition between these three industries and between various of the products which they manufactured. Metal can, glass container and plastic container manufacturers were each seeking to enlarge their sales to the thousands of packers of hundreds of varieties of food, chemical, toiletry and industrial products, ranging from ripe olives to fruit juices to tuna fish to smoked tongue; from maple syrup to pet food to coffee; from embalming fluid to floor wax to nail polish to aspirin to veterinary supplies, to take examples at random.

[10] This is amply demonstrated by the facts of *United States v. du Pont de Nemours & Co.* (Cellophane), 351 U.S. 377, where this Court rejected the government's contention that duPont's 75-percent control over cellophane violated the Sherman Act, on the ground that the relevant market was "flexible wrapping materials"—including such widely different products of separate industries as aluminum foil, vegetable parchment and waxed paper. The district court in the present case mistakenly relied upon a quotation from the *Cellophane* opinion stating that a monopoly in one industry could not be justified by showing the existence of remote interindustry competition. But from this statement it, of course, does not follow that a merger of interindustry competitors is not subject to the antitrust laws.

> Each industry and each of the manufacturers within it was seeking to improve their products so that they would appeal to new customers or hold old ones. Hazel-Atlas and Continental were part of this overall industrial pattern, each in a recognized separate industry producing distinct products but engaged in inter-industry competition for the favor of various end users of their products.

Thus, the competition between Continental and Hazel-Atlas covered a great range of closely related products for thousands of end uses. In a principal category, containers for food canning, competition is limited to metal and glass containers. (See *infra*, pp. 14–16). In that line, as we shall indicate below under Point 2, the companies' market shares were proved and provide an independent basis for invalidating the merger. There are many other end uses, however, in which metal and glass containers compete with each other and also with paper, plastics, and additional materials. In these lines, the multiplicity of uses and alternative products make definition of precise market shares impossible. The case therefore presents the question whether the government must always prove statistically the shares of merging companies in a defined market in order to establish that the merger may substantially lessen competition.

We submit that it need not. The inquiry directed by the statute is to ascertain the extent to which competition may be lessened as a result of the merger. It has become customary in merger cases to commence this inquiry by delineating relevant product and geo-

graphic market. Statistics showing the merging companies' shares in such markets is one of the most important means of measuring the potential reduction of competition resulting from a merger (*Brown Shoe Co.* v. *United States*, 370 U.S. 294, 322 fn. 38, 343; *United States* v. *Philadelphia National Bank*, slip op., pp. 41–44). But this process is only a means used to reach an end—an appraisal of the effect of the merger upon competition. It confuses means with ends to construe the "line of commerce" language of Section 7 as requiring statistical market shares of specific lines in all cases.

Interindustry competition, in particular, may present a need for a measure of the substantiality of competition which is alternative to market percentages. The court's opinion indicates other instances of competition comparable to that between metal and glass containers: copper and aluminum products; cotton, wool and synthetic fibers; iron, copper and plastic pipe (App. 36a, n. 38). In each such case, companies from separate industries may compete through a great number of products for the business of an equally large range of customers, with varying competition from firms in other industries. Even in complex cases, as here, it may be possible to isolate lines in which percentages are available because the participation of other industries is negligible (or can be fairly ascertained). Proof of proscribed anticompetitive effects in any such line would invalidate the merger since the statute proscribes anticompetitive consequences "in any line of commerce." But such a demonstration

may not be available in all interindustry mergers (*e.g.*, between the leading aluminum and copper companies), and it is surely unrealistic to attach dispositive effect to percentages in specific product lines, while not recognizing any criteria by which to appraise the substantiality of overall competition between companies.

In a case such as this, we submit that the validity of the merger can be resolved without evidence of market shares. The "interindustry" competition between Continental and Hazel-Atlas which was eliminated by the merger was plainly substantial. As the court below found, the merging companies were the second and third largest in their respective industries; they were part of an "over-all industry pattern" of "substantial and vigorous inter-industry competition"; they competed with one another "for the favor of various end users of their products," each seeking to enlarge its "sales to the thousands of packers of hundreds of varieties of food, chemical, toiletry and industrial products." Continental, the second largest producer of metal containers, had 33 percent of that field and sales of $670,000,000. Hazel-Atlas, the third largest producer of glass containers, had 10 percent of that field and sales of $70,000,000. This evidence clearly "raise[s] an inference that the effect of the contemplated merger * * * may be substantially to lessen competition * * *" (*United States* v. *Philadelphia National Bank*, slip op., p. 43), and thus sustains the government's burden of proof. Absent any

evidence by the defendants that the normal anticompetitive effects of a merger between two such giants in two vigorously competing industries would not take place, the court should have concluded that the government had shown that the merger was in violation of Section 7 of the Clayton Act.

2. While there is much more to the case than the merger's impact on any single group of customers, the errors of disregarding interindustry competition and requiring rigid forms of statistical proof of market shares are both dramatically demonstrated by the district court's failure to recognize the merger's impact upon competition in the manufacture and sale of containers for food canning. A dominant end use of Continental's metal containers and Hazel-Atlas' glass containers is that made by the food-canning industry which consumes an estimated 35 percent of such containers (GX 801, 636). We submit that the government has shown that manufacture and sale of containers for the food-canning industry (as defined below) is an area of effective competition between Continental and Hazel-Atlas. The government's case also raised an inference that the merger would have forbidden anticompetitive effects, because the market shares of Continental and Hazel-Atlas in this line show that the merger is "inherently likely to lessen competition substantially" (*United States* v. *Philadelphia National Bank*, slip op. p. 41).

(a) *Area of Competition.* Food "canning," as defined by the container industry, is the process of

hermetically sealing and heat-sterilizing food.[11] The government's use of this market is based on the undisputed fact, testified to by qualified experts,[12] that metal and glass containers are the only products in the packaging field which are capable of being hermetically sealed and whose contents can be effectively heat-sterilized. These properties are of crucial significance to the "literally thousands of packers purchasing containers for packing hundreds of food products" (App. 81a). Such customers, whose food products must be protected from spoilage and deterioration while awaiting sale, have a choice only between these two types of containers in which to pack their food products. In this field only glass and metal containers compete.

There is a substantial volume of commerce for which glass and metal containers are the only available packaging materials. Continental itself stated that the "annual production of the canning industry amounts to more than 20 billion pounds, representing about 8½ percent of the Nation's food supply," and that containers for hermetically-sealed, heat-sterilized food are "packed in almost 700 million cases or about 20 billion tin and glass con-

[11] Heat-sterilizing is a protective measure applied after the food has been sealed in glass or metal hermetic containers. It consists, basically, of heating the filled containers under pressure to a temperature which is calculated to destroy all, or essentially all, of the bacteria present in the food which would have a tendency to spoil it, and then cooling under controlled conditions (GX 317, 318). A hermetic seal, impermeable to air and other gases, is needed to keep the contents sterile.

[12] *E.g.*, Tr. 111, 126–133, 753–790, 505–506.

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tainers" (GX 636). The court below would deny this vast field of food processing antitrust protection against mergers like Continental-Hazel-Atlas, on the ground that there was "no showing of reasonable interchangeability of use or cross-elasticity of demand as between metal and glass containers used for packing food" (App. 80a). The court's opinion is colored by its mistaken views about interindustry competition, *supra*, pp. 8–10, and to that extent, its rejection of the canning line was erroneous as a matter of law. As a factual inference, it is clearly erroneous on this record.

The government produced the most graphic evidence of the interchangeability between glass and metal containers in the food canning market: numerous food products packed in both containers. Observations made at retail stores throughout the country showed that packers of more than one hundred food products offered the same products for sale competitively in both glass and metal containers (GX 949, 1158, 1160–1177, 1178A, 1178B, 1179–1201). The record shows that Continental and Hazel-Atlas both served and sought to serve the same categories of processors of a great range of food products (see Record references collected at Government's Proposed Finding No. 95). Within the vast field in which glass and metal food containers actively compete and are interchangeable there may indeed be certain products packed primarily in one container or the other (see DX–N), but this does not vitiate the use of both containers together as a relevant market.

Indeed, even with respect to products sold primarily in one type of container, competition between metal and glass containers still exists, for the evidence amply demonstrates that metal and glass container manufacturers are continuously engaged in attempts to sell to packers using the competing container.

For example, Continental carefully studied and planned advertising campaigns, selling programs, and even product changes designed to induce food packers to shift from glass to metal containers. It prepared a summary of information collected from its sale force detailing the comparative costs of metal and glass containers for processed foods, baby food, soluble coffee, vacuum packed coffee, ovaltine, baking powder, and syrup. Comparable information had already been collected for beer containers, and the intention was to gather further material on prune and apple juices (GX 400A). Studies were made of the use of glass and metal containers in Canada (GX 400), of the metal container's competitive position for packaged syrups (GX 401), of the "market for peanut butter in cans" (GX 402), and of the possibilities of increasing packaging of soluble coffee in metal containers (GX 405, 405A, 406, 407, 408, 409, 410, 411, 412, 413, 414).[13]

[13] These records of Continental's business activities contain such significant statements as: "The purpose of this [freight] allowance is to provide an incentive for packers of instant coffee to switch from glass jars to cans" (GX 405); "That consideration be given to the development and market testing of a small-sized metal container, sufficiently attractive and adaptable for continued use to compete effectively with glass jars for use on household tables" (GX 401); "During the last 20 years

Baby food, consuming an estimated one billion, 608 million containers in 1952, was believed to be divided 60 percent to 40 percent in favor of glass containers (GX 415A). Continental conducted extensive consumer research studies designed to determine what factors induced housewives to favor glass containers and what improvements could be made in metal containers to increase their share of baby food sales (GX 415A, 415B, 416, 418, 419, 419A, 419B, 419C, 420). Continental even developed a new container which it believed might be more competitive than glass in the baby food line (GX 415C, 417). Detailed consideration was given by Continental to potential markets for its containers for wine (GX 421) and tomato catsup (GX 421A). Aerosol cans, which in 1956 consumed 300 million containers (GX 422), were energetically urged as containers for barbecue sauce, chocolate syrup, salad dressings, and whipped toppings (GX 423, 424, 425, 426, 427).

Moreover food processors themselves recognized that metal and glass containers were in competition, since they warned that increases in the price of the containers they were using would induce them to shift to the other kind (Tr. 1541–1547, 2119–2123; GX 773, 775,

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there has been a large increase in the use of soluble coffee. Up to this time the product has been packed almost exclusively in glass. The Continental Can Company has felt that a considerable portion of this market could be obtained by metal containers, provided a suitable container meeting all technical and economic requirements could be developed" (GX 411); "It was the purpose of this study to gather information on consumer acceptance of a metal versus a glass container for instant coffee products" (GX 412).

776).[14] Hazel-Atlas carefully considered the cost of metal containers in determining its own prices and made comparisons which its representatives in the field were instructed to use to show the favorable cost of glass (GX 774).

The actual competition in which Continental and Hazel-Atlas were engaged, and of which the interchangeability of glass and metal food containers is the keystone, was an integral part of the overall pattern of interindustry competition and is reflected in the activities of the respective trade associations. The records of the Glass Container Manufacturers' Institute (GCMI) include: promotional material designed to increase sales of glass at the expense of metal containers; letters from members of GCMI to its director complaining of competition from metal containers, specifically Continental; studies which indicated areas in which it was believed glass could more effectively compete and capture business from metal container manufacturers; and historical analysis of overall competition between metal and glass containers (GX 1–131, 304, 319–346). The Can Manufacturers Insti-

[14] The Hazel-Atlas documents contained information such as: "Burnham & Morrill [food packers] advised Anchor-Hocking and Armstrong that if the full increase in price was put into effect that it would cut down on the use of glass as it would be too far out of line with the cost of their tin package" (GX 773). "We have found considerable resentment in some quarters over the recent price advance. One of our fountain topping accounts was particularly incensed and said that any business that could be swung over to tin would be fully explored, and if possible the change would be made. This manufacturer packs marshallows, chocolate syrup, walnuts in syrup, cherries and pineapple" (GX 775).

tute conducted comparable activities on behalf of metal containers, in an attempt to enable its members to compete more effectively with glass containers (GX 138, 145, 150, 152, 154, 156, 160, 162, 166; Tr. 1663–1664).

Plainly there is reasonable interchangeability between glass and metal containers in the food canning industry, and there is active competition between the producers of metal and glass containers for the customers of this vast market. Containers for the food canning industry is a line of commerce for Section 7 purposes.

(b) *Effect upon Competition.* The purpose of market share statistics is to assess the importance of the competition being eliminated through the merger by comparing the size of the entire market available or potentially available to purchasers of a product with the portions of that selling market represented by each of the merging companies. Thus if there is an overall production of 100 million units of a product and a company manufacturing 20 million merges with a company producing 10 million, it is useful to note that the merger has involved companies with 20 percent and 10 percent of the market available to purchasers. Where, however, a company's overall productive capacity is readily channeled into any of several similar products, a meaningful practical measure of the company's actual and potential production of any particular product—and thus the touchstone for measuring the competition foreclosed by the merger—is its overall production of all such

similar products, for this is the best practical estimate of the capacity a buyer can call upon to satisfy his needs.

In this case the record and the district court's findings demonstrate that the total productive capacity of metal and glass container manufacturers and sellers is actually and potentially available to food canners. It follows that the narrowing of competitive alternatives for food canners as a result of this merger is best gauged in terms of production of all metal and glass containers, and that the best statistical evidence of the competition between Continental and Hazel-Atlas in the production and sale of containers for food canning is their respective shares of the total production of metal and glass containers—21.9 percent and 3.1 percent (GX 801, table 3a).[15]

The court found, first, that there was no difference between metal and glass containers used for food and nonfood purposes. As illustrative, it noted that "substantially the same open-top can is used for food, pet food, motor oil and other non-food products" (App. 16a); and "the same wide mouthed glass jar is used

[15] The record shows that in 1955, the year prior to the merger, Continental Can shipped about 13 billion units and Hazel-Atlas 1.9 billion units out of the total United States shipments of 59.2 billion units of glass and metal containers. The two other leading firms, with Continental, were American Can Co., 26.8 percent, and Owens-Illinois Glass Co., 11.2 percent. Next were Anchor-Hocking Glass Co., 3.8 percent, and National Co., 3.3 percent, and Owens-Illinois Glass Co., 11.2 percent. Next were metal and glass container companies produced 70.1 percent of the aggregate total, with the remainder divided among hundreds of firms.

percent (GX 801, table 3A). In 1955 therefore the top six

for peanut butter and silver polish, and the same narrow necked glass bottle is used for vinegar and liquid starch" (App. 16a) (see Tr. 335, 341, 366, 1004, 3861–3864). Second, the court found that, regardless of the end use, all metal containers are manufactured by the same processes on the same machines; the same is true of glass containers. Food and nonfood containers are sold through the same channels of trade subject to the same price structure (App. 16a, 17a, 80a). The record further demonstrates that modern glass and metal container manufacturing machinery is capable, with easily-made adaptations, of producing all sizes and shapes of each container, and it is standard industrial practice to make such changes to match customer orders (Tr. 330, 437, 466–468, 1198–1199, 1325–1330, 3963; GX 185, 363, 364; DX K).[16] Thus, the best statistical portrayal of the competitive choice of food canners is provided by the production of metal and glass containers by each of the companies engaged in their manufacture.

The court below found, as a major flaw in the government's case, that it failed to present universe and market share statistics limited to the end use proposed as a relevant market—the production and sale of containers for use by food canners in packing hermetically-sealed, heat-sterilized foods. No such statistics

[16] Although prior to the merger, Hazel-Atlas had only one Hartford-Empire I.S. glass container forming machine capable of producing a full line of containers, it had a substantial number on order, and by 1958, had the third largest number of machine sections in the industry (GX 363, 364, DX K).

appear to be available (see the Census categories, App. 15a). But even if available, they would be unnecessary because, in view of the interchangeability of both plants and products, appellees' market positions in the overall market are the most illuminating guide to the effect of this merger.

In any event, there is no reason to believe that Continental's and Hazel-Atlas' shares of containers used for food canning would be substantially different from their shares of total container production. Food canning is of pervasive importance as an end use for metal and glass containers, consuming approximately 35 percent of all such containers (GX 801, 636). Large companies like Continental and Hazel-Atlas, which compete broadly throughout the industry, can be expected to maintain their share of the business of food canners. This is confirmed by data with respect to shipments of all glass and metal food containers (including but not limited to "canning"), in which the percentages held by Continental and Hazel-Atlas correspond closely to their shares of total production.[17] These figures can be relied upon for "the accuracy of the broad picture presented"; [18] certainly they are sufficient to require the defendants to come forward with their evidence.

By the acquisition of Hazel-Atlas' 3.1 percent of the container market Continental, which already had

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[17] Continental had 22.7 percent, Hazel-Atlas, 2.8 percent of all glass and metal *food* containers, not limited to hermetically-sealed, heat-sterilized food, as compared to 21.9 percent and 3.1 percent of total production (GX 801, Table 3c).

[18] *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 342, fn. 69.

21.5 percent, increased its share of the market by more than 14 percent. Continental was the second largest manufacturer of containers suitable for food canning, Hazel-Atlas the sixth. The effect of the acquisition was also to increase the total share of the three largest firms, Continental, American Can Co., and Owens-Illinois Glass Co. by about 5 percent of their prior position to 63 percent.[19]

Such an increase in market shares is sufficient to "raise an inference that the effect of the contemplated merger of appellees may be substantially to lessen competition" in the manufacture and sale of containers for food canning, since it "produces a firm controlling an undue percentage share of the relevant market and results in a significant increase in the concentration of firms in that market" (*United States* v. *Philadelphia National Bank*, slip op., pp. 41, 43). While the percentages here are smaller than those in *Philadelphia Bank*, they occur in industries in which oligopoly is far advanced. As this Court explicitly pointed out in *Philadelphia Bank*, "if concentration is already great, the importance of preventing even slight increases in concentration and so preserving the possibility of eventual deconcentration is correspondingly great" (slip op., p. 43, fn. 42). See also *Brown Shoe*, 370 U.S. at 315-316, 333. Moreover, if this

[19] These calculations utilize the market statistics for 1955, the year preceding the merger. The actual post-merger shares, in 1956, turned out to be somewhat lower. Continental had 24.9 percent, an increase of 13.7 percent over its previous position; Continental, American and Owens-Illinois had 61.9 percent, an increase of about 3 percent.

merger is allowed, future similar transactions cannot be prevented (*Brown Shoe*, 370 U.S. at 343–344), and further mergers between metal and glass container manufacturers would have the accelerated anticompetitive consequence of combining two oligopolistic industries. The government has therefore met its burden of showing that the merger was proscribed.

CONCLUSION

This appeal presents substantial questions of public importance. Probable jurisdiction should be noted.

Respectfully submitted.

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AUGUST 1963.

APPENDIX

No. 28769

Civil 112-387

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, PLAINTIFF

v.

CONTINENTAL CAN COMPANY, INC. AND HAZEL-ATLAS GLASS COMPANY, DEFENDANTS

OPINION

BRYAN, District Judge:

This is a civil action by the United States to enjoin the proposed acquisition by defendant Continental Can Company, Inc. (Continental) of defendant Hazel-Atlas Glass Company (Hazel-Atlas) on the ground that such acquisition would violate § 7 of the Clayton Act as amended.[1] The court has jurisdiction over parties and subject matter.

The Government had previously attempted to block the acquisition by invoking a consent decree which had been entered against Continental in 1950 in a civil

[1] 15 U.S.C. § 18: "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly. • • • "

anti-trust suit under §§ 1 and 2 of the Sherman Act and § 3 of the Clayton Act in the District Court for the Northern District of California. On August 31, 1956 the California court held that the consent decree did not cover the proposed acquisition.[1]

The consummation of the acquisition was delayed in the meantime at the Government's request. The Government then commenced this action. It moved for a preliminary injunction against consummation and sought a temporary restraining order pending the hearing and determination of its motion. The temporary restraining order was denied on September 13, 1956. On that day, Continental took over all of the assets, property, business and good will and assumed all of the liabilities of Hazel-Atlas, which since then has been operated as the Hazel-Atlas Division of Continental.

The Government withdrew its motion for a preliminary injunction on September 18, 1956 and this action became one for divestiture.

After some considerable time, the case was assigned to me for all purposes. Extensive pre-trial proceedings were conducted at which over a thousand pages of transcript were taken. The case then came on for trial.

The Government concluded its case after six weeks of trial during which it called some 78 witnesses. Over four thousand pages of testimony were taken. The Government introduced more than twelve hundred exhibits and the defendants more than five hundred.

At the conclusion of the Government's case defendants, pursuant to Rule 41(b), F.R.C.P., moved for a dismissal on the ground that upon the law and the

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[1] *United States v. Continental Can Company*, 143 F. Supp. 787 (N.D. Cal. 1956).

facts the Government had shown no right to relief and that they were therefore entitled to final judgment on the merits. The motion was granted in a brief oral decision which stated only the conclusions reached. In view of the importance and complexity of the case a detailed opinion was to follow.

Before that opinion could be filed, the Supreme Court decided *Brown Shoe Co., Inc.* v. *United States*, 370 U.S. 294 (1962), its first decision dealing at any length with § 7 of the Clayton Act as amended in 1950. The Government then asked leave to submit material dealing with the effect of that case on the case at bar. This application was granted and both sides submitted briefs on this question. Consideration of the *Brown Shoe* case has not changed the conclusions which I reached at the end of the trial.

My opinion follows.

Defendants' motion under Rule 41(b) for a dismissal at the close of the Government's case, posed squarely the question of whether on the record, as it then stood, defendants were entitled to judgment.

The motion was made on the ground that "upon the facts and the law the plaintiff has shown no right to relief." In an action tried to the court without a jury, the court, when such a motion is made at the close of plaintiff's case, "as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence."

There is no doubt as to the meaning and applicability of Rule 41(b). The test to be applied in a case tried to the court alone is quite different from that on a motion to dismiss or for a directed verdict in a jury trial. In the latter case the question is whether or not the plaintiff has made out a prima facie case sufficient to go to the jury and the court must view the evidence in the light most favorable to him.

In a trial to the court alone, however, the court is authorized under Rule 41(b), to evaluate and weigh all of the evidence presented by the plaintiff, draw such inferences therefrom as it considers reasonable in the light of the record, and determine at that stage whether plaintiff has sustained the burden of proof necessary to establish its right to relief were the case to end there. If the court undertakes to make such a determination and concludes that the plaintiff has not met this burden, the defendant is entitled to judgment on the merits.'

In this case, as the trier of the facts, I determined at the conclusion of the Government's case that it had failed to sustain its burden of showing by a preponderance of the evidence that the acquisition under attack violated Section 7 of the Clayton Act in any respect. I therefore directed that judgment be rendered against the Government.

SECTION 7 OF TI CLAYTON ACT IN THE LIGHT OF THE BROWN SHOE CASE

The Government's case is grounded solely on Section 7 of the Clayton Act as amended in 1950. There is no claim of violation or threatened violation of any provision of the Sherman Act. There is no charge of restraint of trade, monopolization or attempt to monopolize. This is strictly a Section 7 case.

Section 7 as amended forbids the acquisition of the stock or assets of one corporation by another "where

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[1] *Global Commerce Corporation* v. *Clark-Rabbitt Industries, Inc.*, 255 F. 2d 105 (2 Cir. 1958); *Huber* v. *American President Lines*, 248 F. 2d 778 (2 Cir. 1957); *Henry* v. *Moore-McCormack Lines, Inc.*, 134 F. Supp. 71 (S.D.N.Y. 1955); *Brahms* v. *Moore-McCormack Lines, Inc.*, 133 F. Supp. 283 (S.D.N.Y. 1955); 5 Moore's Federal Practice p. 1044, et seq. (2d ed. 1951). See also *Blood* v. *City of New York*, 237 F. 2d 855 (2 Cir. 1956).

in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."[4] The *Brown Shoe* case, decided on June 25, 1962, some twelve years after the 1950 amendment to § 7, is the first definitive interpretation of that section by the Supreme Court since its amendment.

The facts in the *Brown Shoe* case were entirely different from those in the case at bar. The specific holdings of the Court on the facts presented there are therefore not determinative of the problems posed here. Indeed, *Brown Shoe* recognizes that the facts in each case in all likelihood will differ widely, that the framework of each industry is likely to be unique, and that each case must stand or fall on its own facts viewed within the framework of the industry pattern.[5]

However, the discussion in *Brown Shoe* of the legislative history and background of the 1950 amendment to § 7, the theory of the amended section, the interpretation to be given to it, and the principles and guidelines to be followed in applying it, is controlling.[6] *Brown Shoe* is the authoritative declaration of the law on the subject as it now stands and the principles and guidelines which it lays down must be applied here.

Section 7 proscribes acquisition of either stock or assets where, as a result, competition in any line of commerce in any section of the country may be substantially lessened. It covers all mergers or acquisitions, horizontal, vertical or conglomerate.[7]

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[4] 15 U.S.C. § 18.

[5] *Brown Shoe Co.* v. *United States*, *supra*, pp. 321–322.

[6] The legislative history of Section 7 and the 1950 amendment is reviewed exhaustively in *Brown Shoe* (370 U.S. pp. 311–323). Further general discussion here is unnecessary.

[7] *Brown Shoe Co.* v. *United States*, *supra*, p. 317.

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As *Brown Shoe* makes plain, however, the section does not prohibit all mergers. While the congressional intent was to arrest restraints of trade and monopolistic tendencies "in their incipiency and well before they have attained such effects as would justify a Sherman Act proceeding,"[8] there is no per se proscription against the acquisition of the stock or assets of one corporation by another. The statute is concerned only with those acquisitions which have demonstrable anti-competitive effects.[9]

It is clear, moreover, that the statute was directed neither at the possibility that anti-competitive effects might occur nor at certainty of anti-competitive effects already covered by the Sherman Act.[10] "[P]roof of a mere *possibility* of a prohibited restraint or tendency to monopoly will not establish the statutory requirement * * *."[11] The statute is concerned with the reasonable probability of the lessening of competition or tendency toward monopoly as a result of the particular acquisition under scrutiny—a showing that such effects are reasonably likely to occur. This is what the words "may be" as used in the statute mean.[12] The lessening of competition, moreover, must also be shown to be "substantial."[13]

Acquisitions are proscribed where substantial anti-competitive effects or tendency to monopoly are reasonably probable in *any* line of commerce in *any* section of the country. Thus, in order to determine whether there are anti-competitive effects or tendency

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[8] S. Rep. No. 1775, 81st Cong. 2d Sess. pp. 4–5 (1950).

[9] *Brown Shoe Co.* v. *United States*, *supra*, pp. 319–320.

[10] *Brown Shoe Co.* v. *United States*, *supra*, p. 323.

[11] *United States* v. *E. I. duPont de Nemours & Co.* (General Motors), 353 U.S. 586, 598 (1957).

[12] *A. G. Spalding & Bros., Inc.* v. *Federal Trade Commission*, 301 F. 2d 585 (3 Cir. 1962).

[13] S. Rep. No. 1775, 81st Cong. 2d Sess., p. 3 (1950).

to monopoly, it is necessary in each case to define the lines of commerce in which the acquiring and acquired companies were engaged and the sections of the country affected. Anti-competitive effects and their substantiality cannot be evaluated in a vacuum. They can only be judged in terms of the particular markets or sub-markets affected—that is to say "within the area of effective competition."[14]

While Section 7 does not use the term "market", it is clear that "line of commerce" refers to a product market, and "section of the country" refers to a geographic market in which competition exists and in which the effects of the acquisition may be felt. A relevant product market must be a market which is meaningful in terms of competitive and commercial realities.[15] A relevant geographic market must embrace an economically significant section of the country in terms of competitive effects.[16]

Thus, relevant markets are neither economic abstractions nor artificial conceptions. They are rather specific areas where, viewed in the context of the facts of the particular case under consideration, there may be demonstrable anti-competitive effects as the result of the acquisition. The test then is whether the acquisition has demonstrable anti-competitive effects in any relevant product market in any section of the country.

Section 7 does not spell out any particular tests or standards for determining the revelant product markets or geographic areas which may be affected by the acquisition. Nor does it supply either in quanti-

[14] *United States* v. *E. I. duPont de Nemours & Co.* (General Motors), *supra*, 393.

[15] *Crown Zellerbach Corporation* v. *Federal Trade Commission*, 296 F. 2d 800, 811, (9 Cir. 1961), *cert. den.* 370 U.S. 937 (1962).

[16] *Brown Shoe Co.* v. *United States*, *supra*, p. 320.

tative or qualitative terms, any tests for determining whether the effects may be "substantially" to lessen competition. "However, sufficient expressions of a consistent point of view may be found in the hearings, committee reports of both the House and Senate and in floor debate to provide those charged with enforcing the Act with a usable frame of reference within which to evaluate any given merger." [17]

Against this background the tests and standards to be used vary depending upon what may be appropriate in the light of a wide variety of factors. These factors include the nature, business and relationships of the acquired and acquiring companies, the markets which they serve, the kind and extent of competition in such markets, the pattern of the industry as a whole and the place of such companies in the industry.

Thus, in determining relevant product markets it has been deemed pertinent to examine such factors as the peculiar uses and characteristics of the product; its distinguishing physical characteristics; whether it is sold to distinct classes of customers; distinct price differentiations; sensitivity to price changes; reasonable interchangeability of use and demand; public or industry recognition of the market as a separate market entity; unique production facilities; and specialized vendors.[18]

In determining the geographic market pertinent factors include scale of distribution; locale of actual and potential buyers and of competing sellers; focus of

[17] *Brown Shoe Co.* v. *United States*, *supra*, p. 315.

[18] *Brown Shoe Co.* v. *United States*, *supra*; *United States* v. *E. I. duPont de Nemours & Co.* (General Motors), *supra*; *Crown Zellerbach Corporation* v. *Federal Trade Commission*, *supra*; *United States* v. *Bethlehem Steel Corporation*, 168 F. Supp. 576 (S.D.N.Y. 1958).

competition; and whether regional markets interlock to form a larger market.[19]

None of these factors are conclusive in themselves and all must be "functionally viewed, in the context of [the] particular industry."[20] Mere mechanical or quantitative application of § 7 should be avoided and each case must be judged in the light of its own peculiar facts. Only within such a setting can the probable anti-competitive effects of a merger be judged.[21]

In the light of these considerations the issues on which the Government had the burden of proof here were twofold. First, it was required to delineate the relevant product markets or sub-markets in which it claimed that competition was adversely affected by the acquisition and the sections of the country affected. Second, it had to establish that in one or more of such markets or sub-markets in any particular section or sections of the country, there was reasonable probability that the effect of the acquisition would be substantially to lessen competition or to tend to create a monopoly.

II

THE MERGING COMPANIES

(1) Continental

Continental Can Company, Inc. is a New York corporation with its principal offices in New York City. It was organized in 1913 by the merger of three com-

[19] *Brown Shoe Co.* v. *United States*, *supra*; *A. G. Spalding & Bros., Inc.* v. *Federal Trade Commission*, *supra*; *United States* v. *Bethlehem Steel Corp.*, *supra*.

[20] *Brown Shoe Co.* v. *United States*, *supra*, pp. 321–322.

[21] *Brown Shoe Co.* v. *United States*, *supra*, p. 340.

panies engaged in the manufacture of metal cans.[22] At that time American Can Company was the dominant factor in the can industry.

After its organization Continental went through a period of substantial internal expansion. Beginning in 1923 and for the next twenty years it continued to expand internally and also by acquiring some twenty-four companies in various sections of the country which were also engaged in manufacturing various types of cans, some of which had not been previously manufactured by Continental. It also acquired several companies which did not produce metal cans but made other packaging products. Continental acquired its last can manufacturer in 1944.

Since that time it has engaged in a program of diversification aimed at increasing the variety of products which it is able to supply.

Its acquisitions have included companies producing can manufacturing and can closing machinery, flexible packaging, plastic containers and other plastic products, paper containers and paperboard, fibre drums, crown caps and vacuum closures, and a miscellany of other products.

In 1956 it acquired Hazel-Atlas, Robert Gair Company, Inc., a manufacturer of paperboard and similar products, and White Cap Company, which manufactured vacuum type metal closures.

By that time it was and had been for a good many years the second largest metal can manufacturer in the country. It was a formidable competitor of American Can Company which had long been the leader in the industry.

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[22] The three original companies were Continental Can Company, a New Jersey corporation; the Export and Domestic Can Company, a New York corporation; and the Standard Tin Plate Company, a Pennsylvania corporation.

When it acquired Hazel-Atlas Continental's principal business was the manufacture and sale of metal cans and other metal containers to industrial consumers for a wide variety of uses. In 1955 metal cans and other metal containers accounted for between two-thirds and three-quarters of its total dollar sales volume. It also manufactured numerous other products, including fibre drums, flexible packaging materials, plastic products (including plastic containers), paper cups and plates, crown caps, vacuum type metal caps, can closing machinery, and special defense items.

By 1955 Continental had 72 plants for the manufacture of its products at various locations throughout the United States. It also had plants in seven foreign countries, including Canada; forty, manufactured metal cans. Approximately 45,000 persons were in its employ.

Its net sales and operating revenues and net income for the years 1953, 1954 and 1955, in thousands of dollars, were:

	Net sales and operating revenues	Net income
1953	$554,436	$15,680
1954	616,163	20,736
1955	666,266	24,172

Its total assets as of December 31, 1955 were $381,917,000.

Including the Hazel-Atlas, Gair and White Cap acquisitions, for the year 1956 Continental had net sales and operating revenues of $1,010,268,000, and net income of $43,143,000, with total assets as of December 31, 1956 of $633,706,000.

Comparative 1955 combined figures for these four companies prior to acquisition, show net sales and

operating revenues of $929,428,000, net income of $38,693,000, and total assets as of December 31, 1955 of $568,850,000.

(2) Hazel-Atlas

Hazel-Atlas was a West Virginia corporation with its principal office in Wheeling, West Virginia. It was organized prior to 1900 and, as a result of its acquisition by Continental, was dissolved on September 21, 1956.

Its principal business was the manufacture and sale of glass containers of various types to industrial consumers and of glass jars for home canning, both largely of the wide mouthed variety. It also manufactured glass tumblers, tableware, kitchenware, glass articles of special design for industrial use, screw type metal closures and closures for home canning glass jars. It appears to have been the third largest glass container manufacturer in the United States.

Hazel-Atlas operated plants at thirteen locations in various parts of the country, principally in the western Pennsylvania, West Virginia and eastern Ohio area, and had six warehouses. Its net sales and net income in 1953, 1954 and 1955, in thousands of dollars were:

	Net sales	Net income
1953		
1954	$79,280	$3,132
1955	79,174	3,629
	79,930	3,993

Its total assets as of December 31, 1955 were $37,884,000.

After acquisition by Continental the operations conducted by Hazel-Atlas were continued by the Hazel-Atlas Division of Continental and its operating

figures were included in Continental financial statements. It does not appear that there was any substantial change in the volume or character of business done by the Hazel-Atlas Division in the period between its acquisition and the trial.

Prior to its acquisition Hazel-Atlas did not manufacture or sell metal cans, plastic or paper containers, vacuum type metal closures, crown caps or any other product manufactured or sold by Continental or its subsidiaries.

On the other hand, Continental did not, directly or through subsidiaries, manufacture or sell glass containers or any other glass products, screw type metal closures, or any product manufactured or sold by Hazel-Atlas. It is uncontroverted that the two merging companies manufactured and sold no identical products.

III

THE TYPES OF PRODUCTS AND THE SEPARATE INDUSTRIES INVOLVED

This case is concerned with three basic types of containers: those made of metal, glass and plastic. They are of a variety of shapes, sizes and end uses.

The three types of containers are produced by three recognized separate industries, each with its own structure and pattern, the metal can industry and the plastic container industry in which Continental was engaged, and the glass container industry in which Hazel-Atlas was engaged.[23]

[23] It may be noted that reference will be made to what is claimed to be an all encompassing "packaging industry." However, as will be pointed out, the evidence wholly failed to establish that there is any such relevant product market in this case. Nor was it established that there is any recognized separate industry or relevant product market comprising all metal, glass and plastic containers, or any general combinations of them.

In addition to the three types of containers the case also is concerned with three different kinds of metal closures used to close or seal products packed in containers. They are crown caps, vacuum type closures and screw and lug type closures. Continental produced crown caps and vacuum type closures and Hazel-Atlas produced screw and lug type closures. Closures will be discussed separately though there is no separate metal closure industry.[24]

(1) Basic types of products

(a) *Metal cans*

For Census Bureau statistical purposes the metal can is defined "as a single-walled container constructed wholly of tin plate, terne plate, blackplate or waste plate designed for packing products."[25] Such cans have distinct physical characteristics. They are rigid and unbreakable, but can be dented. Unlike plastic containers, they can be hermetically sealed and are impermeable to gases. They can be heat processed faster and are lighter than glass containers, and are not chemically inert.

The basic raw material used in can manufacture is tin-coated steel (tin plate), but some cans are made from uncoated steel (blackplate) or aluminum. Other raw materials include soldering compounds, paints, varnishes, lithographing inks, paper and cartons for packaging. The major factor in determining can prices is the cost of tin plate. Cans are generally sold f.o.b. the manufacturer's plant.

[24] See discussion *infra* pp. 27a–30a. [The court's references to its own opinion have been renumbered to the pagination of this appendix.]

[25] G–1203. This definition excludes steel pails which are defined as "single-walled shipping containers having capacities of 1–12 gallons inclusive that are cylindrically constructed of steel sheet of 29 gauge and heavier."

The products packed in metal cans are extremely numerous and varied and in fact cover a substantial segment of American industrial and agricultural production. However, for statistical purposes the Census Bureau has set up thirteen different general categories of metal cans all in terms of end use. The Bureau collects statistics from metal can manufacturers as to the amount of metal each consumes in the manufacture of cans in each of these categories.[26]

The thirteen Census Bureau and use categories are fruit and vegetables (including juice); evaporated and condensed milk; other dairy products; meat (including poultry); fish and seafood; coffee; lard and shortening; soft drink; beer; pet food; oil open-top (1 quart and 5 quart); all other food (including soup and baby food cans); and all other nonfood.[27] A number of these categories plainly include a great number and variety of specific end uses for which no accurate further breakdowns are available.

Among the principal types of cans are "Packers" cans and "General Line" cans. "Packers" cans are normally used for food products though they are used

[26] Under the regulations of the Bureau metal can manufacturers report the number of base boxes of steel consumed in the manufacture of cans in each category. A base box is a unit of area measurement. The Bureau does not prescribe which specific end products fit into each category and this is left to the discretion of the individual reporting manufacturer.

The base box figures so reported are then converted by the Bureau into short tons of steel on the basis of conversion factors for each category. The comparative production figures in this record are those based on short tons of steel used in the production of metal cans reported by manufacturers as belonging in the various census categories of metal cans shipped.

There are no published figures of the actual number of cans shipped and there are wide differences in the product mixes in terms of sizes of cans produced by the various manufacturers.

[27] G–1203.

for many nonfood products as well. They are round open-top or sanitary cans. The packer after filling the can puts the top on.

"General Line" cans are used both for food and nonfood products and have different kinds of fittings and different shapes. There are other types of cans also. All types of cans are manufactured from the same raw materials by the same production processes and with the same equipment.

Cans used for one type of product may be used for other types of products also, but they usually have different linings for different products. For example, substantially the same open-top can is used for food, pet food, motor oil and other non-food products.

(b) *Glass containers*

There are two basic types of glass containers, the wide mouth and the narrow neck container.

Glass containers have distinct physical characteristics. They are rigid, chemically inert and impermeable to gases; can be hermetically sealed but are readily broken; and, unlike many cans, can be easily resealed after they have been opened. Glass containers are heavier than other types of containers and must be carefully packed for shipment to avoid breakage. Costs of shipment are therefore higher. They take longer to heat process than cans. Many narrow necked glass containers are suitable for re-use by bottlers and are returned by consumers to the bottler for such re-use.

Glass containers used for one type of product are often identical with containers used for widely dissimilar products. Thus, the same wide mouthed glass jar is used for peanut butter and silver polish, and the same narrow necked glass bottle is used for vinegar and liquid starch.

The basic raw materials used in the manufacture of glass containers are sand, lime and soda ash. Also required are the necessary labeling and coloring materials. Because of the need for careful packing for shipment to customers, corrugated cartons are used to pack the containers.

Cost of labor is the major factor in determining glass container prices. The corrugated shipping container represents 18–20% of the cost of the final product as shipped. Glass containers are generally sold on a delivered price basis with freight included in the price.

The Census Bureau publishes data as to glass contained shipments. These statistics are grouped, in terms of end use, in the following fourteen categories:[28]

Narrow Neck: Food; medicinal and health supplies; household and industrial; toiletries and cosmetics; beverage, returnable; beverage, non-returnable; beer, returnable; beer, non-returnable; liquor; and wine.

Wide Mouth: Food, including fruit jars and jelly glasses; medicinal and health suplies; household and industrial; toiletries and cosmetics; dairy products; and packer's tumblers.

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[28] The statistics are collected for the Bureau by the industry trade association, the Glass Container Manufacturers Institute, from its member manufacturers and are used as the industry totals. A number of manufacturers are not members of the Institute. Statistics are prepared on a physical volume basis measured in gross. They show container shipments by product groups as classified by the Institute with a basic division between narrow neck and wide mouth containers. It may be noted that the Institute's descriptions of the different end use categories (G–1205) are slightly different from those which Census apparently used. The Government relied on the latter, however, and I have used them here.

Each of these general end use categories is composed of hundreds of individual end use items. But no detailed breakdown figures on the end use categories are available.

(c) *Plastic containers*

Plastic containers are manufactured by various methods including blow molding and injection molding. They are made of such raw materials as polyethylene and polystyrene. Prices are principally determined by the price of raw materials. Some are sold on a delivered price basis and some are not.

Plastic containers have distinct physical characteristics. They are neither rigid nor transparent. They are not impermeable to gases, and cannot be hermetically sealed. Such containers are virtually unbreakable, but they cannot contain internal pressure and their ability to hold a vacuum is limited. They are lighter in weight than glass containers and appear to be smaller than glass containers of equal capacity. They are electrostatic and therefore attract dust.

Plastic containers are of many shapes and sizes and include such items as bottles, jars, tubes, vials, and bags. They are used to package many kinds of foods, drugs, cosmetics, detergents and industrial products including such widely diverse products as rust removers, baby lotions, ice cream, insect repellents, shoe polishes, pills, water, and deodorants.

(2) Separate industries

(a) *The metal can industry*

This industry is composed of companies engaged in the manufacture of metal cans used to pack a large number and wide variety of different products. Most of the companies in the industry manufacture cans for sale to industrial and agricultural processing

customers who, in turn, use them to pack their own products for marketing. Some companies, on the other hand, the so-called captive companies, produce cans for their own use in packing their own products.[29] Some of the captive companies produce cans for their own use and also sell to other users.[30]

A number of metal can manufacturers also manufacture tinware and other tinplate products. Some also produce other kinds of packaging materials and incidental items.

There are no reliable figures in the record as to the number of companies engaged in the manufacture of metal cans in the United States. Estimates run from seventy-five to over ninety. The largest is American Can Company. Continental is second. Either Campbell Soup (a captive manufacturer) or National Can Company is third. Other important manufacturers include Crown Cork & Seal Company, Heekin Can Company, J. L. Clark Company, Carnation Milk and Sherwin-Williams. American Can, Continental, National Can and Crown Cork & Seal, among others, sell cans throughout the country. Most of the other companies operate on a regional basis.

American Can, the industry leader, like Continental, manufactures a variety of products used by packers. In addition to metal cans it produces fibre, plastic and paper containers. It also manufactures machines for filling and closing both metal and fibre containers. Various other companies manufacturing metal cans also have diversified product lines.

In 1955 American Can shipped approximately 38% of the metal cans sold in the United States. Con-

[29] Such companies include Campbell Soup Company, H. J. Heinz Company, Hollingshead Corporation, Pet Milk Company and Otoe Food Products Company.

[30] Among these are Armstrong Paint Company, Sherwin-Williams Company, The Borden Company and Carnation Milk.

tinental's shipments amounted to approximately 33%. American's shipments exceeded Continental's in nine of the thirteen Census categories. Together these two companies accounted for approximately 71% of the total metal can shipments in the country.

It appears that can companies sell their products directly to users. There is nothing to indicate that there are any jobbers or wholesalers who purchase cans for resale to their own customers and it may be assumed that there are none.

The trade association for this industry is the Can Manufacturers Institute. Its forty-nine members, limited to can manufacturers, include American, Continental, National, Crown, Heekin and Clark. Voting rights and representation on the Board are determined by the number of employees of the member companies.

The Institute has a professional staff of three. Its activities, carried on largely through committees, deal with various technical industry problems such as industrial relations, traffic, safety and research and include a limited amount of promotion on the advantages of the metal can.

A promotion and advertising program, jointly financed by the members of the Institute and tin plate manufacturers who supply raw materials for can manufacture, was carried on at one time. The program was dropped when the tin plate manufacturers withdrew financial support. A recent program of advertising to promote soft drinks in cans was not conducted by the Institute but was financed exclusively by tin plate manufacturers.

Since 1957 the Institute has done no advertising and its only promotion work has been in connection with the celebration of the sesquicentennial of the tin can. The extent of the activities of the Institute and the effects, if any, which such activities may have upon

the industry or upon the public are not reflected in the record.

The annual production of cans has increased substantially since the end of World War II when the industry resumed its normal rate of growth after wartime curtailment of metal supply. Its facilities have also expanded substantially and continue to do so.

Since 1950 American and Continental have substantially maintained their market positions as the number one and number two companies in the industry respectively. However, the medium sized producers, with assets of less than $100,000,000 have not only participated in the growth of the industry but have increased their share in the market. The evidence did not show that there has been any reduction in the number of companies manufacturing cans since the Hazel-Atlas acquisition and, in fact, the number of companies engaged in the "Tin Can and other tinware industry"[31] was greater in 1957 than in 1950.

It did not appear that the initial capital investment needed to embark upon can manufacture is unreasonably high, that there is any obstacle to obtaining whatever technical knowledge is necessary or that there are any patent barriers to entry into the industry. Raw materials are plentiful and readily available.

There was little in the record as to the shape and pattern of the industry in terms of such factors as the markets which it serves, the nature of the competition which exists in such markets, pricing practices, its methods of buying, selling and merchandising, the supply and demand picture or similar matters.

From all that appears the industry is prosperous, healthy and highly competitive. Competition has been and remains keen and vigorous. What the

[31] This is an Internal Revenue Service classification.

record presents is a generalized picture of a large, strong, and relatively stable but expending metal can industry.

(b) *The glass container industry*

This well-defined and recognized separate industry is composed of companies engaged in the manufacture of glass containers sold to industrial and agricultural customers for use in packing their own products. Glass containers are also sold to the public for home preserving.

The industry produces glass containers of a wide variety of types, shapes, sizes and colors for numerous end uses. A number of companies, including Owens-Illinois Glass Company and Hazel-Atlas, also produce glass table and kitchen ware and other glass products. Some also produce other products used by packers.

There are at least forty-two companies engaged in the manufacture of glass containers. By far the largest is Owens-Illinois Glass Company with almost 35% of the total production and with annual sales in 1955 of some $370,000,000 and earnings of some $27,000,000.[32] Anchor-Hocking Glass Company, Hazel-Atlas and Knox Glass, Inc. appear to follow in that order. The Hazel-Atlas share of the glass container market in 1955 was about 9.6% with net sales of some $79,000,000 and net earnings of approximately $3,000,000.

Owens-Illinois, in addition to glass containers, manufactures plastic containers, metal and plastic clo-

[32] These figures apparently include all of the products manufactured by Owens-Illinois and are not confined to glass container sales. The Hazel-Atlas figures are also inclusive but Hazel-Atlas, unlike Owens-Illinois, did not have widely diversified product lines.

sures, corrugated shipping containers, various types of fibre and paperboard containers, closure machinery and a wide variety of other glass and plastic products. Other companies, such as Anchor-Hocking, also have diversified lines.

There are at least twenty companies in the industry with sales above or in the neighborhood of $10,000,000 a year. Most of these companies have been expanding their facilities and production and increasing sales at a rapid rate. There is nothing to indicate that smaller companies are not also prospering.

Five companies in the industry sell throughout the country. They are Owens-Illinois, Anchor-Hocking, Thatcher Glass Mfg. Co., Ball Bros. Co., Inc., and Hazel-Atlas. Other companies sell on a regional basis.

The trade association for the industry is the Glass Container Manufacturers Institute. Its membership consists of thirty-six glass container manufacturers, six closure manufacturers and twenty suppliers of raw materials and equipment.[33] Dues are assessed on the basis of sales volume and the Board of Trustees is composed of employees of the member companies.

The Institute has about forty-five paid employees. Its activities are carried on by standing committees. Members of the professional staff are assigned to each committee.

Activities include market research and promotion, the collection and dissemination of statistics concerning the industry, technical research, package design and specifications, the development of standard testing and quality control procedures, problems of freight rates, labor relations, and liaison work with govern-

[33] A number of manufacturers are not members of the Institute, including Star City Glass Co., Wheaton Glass Co., T. C. Wheaton Co., Kerr Glass Manufacturing Co., Underwood Glass Co., Arkansas Glass Co., and Gallo Glass Co.

ment. The Institute does advertising and publicity for the industry but the evidence does not indicate how substantial this is or how effective such activities are.

As in the case of the metal can industry, there is virtually nothing in the record of significance regarding such matters as the markets served by the industry, the nature of the competition which exists in such markets, the problems faced by its customers, methods of selling and merchandizing, price structure or pricing practices, the supply and demand picture, or similar matters.

During World War II the tin plate supply was greatly curtailed and the glass container industry was able to make substantial advances at the expense of the metal can industry. Since the war the glass container industry has continued its substantial growth and expansion and this process has not abated since the Hazel-Atlas acquisition. The growth of the glass industry has been more rapid than that of the can industry.

Numerous technical improvements have been made in the glass container which have increased its strength, resistance to breakage and overall utility, and have lightened weight. These improvements have contributed significantly to the growth of the industry.

There appears to be no difficulty in entering the glass container industry and a number of new companies have recently entered and have had successful operations. There has been a continuous expansion of facilities by both large and small companies through new plant construction or additions to existing plants.

There was no evidence that the initial capital investment needed to enter the industry was unreasonably high or that there is any obstacle to obtaining whatever technical knowledge or facilities are neces-

sary. Nor are there any patent barriers to entry. Raw materials are plentiful and readily available, as are shipping containers.

The industry is prosperous, healthy and highly competitive. Here again is a generalized picture of a large, strong, and rapidly expanding industry in which competition has been and remains keen and vigorous.

(c) *The plastic container industry*

The plastic container industry is relatively new. It got under way in the mid 1940's. The industry has since grown rapidly and is still undergoing rapid expansion. Neither the size and scope of the industry nor the respective positions of Continental and other manufacturers in it can be determined with any reasonable degree of accuracy from the evidence in this record.

The larger companies in the industry include Plax Corporation, Injection Molding Company, American Can, Continental, Royal Manufacturing Company, Inc., Owens-Illinois, Wheaton Plastics Company and Foster-Grant Company, Inc.

The dollar sales volume of the industry is small compared with that of the metal can and glass container industries. Plax, the largest producer, had plastic container sales in 1959 of about $12,000,000, which it estimated to be 30% to 40% of such sales in the United States.

In 1955 Continental's sales of plastic containers amounted to $2,400,000, and according to its estimate it shipped approximately 9.3% of the plastic squeeze bottles sold in the United States in that year.

There are apparently thousands of small companies engaged in the manufacture of plastic containers.

Some use the blow molding method of manufacture and others use injection molding.

Among the many types of plastic packaging materials produced by companies in the industry are bottles, jars, vials, boxes, folding cartons, tubs, tubes, carboys, tubes with metal ends, film and other flexible materials and bags. These containers are sold to a wide variety of industrial customers who pack their own products.

There is a Plastic Bottle and Tube Manufacturers Institute, organized in 1957, which is a division of the Society of the Plastics Industry, Inc. Its members are American Can, Continental, Foster-Grant, Injection Molding, Plax and Royal.

There was a paucity of information in the record about the activities of this Institute. It appears to collect statistics from its members, some of which apparently are published by the Department of Commerce but these figures are not in the record. Such statistics as are collected by the Institute concerning individual companies are destroyed when received and only overall totals are maintained. The Bureau of Census does not collect or publish statistics relating to the production of plastic containers.

There is no showing that the initial capital investment needed to enter manufacture of plastic containers is high. Nor are there any technical obstacles to such manufacture. Raw materials and labor are readily and plentifully available and patents constitute no barrier to entry into this field.

The number of companies manufacturing plastic containers is on the increase and has continued to increase since the acquisition. The industry is rapidly expanding and competition is keen and vigorous. There are no universal figures for the industry in the record and such statistics as there are concerning it

are wholy unreliable and furnish no basis from which informed conclusions can be drawn.

This relatively new and expanding industry plainly has substantial potential. However, its overall dimensions and the extent to which it may be in competition with the glass container and metal can industries remain, at best, obscure.

(3) Closures

The term "closures" refers to a miscellany of devices used by packers to close and seal containers in which products are packed. The various types include crown caps, vacuum type closures, screw and lug type closures, paper and foil caps, and closures for home canning. Some are made of tin plate, some of aluminum or plastic, and others of paper or foil.

As I mentioned earlier, prior to the acquisition Continental produced crown caps and, after acquiring White Cap Company, vacuum type metal closures as well through that subsidiary. Hazel-Atlas did not manufacture either of these products. It manufactured screw and lug type metal closures and home canning closures. Continental did not.

(a) Crown caps are made of tin plate with cork or composition lining. They are used to close narrow neck glass bottles, primarily for beer and carbonated beverages. They are applied to the bottle by crimping and not by lugs or threads. They are not sold in competition with screw or vacuum type metal closures.

The largest producer of crown caps was Crown Cork & Seal Company, which was also a metal can producer. Other producers, in addition to Continental, were Armstrong Cork and Guttman. Though Anchor-Hocking and Owens-Illinois did not manufacture crown caps at the time of the acquisition, both

of them had been for some time large manufacturers of beer bottles and beverage bottles.

In 1956 Continental shipped 17.1% of the crown caps sold in the United States, in 1957 18.4% and in 1958 18.5%.

(b) Vacuum type metal closures are made of tin plate or aluminum, with various kinds of linings. They may be of the side-seal, top-seal (or twist-off) or roll-on varieties. They are used on glass containers almost entirely for packing food.

Vacuum type metal closures are applied by closing machines which create a vacuum in the head space of the container. The products to be packed are sterilized and steam is inserted into the area remaining between the food and the top of the jar, thus exhausting the air in the head space. The closure is then applied and when the product cools and the steam evaporates a vacuum seal is created.

Closing machines for the application of vacuum metal closures are leased or sold to packers by Continental through its White Cap Division and also by Owens-Illinois, Anchor-Hocking and Aluminum Company of America. Vacuum closing machines for a particular type of vacuum closure made by different manufacturers, are interchangeable with similar machines made by other manufacturers, or may be made so with relatively minor modifications. Such machines cannot be used to apply screw type metal closures and they operate at much higher speeds than machines for the application of screw type closures.

The White Cap Company, now a subsidiary of Continental, is the leading manufacturer of vacuum type closures. Other manufacturers include Anchor-Hocking, Owens-Illinois and Crown Cork & Seal. In 1956 White Cap produced approximately 60% of the vacuum closures made from tin plate. A recent

development, apparently pioneered by White Cap, is the twist-off vacuum closure which is used for the same general purposes as other vacuum closures.

(c) Some screw and lug type metal closures are made of tin plate with various kinds of linings. Others are made of aluminum or plastic. It does not appear that screw and lug type closures made of different materials have end uses substantially different from one another. Closures of this type are normally used on glass containers.

These closures engage the glass container by screwing into continuous threads in the neck of the container. They cannot be used where a vacuum is required and in general are not used for food products for which vacuum metal closures are needed because of spoilage problems. Screw and lug type closures are used on both food and non-food products.

There are at least 18 companies manufacturing screw and lug type metal closures, including Owens-Illinois, Crown, Ball Bros. and Hazel-Atlas. In 1958 Hazel-Atlas produced approximately 4.7% of the screw and lug type metal closures shipped in the United States. There are several companies, including Owens-Illinois, which manufactured both metal and plastic type screw and lug type closures, the uses of which appear to be substantially interchangeable. From 24 to 36 companies make plastic screw type closures.

The statistics in the record relating to closures do not include metal closures used in home canning, aluminum closures, plastic closures or paper caps, though Hazel-Atlas made home canning closures as well as screw and lug type closures for commercial packing. With the exception of home canning jars sold with closures attached, glass containers and closures for them are sold separately. Closures are

sold by the manufacturer directly to packers and there appear to be no wholesalers or jobbers of these products. Closure customers generally have multiple sources of supply. There is no evidence that prices of one type of closure have any effect on the sales volume of any other types.

There is no shortage of raw materials necessary to manufacture closures. There was no showing that there were any substantial obstacles to entry into any of the closure fields.

Crown caps, vacuum type closures and screw and lug type closures have in the main quite different uses and do not significantly compete with one another. However, competition within each of the respective screw type, vacuum type and crown cap fields has been and remains keen and vigorous and there does not appear to have been any significant diminution in the number of companies engaged in these respective fields either before or after the acquisition.

IV

THE CONTENTIONS OF THE PARTIES

(1) Lines of commerce and sections of the country claimed to be relevant

A year and a half before the commencement of the trial, the Government, in answer to defendants' interrogatories, specified with particularity ten separate lines of commerce which it claimed were adversely affected by the acquisition under attack. The lines of commerce so specified remained unchanged throughout the exhaustive pre-trial proceedings in which the issues to be tried were carefully limited and defined, and during the six weeks of the trial itself.

The ten lines of commerce are as follows:[34]

1. The packaging industry.
2. The can industry.
3. The glass container industry.
4. Metal closures.
5. Containers for the beer industry.
6. Containers for the soft drink industry.
7. Containers for the canning industry.
8. Containers for the toiletries and cosmetic industry.
9. Containers for the medicine and health industry.
10. Containers for the household and chemical industry.

The Government contended that the relevant geographic market in which adverse effects of the acquisition were felt in each of these ten lines of commerce was the United States as a whole. It contended also that in lines of commerce numbered 2, 3, 5, 6, 7, 8, 9 and 10 there were adverse effects in two separate sections of the country, as well, (a) the United States east of the Rocky Mountains, and (b) the United States west of the Rocky Mountains.

No discussion of the attempted distinction between the areas east and west of the Rocky Mountains is necessary here. The evidence wholly failed to establish that, in the context of this case, there were any differ-

[34] The lines of commerce are listed here in what seems to me to be the logical order in which they should be discussed. The order in which they were listed by the Government in its interrogatories, which I followed in my oral decision, was as follows:

1. Containers for the canning industry. 2. Containers for the beer industry. 3. Containers for the soft drink industry. 4. Containers for the toiletries and cosmetics industry. 5. Containers for the medicine and health industry. 6. Containers for the household and chemical industry. 7. The can industry. 8. The glass container industry. 9. Metal closures. 10. The packaging industry.

ences between these areas or between either of them and the United States as whole indicating that they constituted economically significant separate geographic markets in any of the lines of commerce specified. Nor was there evidence that such effects of the acquisition as might be felt were any different in different sections of the country. The only "section" of the country which was relevant was the United States as a whole. That is the geographic market with which we are concerned here.

The defendants agreed with the Government that the can industry and the glass industry were separate lines of commerce for Section 7 purposes. They contended, however, that the other eight lines of commerce specified did *not* in fact exist and that there were no such separate relevant product markets or sub-markets.

Hazel-Atlas, said the defendants, was engaged in two lines of commerce, glass containers and screw and lug type metal closures and these were the only relevant markets in so far as it was concerned. They said further that the only relevant product markets in which Continental was engaged were metal cans, plastic bottles, crown caps and vacuum type closures.

Thus defendants contended that there were but six separate and distinct relevant lines of commerce or product markets. Moreover, they took the position that the lines of commerce in which Hazel-Atlas and Continental were respectively engaged, were quite different and did not overlap to any significant degree.

(2) Claims as to anti-competitive effects

The Government conceded that it had no proof that any person or firm, seller or buyer, suffered any actual injury as a result of this acquisition, although the trial took place more than three and a half years

after it occurred. There were no complaining witnesses. None of the 78 witnesses whom the Government placed on the stand testified to any actual anti-competitive effects or tendency to monopoly. There was no evidence of actual anti-competitive effects or tendency to monopoly in this record.

The Government's case was predicated upon what it claimed were potential anti-competitive effects.

As its standards for determining whether such effects were reasonably probable, the Government advanced four criteria referred to in the House Report on the 1950 amendment to the section.[35] It claimed that the acquisition (1) had eliminated in whole or in material part the competitive activity of Hazel-Atlas which had been a substantial factor in competition with Continental; (2) had increased the relative size of Continental to such point that its advantage over its competitors threatened to be decisive; (3) had resulted in an undue reduction in the number of competing enterprises; and (4) had established relationships between buyers and sellers which deprived their rivals of a fair opportunity to compete.

The Government also stressed a statement in the Senate Report on the 1950 amendment that the statute was intended "to cope with monopolistic tendencies in their incipiency and well before they have attained such effects as would justify a Sherman Act proceeding * * *."[36] It emphasized prior acquisitions by Continental of companies in the metal can and other fields, and urged that when Continental acquired Hazel-Atlas, the process of acquisition had reached a stage where it was reasonably probable that anti-competitive effects would occur and that the acquisition was therefore unlawful.

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[35] H.R. Rep. No. 1191, 81st Cong., 1st Sess., 8.

[36] S. Rep. No. 1775, 81st Cong., 2nd Sess. 4.

The Government took the position that, while the anti-competitive effects referred to in the House Report might not be apparent presently, it was probable that they would occur in the future in each of the lines of commerce which it attempted to delineate.

Defendants, on the other hand, while conceding that the criteria referred to in the House Report might be relevant considerations in an appropriate Section 7 case and that, in appropriate circumstances, a continuing process of cumulative acquisition might become unlawful, insisted that there was no substitute for a showing that there be reasonable probability of substantial anti-competitive effects or tendency to monopolize in the product markets relevant to the case under consideration. They pointed out that the intention of Congress to cope with restraints of trade and monopolistic tendencies in their incipiency was carried out by the concept of reasonable probability embodied in the statute and that this was the sole standard to be applied to the particular facts of each case.

Defendants also pointed out that Section 7 cannot be applied mechanically or quantitatively but that each case must be decided on its own facts. They maintained, moreover, that in any event, the Government could not prevail since there was a complete failure of proof here.

They urged that Hazel-Atlas and Continental did not compete with one another to any significant degree and there was no reasonable probability that they ever would; that the merger was utterly devoid of anti-competitive significance; and that it had not resulted and there was no probability that it would result in any substantial lessening of competition or tendency toward monopoly in any of the lines of commerce

delineated by the Government or in any other lines of commerce.

V

UNCOMMON FEATURES OF THE CASE

This case does not fit into any of the classic anti-trust patterns. It deals with three separate and distinct industries manufacturing separate and distinct types of products.

As the earlier discussion indicates, each type of container is made from different raw materials and each has different physical characteristics and properties. Different plant and machinery are required for each and the processes of manufacture are different. The different types of containers manufactured by these different industries are of wide varieties of sizes and shapes and are put to hundreds, if not thousands, of different end uses.

Concededly there was substantial and vigorous inter-industry competition between these three industries and between various of the products which they manufactured. Metal can, glass container and plastic container manufacturers were each seeking to enlarge their sales to the thousands of packers of hundreds of varieties of food, chemical, toiletry and industrial products, ranging from ripe olives to fruit juices to tuna fish to smoked tongue; from maple syrup to pet food to coffee; from embalming fluid to floor wax to nail polish to aspirin to veterinary supplies, to take examples at random.

Each industry and each of the manufacturers within it was seeking to improve their products so that they would appeal to new customers or hold old ones. Hazel-Atlas and Continental were part of this overall industrial pattern, each in a recognized separate industry producing distinct products but en-

gaged in inter-industry competition for the favor of various end users of their products.

It does not necessarily follow from this, however, that the acquisition of Hazel-Atlas by Continental falls within the ambit of Section 7 of the Clayton Act. That section of the act deals specifically with relevant product markets and the lessening of competition within them. The fact that there is inter-industry or inter-product competition between metal, glass and plastic containers is not determinative of the metes and bounds of a relevant product market. As the Supreme Court said in the *Cellophane* case:[37]

> Determination of the competitive market for commodities depends on how different from one another are the offered commodities in character or use, how far buyers will go to substitute one commodity for another. For example, one can think of building materials as in commodity competition but one could hardly say that brick competed with steel or wood or cement or stone in the meaning of Sherman Act litigation; the products are too different. This is the interindustry competition emphasized by some economists. See Lilienthal, Big Business, c. 5.[38]

Thus the relevant product market for anti-trust purposes by no means includes all substitutes. In

[37] *United States* v. *E. I. duPont de Nemours & Co.* (Cellophane), 351 U.S. 377, 393 (1956). See also *Kansas City Star Company* v. *United States*, 240 F. 2d 643 (8 Cir. 1957), *cert. den.* 354 U.S. 923 (1957).

[38] Illustrations of inter-industry competition given in Lilienthal Big Business: A New Era (1952), c. 5, referred to by Mr. Justice Reed, include copper and aluminum; coal and oil; cotton, wool and synthetic fibres; trucks, automobiles, buses and airplanes; iron, copper and plastic pipe; glass, concrete, brick and asbestos building and insulation materials; and *even glass, cans, and plastic bottles.*

this connection the Court said in the *Times-Picayune* case: [39]

> For every product, substitutes exist. But a relevant market cannot meaningfully encompass that infinite range. The circle must be drawn narrowly to exclude any other product to which, within reasonable variations in price, only a limited number of buyers will turn; in technical terms, products whose "cross-elasticities of demand" are small.

This appears to be what the Court had in mind in *Brown Shoe* when it said: [40]

> The outer boundaries of a product market are determined by the *reasonable* interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it. (Emphasis added.)

In this case the circle referred to in *Times-Picayune* cannot be drawn to include within the boundaries of a single product market the metal can, glass container and plastic container industries and their wide variety of products. Attempts by the Government here to combine these separate industries and their products or to combine separate and distinct products from separate and distinct industries into single product markets necessarily failed because appropriate distinctions were not made between inter-industry or overall commodity competition and the type of competition between products with reasonable interchangeability of use and cross-elasticity of demand which has Clayton Act significance.

The boundaries of a product market or sub-market may only be determined "by examining such practical indicia as industry or public recognition of the [mar-

[39] *Times-Picayune Publishing Co.* v. *United States*, 345 U.S. 594 (1953) at p. 612, fn. 31.

[40] *Brown Shoe Co.* v. *United States*, *supra*, p. 325.

ket] as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors."[41]

Nevertheless, the Government here has made an attempt to establish a product market embracing all of these separate industries and products and many more in the line of commerce which it denominated as the packaging industry. The theory upon which it proceeded on this line of commerce is illustrative of its failure to make the distinctions I have pointed out.[42]

Moreover, with the exception of the lines of commerce denominated as the metal can industry and the glass container industry, each of which were conceded to be separate product markets and the line denominated "containers for the beer industry" which I have found to be a separate product market, the Government also ignored these concepts in attempting to combine products produced by separate industries, which were not shown to have reasonable interchangeability of use or cross-elasticity of demand, into relevant lines of commerce. Examination of such practical indicia for determining product markets as were in the record did not establish that there were such lines of commerce. These lines of commerce were artificially carved out by the Government and did not conform to the realities of the marketplace.

We therefore do not have here the pattern of a horizontal combination between two companies which manufacture or sell the same products, as the Government seemed to assume. Nor are we concerned with the pattern of a vertical combination. Neither

[41] *Brown Shoe Co.* v. *United States*, *supra*, p. 325.

[42] See discussion of "The packaging industry," pp. 50a–52a, *infra*.

Continental nor Hazel-Atlas was engaged in any essential step in the processing, manufacture or sale of products made or used by the other.[43]

What we have here, basically, is a conglomerate combination in which one company in two separate industries combined with another in a third industry for the purpose of establishing a diversified line of products suitable for a variety of end uses to be sold to a wide range of customers with differing packing requirements.

> Such a merger * * * does not have the effect of automatically foreclosing to competitors any market outlet or source of supply as in a vertical merger, nor does it have the effect of automatically eliminating a competitor as in a horizontal merger.[44]

Here the Government moved into virtually uncharted Section 7 territory. In the twelve years since Section 7 was amended there are apparently only two other cases raising this exceptional problem. They are *United States* v. *General Motors* (Euclid Road Machinery) which is currently pending in the District Court for the Northern District of Ohio, and the *Proctor & Gamble* case before the Federal Trade Commission which has just been cited. A third case, *United States* v. *General Dynamics*, filed in this district on November 8, 1962 and as yet undetermined, may also involve the same problem to some extent.

To complete the background I should add that I have been unable to find any case dealing with a pattern of inter-industry and inter-commodity competition comparable to that which exists here nor in which

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[43] But see discussion of corrugated shipping cartons, *infra*, pp. 60a–61a and containers for the beer industry, *infra*, pp. 65a–70a.

[44] *Proctor & Gamble Co.*, 3 C.C.H. 1961 Trade Reg. Reports ¶15, 24 F.T.C. Orders), at p. 20,257.

the diversification of products, industries and consumers is so pervasive.

This is not to suggest that enforcement of Section 7 may not be extended beyond the range of any of the cases thus far decided. For, as both *Brown Shoe* and the legislative history which it reviews make clear, Section 7 is applicable to conglomerate mergers where the facts warrant.[45] But there must be evidence that the facts warrant such application.[46]

Understandably the case of a conglomerate merger set in such a complicated inter-industry pattern as this presented great difficulties of proof for the Government. But that does not mean that the Government's burden was lessened or that it was relieved from the obligation of establishing relevant product markets or of showing reasonable probability of substantial anti-competitive effects in one or more of them as a result of the acquisition. In fact, in the case of a conglomerate merger such as this, where such a wide diversity of factors bear on questions of relevant markets and anti-competitive effects within them, the Government must be at pains to examine in detail all practical indicia which might bear on both questions.[46]

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[45] *Brown Shoe Co.* v. *United States*, *supra*, p. 317.

[46] The comments of the Federal Trade Commission with respect to the standards of proof required in such a situation are not inappropriate.

"• • • the same tests apply as in any other matter coming within the purview of Section 7, but since a conglomerate acquisition does not have the above-mentioned 'automatic' effects of a vertical or horizontal merger, such a determination is necessarily difficult to make from a consideration of evidence relating solely to the competitive situation existing in the relevant market prior to the acquisition and to the pre-merger status of the acquired and acquiring corporations. Consequently, a consideration of post-acquisition factors is appropriate [as well]." *Proctor & Gamble Co.*, *supra*, p. 20,258.

In the case at bar the Government not only failed to do this but the evidence concerning such indicia as were examined was woefully inadequate. Even assuming that the theory upon which the Government sought to construct its line of commerce for the packaging industry, for example, were tenable, it conspicuously failed to adduce any evidence whatsoever to support its theory, as I shall point out in detail later. In the lines of commerce denominated containers for the soft drink, canning, toiletry and cosmetic, medicine and health, and household and chemical industries, moreover, its proof was also altogether deficient as to practical indicia showing that such product markets as these in fact exist. It failed to establish that these were relevant lines of commerce.

The Government's failure of proof was not confined to its attempted delineation of end use and other lines of commerce. Its failure was equally evident with respect to anti-competitive effects in the can industry, the glass industry and the beer container lines of commerce which it was successful in establishing.

Plainly, in order to make out a case under the Act the Government was required to show either that the acquisition had actually resulted in a significant diminution of the vigor of competition or that there was reasonable probability that it would do so. Unless it showed that there were actual anti-competitive effects of a substantial nature, which it did not, the reasonable probability test had to be met. As I have mentioned, there is no evidence of actual anti-competitive effects in this record, substantial or otherwise and the Government did not proceed on that theory.

Thus, the Government had to establish the reasonable probability of substantial anti-competitive effects from this acquisition and it had to do so under the facts and circumstances of this case and within the

framework and context of the industries and markets specifically involved.

The Government was not able to sustain this burden. Its case was based on what it claimed to be anti-competitive effects which *might* occur in the future. No doubt if the evidence here had shown that there was a reasonable probability that future effects of a substantial nature would occur, sufficient would have been shown to make out this element of the case.[47] But no such showing was made. It is a far cry from *might* occur to a reasonable *probability* of occurring.

Reasonable probability of the lessening of competition in the future is just as much subject to evidentiary proof as is actual lessening of competition. Mere speculation or conjecture cannot be substituted for proof of reasonable probability. Nor are mere possibilities that competition might be lessened in the future, or inferences to that effect, sufficient.

In the absence of evidence of reasonable probability of anti-competitive effects the Government has speculated as to what might occur and has substituted what are at best mere possibilities for reasonable probabilities.

For example, the Government laid great stress throughout on prior acquisitions by Continental and urged that the overall history of such acquisitions impels the conclusion that the Hazel-Atlas acquisition was repugnant to the statute.

It is plain that the Act requires intervention in a cumulative process of acquisitions where the effect may be a significant reduction in the vigor of competition in any line of commerce.[48] But this cannot be

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[47] *Brown Shoe Co.* v. *United States*, *supra*.

[48] *Brown Shoe Co.* v. *United States*, *supra*, pp. 318, fn. 32, 333–334, 345, fn. 72.

assumed. It can only be established by showing that such effects had in fact occurred or that it was reasonably probable that they would. There is no such proof in this record.

The evidence as to prior acquisitions here is confined to two documents which were answers by Continental in 1946 and in 1956 to inquiries made by the Government and passing references in a letter in which Continental outlined to the Anti-Trust Division its position with respect to the proposed acquisition of Hazel-Atlas.[9] All that these documents show is that Continental has, over a period of many years, acquired a substantial number of companies, or portions of companies, in a wide variety of businesses.

Many of the acquisitions were made a number of years ago in the 1920's and the 1930's. Many were extremely small. Some were the result of liquidation sales. Some appear to have been cleared with the Department of Justice or to have had its tacit approval. Some were located in Canada. Some of the companies acquired were subsequently sold.

None of the companies acquired in the ten years prior to suit were can companies. No glass company had ever been acquired before. As I will point out a little later, the objectives of the acquisitions carried out over the last ten years at least, and of a number before that, were to diversify Continental's product lines.

The Government did not show what the effects of any of these acquisitions were, cumulative or otherwise. There was no evidence that they had any anti-competitive effects in any of the industries or product markets to which they were related. The Government's conclusion that anti-competitive effects will necessarily flow from this merger because of Con-

[9] G-785, G-786, G-900.

tinental's prior acquisitions is pure conjecture, unsupported by evidence.

Indeed, such evidence as there is tends to negative such a conclusion. Continental's letter to the Anti-Trust Division, outlining its position with respect to the proposed acquisition,[50] states its purposes and intentions in making the acquisition.

Plainly, purpose and intention are not in any way controlling in a Section 7 case. But purpose and intention are factors which may be taken into account together with all the other factors in the case in predicting the probable future conduct of the parties and the probable effect of the merger.[51] Viewed in that context purpose and intention may throw some light on the effects which might reasonably be anticipated from the merger.

The Government placed heavy reliance on Continental's letter stating the purpose of the acquisition. As expressed in that letter the purpose was a further diversification of Continental's various lines of products to include for the first time a glass container division.

The history of prior acquisitions by Continental indicates its design to diversify increasingly so as to be able to maintain independent lines of various kinds of materials used by packers of many kinds of products and to service a wider variety and number of customers. As a result of this program, apart from metal cans, other products which it had come to produce included fibre drums, kraft liner board, flexible packaging materials, plastic containers, crown caps, vacuum type metal closures, various types of can and closure machinery, paper cups and plates, and steel pails. By the acquisition of Hazel-Atlas, Continental

[50] G-900.

[51] *Brown Shoe Co.* v. *United States*, *supra*, p. 329, fn. 48.

further diversified its product lines to include glass containers and other glass products, screw and lug type metal closures and home canning closures.

There was no evidence that Continental's program of diversification resulted in the suppression of new lines which it acquired. Nor was there evidence that competition in these lines was curtailed or that any pressures, either directly or indirectly, were brought in any of them which tended to create any anti-competitive effects. Though the case was tried almost four years after the acquisition, far from indicating that there had been any such post-acquisition effects, the evidence was to the contrary. This is especially significant in the case of a conglomerate merger such as this.[52]

The announced, and, indeed, actual policy which Continental followed was to encourage development of the new lines in separate corporate divisions and to promote intra-company competition so as to strengthen its overall ability to compete with other companies in the different industries and different product lines in which it was doing business.

There are no indications in the record that the acquisition tended either to weaken the position of Hazel-Atlas as a competitive factor in the glass industry or in any of its product lines, or to weaken Continental's position as a competitive factor in the metal can industry or in its product lines. Nor is there anything to show that such positions were so strengthened as to have any significant anti-competitive effects in any of the industries or markets involved here.

In the light of the situation in the metal can and glass container industries, the apprehension expressed by the Government that Continental was likely to

[52] *Procter & Gamble Co., supra*, p. 20, 258.

eliminate or limit the manufacture of glass containers after the Hazel-Atlas acquisition or to eliminate or limit some of its can lines, is not only unsupported by the evidence but also unfounded. In fact any such course would have run counter to Continental's concept of the theory and purpose of its diversification program.

The Government views with alarm every advantage which Continental or Hazel-Atlas might gain as a result of the merger and sees in each the spectre of anti-competitive effects. But the mere fact that the competitive position of acquiring or acquired companies may be improved by a merger does not establish that the merger is harmful or has any of the proscribed anti-competitive effects.[33]

The test is not whether, as a result of a merger, either the acquired or acquiring company obtains advantages which help it to compete more effectively. Obviously were this so, any merger permitted under the Act could have no sound business justification. The object of the Clayton Act is not to discourage businesses from taking steps to compete more effectively but to keep competition vigorous and effective. Opportunities to offer improved products, to make cost reductions or to give better service to customers are not in themselves indications of anti-competitive effects. These are all legitimate business objectives. "It may well be that by effecting a better arrangement for a more profitable undertaking * * * competition would be stimulated rather than lessened."[34]

Thus, the Government could not have succeeded here merely by showing that there were competitive advantages accruing to the acquiring or acquired

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[33] *Brown Shoe Co.* v. *United States*, *supra*, pp. 319–320. See also Address by Attorney General Robert F. Kennedy, Economic Club of New York, Nov. 13, 1961.

[34] 96 Cong. Rec. 16,456 (1950). (Remarks of Senator O'Conor.)

companies or both from the merger. It is the *anti-*competitive effects of the merger with which the statute is concerned—that is to say, the lessening of the vigor of competition, rather than the converse. Competitive advantages are not proscribed unless there is a reasonable probability that anti-competitive effects of some significance in the relevant product markets will result. No such showing was made.

The Government also contended that "concentration" in the industries and product markets involved resulted from the merger which should be considered as a key factor in establishing that there was reasonable probability of anti-competitive effects or tendency to monopoly.

Concededly Continental was a very large corporate entity. So to a much lesser degree was Hazel-Atlas. They stood second and third respectively in their industries and each had substantial shares in different product markets.

It is not to be doubted that size and market shares are factors to be taken into account in determining anti-competitive effects and tendency to monopolize. But mere size or concentration alone are not decisive. As the Supreme Court has said, exclusively mathematical tests are to be avoided.[33]

Such tests are particularly inapposite where a conglomerate merger is under scrutiny. In such a situation the Supreme Court's stricture that the merger must be "functionally viewed, in the context of its particular industry"[34] becomes especially meaningful.

A conglomerate merger does not result in the elimination of a competitor but merely substitutes the

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[33] *Brown Shoe Co.* v. *United States*, *supra*, p. 321, fn. 36. See also *A. G. Spalding & Bros., Inc.* v. *Federal Trade Commission*, *supra*, pp. 625–626; *Crown Zellerbach Corporation* v. *Federal Trade Commission*, *supra*, p. 826.

[34] *Brown Shoe Co.* v. *United States*, *supra*, pp. 321–322.

competition of the acquiring company for that of the acquired company in the lines of commerce in which the acquired company was formerly engaged. Thus such a merger does not in itself result in any increase in industry or product market concentration and the shares of the acquiring and acquired companies in their respective product markets are the same as they were before.

Of course, if the product markets served by the acquiring and acquired companies are closely tied together, it is possible that substantial competitive advantages may accrue which could result in changes of market positions. It was not shown that this was the situation here, however, and though, at the time of trial three and a half years had elapsed since the merger, there was no indication either that any such changes had occurred or were reasonably likely to occur.

The record here is replete with statistics. Basic figures have been combined, separated, recombined and then combined again. Many of these combinations have no sound statistical basis and are predicated on implausible hypotheses not supported by evidence. Figures have been placed in unnatural and illogical groupings without regard to dissimilarity of products, separate and distinct industrial patterns or the realities of the marketplace. This was particularly evident in the proof concerning the last five lines of commerce where the Government unsuccessfully attempted to combine different products produced by different industries solely in terms of end uses.[37]

[37] These lines of commerce are containers for the soft drink industry, pp. 70a–76a, *infra*, the canning industry, pp. 76a–83a, *infra*, and the toiletries and cosmetic industry, the medicine and health industry, and the household and chemical industry, pp. 83a–91a, *infra*.

The 78 witnesses placed on the stand by the Government included, in addition to one can manufacturer, 18 representatives of glass container manufacturers, several plastic container manufacturers, three minor food packers, and a number of firms manufacturing toiletries, cosmetics and drugs.

Yet the Government failed to adduce testimony from these witnesses from which inferences or conclusions could be reasonably drawn that there was reasonable probability of anti-competitive effects or monopolistic tendencies. These witnesses, instead, gave a picture of keen and vigorous competition within the industries and markets with which they were respectively familiar and between such industries and markets and the other industries and markets involved, both before and after the acquisition. None of them gave evidence tending to show either that the merger had in fact lessened competition in any line of commerce or that there was any reasonable probability of its doing so.

Viewing the evidence as a whole, quite apart from theory, there was a total failure by the Government to establish the essential elements of a violation of Section 7. As will be apparent from a discussion of the proof relating to each specific line of commerce, the Government did not lay either the statistical or testimonial foundations required to establish its case. It was this failure of proof which required the dismissal of the complaint and entry of judgment for the defendants.

VI

THE PROOF AS TO THE LINES OF COMMERCE SPECIFIED BY THE GOVERNMENT.[58]

(1) "The packaging industry"

The claim of the Government as to this line of commerce was dismissed during the oral argument of defendants' motion made at the close of the Government's case.

The evidence in the record on which the Government relied to establish what it called "the packaging industry" product market was confined to the mid-1956 letter from Continental answering Department of Justice inquiries concerning its proposed acquisition of Hazel-Atlas.[59] In that letter Continental outlined its diversification program and stated it was attempting to provide "tailor-made packaging" for a wide variety of products. In discussing this program the letter used the generic but undefined term "the packaging industry."

As requested, the letter estimated the percentage of the national market held by Continental in various groups of products for the year 1955. The products listed included metal cans, steel pails, lithographed kitchenware made of tin plate, unspecified military items, can closing equipment, metal closures, cork products, low pressure laminates, injection molding, rigid plastic containers, squeeze bottles, plastic pipe and fittings, paperboard, paper products (including paper cups and plates, nested containers and fibre drums) and flexible packaging.

The estimates made by Continental of its share of the markets in these various products ranged from

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[58] The lines of commerce will be discussed in the order in which they are listed at page 31a, *supra*.

[59] G-900. See *supra*, p. 44a.

less than 2% in such product categories as paper board and injection moldings, to 31.4% in metal cans, and in the single instance of fibre drums, to approximately 80%. With respect to several products no figures were available from which any informed estimates could be made and some of the products listed, such as plastic pipe, were no longer produced by Continental.

In addition to these product categories the Government apparently also sought to include within this line of commerce corrugated shipping cartons and other products manufactured by Gair, and glass containers, glassware, screw type metal closures and closures for home canning jars produced by Hazel-Atlas.

There was no definition of the boundaries of this alleged line of commerce in the record. Nor were there any universe figures for it. The Government offered in evidence a table purporting to compare the value of all packaging materials sold in 1957 and 1958 with the net sales and operating revenues of Continental for these years.[*] The table was excluded because there was no substantiation whatsoever of the overall figures which it contained. The comparisons which the table attempted to make between Continental's sales and revenues and the value of all packaging materials sold were shown to be utterly unsound statistically and entirely unsupportable. During the colloquy concerning the admission of this exhibit, it became apparent that the Government conceived of "the packaging industry" as involving a sales volume of more than ten billion dollars. The products which it sought to include fell into 43 general categories, each of which was sub-dividable into countless individual items. The product ranged from

[*] G-803(5c) for id.

cooperage to grocery boxes, from transparent film to steel drums, from pill boxes to plastic and glass carboys, from fruit and vegetable baskets to plastic tubes and from Christmas wrappings to cigar boxes. Here we are veritably wandering in a sort of Clayton Act Wonderland where there is talk "of shoes—and ships—and sealing wax—of cabbages—and kings * * *"[41]

It is manifest that the broadest application of the product market test of "reasonable interchangeability of use or cross-elasticity of demand" could not possibly encompass this wide diversity of products and there was no evidence that it did. Nor was there any evidence concerning industry or public recognition of the market, peculiar characteristics and uses of the products involved, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, specialized vendors, or any of the other practical indicia by which a product market may be determined.[42]

Moreover, the record does not even show the names of the companies which were claimed to be a part of the industry, to say nothing of where they were located, what their annual sales were, or anything about them. There is nothing at all in this record from which it could be found that a relevant "packaging industry" product market exists.

Furthermore, there was no evidence at all about competition within this alleged market, let alone anti-competitive effects. In sum, there was complete failure of proof.

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[41] Lewis Carroll (Charles Lutwidge Dodgson), *Through the Looking-Glass and What Alice Found There*, Chap. IV, Stanza 11.

[42] See discussion *supra*, pp. 8a–9a.

(2) "The metal can industry."

The defendants conceded that this line of commerce, as delineated by the Government, was a separate and relevant product market, and I have so found. Thus, the Government's burden was confined to establishing that, in this product market, there was reasonable probability of substantial anti-competitive effects resulting from the acquisition.

The Government claims that in this line of commerce, as a result of the acquisition:

(a) Continental's increase in size and diversity, and its consequent ability to offer a full line of container products, gave it an advantage over smaller and less diversified can manufacturers which threatened to be decisive.

(b) Entry into the industry was made more difficult and more unlikely than prior to the merger, and the possibility of new entry was significantly decreased.

(c) It was probable that similar mergers would be triggered and that such further acquisitions would make effective competition less likely.

(d) Continental's incentive to push metal cans as against glass or plastic containers was reduced, and it was therefore less likely to be an industry innovator and pioneer.

(e) And finally, there was a tendency toward monopoly because the merger tended "to aggravate a general oligopolistic trend" in the industry.

We are dealing here with the effects of the merger in a specific line of commerce—the metal can industry. Unless the probability of substantial anti-competitive effects were shown in that industry, the Government case as to this line of commerce necessarily failed.

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The Government's difficulty here was the same that it encountered so frequently in this trial. Its claims are pure speculation and, as far as I can discern, are not supported by any proof that it was reasonably probable that the claimed results would follow.

a. The Government urged that Continental obtained an advantage over its competitors in this industry which threatened to become decisive because of its ability after the merger to offer a "full line" of metal, glass and plastic containers, closures of various types and closure machinery. But there was no testimony that a can manufacturer obtained any particular competitive advantage by offering a full line of container products.

The only can manufacturer who testified was the Chairman of the Board of National Can, the No. 3 company in the industry, which manufactured general line and packers' cans only. His testimony was to the effect that National was expanding its operations; that it had built a new plant as late as 1956; that competition in the industry was "tougher"; but that National's earnings figures had gone down somewhat since 1956 though to what extent was not shown. He did not testify that there was any competitive advantage to be obtained in the can industry from offering a full line of products. Nor did he indicate that whatever decline in earnings National had had since 1956 was in any way ascribable to the Hazel-Atlas-Continental merger.

No other can manufacturer was called to testify. No one else testified on this subject. There were no documents or figures in the record supporting the Government's contention.

Plainly Continental, by its diversification program, expected to be able to compete more effectively against the strong competition in this highly competitive

market.[42] But on this record it would be sheer speculation to conclude that because this was so, anti-competitive effects were likely to occur, to say nothing of competitive advantages which threatened to become decisive. There was no evidence of any such probabilities.

b. Much the same can be said of the Government's contention that the acquisition made new entry into the industry more difficult and significantly reduced the possibility of such entry. The only evidence which might be considered to bear any relation to this contention is the testimony of the National Can Board Chairman that there had been no new company among the six top producers since 1935, and that of the Board Chairman of Owens-Illinois Glass concerning the metal can business which that company carried on between 1936 and 1944.

The National Can Chairman did not testify that there was undue difficulty in entering the metal can industry at any time. This can scarcely be inferred from the fact that competition in the industry was keen and vigorous and becoming increasingly so. It is of course always difficult to enter a highly competitive industry. But the Clayton Act was surely not designed to make an industry less competitive so as to encourage new entrants. It was designed to insure that competition remained keen and vigorous.

As to the Owens-Illinois experience, it appeared that this company acquired various metal can companies in 1936, made a profit from its can business immediately before the war and disposed of the business in 1944 when, because of the war, it was difficult to get the necessary supply of tin plate. It then sold its can business to Continental for $7,500,000. Continental did not acquire any other metal can

[42] See discussion *supra*, p. 45a.

company in the ensuing sixteen years up to the time of the trial.

There was no other evidence in the record bearing on this contention. There was no showing that the amount of capital required to enter the industry was unreasonably large, that any unobtainable know-how was required, that there were any patent barriers to entry, or that any other factors made entry difficult for anyone desiring to go into the business. Indeed, there was no evidence at all concerning problems of entry at the time of the merger or subsequently.

Once again the Government's claim was based on sheer speculation unsupported by proof.

c. There was no showing that this acquisition would trigger further acquisitions of glass companies by can companies. To sustain this contention the Government seized on a passing mention by the Executive Director of the Glass Container Manufacturers Institute that he had heard a rumor to the effect that a relationship had recently been established between American Can and Wheaton Glass Company. The subject was dropped there and never referred to in the evidence again. The Government made no effort to call either American Can or Wheaton to find out anything about this. There was nothing to show the nature of the arrangement, the reasons for it, what it was all about, or indeed that it in fact existed. Nor was there anything to show that if it did exist it had any connection with or bore any relation to the Continental-Hazel-Atlas merger.

d. The Government fared no better on its claim that as a result of the merger Continental was likely to lose the incentive to push can sales at the expense of glass. The Government introduced no evidence showing either that there had been or was likely to be any slackening of effort to push can sales. On the con-

trary, as has been pointed out, the object of the merger was diversification, and Continental was actively promoting intra-company competition between its various product lines." Since by far the largest proportion of Continental's business was in metal cans, it scarcely seemed likely that cans would suffer at the expense of glass.

Moreover, subsequently to the merger Continental actively engaged in a vigorous research and promotion program in both its metal and glass container lines. In the light of the record and of the competitive realities, the notion that it was likely to cease being an innovator in either line is patently absurd.

e. Finally, the Government's claim that the acquisition would tend toward monopoly in the can industry rests on no firmer footing than the other claims just discussed. What the Government said it meant by this claim was that the merger would "tend to aggravate a general oligopolistic trend in an industry."

As far as I can discern, what the Government relied on in terms of specifics was that Continental had widely diversified its product lines by acquiring other companies engaged in different businesses and now has assets and sales in excess of one billion dollars.

The Government placed in the record figures purporting to show the share of Continental in the combined metal can and glass container industries based on alleged total unit production. At best these figures rest on a somewhat shaky statistical foundation. But even accepting them at face value, Continental's share of the combined industries in 1957 was less than 25% and it remained in second place behind American Can which does not produce glass containers. The competition in both industries has consistently been keen and vigorous. There are many strong compet-

[11] *Supra*, pp. 43a–46a.

ing companies in both industries and there was no evidence of any dimunition of competition. No reasonable probability that the merger will tend to create a monopoly was shown or could reasonably be inferred.

(3) "The glass container industry."

This line of commerce, as delineated by the Government, was also conceded by defendants to be a separate and distinct product market and I have found that it was. Here, too, the Government's only obligation was to establish reasonable probability of substantial anti-competitive effects in a recognized product market.

Its claims were in large measure the same as those it made with respect to the metal can industry. It contended that the increased size and diversity of Continental after the merger, and its ability to offer a full line of container products gave it a competitive advantage in the glass container industry that threatened to become decisive; that entry into the industry had been made more difficult by the merger; that the acquisition would trigger self-defensive similar acquisitions; that there was less incentive for Continental to push glass at the expense of cans or plastics; and that there was a tendency toward monopoly in the industry.

All of these contentions failed for lack of evidence to support them. Little needs to be added here to what has been already said under the metal can line. Only additional features specifically bearing on the glass container industry will be discussed.

The evidence on which the Government relied to establish the likelihood of increased difficulty of entry into the industry as a result of the acquisition is illustrative of how flimsy its proof was on much of

this case. The major emphasis was placed on a letter from Emhart Manufacturing Company, a producer of glass forming machinery, to the Anti-Trust Division in 1958.[46] The Government urged that a paragraph of the letter headed "Glass Container Business Requirements" stated the factors showing difficulty of entry into this field. A reading of the paragraph on which the Government relies is illuminating:

> It is Emhart's opinion based on its experience that an essential requirement in entering the glass business is to obtain the services of at least one good man of executive or managerial caliber, experienced in the art of manufacturing glassware. A great deal of know-how is required, but the glass technology and engineering services of Emhart and others specializing in this industry are available. Machine operators are usually obtained from the unions. A large amount of capital is required. A real problem exists in finding a market for new production in competition with established manufacturers.

It is difficult to understand the claim that this paragraph supports the Government's position. The paragraph certainly does not show that entry into the glass container industry is any more difficult than would normally be expected in a well established highly competitive industry. The only indication as to what the statement "a large amount of capital is required" means is a proposal which Emhart made to Gallo Wine Company in 1956 with reference to the establishment, from the ground up, of a plant to meet Gallo's substantial wine bottle requirements. Emhart estimated the cost as slightly more than three million dollars, surely not an unreasonably large capital requirement for the institution of such an enterprise.

[46] G–364.

The Government's reliance on the failure of the Neville Island Glass Company in 1947, to show difficulty of entry in 1956, is just as far removed from reality.

This small company never got off the ground and lasted less than a year before it went into a Chapter X reorganization and was thereafter liquidated. As appears from the Section 167 report of its Trustee in Reorganization,[46] the company was doomed from its inception due to egregious under-capitalization, inadequate facilities, and incompetent management. Its failure, occurring nine years before the merger and thirteen years before the trial, proves precisely nothing.

As against this evidence, or lack of it, it appears that five new companies using Emhart machinery, and six other new companies, have in fact entered the glass container field since 1950, some independent and some captive. In addition, new production facilities have been placed in operation throughout the industry at a rapid rate, the growth and expansion of the industry have been rapid, and competition has consistently been keen and vigorous.

The Government also urged that Hazel-Atlas obtained competitive advantages in the glass container industry which threatened to become decisive because the Gair Division of Continental manufactured corrugated shipping cartons in which glass containers are usually shipped. This is the one instance in this case where the Government contended that there was an aspect to the merger of a vertical nature since the shipping carton represents a not insignificant part of the cost of the glass container as shipped. But here again the proof failed to support the theory.

Owens-Illinois and Anchor-Hocking, among other major glass container companies, produced corrugated

[46] Defendants' Exh. J.

shipping containers for their own use. Other companies used local suppliers in the vicinity of their plants, generally more than one local supplier. Yet others, such as Ball Bros., both manufactured such containers themselves and bought locally.

Corrugated shipping containers are readily available in any quantities required. There was nothing in the record to show that Hazel-Atlas, which before the merger was third in the industry and did not manufacture cartons, or any other company which did not do so, was under the slightest competitive disadvantage against manufacturers who made their own. Nor was there any evidence that any significant competitive advantage was to be gained by producing cartons, much less a decisive advantage.

The Government's next contention was that significant competitive advantages in the glass container industry were likely to accrue to Continental as a result of the acquisition because it produced crown caps which were used to close glass beer and beverage bottles, vacuum type closures used to seal hermetically glass jars, and vacuum closure machinery. Once more the evidence failed to support the Government's theory.

There was nothing at all about any competitive advantages to be derived by a manufacturer who produced both glass bottles and crown caps. As I shall point out a little later, Hazel-Atlas did not manufacture beer or beverage bottles or any other narrow neck bottles on which crown caps are used, to any significant extent, nor was there any likelihood of its doing so.[67] On the other hand, Anchor-Hocking and Owens-Illinois were large manufacturers of beer and beverage bottles. They did not manufacture crown caps. Their consistent positions in the industry make it

[67] See pp. 67a–68a, 73a–75a, *infra*.

manifest that they suffer no disadvantage from that fact. Plainly the crown cap contention has no merit.

As to vacuum closures and vacuum closure machinery—of the eighteen representatives of glass manufacturers who testified, seventeen did not refer to the subject of such advantages at all. The only glass manufacturer who mentioned it, the Vice-President of Brockway, indicated that there might be a sales advantage in selling both vacuum closures and glass containers. He said, however, that there was no reason why his company could not manufacture vacuum closures if it wished but that it had never chosen to do so. Significantly enough, according to his testimony, the sales of Brockway had risen from twenty-three million dollars in 1954 to fifty-one million dollars in 1959. It can scarcely be said that Brockway was significantly disadvantaged.

Owens-Illinois and Anchor-Hocking also make vacuum closures and machines for applying them. There was no evidence that any competitive advantages over other glass container manufacturers accrued to them because they did so.

The theory was also somewhat tentatively advanced by the Government that the Hazel-Atlas Division of Continental would have a significant competitive advantage in the glass industry by having access to the confidential customer lists of Continental. The Government offered no proof whatsoever to sustain this theory and it was without support in the record.

In addition the Government advanced the converse of the proposition which it urged with respect to the metal can line—that as a result of the merger Continental was likely to lose the incentive to push glass container sales at the expense of cans. In view of what has been said concerning the purpose of Continental's diversification program and the course it

pursued after the merger, it is no more likely that Continental would slacken its efforts to promote glass than that it would slacken its efforts to promote cans. Indeed, if it had planned to do so there would have been little, if any, point to acquiring Hazel-Atlas, a major glass container producer.

Whether the Government's claims as to the effects of the acquisition in the glass container industry be considered separately or in combination, it showed no reasonable probability of substantial anti-competitive effects or tendency to monopoly in this industry as a result of the acquisition.

(4) "Metal closures."

There are several types of closures used to close or seal containers, as I have already mentioned. They are made of a variety of materials, including tin plate, aluminum, plastic and paper.

The Government excluded from its "metal closure" line of commerce closures made of aluminum, plastic and paper and there were no statistics with respect to such closures in the record. It also excluded crown caps and home canning closures, both made of metal (tin plate). Thus the line of commerce which the Government defined as "metal closures" included only two types of metal closures—vacuum types closures and screw and lug type closures. The former were produced by Continental in its recently acquired White Cap Division but not by Hazel-Atlas, and the latter were made by Hazel-Atlas but not by Continental.

The proof offered by the Government failed to establish that vacuum type closures and screw and lug type closures can properly be combined into a single product market. In fact the evidence was to the contrary.

There was no public or industry recognition that such a product market existed. There was no showing of inter-changeability of use, cross-elasticity of demand or cross-sensitivity of prices between the two distinct types of product which the Government sought to bracket together. There were no distinct classes of customers or any specialized vendors for both products. Production facilities for the two were quite different.

These products do not have the same characteristics or end uses. Vacuum closures whether of the side-seal, top-seal or roll-on variety, are used almost exclusively for heat sterilized food products packed in glass containers where a vacuum is required to prevent spoilage. Screw type closures of metal and plastic, on the other hand, are used both for foods and non-foods. There was no showing that screw type closures were used on foods which require vacuum packing, and, as far as appears here, they are generally used to pack different food products from those which require vacuum closures and for non-food products as well.

Vacuum closures are applied by machine. A number of companies which produced vacuum closures, including Continental (White Cap), Owens-Illinois and Anchor-Hocking, also produced and sold or leased machinery for applying them. The closure machinery made by one company can be used to apply vacuum closures made by other companies, in some cases with and in some cases without minor modifications.

However, machines which apply vacuum closures cannot be used to apply screw type closures. They operate differently and much more speedily than screw type closure machines.

These two types of closures do not compete with one another to any significant degree, if at all. Each

is in a quite distinct and separate line of commerce and I so find. Indeed, it appears that the Government has abandoned its contention that this combination of products constitutes a separate line of commerce by failing to request a finding to that effect.

In view of the failure to establish this as a line of commerce it is unnecessary to discuss anti-competitive effects of the acquisition within it, though, in any event, proof of such effects was wholly lacking.

(5) "Containers for the beer industry."

This is the first of the lines of commerce which the Government sought to define in terms of end use. It is composed of metal cans and glass bottles sold to brewers and used to package beer.

The proof indicates the following:

Beer can only be packaged in metal cans or glass bottles. The cans and bottles used to package beer are suitable only for that purpose.

Beer generates specific pressures which are peculiar to it. Beer cans and bottles are therefore structurally designed to resist such pressures and are not suitable for liquids such as carbonated beverages which generate different pressures. Beer cans and bottles are made in the same sizes in terms of capacity. Cans used for beer have special linings. Because of the characteristics of glass, beer bottles need not be lined. Thus, beer cans and beer bottles not only have the same end uses but have some common characteristics.

Brewers constitute a distinct and limited class of customer for both and they are sold to no other customers. Either one or the other may be used by the brewer as he chooses.

The trade associations of both the metal can and glass container industries have made extensive studies of the competition between beer cans and beer bottles

and the inroads which they have respectively made on one another. Individual manufacturers, including Continental, have made similar studies. Each industry and the individual manufacturers in each were actively engaged in promoting the sale of one container as against the other.

Individual manufacturers of beer containers in each industry are sensitive to competition from the other. There was recognition in each industry of virtual interchangeability of use and cross-elasticity of demand between the two types of containers used for this purpose.

Manufacturers of beer cans and beer bottles showed considerable interest in the prices charged for the competing container and it is a fair inference that there was some price relationship between the two.

Of course, in view of the fact that defendants' motion to dismiss was granted at the close of the Government's case only one side of the picture was presented. At that stage of the case, however, the proof adduced by the Government, standing as it did uncontradicted, established prima facie that this was a relevant product market.

The basis on which the defendants' motion to dismiss as to this line of commerce was granted was not therefore the Government's failure to establish the relevant product market but rather its failure to establish the reasonable probability of substantial lessening of competition or tendency to monopoly in the market as a result of the Hazel-Atlas acquisition.

The statistics on which the Government relied to show the scope and extent of this product market were based on unit sales of cans and bottles.[*] These figures are of questionable accuracy with respect to beer can units because of the method of computation

[*] G-801 (1d), (2d), (3d).

used,[*] and with respect to beer bottle units because no weight was given to the fact that most beer bottles are returnable and are refilled an average of twenty-two times by the brewer.

Nevertheless, the figures in the record were an indication of the overall size of the market. According to these figures shipments of beer cans and bottles exceeded 8.8 billion units in 1955, 9.3 billion in 1956, and 9.6 billion in 1957. This was plainly a large product market.

Although at one time almost all packaged beer was sold in bottles, in a relatively short period the beer can made great headway and may well have become the dominant beer container. Beer cans represented approximately 83 percent of the total in 1955 and approximately 83.7 percent in 1957, though, as has been noted, the failure to give weight to the returnable bottle factor distorts these figures.

Continental's share of the beer can market, measured by units shipped, ran from 43 percent in 1955 to 46 percent in 1957. Its share of both beer can and beer bottle shipments, disregarding the returnable bottle factor, ran from 36 percent in 1955 to 38 percent in 1957. It is apparent that Continental had a sizeable share of the total product market.

The participation of Hazel-Atlas in the product market is in sharp contrast. Before the merger in 1955 Hazel-Atlas shipped only 8/10ths of one percent of the total beer bottles shipped, disregarding the re-

[*] The unit figures are arrived at by converting base boxes of tin plate to short tons of steel and then applying a conversion figure to the tonnage to arrive at a unit figure. The conversion figure is based upon a hypothetical number of beer cans which might have been produced from each short ton of steel consumed. Although the formula used is related to methods used by the Bureau of Census, the reliability of the outcome was not demonstrated.

turnable bottle factor. It shipped only 2/10ths of one percent of returnable beer bottles. In 1957, over a year after the merger, its total beer bottle shipments, again disregarding the returnable bottle factor, had barely advanced to 1.1 percent of the total beer bottles shipped.[79] There were no figures as to its shipments of returnable bottles in 1957.

These figures show only the extent of the Hazel-Atlas participation in beer bottles and not in the market composed of beer cans and beer bottles together. Its share in this overall market was only 14/100ths of one percent in 1955 and 17/100ths of one percent in 1957. The Hazel-Atlas share of the beer container product market was completely insignificant and indeed practically non-existent.

At the time of the merger for all practical purposes Hazel-Atlas was not a competitive factor in this product market, nor had it ever been. The acquisition of Hazel-Atlas by Continental could not have lessened existing competition in the market to any remotely significant degree and there is no evidence that it did. Nor was Continental's position in the market strengthened to any significant degree by the acquisition. It remained in second place behind American Can and its role in the market was not appreciably affected.

The Government did not stress the claim that there was any actual lessening of existing competition in this line of commerce as a result of the merger. It contended, instead, that there might be anti-competitive effects in the future because the potential of Hazel-Atlas as a competitor in the manufacture of beer bottles had been eliminated. The difficulty with this position was that the evidence failed to show that, had the acquisition not taken place, there was

[79] G-801(ld), G-800I.

any reasonable probability that Hazel-Atlas would become a significant competitive factor in the manufacture of beer bottles.

At the time of the acquisition Hazel-Atlas was primarily a manufacturer of wide mouth containers which could not be used for beer and had relatively few machines for the manufacture of narrow neck bottles. It did not make amber glass, required for most beer bottles, in any quantity. It was not able to produce beer bottles economically. Though it filled an occasional order it did not consider itself to be a manufacturer of beer bottles.

There was evidence that some of its wide mouth manufacturing machinery could have been converted to narrow neck manufacture at relatively little expense and that it would have been able to convert its flint glass tanks to [redacted] manufacture of amber glass had it desired to do [redacted] But the record is devoid of evidence that it had any intention of so doing, or any reason for such a step which could have been taken only at the expense of its regular product lines.

Hazel-Atlas had no surplus capacity and its production was fully occupied with supplying its customers in the glass lines in which it had significant sales. Its plans to build a new plant in Plainfield, Illinois, had been deferred due to heavy increase in the costs involved. There was no intention, in any event, of using the proposed plant for the manufacture of beer bottles or of converting any of its existing facilities to such use. The Plainfield plant was planned for the purpose of producing the regular Hazel-Atlas product lines in the general Chicago area so as to bring it closer to that market and reduce freight costs.

Such scraps of evidence as there are concerning Hazel-Atlas miniscule manufacture of beer bottles do not indicate that there was any likelihood of its be-

coming a significant competitor in the beer bottle field. There was a rumor that Hazel-Atlas was selling a few beer bottles on the West Coast in 1956 but there were also indications to the contrary. Two Hazel-Atlas salesmen in 1953, when it manufactured no beer bottles at all, referred to Owens-Illinois beer bottle prices in two unsolicited letters to the company. A Hazel-Atlas officer, in a speech made in 1954, made brief reference to limited experiments in amber glass. That is all there was on this subject. It was plainly not enough.

Of course, there was always the *possibility* that Hazel-Atlas might, at some undetermined time in the future, for some undetermined reason, have undertaken to become a significant manufacturer of beer bottles. That, however, was mere speculation and by no means met the reasonable probability test.

There was no evidence in the record of any reasonable probability that the effect of the acquisition would be substantially to lessen competition or to tend toward monopoly in the beer container market.

(6) "Containers for the soft drink industry."

The Government attempted to define this line of commerce, in terms of end use, as comprising metal cans and glass bottles used to package "soft drinks." However, it is difficult to understand just what the Government intended the term "soft drinks" to mean.

The statistics produced to support this line of commerce are confusing. The table as to shipments of glass containers included in this line of commerce was headed "Beverage containers, returnable and non-returnable."[n] The table for metal can shipments in-

[n] G-801(1e).

cluded in the line was headed "Soft Drink Containers."[15]

"Beverages" apparently included bottled water, a variety of fruit juices and other unspecified drinks. One Government statistician, testifying on these tables, said that they included "mostly soft drinks" but that bottled water in carboys was also included. On the other hand, a food technician called by the Government testified that he considered soft drinks to be in the food category. Some fruit juice containers were classified as food containers, and orange drink in wide mouthed glass jars was classified under the heading "Dairy Products."[16]

The Government's statistics were taken from Census Bureau figures, which in turn were derived from figures supplied by the Glass Container Manufacturers Institute. The Institute classified "beverages" as applying "to all bottles for soft drinks and water, carbonated or non-carbonated * * *." But this does not aid materially in resolving the confusion.[17]

There appeared to be no definition in the record of the term "soft drinks" as used in the metal can table

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[15] G-801(2e). These statistics are predicated on the same theoretical computations as were used for beer cans—that is to say, unit base boxes of steel converted into short tons of steel, converted in turn into can units.

[16] For example, G-1205 gives the following instructions for reporting to the Institute production of containers for dairy products:

> "This classification applies to all containers used by dairies. It includes milk and cream bottles, and it also includes cottage cheese jars, *orange and chocolate drinks when not in narrow neck beverage bottles.*". [Emphasis added.]

I assume that orange and chocolate drinks, when in narrow neck bottles are classified under beverages and, therefore, come under "soft drinks." But to confuse matters further, fruit juices, when in narrow neck bottles are included under containers for foods.

but I will assume, for purposes of this discussion, that it includes at least carbonated and non-carbonated beverages."

The figures for glass and metal containers were combined in a third table purporting to show total container shipments of "glass and metal soft drink and beverage containers."[13] This is the table on which the Government relied to establish this line of commerce.

Assuming the line includes both carbonated and non-carbonated beverages, and perhaps other products, there is no evidence to establish that this is a separate and distinct product market.

The boundaries of the market were undefined and there was no showing of interchangeability of use or cross-elasticity of demand between the various types of containers included. In fact, carbonated beverages generate even more pressure than beer, and bottles and cans used for those purposes must be specially designed to withstand such pressures. They have different physical characteristics from bottles and cans used for other soft drinks.

The practical indicia to be examined did not show that a product market consisting of carbonated and non-carbonated beverages and soft drinks exists and I have found that no such market was established.

However, after the case was concluded there were indications that the Government's position changed and that it then sought to have this line of commerce

[12] There is no evidence to indicate whether or not G-802, Table 2e, the Government's table on metal soft drink containers lumps metal containers for both carbonated and non-carbonated beverages together, but in order for these figures to be at all relevant on this line of commerce they must be consistent with those used for glass containers and with the term "soft drinks" as used by the Government.

[13] G-801(3e).

confined to carbonated beverages only. If this be so, the Government shifted its position with respect to this line at a very late date indeed. But assuming this change in position to be permissible, the Government is faced with the difficulty that no record was made to support its altered theory.

There were no universe or total unit figures and no breakdown figures in the record showing shipments of carbonated beverage containers, taken by themselves, as distinguished from soft drink and beverage containers generally. In the absence of such figures it is manifestly impossible to determine the extent of such a market or the shares of Continental, Hazel-Atlas and other manufacturers in it.

But quite apart from the failure of the Government to establish a carbonated beverage product market consisting of metal cans and glass bottles, it failed to show any anti-competitive effects of the merger in such a market, if it existed.

After considerable initial difficulty, metal can manufacturers developed a can strong enough to resist the pressures generated by carbonated beverages. These cans had advantages which distinguished them from glass bottles, including unbreakability, greater lightness in weight, lack of necessity for return, faster chilling and less storage space requirements. However, the cost as compared with the bottle, and particularly the returnable bottle, was and continued to be high. The metal can for carbonated beverages was conceived of as a luxury package to be sold at a premium price with a resulting increase in the overall sale of carbonated beverages rather than a decreased use of bottles by beverage manufacturers.

However, can manufacturers made strenuous efforts to promote the use of metal cans for carbonated beverages as against glass bottles. Despite these ef-

forts, taking into account the estimate that returnable beverage bottles are reused twenty-five times, not more than 1½ percent of all soft drinks sold were packaged in metal cans and the cans used for this purpose constituted less than 1 percent of overall can production.

Continental's share of this small market for metal soft drink containers ranged from 36 percent in 1955 to 26 percent in 1957.

Disregarding the important returnable bottle factor, the Hazel-Atlas percentage of total shipments of glass beverage containers was only 0.04 percent in 1955, 0.08 percent in 1956 and 0.6 percent in 1957.[78] It would, of course, be very much smaller were weight given to the returnable factor. In 1955 Hazel-Atlas shipped no returnable beverage bottles. The Hazel-Atlas share of total glass and metal soft drink and beverage containers shipped, once again disregarding the returnable bottle factor, was 0.03 percent in 1955, 0.07 percent in 1956 and 0.48 percent in 1957.

Thus, as in the case of beer containers, the Hazel-Atlas share of the product market consisting of metal and glass containers for soft drinks and beverages was so insignificant as to be for all practical purposes non-existent. Indeed, in 1955, prior to the acquisition it was only 3/100ths of one percent, even less than in the case of beer. Were any figures for carbonated drinks alone available in the record it cannot be assumed that Hazel-Atlas's percentage of this market would be any more significant.

Moreover, Continental's share in the total market was far from large, even with the returnable bottle factor disregarded. If that factor be disregarded, its

[78] The percentage figures for 1955–1956 shown as 0.1 percent for each year in G-801 are incorrect. I have used the correct figures.

share of the total shipments of glass and metal soft drink and beverage containers was 7.2% in 1955, less than 5.4% in 1956, and less than 5.2% in 1957." Taking the returnable factor into account, however, as previously indicated, Continental's share of the market was so small as to be insignificant in terms of the overall market which the Government delineated.

Thus Hazel-Atlas was not a significant factor either in the theoretical beverage and soft drink container market or in the theoretical carbonated drink container market, nor had it ever been. In view of the limited acceptance of cans for these end uses Continental was scarcely more of a factor. Hazel-Atlas did not compete in these markets and the acquisition did not lessen competition in either of them to any remotely significant degree.

The Government also contends, as it did with respect to beer, that Hazel-Atlas was a potential competitor in the manufacture of beverage bottles and that anti-competitive effects may arise because such potential competition was eliminated by the merger. However, it was not established that there was any reasonable probability that Hazel-Atlas would have become a significant factor in the manufacture of soft drink bottles had the acquisition not taken place.

While Hazel-Atlas had produced a few satisfactory beverage bottles prior to the merger, its experience in this field was extremely limited and it had made only minor and very tentative efforts to sell such a product. Its facilities for decorating beverage bottles were inadequate, it had no franchises from any of the large bottlers such as Coca Cola which required their bottle manufacturers to be franchised, and the Hazel-

[11] Continental's shares of the overall market for 1956 and 1957 shown on G-801(3e) include the bottles produced by Hazel-Atlas during those years.

Atlas management felt that small bottlers were not desirable customers since they were poor credit risks. With the exception of a brief passage in a speech by a Hazel-Atlas officer in 1954 which pointed out some of its difficulties in this area, there was nothing in the record indicating any likelihood that it would become a significant competitor in this field. The conclusion that it might have become so at some indeterminable time in the future is mere speculation.

The Government also urged that the acquisition reduced the incentive of Continental to press its metal can line for packaging soft drinks. There was not the slightest evidence to support this theory. Quite apart from the considerations regarding Continental's diversification program, already discussed, there was in fact no reduction in Continental's activities in promoting soft drink cans after the acquisition.

Thus I find that the Government failed to establish either a line of commerce consisting of "containers for the soft drink industry" or a line consisting of containers for carbonated beverages. Moreover, even had it done so there was no showing of any reasonable probability that the effect of the acquisition would be substantially to lessen competition or tend to monopoly in either of such product markets.

(7) "Containers for the canning industry."

The line of commerce which the Government denominated "containers for the canning industry" included all metal cans and glass containers for the end uses of "canning" food. "Canning" was specifically defined by the Government as "the process of sterilizing foods, including juices, by heat and hermetically sealing them in tin cans and glass containers."

The Government's case as to this line of commerce was predicated on its definition of "canning." Yet

the statistics concerning metal cans and glass containers which it placed in evidence to support this line[78] cannot be equated to its definition. These statistics related to glass and metal containers used for foods generally and were not limited to containers for foods which were heat sterilized and hermetically sealed. Though a number of foods are hermetically sealed when packed, many are not hermetically sealed and many others, though hermetically sealed, are not heat sterilized. Containers for all of these kinds of food were nevertheless included in the Government's figures.

The tables introduced did not show which of the containers included were used to pack either heat sterilized or hermetically sealed foods, or both, and which were not. Some of the products included, moreover, such as coffee, were not even considered to be foods.[79]

Thus there were no universe figures in the record as to the amount of containers used for canning food as this term was defined by the Government, or any showing as to Continental's share of the metal cans, Hazel-Atlas's share of the glass containers, or their combined share of the containers of both types shipped for such end uses.

"Containers for the canning industry" was one of the lines of commerce specified by the Government be-

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[78] G-801(1c), (2c), (3c).

[79] Excluded from the Government's definition of canned foods by one or both of the food experts who testified for the Government, were such items as coffee, mayonnaise, vegetable oil, shortening, syrup, concentrated fruit juices, pasteurized whole milk, pasteurized barbecue sauce, maraschino cherries, green and Spanish olives, peanut butter, nuts, condiments, frozen fruits and vegetables. Some items such as vinegar, pickles, fruit preserves and fruit jellies were excluded by one expert and included by the other.

fore the pre-trial sessions began and its definition of this product market remained unchanged until after the case had been concluded. However, after defendants, upon argument of their motion to dismiss, had pointed out the deficiencies in the Government's proof as to this product market, the Government abandoned its claim that there was such a line of commerce. It then advanced for the first time the theory that the process of heat sterilization should not properly be included as a factor in defining this line and that only hermetic sealing was significant.

Thus, after all the evidence was in, the Government attempted to substitute an entirely different line of commerce for the one which it had theretofore consistently advanced. The new line was composed of glass containers and metal cans used to pack hermetically sealed foods and its boundaries were quite different from those of the line on which the case had been tried and on which the defense had been conducted.

However, the Government was in no better position to sustain this new line of commerce than it had been to sustain the old. It was apparent that the statistics in evidence combined both containers for foods which were hermetically sealed and those for foods which were not. For example, they included undetermined amounts of containers used to pack a large variety of products such as mayonnaise, mustard, honey, whole milk and baking powder, which were not hermetically sealed. Indeed the figures included metal cans and glass containers used to pack all types of food in the following categories: Fruits and vegetables (including juices); evaporated and condensed milk; other dairy products; meat (including poultry); fish and seafood; coffee; lard and shortening and all other food.

Thus the Government's statistics on its revised theory of this product market did not give any universe

figures for shipments of glass or metal containers, or both, used to pack hermetically sealed foods. Its figures were not and could not be broken down to show totals for foods hermetically healed and those not hermetically sealed. Nor was there anything in the record from which to ascertain the amounts of cans in either category produced by Continental or by other manufacturers in the metal can industry, or the amounts of glass containers in either category produced by Hazel-Atlas or others in the glass container industry.

Thus, the Government's position in substance boiled down to this—that on the basis of statistics covering containers used for packing all types of food, whether hermetically sealed or not, and with no showing as to the proportions of containers used for hermetic sealing it sought to have the court find a line of commerce consisting of metal cans and glass containers used to pack hermetically sealed foods only.

It is manifestly impossible on the basis of such figures to determine the boundaries of a product market consisting of metal and glass containers for hermetically sealed foods. Nor can it be ascertained, in terms of end uses, what products were packed in hermetically sealed containers and what products were not.

Moreover, there was no showing that there is any public or industry recognition of such a product market or sub-market. Nor did any of the other indicia for determining whether there was such a relevant product market show that such a market or submarket exists.

There remains only what appears to be some suggestion by the Government that there might be a product market consisting of metal cans and glass containers used to pack all of the types of food products included in the Government's statistics.

Such a line of commerce commends itself neither to logic nor to the realities of the market place. It not only includes a vast number of disparate products but it excludes a large number of similiar products. If milk bottles are included, as they apparently are, why are paper milk cartons excluded? If screw top glass jars for hard candies are included, why are not cellophane bags for such candy also included? If jars and cans for spices are included in the market, why not cardboard containers, with or without metal ends, for spices?

Again, as in the case of the claimed product market for hermetically sealed foods, there was no public or industry recognition of any such product market as was suggested. The metal cans and glass containers included within it do not have the same physical characteristics and uses. Their shapes, sizes and other characteristics differ widely, depending upon the type of food to be packed in them. The characteristics of metal cans and glass containers used for packaging food do not differentiate them from cans and glass containers used for other purposes. Metal or glass food containers were not sold differently or shipped differently from non-food containers.

There was no showing of reasonable interchangeability of use or cross-elasticity of demand as between metal and glass containers used for packing food. At least sixty categories of foods are packed either in cans entirely, or almost entirely, or in glass entirely, or almost entirely.[80]

The Government went to some pains to have F.B.I. agents observe, on the shelves of chain stores in Atlanta, Chicago, Los Angeles and Washington, D.C., food products of different kinds, a number of which were available both in glass and metal containers

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[80] Defendants' Exch. N.

and a number only in glass or only in metal. But, except in limited instances, there was no information as to such factors as differences in price, size or quality of the products packed in the containers which were compared. There was no explanation as to why such differences in packing as there were occurred.

There are literally thousands of packers purchasing containers for packing hundreds of food products. The only three packers who were called to testify packed between them only 25 different food products. They represented but a tiny segment of the packing industry and of the products which the industry packed and there was no showing that they were representative. Only eight of the twenty-five products packed by these witnesses were packed in both glass and cans. The small quantity of string beans packed in glass did not sell. A few boiled onions were packed in glass because, for some obscure reason, "eye appeal" was important to certain people purchasing boiled onions. In the case of other of the eight products packed in both glass and cans, only glass was used for consumer sizes and only cans for the large institutional sizes.

The three packers called made it clear that different kinds of machinery and different cooking processes had to be used for packing in glass and packing in cans.

It can scarcely be said that this testimony shows any general interchangeability of use or cross-elasticity of demand as between glass and cans. The fact that in some instances similar products were packaged in two or more different types of containers, or that at times one kind of container has supplanted another in the packing of the same product, does not show that different types of containers are generally commercially interchangeable.

Choice of type of container in which to pack a particular product may be dictated by a variety of factors, including traditional or changing preferences of the buying public, eye appeal, the nature of the trade to be served, the physical characteristics of the product to be packed, the type of packing process required, distance to outlets, and other diverse factors. But the record is barren as to the extent to which specific factors of this nature affect the choice of metal or glass containers in which to pack the enormous varieties and kinds of food products included within the broad range claimed for this product market.[81]

Metal cans and glass containers used for packaging food do not have unique production facilities. The manufacturing equipment and processes and the raw materials for each, far from being interchangeable, are entirely different. Moreover, as has been mentioned, the machinery used to pack food products in glass containers and the packing process are different from that used for packing in metal cans.

There was no evidence to show that the thousands of packers of food products who purchase metal cans or glass containers, or both, fall into any categories of distinct classes of customers. In fact, one of the glaring deficiencies in the Government's proof on this line of commerce, and elsewhere in the case, was its failure to make any detailed inquiry into the customer pattern.

Nor was there any evidence of a distinct price structure for metal cans and glass containers used for food products, or of correlation or correspondence of prices between them. Indeed, the paucity of

[81] For example, ground coffee is packed 99% in cans and paper bags and less than 1% in glass. Soluble (or instant) coffee, on the other hand, is packed 99% in glass and 1% in cans. Catsup is packed in glass for the consumer market and in cans for the institutional market. (Defendants' Exhibit N.) There is no explanation of these differences.

evidence on the subject of prices and pricing practices was another major deficiency in the Government's proof.

There are no specialized vendors of containers used for food products. Can manufacturers and glass manufacturers each sell their own products directly to users who in most instances have multiple sources of supply. There are apparently no jobbers or wholesalers who sell either cans or glass containers, or both.

Much of what has been said concerning a product market consisting of metal and glass containers used to pack all types of foods applies also to a market composed of such containers for hermetically sealed foods only. Such limited examination as was made in this case of the practical indicia for determining whether a product market exists did not establish that there was any line of commerce consisting of metal cans and glass containers used either for packing food products generally or for food products hermetically sealed.

It is therefore scarcely necessary to discuss the question of proof of anti-competitive effects in such product markets. It is sufficient to say that the Government failed to show any reasonable probability of substantial anti-competitive effects or of tendency to monopoly in these areas as a result of the Hazel-Atlas acquisition.

(8) "Containers for the toiletries and cosmetic industry;"

(9) "Containers for the medicine and health industry;" and

(10) "Containers for the household and chemical industry."

In each of these three lines of commerce respectively the Government sought to include, in terms of end use,

glass, metal and plastic containers of every type used by the industry designated. Since such statistics and figures as were introduced to support these lines of commerce are inextricably confused and cut across all of them, and since the problems concerning them are in essence the same, they will be discussed together.

Each of the groups of manufacturers categorized as an "industry" produce a very wide range of products and use containers to package their products of many diverse kinds, shapes, sizes, materials and characteristics. For example, the numerous products packed by a representative group of companies in the toiletries and cosmetic industry include dentifrices, cosmetics, deodorants, face creams, bath salts, lipsticks, face powder, shampoos, colognes, hair dressings, medicated powders, analgesics, hand creams, nail polish, eye shadow, and hair spray. The containers used in packaging such products include glass containers, glass aerosols; metal aerosols, aluminum foil, paper, collapsible metal tubes, including lead and aluminum tubes, brass cases; plastic containers, both squeeze type and others, cloth, cans and paperboard boxes. Glass containers of various kinds are used more frequently than the others.

Manufacturers grouped in what is called the household and chemical industry manufacture an even wider range of products running into the hundreds, if not the thousands. To mention only a few, there are such disparate products as car wax; embalming fluid; insecticides; silver polish; inks; hydrochloric, nitric, sulphuric and other acids; chlorination liquids; rust removers; pet cleaners; weed killers; glue, blueing; and photographic chemicals. The containers used range from small cans to large glass carboys to fibre drums and include a wide range of materials.

What is called the medicine and health industry covers the whole range of medical and health products, including such items as prescription drugs, topical lotions, foot powders, rubbing alcohol, mercurochrome, throat and mouth sprays, eye drops and ear drops, cough syrups and cough drops, first aid kits, absorbent cotton and bandaids. Again the varieties and types of containers used to package the various products produced are extremely wide.

While it is apparent that the number of products produced by each of these industries is exceedingly large and varied, the scope of the respective industries was not shown by the evidence. There were no figures showing the extent of these industries and it cannot be determined which companies or which products are included in them and which are excluded. The statistics in the record do not show either unit or dollar figures for metal or plastic containers used in packaging products in these industries either separately or combined. It is impossible to determine what share Continental or Hazel-Atlas had of the container business in these fields either before or after the acquisition.

The statistical tables of Continental's metal can production include a category covering all non-food products and indicate that in 1955, 1956 and 1957 Continental shipped approximately 30 percent of the total shipments of such containers.[82] This figure includes cans for such products as pet food and motor oil which plainly do not come within the compass of any of the industries with which the three lines of commerce under discussion here are concerned. There was nothing to show what percentage of Continental's non-food metal can shipments fall into these categories nor what the shares of Continental are in the overall

[82] G–801(2f).

shipments of containers for use by these industries. There were no figures at all showing what percentage of plastic containers for these industries were sold or shipped by Continental, though there is an estimate that Continental sold between 7 and 9 percent of polyethylene bottles, tubes, jars and carboys and about 6 percent of the plastic squeeze bottles shipped in 1955.[83]

The three industry classifications used to delineate these lines of commerce were taken from the Bureau of Census categories for the glass industry. The Bureau of Census figures, expressed in totals only, and not broken down by individual companies, were in turn obtained from the Glass Container Manufacturers Institute which used these categories to collect statistics from its members.[84] The Census Bureau used quite different categories in collecting figures for the metal can industry and had no figures at all for the plastics industry.

There were figures indicating that in 1955 Hazel-Atlas shipped about 10 percent of the narrow neck bottles and about 40 percent of wide mouth glass containers for the household and chemical industry. It also shipped about 9 percent of narrow neck glass containers and 28 percent of wide mouth glass containers for the toiletries and cosmetic industry, and about 6 percent of narrow neck and 25 percent of wide mouth glass containers for the medicine and health industry.[85]

But there were no totals for plastic and metal container shipments to these three industries. Nor were there any totals for the combined shipments of glass, plastic and metal containers to them with which to

[83] G–810.

[84] See fn. 28, *supra*, p. 17a.

[85] G–800.

compare the Hazel-Atlas figures, or any showing of what the Hazel-Atlas share of such totals might be.

Apart from its failure to produce evidence showing the size and scope of the product market said to be embraced within these three lines of commerce, the Government also failed to show any other factors establishing that such lines of commerce existed.

There was no public or industry recognition of any such product markets either separately or in combination.

There was no showing that the containers which were sought to be included had peculiar characteristics and uses. The wide variety of sizes, shapes and kinds of containers and of different products packed in them has already been referred to. Plastic containers could not be used at all to package a goodly number of products because plastic is too porous. There are other differences between the products sought to be included such as the use of opal glass jars to package certain types of products and flint glass jars and bottles for others; the peculiar characteristics of the plastic squeeze bottle and of the aerosol type of container; the differences in design, decorative features and fitments of various types of containers; and the differences in weight between glass, metal and plastics. Moreover, there are many other materials used to package products included within these industry categories which are excluded entirely from consideration here without explanation.

It was not shown that the general characteristics and uses of the various types of containers used for packing products in any one of these industries were the same or that their characteristics and uses necessarily differentiated them from containers used in other industries, or, indeed, for other purposes entirely. Containers used by these industries were not

sold or shipped differently from any other containers.

It did not appear that there was any reasonable interchangeability of use or cross-elasticity of demand between containers made of these different materials. It is true that glass container, plastic container and metal container manufacturers are each seeking to promote their lines of containers at the expense of other lines, and that all are attempting to improve their products or to develop new ones so as to have a wider customer appeal. But, as has been pointed out, this, in itself, does not establish reasonable interchangeability.[86]

Here, as in the case of foods, the choice of container may be dictated by a wide variety of factors, as the testimony of the witnesses from companies engaged in the manufacture of toiletries and cosmetics showed. In this field plainly the matter of customer appeal is of paramount importance. The physical characteristics of the product to be packed and the nature of the trade to be served also have a major effect on the choice of a container for a particular product.

It is true that manufacturers from time to time may shift a product from one type of container to another. But there does not appear to have been any general shifting back and forth as between the containers used for a given product. Packaging changes are made only after careful research and investigation and are normally permanent in character. For example, switches for a particular end use from glass to plastic and back from plastic to glass do not appear to occur.

The Government lays some emphasis on the packaging of light duty detergents. Such detergents in powder form were originally packed in paper containers. When light duty liquid detergents were de-

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[86] See *supra*, pp. 35a–38a.

veloped they were first packaged in glass containers since no other container was functionally suitable. After a modification in the product formula, light duty liquid detergents changed from glass to metal containers. Most of them now are packed in plastic containers and apparently the product has never returned to the container from which it was shifted.

Again, as in the case of foods, the Government introduced evidence as to observations of F.B.I. agents of products on the shelves in chain stores and department stores. These observations indicated that some products were sold in containers made of glass, plastic and metal, some of glass and metal, and some of metal and plastic. Other products, on the other hand, were sold only in one type of container.

But, as in the case of foods, with limited exceptions, no observations were taken as to differences in sizes, prices, or quality of products, the uses for which they were intended, or any other factors which might determine the choice of the container for them. There was no showing that the products packed in containers made of the same material represented any substantial proportion of the total number of products included within these industries. On the contrary, it appears that in the larger stores, at least, there were thousands of products on the shelves which might be classified as sold by these industries and the products found in containers made of the same materials represented only a small proportion of the total.

As to the medicinal and health and household and chemical industries, there was no evidence that there were any distinct classes of customers engaged in purchasing all three types of containers, though some overlap could certainly be expected in view of the great number of different products being packed by these industries.

As to the toiletries and cosmetic industry, certainly the principal toiletry and cosmetic manufacturers normally purchased all three types of containers. This again was to be expected in view of the large number of different kinds of products which they packaged and is of no particular significance in the line of commerce context.

There was no distinct price structure for the three kinds of containers included within these lines of commerce. It appears that plastic containers have been and remain considerably more expensive than glass containers. While a number of toiletry and cosmetic manufacturers take some account of differences in prices between the various kinds of containers, as they would be expected to do, it does not appear that this is a dominant or controlling factor in selling a container for a particular product. While manufacturers of one type of container pay some attention to the prices of other types, it was not shown that there was any correlation or correspondence of prices between the three types of containers.

There is no evidence that there are any specialized vendors for containers of these types. Manufacturers sell their own products directly to users who appear to have multiple sources of supply.

Here again the Government failed to establish the lines of commerce which it specified either separately or in combination. There is no showing that there are any product markets consisting of metal, plastic and glass containers for use by the toiletry and cosmetics, medicine and health, or household and chemical industries. Inter-industry competition between plastic, metal and glass manufacturers in the sale of containers to package some products included within these industries there no doubt is, but separate relevant product markets in the anti-trust sense were not shown to exist.

Again, since no lines of commerce have been established there is no necessity for discussing the Government's claims as to anti-competitive effects of the acquisition in such lines. It should be said, however, that none of the numerous witnesses representing toiletry and cosmetics manufacturers or the representative of the largest plastics container manufacturer who testified with respect to these lines of commerce, indicated that the Hazel-Atlas acquisition had had or was likely to have any effect of any kind on their own businesses or generally. All gave a picture of healthy competitive conditions both before and after the acquisition with no suggestion of any anti-competitive effects or tendency to monopoly.

VII

CONCLUSION

The evidence in the record at the close of the Government's case has been weighed not only as a whole but as to each of the ten lines of commerce on which the Government relied until the end of the trial, as to such possible alternative lines as the Government suggested after its case had been concluded, and as to any other product markets which may have existed. Such inferences have been drawn from the evidence on each aspect of the case as were reasonably justified.

After doing so, I concluded that the proof submitted by the Government established only three of the ten lines of commerce or relevant product markets which it attempted to delineate in this case—the metal can industry, the glass container industry and containers for the beer industry. As to these product markets I found that there was no proof of any reasonable probability of substantial anti-competitive effects or tendency to monopoly in any of them as a result of the acquisition of Hazel-Atlas by Continental.

I also concluded that the proof failed to establish that any of the other lines of commerce which the Government delineated or suggested were in fact relevant product markets or sub-markets. In addition, I concluded that there was no evidence in the record establishing any relevant product markets or sub-markets other than those relied upon or suggested by the Government.[87]

Moreover, even assuming that any such product markets existed, I have found there was no proof of any reasonable probability of substantial anti-competitive effects or tendency to monopoly as a result of the acquisition in any of them.

Thus, the Government wholly failed to sustain its burden of proof in this case.

Some measure of its failure of proof here can be gathered from a comparison with the proof adduced in the *Brown Shoe* case. I do not mean by this to suggest that the proof in *Brown Shoe* sets any minimal standards for determining Section 7 violation. However, such a comparison is illustrative of the deficiencies in the Government's proof in the case at bar.

The *Brown Shoe* case involved a merger, both horizontal and vertical, of two companies in a single, well-recognized, separate industry. In the case at bar, on the other hand, the merging companies were each in

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[87] I found that vacuum type closures and screw and lug type closures while not forming a product market in combination, each constituted a separate product market. These products did not compete with one another to any significant degree. Their respective product markets were not areas of effective competition in the context of this case and were not "relevant" in that sense. (See pp. 63a–65a, *supra*.)

The plastic container industry was a recognized separate industry (see pp. 25a–27a, *supra*) and may constitute a separate product market. However, the Government made no attempt to establish such a relevant product market here.

different industries and the merger was almost entirely of a conglomerate nature. I have already pointed out the different problems presented by conglomerate mergers and horizontal or vertical mergers, the difficulties of proof in a conglomerate case and the necessity in such a case for detailed examination of all of the factors which might bear on relevant product markets and anti-competitive effects within them.[58]

In the light of the differences between the two types of cases, it is particularly significant that the proof in *Brown Shoe* which impelled the Court to strike down the acquisition there, went far beyond the proof adduced in the case at bar.

For example, in *Brown Shoe* there was "[t]estimony in the record from numerous independent retailers, based on their actual experience in the market, demonstrat[ing] that a strong, national chain of stores can insulate selected items from the vagaries of competition in particular locations and that the large chains can set and alter styles in footwear to an extent that renders the independents unable to maintain competitive inventories."[59] There was also evidence "that [the merger] creates a large national chain which is integrated with a manufacturing operation. The retail outlets of integrated companies by eliminating wholesalers and by increasing the volume of purchases from the manufacturing division of the enterprise can market their own brand at prices below those of competing independent retailers."[60]

Moreover, the proof in *Brown Shoe* established lines of commerce within a single industry, well recog-

[58] *Supra*, p. 40a.

[59] *Brown Shoe Co.* v. *United States*, *supra*, at p. 344.

[60] *Ibid.*

nizable in terms of the commercial realities. There was detailed testimony as to specific and demonstrable anti-competitive effects in each of these lines of commerce in specifically defined economically significant geographic markets.

It was on evidence of this nature, taken in conjunction with proof of the market shares held by the combining companies and the trend toward concentration in the industry, including Brown Shoe's own part in that trend, that the Court found that the Brown Shoe-Kinney merger violated Section 7.

Here, in contrast, seven of the ten lines of commerce which the Government attempted to carve out were artificially contrived and were neither recognized as separate product markets nor comported with market realities. Beyond this, as to no product market in the case at bar was there evidence from competitors in the relevant industries, from buyers of the products involved, or from any other sources, that there was reasonable probability of any anti-competitive effects, substantial or otherwise, or any tendency to monopoly as a result of this acquisition.

Lacking evidence to sustain its burden, the Government speculated as to what might happen as a result of the acquisition. In the light of the record these speculations were at best mere possibilities. There was no proof of reasonable probability that such anti-competitive effects as the Government foresaw were likely to occur or that, if any of them did occur, they would be substantial.

It has been said that "* * * mergers are a common form of growth; they may lessen, increase, or have no effect upon competition. A merger as such involves no necessary connotations of coercion, dominance or lack of effective competitive pressures."[21]

[21] Report of the Attorney General's National Committee to Study the Anti-Trust Laws, March 31, 1955, p. 124.

As far as the record here shows the merger under scrutiny in this case had no such connotations and, in fact, had no significant effect upon competition in any product market. This merger was not shown to be one of those proscribed by Section 7 of the Clayton Act.

Thus, at the end of the Government's case it was apparent that the Government had not succeeded in establishing any violation of Section 7. Defendants were therefore entitled to judgment which will be entered accordingly.

This opinion constitutes my findings of facts and conclusions of law in this case pursuant to Rule 52(a), F.R.C.P.

It is so ordered.

Dated: New York, N.Y., April 15, 1963.

FREDERICK VAN PELL BRYAN,
U.S.D.J.

Final Judgment

The issues in the above entitled action having regularly been brought on for trial before the Honorable Frederick van Pelt Bryan, United States District Judge on June 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, July 1, August 12, October 3, 4, 5, 6, 10, 11, 13, 14, 17, 18, 19, 20, 24, 25, and December 9, 1960, and the Court having handed down its opinion constituting its findings of fact and conclusions of law on April 16, 1963, it is

Adjudged: That the defendants have judgment against the plaintiff.

Dated: New York, N.Y., April 16, 1963.

/S/ James E. Valeche,
Clerk.

Judgment entered April 16, 1963.

James E. Valeche, *Clerk.*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 367

UNITED STATES OF AMERICA,

Appellant,

v.

CONTINENTAL CAN COMPANY, INC. and HAZEL-ATLAS GLASS COMPANY.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTIONS TO DISMISS OR AFFIRM.

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September 11, 1963

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MOTIONS TO DISMISS OR AFFIRM.

Appellee, Continental Can Company, Inc., pursuant to Rule 16 of the Revised Rules of this Court, moves 1) that the appeal be dismissed because not taken in conformity with the Rules of this Court, or in the alternative 2) that the final judgment of the district court be affirmed on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

Statement.

This is a direct appeal from the judgment of the district court holding that the acquisition of Hazel-Atlas Glass Company (Hazel-Atlas) by Continental Can Company, Inc.

(Continental) did not violate Section 7 of the Clayton Act, 15 U. S. C. 18.

The government's complaint was dismissed by the district court because of a failure of proof of either actual anti-competitive effects flowing from the acquisition or reasonable probability that the forbidden anti-competitive effects would result in the future.

The district court rendered an opinion in which it made meticulous findings of fact and carefully and correctly applied the law, including *Brown Shoe Co.* v. *United States*, 370 U. S. 294 (1962), which was decided by this Court after the completion of the government's case but before the district court filed its opinion and order.

It is appellee's position that the appeal should be dismissed because, contrary to the Rules of this Court, the government's Jurisdictional Statement is based in substantial and material part upon material which, although referred to in the Jurisdictional Statement as part of the record, is not a part of the record and was not offered or received in evidence.

It is, further, appellee's position that the judgment of the district court is clearly correct, that it is fully supported by the evidence of record and the decisions of this Court and that no substantial question of law is presented by the appeal.

Appellee therefore moves that the appeal be dismissed, or, in the alternative, that the judgment below be affirmed without further briefing or oral argument.

The Acquisition

Continental acquired all of the assets and assumed all of the liabilities of Hazel-Atlas on September 13, 1956. Since that date the acquired business has been operated by Continental. Hazel-Atlas was dissolved late in 1956.

Prior to the acquisition, Continental's principal business was the manufacture and sale of metal cans and other metal containers. Other products included paper cups and plates, fibre drums, kraft linerboard, flexible packaging materials, crown caps, vacuum type metal caps, plastic containers and can closing machinery. It did not manufacture or sell any glass products or other product manufactured or sold by Hazel-Atlas (App. 13a).[1]

Continental was formed in 1913. In common with many American corporations it grew over the years by both internal growth and outside acquisitions.

The district court considered the evidence relating to prior acquisitions and found:

> "Many of the acquisitions were made a number of years ago in the 1920's and the 1930's. Many were extremely small. Some were the result of liquidation sales. Some appear to have been cleared with the Department of Justice or to have had its tacit approval. Some were located in Canada. Some of the companies acquired were subsequently sold.
>
> "None of the companies acquired in the ten years prior to suit were can companies. No glass company had ever been acquired before" (App. 43a).

The government does not challenge these findings.[2]

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[1] References to the district court's opinion are to the Appendix to the Jurisdictional Statement. To avoid confusion the appendices to these motions are designated Appellee's Appendix 1 and Appellee's Appendix 2. The government's Jurisdictional Statement is referred to herein by the abbreviation "J. S.".

[2] In its Jurisdictional Statement the government refers to the acquisition of White Cap Company and states that in 1958 it had "approximately 60% of the production and shipment of all vacuum closures made from tin plate" (J. S. 5, n. 3). The reason for including this statement in the Jurisdictional Statement is not clear; in any event it is meaningless unless considered in connection with the structure of the industry of which metal vacuum closures are a part. The government has excluded this subject from the appeal (J. S. 6, n. 6).

Hazel-Atlas was a company manufacturing and selling glass containers both for home and commercial use, glassware, including tumblers, tableware and kitchenware, some types of metal closures for glass containers and miscellaneous items. It did not manufacture or sell metal containers or any other product made or sold by Continental (App. 13a).

The Proceedings Below

When the proposed acquisition was announced in the summer of 1956, the government attempted to stop it by invoking an existing decree to which Continental was a party. When the district court which had entered that decree held that it did not apply to the proposed acquisition,[3] the government obtained the voluntary agreement of the companies to postpone the acquisition until the government could apply for a temporary restraining order. Shortly thereafter a complaint charging violation of Section 7 of the Clayton Act was filed in the District Court for the Southern District of New York, and application was made by the government for a temporary restraining order. This application was denied on September 13, 1956, and thereupon the acquisition was completed.

The action was continued as an action for divestiture. Extensive pretrial proceedings, involving both elaborate discovery and pretrial conferences, were conducted and the government presented its case in a trial lasting six weeks. During the trial the government called numerous witnesses, took over 4,000 pages of testimony and introduced hundreds of exhibits, among which were elaborate statistical computations. With very few exceptions everything the government offered was admitted in evi-

[3] *United States* v. *Continental Can Company*, 143 F. Supp. 787 (N. D. Cal. 1956).

dence. The government does not complain of the exclusion of the few items offered which were not admitted.

On the conclusion of the government's case Continental moved for a dismissal of the complaint under Rule 41(b) of the Federal Rules of Civil Procedure.

The district court, correctly applying Rule 41(b), proceeded to evaluate the evidence to determine whether on the facts presented the government was entitled to relief. Finding that it was not, the court orally announced its decision to dismiss the complaint.

This Court decided *Brown Shoe Co.* v. *United States*, 370 U. S. 294 (1962) before the district court completed the preparation of its written opinion, findings of fact and conclusions of law. Very shortly after the *Brown Shoe* decision was rendered, the government requested and received permission to file with the district court an additional brief discussing the applicability of *Brown Shoe*. This was done and appellee responded. Judgment dismissing the complaint was entered on April 16, 1963.

The district court's opinion covers 95 printed pages. Each of the government's contentions is carefully analyzed and comprehensive findings are made with the greatest of care. Scrupulous attention is given to the teachings of *Brown Shoe* and other relevant decisions of this Court.

The district court found no fault with the legal theories advanced by the government. It based its conclusions squarely on the finding that the evidence showed no actual anti-competitive effects from the acquisition and showed nothing from which it could be concluded that there was a reasonable probability that the forbidden anti-competitive effects would develop in the future. The complaint, in short, was dismissed because the government failed to support its allegations with proof.

Argument—Motion to Dismiss Appeal.

Rule 13 of the Revised Rules of this Court provides that upon filing in this Court of the record brought up by appeal, the appellant shall file a statement as to jurisdiction, which shall comply in all respects with Rule 15.

Rule 15 provides that the Jurisdictional Statement shall contain: "a concise statement of the case containing the facts material to the consideration of the questions presented."

It is implicit that the statement of facts shall be a fair statement based on the record.

The government's Jurisdictional Statement is based in substantial part on material which, although referred to in the Jurisdictional Statement as exhibits, was neither offered nor received in evidence.

The first item in question is referred to in the Jurisdictional Statement as "GX 636". No such exhibit was offered or received in evidence. The government at page 15 of its Jurisdictional Statement quotes from "GX 636" at length. The same reference is cited at pages 14 and 23 of the Jurisdictional Statement.

On page 18 of its Jurisdictional Statement, the government cites material which it refers to as "GX 415A". The reference is later repeated on the same page. No such exhibit was offered or received in evidence.

On page 18, also, of its Jurisdictional Statement the government cites material which it refers to as "GX 418" and "GX 421". No such exhibits were offered or received in evidence.

On page 19 of its Jurisdictional Statement, the government cites material which it refers to as "GX 774". No such exhibit was offered or received in evidence.

On page 19, also, of its Jurisdictional Statement the government cites as a group "GX 1-131". Out of this group the following were neither offered nor received in evidence:

GX 4	GX 19
GX 5	GX 20
GX 6	GX 21
GX 7	GX 22
GX 8	GX 23
GX 9	GX 25
GX 10	GX 26
GX 11	GX 27
GX 12	GX 28
GX 13	GX 29
GX 15	GX 30
GX 17	GX 32
GX 18	GX 41

All of the above material was material which was assigned identification numbers before the trial. After the appellee—the defendant below—advised the government that it would object to such material as unreliable, the government chose not to subject it to the test of admissibility, and it was not offered. The government should not now be heard to rely on material which it did not offer at the trial.

On page 17 of its Jurisdictional Statement the government cites material which it refers to as "GX 414". The reference is to a document which was offered at the trial and excluded (Tr. 3553-3554).

The Jurisdictional Statement, being based upon and replete with references to material which is not in the record, is not in accordance with the Rules of this Court and should be rejected. Accordingly, the motion to dismiss the appeal should be granted.

Argument—Motion to Affirm.

The Government's Questions

The first question which the government raises on its appeal: "whether mergers eliminating 'interindustry' competition are subject to Section 7 of the Clayton Act" is fictitious. Appellee never contended below, and the district court did not hold, that mergers eliminating interindustry competition were not subject to Section 7. The district court held that the existence of such competition "is not *determinative* of the metes and bounds of a relevant product market" (App. 36a; emphasis added), and that lines of commerce in a Section 7 case must be defined by applying the various criteria established by the decisions of this Court and recently synthesized in *Brown Shoe*. It thereupon proceeded to apply those criteria to the facts and found that metal cans and glass containers together did not constitute a single line of commerce (App. 36a-37a). In making this factual assessment, the court below pointed out that the government had failed to distinguish "between inter-industry or overall commodity competition and the type of competition between products with reasonable interchangeability of use and cross-elasticity of demand which has Clayton Act significance" (App. 37a).

But the court did not stop there. It went on to consider whether the prohibited anticompetitive effects (actual or probable) had been shown in this market setting of interindustry competition. It specifically recognized that conglomerate mergers (*i.e.*, mergers of companies engaged in different industries) are covered by the statute where such effects are shown (App. 40a). Here no such effects were shown. This case, therefore, does not present the issue posed by the first question.

The second question which the government raises: "whether, in order to prove that a merger may substantially lessen competition, the government must in every case use statistical evidence of market shares in a defined product market" is equally fictitious. Appellee never contended below, and the district court did not hold, that the use of statistical evidence of market shares was a necessary requirement. It was the government that elected to try its case on the basis of statistical, and virtually no other, evidence. It was the government that tried to define, by statistics, an unknown product line. And it was the district court that tried, and tried hard, to use the statistics presented to it. As will be shown, *infra*, the government's statistics were no good, and even on this appeal the government is forced to abandon the statistics that it offered below in support of its claimed canning line of commerce and fall back on more general statistics which, in turn, are thoroughly unreliable. Confronted with this confusing hodgepodge of statistics, the district court nevertheless gave them the benefit of every doubt and adjudicated the issue of competitive effects on the basis of *all* the evidence in the case, making such use as it could of the government's statistics. Here again, this case does not present the issue posed by the government's question.

The only question in this case is the third posed by the government. It is strictly factual and plainly unsubstantial: "whether the district court erred in concluding that the government had failed to show that this merger would substantially lessen competition in the market for containers for food canning". This is simply an attempt by the government to substitute this Court for the trier of the facts. It presents no substantial question of which this Court should take cognizance. This Court should not be asked to retry a case that an experienced district judge

has tried with care and skill, and rendered a judgment that is clearly correct.

The situation here is comparable to that in *United States* v. *Yellow Cab Co.*, 338 U. S. 338 (1949) in which this Court, in refusing to retry an anti-trust case, concluded at 340-41:

> "The judgment below is supported by an opinion, prepared with obvious care, which analyzes the evidence and shows the reasons for the findings. To us it appears to represent the considered judgment of an able trial judge, after patient hearing, that the Government's evidence fell short of its allegations—a not uncommon form of litigation casualty, from which the Government is no more immune than others."

Lines of Commerce

Section 7 is applicable by its terms to substantial anti-competitive effects in "any line of commerce".

This Court has clearly recognized the necessity of delineating lines of commerce within which to measure the effects of a merger. In *United States* v. *E. I. duPont de Nemours & Co.*, 353 U. S. 586 at 593 (1957), this Court observed:

> "determination of the relevant market is a necessary predicate to a finding of a violation of the Clayton Act because the threatened monopoly must be one which will substantially lessen competition 'within the area of effective competition.' Substantiality can be determined only in terms of the market affected."

This statement was repeated in *Brown Shoe* (370 U. S. at 324), which also further elaborated on the criteria to be applied in defining the relevant product market or markets.

Notwithstanding the statute and the pronouncements of this Court, the government would reduce the product market inquiry—the critical threshold question in any Section 7 case—to a "customary" ritual (J. S. 11).

In defining the pertinent lines of commerce in this case, the district court scrupulously applied the tests established by the decisions of this Court and made detailed findings of fact fully supporting its market definitions.

The government originally proposed ten lines of commerce.[1] Each of these was considered in minute detail by the district court. It found that only three of them—glass containers, metal cans, and containers for beer—did, in fact, constitute separate lines of commerce.

That the district court clearly understood and properly applied the criteria specified by this Court for determining lines of commerce and appraising competition between products, whether in the same industries or in different ones, is demonstrated by its findings with respect to beer containers. Here the district court evaluated the evidence and found that a *prima facie* showing had been made that glass containers for beer and metal containers for beer constituted a single line of commerce notwithstanding the fact that they were made and sold by different industries. This finding was based on evidence which the district court considered to show "virtual interchangeability of use and cross-elasticity of demand between the two types of containers used for this purpose" [i.e., beer] (App. 66a). Having found such a line of commerce, the district court proceeded to evaluate the effect of the acquisition in it and

[1] 1. Containers for the canning industry. 2. Containers for the beer industry. 3. Containers for the soft drink industry. 4. Containers for the toiletries and cosmetics industry. 5. Containers for the medicine and health industry. 6. Containers for the household and chemical industry. 7. The can industry. 8. The glass container industry. 9. Metal closures. 10. The packaging industry.

found no reasonable probability that the acquisition would adversely affect competition in that line of commerce (App. 68a-70a). The district court's opinion plainly shows that the same methodology was followed with respect to every other line of commerce claimed by the government, including its alleged "interindr ry" lines, and, specifically, metal cans for food and glass containers for food.

It is perfectly apparent why the district court found that metal cans for food and glass containers for food, unlike metal and glass containers for beer, did not constitute a single line of commerce. Beer is beer. But one food product is not the same as another. Nor are their packaging needs the same. Sardines and mayonnaise are both food. But sardines traditionally move in metal cans, and the housewife traditionally buys mayonnaise in glass containers (DX-N). Or take the case of two varieties of a single food product—coffee. Ground coffee is packed 99% in metal cans and paper bags, and less than 1% in glass; whereas soluble (or instant) coffee is packaged 99% in glass and 1% in cans (App. 82a, n. 81). Then, again, consider the case of catsup. This food product is packed in glass for consumer usage and in cans for institutional usage (*ibid.*).

At the trial one of the *government's* expert witnesses estimated the extent to which various products are packaged in one type of container or another. His estimates, contained in DX-N, are reproduced herein as Appellee's Appendix 1 to this motion. They demonstrate that it would defy the realities of the market place to lump metal cans together with glass containers in a single food canning line of commerce. As the district court observed:

> "Choice of type of container in which to pack a particular product may be dictated by a variety of factors, including traditional or changing prefer-

ences of the buying public, eye appeal, the nature of the trade to be served, the physical characteristics of the product to be packed, the type of packing process required, distance to outlets, and other diverse factors" (App. 82a).

In rejecting the government's food canning line of commerce, the district court specifically found, after an exhaustive review of the evidence, that there was "no showing of reasonable interchangeability of use or cross-elasticity of demand as between metal and glass containers used for packing food" (App. 80a); that there was "no showing of any public or industry recognition of such a product market or sub-market" (App. 79a); that metal cans and glass containers do not have the same physical characteristics and uses in the food field (App. 80a); that "their shapes, sizes and other characteristics differ widely, depending upon the type of food to be packed in them" (*ibid.*); that "the manufacturing equipment and processes and the raw materials for each, far from being interchangeable, are entirely different" (App. 82a); that "the machinery used to pack food products in glass containers and the packing process are different from that used for packing in metal cans" (*ibid.*); that "there was no evidence to show that the thousands of packers of food products who purchase metal cans or glass containers, or both, fall into any categories of distinct classes of customers" (*ibid.*); that there was no evidence of "a distinct price structure for metal cans and glass containers used for food products, or of correlation or correspondence of prices between them" (*ibid.*); and that "there are no specialized vendors of containers used for food products" (App. 83a).

The district court, in short, went down the line of product market indicia outlined by this Court in *Brown Shoe*, and found the government's case deficient on each and

every score. One will read the Jurisdictional Statement in vain for any showing that these findings were incorrect, much less clearly erroneous (Rule 52(a)).

In addition to these findings negating the government's canning line of commerce, it should be noted that although Hazel-Atlas and Continental both sold their respective containers for food, they sold them for different uses.

The principal glass containers manufactured and sold by Hazel-Atlas for use as food containers were for use in packaging catsup, chili sauce, vinegar, syrup, salad dressing, jams, preserves, pickles, mayonnaise, maraschino cherries, olives and mustard (Tr. 879).

These products do not move in metal cans, except that a small amount of certain types of syrup is in cans. Catsup, chili sauce, salad dressing and mayonnaise in retail sizes are practically unknown in containers other than glass. The same is true of the other principal foods for which Hazel-Atlas sold glass containers—vinegar, jams, preserves, pickles, maraschino cherries and mustard (DX-N). Baby food containers, to which the government refers (J. S. 18), was a use for which Hazel-Atlas's participation was negligible.[5]

On the other side, the principal food products for which Continental sells its metal cans do not move in glass containers. Continental's largest food container lines are for fruits and vegetables, including juices (GX 880). Much of the fruit juice is packed concentrated in frozen form for which glass containers are not suitable. With respect to fruits and vegetables generally, cooking time, weight,

[5] The government's Jurisdictional Statement (J. S. 18) gives figures purporting to show the consumption of baby food containers and the division of such containers as between cans and glass containers. As a source of its figures the government cites a document which it refers to as "GX 415A." No such document was offered or received in evidence.

appearance and other market factors militate so heavily against glass containers that in practice only small amounts of premium grades are packed in glass containers (Tr. 766-69, 1112-13, 1124, QX 317, GX 318). In total, these are negligible (DX-N).

Other major food products for which Continental sells metal cans are evaporated milk, fish and seafood, coffee, meat and lard and shortening (GX 800). Here also, for a host of different reasons, some applying to one product and some to another, these products are, and continue to be, packaged in cans. Sometimes it is weight, often it is appearance and very frequently it is the very nature of the processing to which the product is subjected which determines that a metal container is the only practicable container to use.

In pretrial proceedings the government claimed that all packaging materials constitute a single line of commerce. This position was not pressed at the trial and has been abandoned. The interindustry competition to which it now refers, however, is by no means limited to glass containers and metal cans. Included also is competition of paper, plastics, and other packaging materials. Although the government is forced to recognize this in its Jurisdictional Statement (J. S. 11) it would now ignore everything except metal cans and glass containers.

The evidence on the question of whether metal cans and glass containers can be forced into the same product market can best be summarized in terms of the "practical indicia" referred to in *Brown Shoe*.[6]

Industry and public recognition

The can industry and the glass container industry are separate and well defined. Each has its own trade

[6] 370 U. S. at 325.

association and the Bureau of Census collects statistics relating to them separately (Tr. 1018, 2013, GX 800, pp. 5-21, GX 801, Table A, 2a-2f). The business world and the public recognizes them as separate industries and markets. There are no combined statistics available (Tr. 2941-42).

The product's peculiar characteristics and uses

Cans and glass containers are made of different materials and have different physical characteristics (App. 14a, 16a). While in some instances it may be physically possible to package products in either type of container, other forces, including tradition, weight, price, attractiveness and many others determine which container is customarily used (Tr. 665, 1080-81, 1116, 2111-12). This was graphically demonstrated by the estimates of the government's own expert (Tr. 2008, 2100-02, 2105-06A, DX-N).

Unique production facilities

Can and glass container manufacturing equipment is not interchangeable (DX-K, cover letter, p. 5). From the user's point of view it is not feasible to use a canning line designed for packing a product in cans to pack a product in glass containers or vice versa (Tr. 781, 1107, 1122-25).

Distinct customers

There was no evidence to show that purchasers of metal cans or glass containers, or both, fall into any categories of distinct classes of customers (App. 82a). The purchasers do not pack the same product in different containers (DX-N).

Distinct prices

Glass containers and cans are priced separately. The prices of cans are determined principally by the price of tinplate; those of glass containers principally by the cost of labor (Tr. 444, 484, 1002-03).

Sensitivity to price changes

Prices of one type of container are not changed in response to price movements of the other type (Tr. 444, 515, 733, 946, 964).[7] Manufacturers of one type of container frequently do not even know the price at which the other type of container is being sold (Tr. 946, 964). The record does not indicate that buyers shift their purchases from one type of container to the other because of changes in the price differential between the two.

Specialized vendors

Can manufacturing companies sell cans and glass container companies sell glass containers. Sales are normally made directly to users (Tr. 945). The evidence gives no hint of the existence of jobbers or wholesalers who sell both cans and glass containers, and the reason, of course, is that such persons could not be found.

Against this evidence the government still contends that cans and glass containers are somehow in the same product market. For this it relies primarily on studies made by a market study group within Continental of the possibility of putting certain food products which customarily move in glass containers into cans (J. S. 17-18).[8] The limited nature of such studies is shown by the gov-

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[7] The government's Jurisdictional Statement (J. S. 19) states that Hazel-Atlas considered the cost of metal containers in determining its own price. There is no such evidence in the record. In support of its statement the government cites (J. S. 19) a document which it refers to as "GX 774". No such document was offered or received in evidence.

[8] The government's Jurisdictional Statement (J. S. 18) also states that consideration was given by Continental to containers for wine and cites in support of that statement a document which it refers to as "GX 421". No such document was offered or received in evidence.

ernment's description of them. The government's own quotations from them (J. S. 17, n. 13) show that they were predicated on the development of cans which were not in existence. Many of them relate to experiments with aerosol containers. That they changed nothing in terms of market usage is clearly shown by DX-N. The few other documents referred to proved no more. Most of the Glass Container Manufacturers' Institute studies referred to on page 19 of the government's Jurisdictional Statement relate to beer containers, which the district court found to be a line of commerce, but one in which Hazel-Atlas' activities were almost non-existent (App. 65a, 68a). Most of the Can Manufacturers' Institute documents referred to on pages 19-20 of the government's Jurisdictional Statement relate to general research with respect to the use of cans. The district court properly found that this evidence did not show reasonable interchangeability or cross-elasticity of demand as between metal cans and glass containers generally.

Prior to the trial, also, the government proposed a "canning" line of commerce which it then defined as relating to containers for heat-sterilized and hermetically sealed foods. At the trial it limited this line to hermetically sealed foods, although some of the foods it claimed fell within this line were heat-sterilized but not hermetically sealed, some were hermetically sealed but not heat-sterilized, and some were neither.[9] See App. 77a, n. 79.

The government's confusion as to what it means to include within its "canning" line is complete. In its Pretrial Statement of proposed "Steps of Proof" it defined it as ". . . fruits, vegetables, juices and other foods which

[9] In its Jurisdictional Statement (J. S. 15-16) the government quotes extensively from an alleged exhibit which it refers to as "GX 636". No such exhibit was offered or received in evidence.

are heat-sterilized and hermetically sealed in cans and glass containers."

In oral argument on the motion to dismiss counsel for the government said (Tr. 4101): ". . . when we attempted to define this in our answer to interrogatories, we attempted to define it in this manner to explain what we were talking about and what we were trying to exclude, and the key thing is we were trying to include things which are hermetically sealed. We used the words 'heat sterilization' because we are trying to get away from frozen food." In response to questions from the district court, government counsel said that candy and baking powder in screw top containers (i.e., containers which are not hermetically sealed) would be included. The district court then said (Tr. 4109):

> "The Court: In other words, your contention now—I want to make sure I get this—your contention at the present time is that your line of commerce on food includes all foods that are packaged in tin or glass."

To this government counsel replied (*ibid.*):

> "That would be correct."

In an affidavit in support of a motion for reargument made just after the trial, government counsel said:

> ". . . our definition of the canning line included products which were not heat sterilized and in essence represented all foods which were put in hermetic containers." (McManus affidavit, Dec. 21, 1960, p. 3).

In the same affidavit (p. 5) government counsel said:

> "By its [the government's] direct examinations and by its documentary evidence it left no doubt

that the 'canning' line included non-heat sterilized foods."

The district court dealt with this confusion in its opinion. See App. 78a.

On this appeal the government has reversed its position again, and it now would limit the line to foods which are both hermetically sealed and heat-sterilized (J. S. 14-15).

On this appeal the government contends that one physical fact alone—the possibility of creating a hermetic seal on a container which can be heat-sterilized—is sufficient to create a line of commerce. It would ignore all other market factors which were shown at the trial to negative completely the existence of a line of commerce consisting of containers for canning.

A line of commerce consisting of containers for hermetically sealed and heat-sterilized foods is not known in everyday use and the evidence does not permit one to be discovered.[10] The government's two experts did not recognize such a line. The government's food expert testified that food processing for glass packing was different from that for metal can packing; that packing techniques for different types of containers were different; that packing economics were different; that the equipment required was different; and that the physical characteristics of the two types of containers produced different packing results (Tr. 765-70, 780-81A, 785-86). The government's other expert testified that specified products tend to move

[10] At page 11 of its Jurisdictional Statement the government states that it will be shown later in the Jurisdictional Statement that market shares of "containers for food canning" were proved. In the subsequent discussion referred to, however, the government admits (J. S. 22-23) that it has no figures to show market shares and attempts to create some by indulging in supposition and by using "GX 636", a document not offered in evidence.

in containers of one type or the other but not in both (Tr. 2100-02, 2105-06A, DX-N).

The government points to what it calls "the most graphic evidence of the interchangeability between glass and metal containers in the food canning market: numerous food products packed in both containers", and says that observations showed the same products offered for sale competitively in both glass and metal containers (J. S. 16).

The reference is to certain products purchased by FBI agents in retail stores. So far from showing that the products were offered for sale "competitively", it was stipulated at the trial (Tr. 2697-2701) that no attempt had been made to determine if the products were offered competitively. They are not the same products; they are not processed in the same way; and they are not priced competitively. A copy of the stipulation is annexed as Appellee's Appendix 2.

An examination of the government's examples of food products packed in both types of containers generally shows immediately what the differences were: green olives were packed in glass—ripe olives in cans; fruit preserves packed domestically were packed in glass containers—fruit preserves packed abroad and imported were packed in cans; tomato catsup in retail sizes was packed in glass containers—tomato catsup in institutional sizes was packed in cans.

Upon all of this evidence the district court found no reasonable interchangeability or cross-elasticity of demand as between cans and glass containers for packaging food. This finding was clearly correct.

Anti-Competitive Effects

The district court construed the words "may be", used in Section 7 in defining the ~~effect on competition~~ of mergers, as the equivalent of reasonable probability (App. 6a).

There is no doubt that this is correct. The Senate Report on the bill which became Section 7 says, with respect to the words "may be": "The use of these words means that the bill, if enacted, would not apply to the mere possibility but only to the reasonable probability of the prescribed effect." (S. Rep. No. 1775, 81st Cong. 2d Sess. 6; *Brown Shoe*, 370 U. S. at 323).

Although the present case was tried more than four years after the acquisition, there was no proof of actual anti-competitive effects. The government does not dispute this.

The inquiry then becomes one of the reasonable probability of the future development of anti-competitive effects where no such effects have developed in four years.

From the mere existence of interindustry competition in general in the sale of cans and glass containers, and the position of Continental and Hazel-Atlas in their respective industries, the government argues that an inference should be drawn that the effect of the acquisition may be substantially to lessen competition (J. S. 13). Here the government seizes upon half a sentence in *United States v. Philadelphia National Bank*[11] and tears it out of context.

The factual situation in *Philadelphia Bank* was completely different from that in the present case. There, both parties to the merger were direct competitors in the same line of commerce (commercial banking), so the merger was plainly a horizontal one. The merger would have produced a bank controlling an undue percentage of the relevant market and would have significantly increased the high degree of concentration that already prevailed in an industry which had witnessed a decline in the number of competitive units. It was in this context that the Court made its comments with respect to the inherent likelihood

[11] 374 U. S. 321, 365 (1963).

of the effects of that merger. There is no parallel whatever between the *Philadelphia Bank* case and the merger at issue here, which involves diversification by one company into a new product line.

In the present case the government contends that the interindustry competition was such as to make unavoidable an appraisal of the effects of the merger on this competition (J. S. 9). But that is precisely what the district court did. Although it found no single line of commerce comprising all metal cans and glass containers, and no line of commerce consisting of containers for canning, the district court proceeded to make a very careful and complete appraisal of the effect of the acquisition in every direction. Each of the areas in which the government contended that anti-competitive effects might arise was considered separately. The thoroughness of this study is indicated by the areas considered:

(a) Prior acquisitions (App. 42a).

(b) Intention of the parties (App. 44a).

(c) Likelihood of suppression of product lines (App. 45a).

(d) Elimination of competition (App. 45a, 55a, 62a).

(e) Weakening of either company in their respective lines (App. 45a).

(f) Advantages resulting from the acquisition (App. 46a, 54a, 61-62a).

(g) Concentration in the respective industries (App. 47a).

(h) Changes in market position (App. 48a).

(i) Effects on competitors (App. 49a).

(j) Ease of entry into industries involved (App. 55a, 58a).

(k) Tendency toward monopoly (App. 57-58a).

This careful inquiry yielded nothing to show a reasonable probability that the acquisition would have the prohibited anti-competitive effects. There was a total failure of proof that this interindustry merger was likely to adversely affect competition in either industry or in any other line of commerce claimed by the government.

The Government's Statistics

Although the government deprecates reliance on statistics, it uses a great many of them in its Jurisdictional Statement in an attempt to show what Continental's and Hazel-Atlas' positions would have been if metal cans and glass containers or metal cans and glass containers for foods or for canning could have been combined into a single product market.

Its statistical methodology is such, however, that each figure it uses must be examined with care. The record shows that they are false. The district court found that many of the government's statistical combinations "have no sound statistical basis and are predicated on implausible hypotheses not supported by evidence." (App. 48a). The government does not contest this finding; it tries to ignore it.

It is never easy to demonstrate the falsity of statistics, but the record in this case is such as to permit it to be done.

In the first place, the metal can and glass container industries are so different that they do not use a common system of statistical notation. The can industry reports to the Census Bureau in terms of the amount of tinplate consumed; the glass industry in terms of units, by end

use categories, shipped. At the trial the government witness presenting its statistics testified that he had never heard of combined figures (Tr. 2941). He had set about to make his own combinations.[12]

In an attempt to convert the tinplate use to units of metal cans, the government took a series of figures from the can industry's trade association which were clearly marked as the hypothetical number of cans which could have been made from the amount of tinplate consumed. These figures were never used by the trade association without being clearly marked as hypothetical. They were admittedly made without regard to product mix, which the record shows varies greatly from company to company, and by making certain undisclosed assumptions with respect to size of cans and weight of tinplate used in making metal cans (Tr. 2931-38, GX 800).

From the trade association's hypothetical figure the government computed an assumed conversion factor (one never used by the trade association—Tr. 2989) which it applied to the Census Bureau figures of total tinplate consumed in the making of cans of all sizes and shapes. No attempt was made to allow for variations in sizes of cans, which obviously vary widely.

Using the method described, with its clearly erroneous assumptions, the government then had a figure which it called the total number of units of cans manufactured. To this it added the total number of units of glass containers shipped, counting each unit as one although the record shows that great numbers of the glass containers were returnable bottles used on an average of twenty-two times each (Tr. 2363). The Census Bureau has, for obvious reasons, always carefully separated returnable from non-returnable bottles (Tr. 2944). The largest category of

[12] He was not a qualified statistician (Tr. 2849-51).

returnable bottles is beer bottles. Since Hazel-Atlas' production of beer bottles was negligible, the distortion was extremely large.

To this artificially constructed universe figure the government applied Continental's usage of tinplate, similarly converted into hypothetical units, and Hazel-Atlas' production of units of glass containers, to get a percentage of the total. This percentage was carried out beyond the decimal point to give an appearance of exactitude.

The percentage figures have no relationship to reality. They are false.

At the trial the government attempted to construct figures showing Continental's and Hazel-Atlas' share of containers used in "food canning." It now recognizes that it failed in this (J. S. 23), but it proposes a totally unfounded assumption that the proportion would be the same as the proportion of the whole. Even if the stated proportion of the whole were reliable, which it clearly is not,[13] this assumption would be untenable for the product mix of each of the two companies was entirely different from the rest of their respective industries.

Finally, the government, recognizing the weakness of its statistics, says that in any event they can be relied upon for "the accuracy of the broad picture presented" (J. S. 23). They cannot be relied on for any picture, broad or narrow, because they are based on inherently unsupportable assumptions.

In any event, the district court admitted these statistics in evidence, accorded them every possible weight, and properly concluded that there was no showing, statistical or otherwise, of the forbidden anti-competitive effects in any line of commerce.

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[13] To get this proportion, the government relies on the pseudo "GX 636" (J. S. 23).

Conclusion.

In an extremely conscientious examination of the law and the facts the district court found that there had been a failure to prove any violation of Section 7. The appeal presents no questions of law for this Court's review. The government would have this Court examine *de novo* a large record compiled in a lengthy pre-trial and trial, and make new findings in place of those made by the trier of facts, who spent large amounts of time over a period of several years in their preparation. Under Rule 52(a) those findings cannot be set aside unless they are clearly erroneous. No such showing has even been attempted, much less made, here. This is a fact case pure and simple. The appeal should be dismissed for the reasons stated above or the judgment of the district court should be affirmed without further briefs or oral argument.

Respectfully submitted,

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Attorneys for Appellee Continental Can Company, Inc.

September 11, 1963

Appellee's Appendix 1.

(Exhibit DX-N)

Ammonia	All or substantially all in glass.
Antiseptics	All or substantially all in glass in consumer size.
Baby Foods	80% glass; 20% cans.
Beer and ale	39% cans; 6½% non-returnable glass; balance returnable glass.
Brilliantines	All or substantially all in glass in liquid form and some collapsible tubes with different formulation.
Catsup	All or substantially all in glass in consumer size—Institutional all or substantially all in cans—plastic film or containers for individual servings—very small.
Cheese spreads	90% glass; balance aluminum tumblers, plastic tubes and film, collapsible metal tubes, foil, crocks and paper; no cans.
Chili sauce	All or substantially all in glass.
Cider	All or substantially all in glass.
Citrus segments, chilled	All or substantially all in glass.
Citrus segments, non-refrigerated	95-100% cans.
Coffee, ground	Less than 1% in glass; balance in cans and paper bags.
Coffee, soluble	99% glass; 1% cans.
Cologne	95-100% glass — some aerosols of glass, metal and plastic.
Corn	All or substantially all in cans.
Corned beef hash	95% cans.
Cosmetic creams	90% glass; 5% plastic; 5% collapsible tubes.
Crabmeat	All or substantially all in cans.
Cranberry sauce	All or substantially all in cans.
Cream, whole	50% glass; 50% paper—no cans.

Cured ham	All or substantially all in cans.
Distilled spirits	All or substantially all in glass.
Drugs, ethical in liquid form	All or substantially all in glass.
Flavoring extracts	All or substantially all in glass.
Food sauces other than tomato sauce	All or substantially all in glass.
Fruit spreads and preserves	More than 95% in glass for home consumption.
Green beans	95% cans; 5% glass.
Hair lacquer	All or substantially all in metal.
Hair tonic	More than 95% in glass.
Hominy	All or substantially all in cans.
Horse radish	All or substantially all in glass.
Juices, concentrated and frozen	All or substantially all in cans.
Lard	All or substantially all in cans; a little paper.
Lighter fluid	90% cans—10% glass.
Lima beans	All or substantially all in cans.
Liquid bleach	All or substantially all in glass.
Liquid shoe polish	All or substantially all in glass.
Lubricating grease	All or substantially all in cans.
Luncheon meat	All or substantially all in cans.
Machine oil	Substantially all in cans.
Marachino cherries	All or substantially all in glass in consumer size.
Mayonnaise	All or substantially all in glass in consumer size.
Milk, whole	55% paper—45% glass.
Mineral oil	All or substantially all in glass.
Motor oil	All or substantially all in cans.
Mouth wash	All or substantially all in glass.
Mustard, prepared (consumer size)	95% glass—5% plastics.

[illegible]sh	All or substantially all in glass.
Nail polish remover	All or substantially all in glass.
Olives, green	All or substantially all in glass.
Olives, ripe	90-95% cans; balance glass.
Paint, oil base (household, interior and exterior)	None in glass.
Paint, polyvinyl acetate base (household, interior and exterior)	None in glass.
Paint, rubber base (household, interior and exterior)	None in glass.
Paste shoe polish	All or substantially all in cans.
Peaches	95% cans—5% glass.
Peanut butter (consumer size)	90% glass—5% plastic and 5% cans.
Pears	95% cans—5% glass.
Peas	All or substantially all in cans.
Perfume	All or substantially all in glass.
Pickles	Over 95% glass for household use—balance between cans and plastic film.
Pineapple	All or substantially all in cans.
Proprietary medicine in liquid form	95% glass—5% plastics.
Prune juice	All or substantially all in glass.
Pumpkin	All or substantially all in cans.
Relish (consumer size)	All or substantially all in glass.
Salad and cooking oils (consumer size)	85% glass; 15% cans.
Salad dressings	100% glass for retail.
Salmon	All or substantially all in cans.
Sardines	All or substantially all in cans.
Single strength blended orange and grapefruit juice	Over 95% cans.
Single strength grape fruit juice	90-95% cans; balance glass.

Soft drinks	98½% glass; balance cans (1% is one way bottle).
Solid and semi-solid shortening	All or substantially all in cans.
Soup (Liquid form)	All or substantially all in cans.
Squash	All or substantially all in cans.
Starch (Liquid form)	All or substantially all in glass.
Sweet Potatoes	All or substantially all in cans.
Syrup, chocolate	95% cans—5% glass.
Toilet water	All or substantially all in glass.
Tomato juice	Over 95% in cans.
Tomato paste	All or substantially all in cans.
Tomato puree	All or substantially all in cans.
Tomato sauce	All or substantially all in cans.
Tomatoes, stewed	All or substantially all in cans.
Tomatoes, whole	All or substantially all in cans.
Tuna fish	All or substantially all in cans.
Vinegar	All or substantially all in glass consumer size.
Wax beans	Over 95% cans—balance glass.
Wet pack pet foods	90-95% cans; balance glass.
Wine	All or substantially all in glass.
Writing ink	All or substantially all in glass except refill cartridges.

Appellee's Appendix 2.

(Stipulation—Tr. 2697-2701).

The plaintiff stipulates that if the remaining FBI witnesses which it will call to testify were cross-examined with respect to the following matters each of them would answer substantially as follows:

That he had never been employed by a can manufacturer, a glass container manufacturer, a plastic container manufacturer or a firm engaged in conducting surveys or polls of public opinions or consumer preference, and that he is not experienced in the techniques of such polls or surveys;

That he has never been employed by a packer who uses any of the kinds of containers that he observed during the course of his assignment;

That he has not been in communication with any of the packers whose products he has stated that he observed;

That he is not a chemist;

That he does not know the difference between high-density and low-density polyethylene, nor the difference between either of them and polystyrene;

That he took no note of and made no list of products in the stores which he visited which were packed in only one type of container;

That he took no note of and made no record of prices of the products which he observed;

That he took no note of and made no record of the quantities of products in the containers he observed;

That he took no note of and made no record of the quality of the products in the containers he observed;

That he took no note of and made no record of the differences in the preparation of the products in the containers he observed;

That he could not say whether the products which he observed were specially packed for special purposes, such as, for example, dietetic purposes;

That he did not know whether any of the products which he observed were processed by heat sterilization;

That he made no observation as to the amount of shelf space devoted to the different types of containers used to package what he considered to be similar products;

That he has no information as to the quantities of any of the products which he observed in inventory in any store, or as to the quantities sold in any store in any period of time, or as to the quantities sold in the metropolitan area of the community in which the observations were made, or as to the quantities sold in the United States at any time;

That he has no information with respect to the formulation of any of the products which he observed to be packaged in cans or glass or plastic;

That he did not notice whether any of the products which he observed were packaged locally or at a distance;

That he could not tell from the package of any article which he observed whether or not it was being test-marketed, or whether or not it was obsolete stock, or whether or not it had been packed as an experiment, or whether or not it was on special sale on the date of the observation;

That he couldn't tell from the package of any article which he observed whether or not the packager who packaged it is still packing in the same type of container;

That he could not tell from the package of the products that he observed or from any other source why the packer chose the particular type of package for the product;

That in the case of stores whose principal business is the sale of foods, he noticed that they carried fresh fruits and vegetables, fresh meats and fresh dairy products, that they carried frozen foods and foods in dried or dehydrated forms, but that he made no particular observations as to what the particular products were;

That he has no information as to the method of processing the various products he observed and no information as to the method of filling the containers he observed.

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 367

UNITED STATES OF AMERICA, APPELLANT

v.

CONTINENTAL CAN COMPANY AND HAZEL-ATLAS GLASS COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF IN OPPOSITION TO MOTIONS TO DISMISS OR AFFIRM

The Solicitor General acknowledges, and greatly regrets, his error in citing, in the jurisdictional statement, a number of supposed "exhibits" that were in fact never admitted. The mistake has no bearing whatever on the merits of the present case, but unfortunately it raises doubt as to the uniform reliability of the government's court papers. Because of our awareness of the general importance of maintaining that standard, this reply will first describe the specific measures being taken to avoid repetition of the error. Next, we will show that the errors do not affect the substance of the issues in this case, because the facts that the documents were cited to demon-

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strate were amply proved by evidence as to which there can be no contest. Finally, we deal briefly with appellee's argument on the merits of the appeal.

I

The government's citation of exhibits which had been marked for identification but not introduced in evidence was the cumulative result of several circumstances. The jurisdictional statement was prepared by attorneys in the appellate section of the Antitrust Division and in the two and a half year interval since the trial had ended, the recollection of the trial staff had become dimmed and the working records which it had maintained during the trial were not adequately studied. Under the practice of the District Court for the Southern District of New York, the exhibits were not part of the physical record, but in this case were returned to the government by the court. The clerk of the district court did not maintain a list or a set of the exhibits which had been admitted in evidence, and the certified record which he transmitted to this Court did not contain either the exhibits themselves or an index to them. Furthermore, the court reporter did not include a table of exhibits in the index to the transcript.

All the exhibits which had been marked for identification at the pre-trial proceedings were bound, consecutively numbered, in several volumes. The attorneys handling the appeal mistakenly assumed that all the documents so bound had been received in evidence.

The error could have been avoided by checking the transcript to find the point at which each exhibit was

admitted. Accordingly, in order to avoid any possible repetition of the error, the government henceforth will cite in its jurisdictional statements the page of the transcript at which each document cited was received in evidence, thus applying the rule applicable to briefs upon a printed record (Rule 40(2)). This procedure should prevent inadvertent reliance upon any documents that were not received in evidence.

II

The mistaken citation of exhibits which had been marked for identification but not received in evidence, has no bearing upon the merits of the case because all of the material facts in our jurisdictional statement are fully supported by other documents which were admitted into evidence.

(a) GX 636, which we did not offer in evidence, is a 1956 publication of Continental intended to promote the use of cans for food. It was mistakenly cited on pages 14, 15–16 and 23 of our Jurisdictional Statement to support the statements that "the 'annual production of the canning industry amounts to more than 20 billion pounds, representing about 8½ percent of the Nation's food supply' and that containers for hermetically-sealed, heat-sterilized food are 'packed in almost 700 million cases or about 20 billion tin and glass containers' "; and that the food canning industry consumes an estimated 35 percent of all metal and glass containers.[1] GX 656, a similar

[1] The percentage was computed by comparing Continental's figure in GX 636 of 20 billion metal and glass containers used in food canning with the total shipments of metal and glass containers in the continental United States (GX 801, table 3a).

1958 publication of Continental, admitted into evidence at Tr. 3569, states substantially the same facts for 1958 as follows:

> The annual production of the canning industry now amounts to more than 22 billion pounds, representing about 8½% of the nation's food supply. This is packed in 700 million cases containing more than 22 billion tin and glass containers.

The 8½ percent and 700 million case figures in the two exhibits are identical. The estimated percentage figure, if based on the admitted exhibit, GX 656, instead of upon the unoffered GX 636, would still have been about 35 percent.

(b) The government introduced in evidence a large number of documents showing that there was active competition between manufacturers of metal and of glass containers in selling and attempting to sell containers to packagers of numerous food items. At page 18 of the jurisdictional statement we mistakenly cited GX 415A, 418, and 421, which had not been offered in evidence. GX 415A and 418 are studies and surveys of the baby food container market prepared for Continental, which reveal that company's interest in increasing its share of that market at the expense of glass containers. GX 421 was an internal memorandum of Continental indicating its interest in entering the field of wine packaging, dominated by glass containers.[2]

[2] GX 421, although not offered in evidence by the government (Tr. 3559–3560), was marked by the court clerk as in evidence (see notation on the original exhibit).

The same active competition by glass and metal container manufacturers, and the attempts of each to sell to packers using the competing containers, are demonstrated by similar documents in evidence which are cited on page 18 of the jurisdictional statement. The baby food market is explored at length in GX 415B, 416, 419, 419A, 419B, 419C, 420.[a] While there is no document in evidence specifically dealing with wine, there are documents in evidence which show Continental's similar interest in packaging tomato catsup, barbecue sauce, chocolate syrup, salad dressings and whipped toppings, referred to on page 18 of the jurisdictional statement. The significant fact is that Continental endeavored to sell metal containers to food packers who were using glass, and the significance of such endeavors is not vitiated by deletion of the reference to wine on page 18.

(c) GX 774 (not offered in evidence) is a letter from the Vice President and General Sales Manager of Hazel-Atlas to one of that company's sales representatives, comparing the prices of its glass containers with competing metal containers. It was mistakenly cited on page 19 of the jurisdictional statement in a paragraph emphasizing the cross-elasticity of demand between glass and metal food containers, and the awareness of the manufacturers of such containers that food processors were prepared to change from one type to another if there was a significant price differential. The same information is provided by

[a] These exhibits were admitted, respectively, at Tr. 2006, 3556, 3558, 1417, 1417, 1417, 3559.

GX 773, 775 and 776, admitted in evidence[4] and cited in the same paragraph; two of them are quoted in footnote 14, page 19. These three documents show that customers of Hazel-Atlas threatened to package their products in metal containers if glass container prices were substantially raised.

(d) The 26 documents cited on page 7 of the appellee's motion (GX 4–1. 15, 17–23, 25–30, 32, 41) which were not offered in e idence, were records of the Glass Container Manufacturers' Institute (GCMI). They were mistakenly cited as examples of the glass-container trade association's efforts to induce the replacement of metal containers with glass. At that point, we were demonstrating that the inter-industry competition found by the court below (J.S. 35a–36a), of which Continental and Hazel-Atlas were a substantial segment, was reflected in the activities of their respective trade associations. The same activity by the glass container association is clearly demonstrated in the similar GCMI exhibits in evidence which are cited on page 19 (GX 1–3; GX 14; GX 24; GX 31; GX 33–40; GX 42–131; GX 304; GX 319–346).[5]

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[4] These exhibits were admitted, respectively, at Tr. 1549, 1559, and 2122.

[5] These exhibits were admitted in evidence as follows: GX 1–3, Tr. 2329–2330; GX 14, Tr. 2333; GX 16, Tr. 2334; GX 24, Tr. 2334; GX 31, Tr. 2335; GX 33–40, Tr. 2098; GX 42, Tr. 2139; GX 43–55, Tr. 2146; GX 56, Tr. 2151; GX 57, Tr. 2152; GX 58–61, Tr. 2153; GX 62–64, Tr. 2154; GX 65–71, Tr. 2157; GX 72, 73, Tr. 2158; GX 74, Tr. 2159; GX 75, Tr. 2160; GX 76, Tr. 2163; GX 77, Tr. 2164; GX 79, Tr. 2166; GX 80, Tr. 2167; GX 81, 82, Tr. 2168; GX 83, Tr. 2169; GX 84, Tr. 2169; GX 85–131, Tr. 2127; GX 304, Tr. 3586; GX 319–346, Tr. 2110. Although government records indicate that GX 78 was admitted,

(e) GX 414, mistakenly cited at page 17 of the jurisdictional statement, was a proposal by Continental's advertising agency for the introduction of metal containers for soluble coffee. It was offered at the trial, objected to on various grounds and excluded by the district court as cumulative (Tr. 3553–3554). It was cited as one of a list of eleven exhibits relating to the use of metal containers for soluble coffee. Nine of these exhibits, all of which are in evidence (GX 405, 405A, 406, 407, 408, 409, 411, 412, 413)[6] show that Continental did in fact attempt to induce such food processors to convert from glass to metal containers.

The foregoing comparison of the mistakenly cited exhibits with those in evidence clearly demonstrates that our jurisdictional statement presented a fair statement of the "facts material to the consideration of the questions presented" which were supported by the record, as Rule 15(d) requires. The motion to dismiss should be denied.

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as does the clerk's notation on the original document, and appellee has not contended to the contrary, we are unable to find a reference to this exhibit in the transcript.

[6] These exhibits were admitted in evidence as follows: GX 405 (in part), Tr. 1775; GX 405A, Tr. 520, 614; GX 406, Tr. 3547; GX 407, Tr. 3549; GX 408, Tr. 1777; GX 409, Tr. 1778; GX 411, Tr. 3550; GX 412, 413, Tr. 3553.

The first quotation in footnote 13, page 17 of the Jurisdictional Statement, was mistakenly taken from a part of GX 405, which was not admitted (Tr. 1772). GX 410 was also not admitted into evidence (Tr. 1779), but is identical, except for the name of the person to whom it was sent, with GX 409, which is in evidence (Tr. 1778). These errors were not pointed out by appellee.

III

The motion to affirm rests on a basic misconception of the nature of competition between corporations like Continental and Hazel-Atlas—very large firms in vigorous competition with each other, manufacturing and selling physically different products which are equally adaptable to the needs of a vast number and variety of end users. The antitrust laws express a concern with broader forms of competition than the activities of rival salesmen currently selling the same or similar products. The antitrust laws are equally concerned with maintaining the competition of rival technologies offering, or able to offer, suitable products in the market-place as alternative choices for a substantial body of customers. The adaptability of products like the containers of Continental and Hazel-Atlas to a wide variety of consumer needs means that the independent existence of such concerns is often as beneficial to consumers as if completed products were being sold, because of the continuous pressure not only to increase the use of one type of product at the expense of the other but also to develop new uses.

The failure to appreciate the importance of these forms of competition was the source of the district court's error. Its conclusion that this was "basically * * * a conglomerate combination" rather than a "horizontal combination" between competitors (J.S. App. 38a–39a), notwithstanding its finding of "substantial and vigorous" competition between glass and metal container manufacturers (including Hazel-Atlas and Continental), reflects the mistaken view that the Clayton Act is less concerned with "inter-

industry" competition of the kind described than with simpler phenomena. Several of appellee's contentions reflect the same misconception. For example, it is asserted that our interindustry line of commerce is vitiated by the fact that the glass and metal container companies are in separate recognized industries, that the two types of containers have distinct physical characteristics, and that they are made of different raw materials by means of different manufacturing equipment and processes (Motion, pp. 13, 15–16). These facts show only that glass and metal containers are physically distinct products. They do not touch upon the issue in this case, which is whether, because of the competition between the manufacturers of such products, they form an appropriate single line of commerce within which the anticompetitive consequences of the merger may be evaluated.

Appellee urges (Motion, p. 9) that the case does not present the question whether statistical evidence of market shares in a defined product market must be proved by the government under the Clayton Act. This issue is posed because the district court, although finding that there is "substantial and vigorous" competition between Continental and Hazel-Atlas, was unable to measure this competition in percentage terms which expressed its substantiality. Admittedly, the interindustry nature of the competition makes it difficult to develop the customary market share statistics. We believe, however, that there was ample evidence to show the substantiality of the competition being eliminated between the companies and

that the court erroneously failed to appreciate this. See our jurisdictional statement, pp. 12–14, 20–25.

Finally, appellee attacks at great length (Motion, pp. 9–26) our analysis of perhaps the most significant market in which Continental and Hazel-Atlas compete—the manufacture and sale of containers for food-canning. To refute our proof that food canners consider and use metal and glass containers as reasonably interchangeable, appellee chiefly relies upon evidence that numerous commodities, at a particular time, were distributed predominantly in one type of container rather than in the other. Its primary reliance is upon DX–N, in which a government witness gave his estimates of the extent to which 92 specific commodities (out of 129 suggested by appellees), about 60 of which were food, were packaged in glass and in metal.[7] But in a field where the court found that there are "literally thousands of packers purchasing containers for packaging hundreds of food products" (J.S. App. 81a), such a limited predominance is not persuasive. In any event, analysis of the competition between Continental and Hazel-Atlas must start with the fact that metal and glass containers are adaptable to almost any food use.

[7] DX–N and DX–O were admitted in evidence at Tr. 2107. DX–O was a list of 129 food and non-food products made up by counsel for appellee (Tr. 2103). From this exhibit, the government witness, Cheney, chose 92 products with respect to which he stated that he could give an opinion, with reasonable certainty, based on his recollection (Tr. 2350), of the relative amounts of each which were packed in glass and metal containers. The list of the 92 commodities and his estimates constitute DX–N.

While at any specific time a particular commodity may be sold largely in one type of container, the record shows that the manufacturers of the other type of container continuously attempt to increase their share of the packaging of such products, are ever alert to opportunities to replace the competing container, and, in fact, employ price pressure, innovation of product and extensive advertising in order to do so. In short, this interindustry competition usually takes the form of a manufacturer of one type of container trying to take customers away from manufacturers of the other type. Such activities constitute the actual and potential competition which always exists between metal and glass containers and which was going on between Continental and Hazel-Atlas prior to the acquisition. The existence of that form of competition is not negated by showing that the use of glass or cans was the prevailing practice during particular periods. In the jurisdictional statement, pp. 14–20, we set out in summary form the record basis for our conclusion that the amount of competition in the food canning line, eliminated by the merger, was substantial.

The simple, ultimate question in this case is whether two giant corporations in different industries, each plainly able and ready to meet the needs of many of the same buyers, may combine without violating Section 7 of the Clayton Act.

Probable jurisdiction should be noted.

Respectfully submitted.

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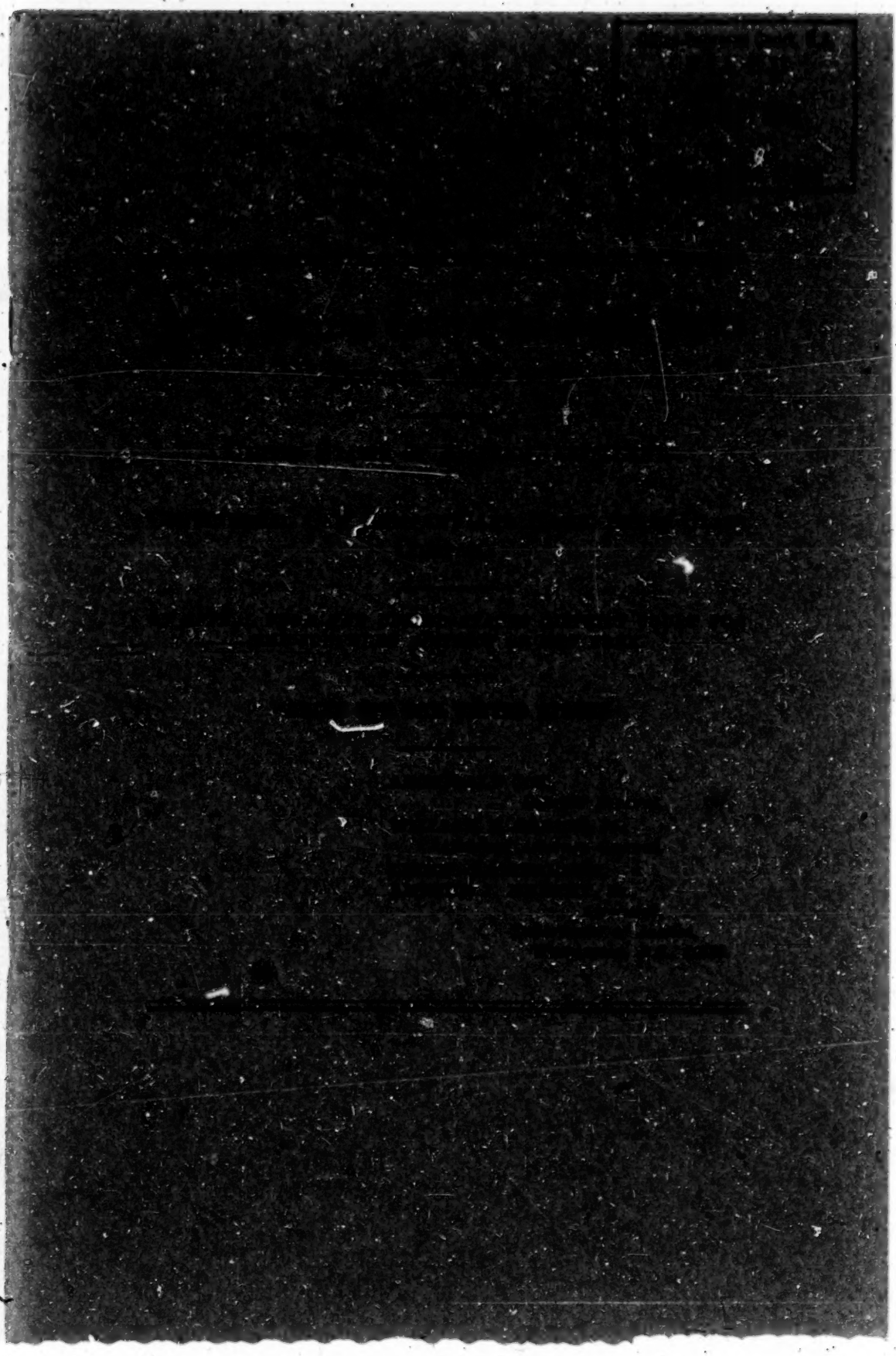
OCTOBER 1963.

U.S. GOVERNMENT PRINTING OFFICE: 1963



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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 367

UNITED STATES OF AMERICA, APPELLANT

v.

CONTINENTAL CAN COMPANY AND HAZEL-ATLAS GLASS COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court, comprising its findings of fact and conclusions of law (R. 1574–1654), is reported at 217 F. Supp. 761.

JURISDICTION

The judgment of the district court was entered on April 16, 1963 (R. 1654),[1] and the notice of appeal was filed by the United States on June 14, 1963 (R. 1655). This Court noted probable jurisdiction on

[1] "R." refers to the record printed in this Court. "GX" refers to the government's exhibits, and "DX", to defendants' exhibits. In the appendix, pp. 55–58, *infra*, we list the places in the record at which each cited exhibit was admitted in evidence.

October 28, 1963 (R. 1656; 375 U.S. 893). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29.

QUESTIONS PRESENTED

The main question is whether the evidence presented by the government established that a merger eliminating substantial competition between Continental Can Co., the second largest metal container maker, and Hazel-Atlas Glass Co., the third largest glass container maker, violates Section 7 of the Clayton Act. Subsidiary questions are:

1. Whether the government's proof that this merger eliminated substantial competition in the entire range of uses for which glass and metal containers compete and that each of the merging companies had a dominant position in a highly concentrated industry was sufficient to render the merger illegal under Section 7 of the Clayton Act.

2. Whether the elimination of competition between the merging firms and the increased concentration in the production of containers for food canning made the merger illegal under Section 7 of the Clayton Act.

STATUTE INVOLVED

Section 7 of the Clayton Act, 38 Stat. 731, as amended, 64 Stat. 1125, 15 U.S.C. 18, provides in pertinent part:

> No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the

> Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

STATEMENT

This is a civil action brought by the United States challenging, under Section 7 of the Clayton Act, the acquisition by Continental Can Company, Inc. ("Continental") of Hazel-Atlas Glass Company ("Hazel-Atlas").

Prior to instituting this action, the United States, on learning of Continental's plans to acquire Hazel-Atlas, sought to prevent the proposed merger under a 1950 consent judgment, which had been entered in a suit charging price-fixing and lease tie-in arrangements and which barred Continental from acquiring any "container" manufacturers.[2] In August 1956, the United States District Court for the Northern District of California, finding that the term "container" as used in the judgment did not encompass glass containers, held that the consent decree did not cover the proposed acquisition.[3]

The United States thereupon commenced this action on September 10, 1956, moved for a preliminary injunction, and sought a temporary restraining order

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[2] *United States* v. *Hartford-Empire Co.*, 46 F. Supp. 541 (N.D. Ohio), affirmed in part, reversed in part, 323 U.S. 386.

[3] *United States* v. *Continental Can Co.*, 143 F. Supp. 787 (N.D. Cal.) (R. 1575).

pending the hearing and determination of that motion. The motion for a temporary restraining order was denied on September 13, 1956, the district court stating that "should the acquisition be ultimately held violative of the Clayton Act, plaintiff's relief may be accomplished by a decree of divestiture".* On that day, Continental acquired all of the assets, properties, business, and good will of Hazel-Atlas in exchange for 999,140 shares of Continental common stock and the assumption by Continental of all the liabilities of Hazel-Atlas (R. 13).

After extensive discovery proceedings by both parties, trial began in June 1960 (R. 14). At the conclusion of the government's case, on October 19, 1960, defendants moved to dismiss the complaint (R. 1564). On December 8, 1960, the district court, in a brief oral statement, indicated that it had decided to grant the motion and that its written findings and opinion, as well as the judgment, would follow (R. 1565–1574). No opinion or findings were rendered before June 25, 1962, when this Court announced its decision in *Brown Shoe Company* v. *United States*, 370 U.S. 294. The government thereupon requested the district court to reconsider its oral opinion in light of the *Brown Shoe* decision (R. 1576).

On April 16, 1963, the district court issued its written opinion incorporating findings of fact and conclusions of law, and granting defendants' motion for judgment (R. 1574–1654).

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* Memorandum Order, September 13, 1956.

1. THE MERGING COMPANIES

(a) Continental, a New York corporation, was organized in 1913 to acquire all the assets of three metal container manufacturers (GX 786; R. 2837). By 1921, Continental was the second largest manufacturer of metal containers in the United States (exceeded only by American Can Company) and was several times larger than the third-ranking firm, United States Can Company. Soon thereafter, Continental commenced an extensive series of acquisitions. Between 1927 and 1929 it acquired 16 domestic companies, including the third-ranking United States Can Co.[5] More recent acquisitions have marked its further expansion. (GX 786; R. 2849–2863). Its latest acquired metal container firm was the Owens-Illinois Can Co., a subsidiary of Owens-Illinois Glass Co., which it purchased in 1944, thereby terminating the one serious attempt by a glass container firm to enter the metal container business (GX 785; R. 91, 100, 2831–2834, 2863). At the time this action was commenced, Continental had acquired a total of 21 domestic companies in the metal container field and a large number engaged in other aspects of packaging. This latter group includes seven producers of flexible packaging; one manufacturer of

[5] GX 786, R. 2839–2848; "Profits in Cans", *Fortune*, April 1934, p. 81. Although negotiations were also conducted regarding a merger with Owens-Illinois Glass Corporation, the largest glass container manufacturer, collapse of the stock market in 1929 aborted these plans. Hession, *Competition in the Metal Food Container Industry (1916–1946)* (1948), pp. 53–54.

polyethylene bottles and similar plastic containers; 14 producers of paper containers and paperboard, including fibre drums, folding boxes, and corrugated shipping containers; four (including Hazel-Atlas) making closures for glass containers; seven producing a miscellany of products; and one, Hazel-Atlas, producing glass containers.[6]

By 1955, prior to this merger, Continental had total assets of $382 million and operated 72 domestic plants, of which 30 had been obtained through acquisitions (GX 785, 786, 900, 1211; R. 2829–2863, 3049–3050, 3278). In that year, Continental shipped approximately 33 percent of all metal containers sold in the continental United States, and was the second largest company in the field. The leading producer, American Can Company, shipped 40 percent of the total. These two leading companies thereby ac-

[6] (GX 785, 786; R. 2829–2863) As stated in the leading work on the industry, Continental has "expanded tremendously through a series of mergers and outright purchases of other concerns," while American Can's growth, during the last 30 years, has been "largely internal". Hession, *Competition in the Metal Food Container Industry, 1916–1946* (1948), p. 51. Continental's acquisitions until 1946 are described at pp. 51-58 of this work. American Can's pre-1908 acquisitions had brought together a large portion of the industry in what was found to be an attempt to monopolize. *United States* v. *American Can Co.*, 230 Fed. 859 (D. Md. 1916), decree rendered, 234 Fed. 1019, appeal dismissed, 256 U.S. 706 (1921). Sources for the history and competitive conditions of the metal can industry are Hession, *supra;* Hession, "The Metal Container Industry" in Adams ed., *The Structure of American Industry* (3d ed. 1961), chap. 12; Whitney, *Antitrust Policies: American Experience in Twenty Industries* (1958), Vol. II, chap. 16; McKie, *Tin Cans and Tin Plate* (1959).

counted for approximately 73 percent of all metal containers. The third largest manufacturer, National Can Company, shipped about 5 percent. The remaining 24 percent of this market was shared by 75 to 90 other firms (R. 412–413, 1590; GX 801; R. 2962).

According to Continental, the acquisition of Hazel-Atlas was part of its program to develop a complete line of containers (GX 900, 1242; R. 3048–3049, 3293–3295, 3300–3306). A few weeks after its acquisition of Hazel-Atlas in September 1956, Continental acquired the Robert Gair Company, Inc., a leading manufacturer of paper and paperboard products (GX 1212; R. 3293–3296, 3302–3303).[7] Earlier in the same year, Continental had also acquired the White Cap Company, a leading producer of vacuum-type metal closures for glass food containers (GX 1211; R. 3267–3268, 3282).[8] At that time, Continental also contemplated entry into the beverage bottle field, which was to be facilitated by the acquisition of another glass

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[7] Gair had net sales in 1955 of $160.2 million and assets of $134.9 million. It was "a leading producer of folding cartons, shipping containers, paperboard, and other paper products" (GX 1242; R. 3294. See R. 3302–3303). On October 30, 1956, the United States filed another complaint against Continental alleging that this acquisition violated Section 7 of the Clayton Act (R. 3231).

[8] White Cap shipped approximately 18.5 percent of all types of metal closures made from tin plate in that year (GX 803; R. 3030). As the district court noted, two years later, when such figures became available, it was determined that White Cap had accounted for approximately 60 percent of the production and shipment of all vacuum closures made from tin plate (GX 803; R. 3031).

container company specializing in that product (GX 788, 900; R. 2864, 3051). As a result of its three mergers in 1956, Continental's assets rose from $382 million to more than $633 million (GX 1212; R. 3317), and its net sales and operating revenues rose from $666 million to more than $1 billion (GX 1212; R. 3319). Measured by sales, it moved from the 47th (in 1955) to the 31st largest United States industrial corporation in 1956.[9]

(b) Hazel-Atlas, a West Virginia Company organized prior to 1900, was incorporated in 1901 as the Atlas Glass and Metal Company, and later merged with the Hazel Glass Company (*United States* v *Hartford-Empire Co.*, 46 F. Supp. 541, 547). It was one of the leaders in the mechanization of the glass container industry which was, at first, largely hand-operated. The development in 1903 of the automatic "suction" machine by the Owens Bottle Machine Company revolutionized the glass container industry, and Hazel-Atlas was granted an exclusive license to manufacture wide-mouth food jars by means of the Owens machine (R. 335–336). Thereafter, Hazel-Atlas entered into further licensing agreements under which it operated as the price leader for wide-mouth containers.[10] At the time of the *Hartford-Empire* case, Hazel-Atlas

[9] See *Fortune*, "Directory of the 500 Largest U.S. Industrial Corporations" (July 1956, July 1957).

[10] See *United States* v. *Hartford-Empire Co.*, 46 F. Supp. 541 (N.D. Ohio), affirmed in part and reversed in part, 323 U.S. 386. Glass containers are generally classified into narrow-neck (*e.g.*, for beverages and catsup) and wide-mouth containers (*e.g.*, for fruits and peanut butter) (R. 79). The latter are used predominantly for packing foods (R. 335).

was the second largest manufacturer of glass containers generally, and the largest maker of wide-mouth ware (46 F. Supp. at 613).

Prior to the merger with Continental, Hazel-Atlas, with net sales of more than $79 million, shipped approximately 9.6 percent of the glass containers in the continental United States, and was exceeded only by Owens-Illinois Glass Company (34.2 percent) and Anchor-Hocking Glass Company (11.6 percent) (GX 801, 1209; R. 2956, 3217). The remaining 44.6 percent of the market was divided among at least 39 other firms (R. 1593). Hazel-Atlas then had assets of $37 million, including 13 plants (GX 1210; R. 8, 11, 1584 3222, 3249–3250). It had always operated as a profitable venture and had not missed a dividend since 1907 (R. 337).[11]

2. THE DECISION OF THE DISTRICT COURT

In its opinion of April 15, 1963, the district court identified three classes of products produced by Continental and Hazel-Atlas which it considered to be relevant to a consideration of the legality of this merger (metal, glass and plastic containers),[12] and characterized each as being produced by a separate

[11] Prior to its acquisition in 1955, Hazel-Atlas had ranked as 347th of the 500 largest industrial corporations by sales, with sales of $79,174,000, and a net profit of more than $3 million. *Fortune*, "Directory of the 500 Largest Industrial Corporations for 1955," July 1956.

[12] For the purpose of this appeal, we accept the district court's rulings that closures (devices used to close and seal various containers) are not a relevant separate line of commerce (R. 1627), and that the relevant geographic market is the United States as a whole (R. 1600–1601).

industry (R. 1585, 1590-1597, 1603). The court found that "there was substantial and vigorous inter-industry competition between these three industries and between various of the products which they manufactured * * *. Each industry and each of the manufacturers within it were seeking to improve their products so that they would appeal to new customers or hold old ones. Hazel-Atlas and Continental were part of this overall industrial pattern, each in a recognized separate industry producing distinct products but engaged in inter-industry competition for the favor of various end users of their products" (R. 1603–1604).

The court ruled, however, that the existence of such "inter-industry or inter-product competition" did not mean "that the acquisition of Hazel-Atlas by Continental falls within the ambit of Section 7 of the Clayton Act" (R. 1604), and held that it was insufficient to make such "products from separate and distinct industries" constitute a line of commerce for the purposes of Section 7 (R. 1605). The court therefore held that this transaction could not be classified as a horizontal merger, since it was not between competing companies, and found it to be a "conglomerate" merger (R. 1606–1607) which "does not result in the elimination of a competitor but merely substitutes the competition of the acquiring company for that of the acquired company in the lines of commerce in which the acquired company was formerly engaged" (R. 1614).

Of the ten lines of commerce in which the government contended the merger would have anticompeti-

tive effects, the district court concluded that only three were supported by the evidence: the metal container industry (R. 1618–1622); the glass container industry (R. 1622–1627); and the production and sale of containers for beer (R. 1628–1633). In each of these, the court found inadequate evidence of probable anticompetitive effects resulting from this acquisition. The other proposed lines of commerce were rejected (R. 1633–1650). The court then held alternatively that "even assuming that any such product markets existed, * * * there was no proof of any reasonable probability of substantial anti-competitive effects or tendency to monoply as a result of the acquisition in any of them" (R. 1651).

SUMMARY OF ARGUMENT

I

This merger joins the second largest metal container manufacturer in the United States with the third largest glass container manufacturer. It combines dominant firms in two industries which have had a history of vigorous and unabated interindustry competition, and which have developed highly concentrated, oligopolistic, market structures. We submit that when a merger of such magnitude is involved, it is unnecessary for purposes of Section 7 of the Clayton Act for the government to demonstrate with precise statistical data exactly what share of the relevant product market will be affected by the merger, or what percentages had been held prior to the merger by either of the merging firms.

A. Section 7 protects interindustry competition as well as competition within an industry. This principle is particularly important in an age when modern technology and scientific advances have enabled manufacturers to cross traditional industry lines and compete in areas previously considered reserved to other industries. Competition between glass and metal container manufacturers has followed this pattern. Consequently, for "line of commerce" purposes, the present merger affects competition within the entire range of end uses for which metal and glass containers may now or hereafter be produced and sold.

B. The 1950 amendment to Section 7 was enacted principally to stem the tide of concentration in our modern economy. When, as is true here, a merger involves industries which are already highly concentrated, it is particularly suspect. And when the combining firms are each dominant in its own industry, the anticompetitive effect on interindustry rivalry is obvious. Accordingly, it should be sufficient for Section 7 purposes if the government proves: (1) substantial interindustry competition, (2) high concentration in either industry, and (3) the dominant positions of the merging firms. An interindustry merger on such a state of facts is sufficiently likely to have a substantial effect on present and potential competition between the industries to render it unlawful under Section 7. This "test of illegality" is, we submit, a more realistic measure of the consequences of such an interindustry merger than the selection and analysis of some relatively insignificant submarket in

which market shares can be demonstrated with accessible data.

C. The record in this case requires an affirmative finding on each of the three elements proposed above. Hence the government satisfied its burden of proof at the trial, and the district court erred in dismissing the complaint at the close of the government's case.

II

If it is necessary to engage in a market share analysis with respect to a merger of this magnitude, we submit that the record reflects a reasonable probability that the merger will substantially lessen competition in the production and sale of containers for "food canning"—*i.e.*, the process of hermetically sealing and heat-sterilizing food.

A. "Food canning" containers are a relevant product line for Section 7 purposes. Only metal and glass containers compete in this field, and they compete most vigorously. The record reflects substantial interindustry competition which is ultimately manifested in the choice available to consumers in retail grocery establishments. Many foods are "canned" in both metal and glass containers, and the merging firms in fact engaged in substantial competition *inter sese* for this market prior to their merger. In addition, the flexibility of manufacture enables most glass or metal container producers to manufacture containers for food "canning".

B. No precise authoritative statistics are available to determine market shares in this particular product market. However, the record contains figures, com-

piled from Bureau of Census data, showing market shares of the total metal and glass containers shipped in the United States and of those used for food of all kinds—whether or not hermetically sealed and heat-sterilized. In the absence of evidence to the contrary, these statistics may be assumed to provide a fairly accurate picture of the shares of the various leading firms in each significant component of the total food container market, including food "canning." On the basis of these figures, it is clear that the merger results not only in a significant increase in Continental's market share but also strengthens the undue concentration of power held by the three dominant firms in the relevant market. Therefore, under the standards announced by this Court in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, and *United States* v. *Philadelphia National Bank*, 374 U.S. 321, this merger violated Section 7 of the Clayton Act.

ARGUMENT

I

THIS MERGER VIOLATED SECTION 7 OF THE CLAYTON ACT BECAUSE ITS PROBABLE EFFECT WAS SUBSTANTIALLY TO LESSEN COMPETITION IN THE PRODUCTION AND SALE OF CONTAINERS FOR ALL END USES FOR WHICH METAL AND GLASS CONTAINERS COMPETE

A. SECTION 7 APPLIES TO MERGERS WHICH WOULD SUBSTANTIALLY LESSEN INTERINDUSTRY COMPETITION

The terms of Section 7 of the Clayton Act bring within its prohibitory scope any merger which may substantially lessen competition "in any line of commerce in any section of the country." As this Court observed in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 320–321, this language was chosen by Congress to

leave to the flexibility of the decisional process the test for measuring the relevant product and geographic markets. Under the statutory formula it is the duty of courts "to recognize competition where, in fact, competition exists," *id.* at 326, and to draw the market lines accordingly. In each instance the touchstone is "the area of effective competition" (*Standard Oil Co.* v. *United States*, 337 U.S. 293, 299 n. 5, quoted in *United States* v. *E. I. Dupont de Nemours & Co.*, 353 U.S. 586, 593)—a standard which is applied not by segregating industries but by "discovering patterns of trade which are followed in practice." *United States* v. *United Shoe Machinery Corp.*, 110 F. Supp. 295, 303 (D. Mass.), affirmed, 347 U.S. 521.

When, as in the present case, "patterns of trade" demonstrate vigorous competition between members of two separate industries for the business provided by a large number of consumers (pp. 25-33, *infra*), any elimination or substantial lessening of such competition must come within the reach of Section 7 if the legislative objective of the statute is to be accomplished. The words "any line of commerce" cannot, consistently with the policy underlying Section 7, be construed as words of limitation which render the statute applicable only to mergers having a substantial anticompetitive effect within one industry. Such an interpretation of the statute would cripple its application in all cases involving interindustry mergers and would place beyond the reach of Section 7 combinations which endanger the vitality of competi-

tion among separate industries—an increasingly important and pervasive element in our modern economy.

Business [13] and academic [14] observers have recently had occasion to emphasize technological strides which have enabled firms to enter fields traditionally regarded as the province of another industry, a practice which promotes competition by broadening the consumers' latitude of choice. The president of du Pont, for example, recently described how a new resin was being used to make pipe and other items previously reserved to steel, aluminum or other metals. (See note 13, *supra*). An enlightening earlier example is provided in the work by David Lilienthal which was cited in support of the concept of interindustry competition in *United States* v. *E. I. du Pont de Nemours & Co.*, 351 U.S. 377, 393 (the *Cellophane* case). The author there related how, in the mid-1930's, the Tennessee Valley Authority had been able to turn to the aluminum industry and obtain aluminum conductor

[13] *E.g.*, Lilienthal, *Big Business: A New Era* (1952), pp. 58–67; Greenewalt, *A Businessman Looks at the Antitrust Laws*, 23 A.B.A. Antitrust Section 337; *Wall Street Journal*, editorials February 11, 1964, p. 18, December 26, 1963, p. 4. These business comments were made in part to urge the inaptness of applying the monopoly tests of the Sherman Act within separate industries. Regardless of the correctness of this argument, see pp. 36–38, *infra*, the vigor and scope of modern interindustry competition is highly relevant to appraising the validity of interindustry mergers.

[14] *E.g.*, Clark, *Towards a Concept of Workable Competition*, 30 Am. Econ. Rev. 241; Hale & Hale, *Market Power: Size and Shape under the Sherman Act* (1958), pp. 105–113; Robertson, *On the Changing Apparatus of Competition*, 44 Am. Econ. Rev. 51.

cable for overhead transmission lines at a time when all the copper companies had uniformly offered identical and excessive bids.[15]

These illustrations represent the trend whereby modern research and technological advances have prompted the crossing of the "orthodox industrial boundaries"[16] separating industries which had long settled into oligopolistic structure and patterns of behavior. Conventional industry or commodity categories are of little value in ascertaining the vigor of competition in such situations.[17] Nor is the usual statistical analysis of market shares within an industry useful in measuring the precise ranking of large interindustry competitors.

As this Court observed in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 317, the legislative history of the 1950 amendments to Section 7 clearly demonstrates that Congress intended to prohibit "not only * * * mergers between actual competitors, but also * * * vertical and conglomerate mergers whose effect may tend to lessen competition in any line of commerce in any section of the country."

We contend that this is such a merger and that the

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[15] Lilienthal, *Big Business; A New Era* (1952), pp. 58–60. Since the incident described by Mr. Lilienthal, aluminum conductor cable has substantially taken over the field of electrical cable for overhead transmission lines, a development described in the government's brief in *United States* v. *Aluminum Company of America et al.*, No. 204, this Term.

[16] Greenewalt, *A Businessman Looks at the Antitrust Laws*, 23 A.B.A. Antitrust Sec. 337, 339.

[17] Hale & Hale, note 14, *supra*, at p. 112.

district court erred in concluding that this is merely a "conglomerate" merger which "does not result in the elimination of a competitor but merely substitutes the competition of the acquiring company for that of the acquired company" (R. 1606-1607, 1614). In fact, the district court's own findings as well as other evidence in the record (pp. 25–33, *infra*) demonstrate that there was substantial actual and potential competition between the acquired firm and the acquiring firm. If a line of commerce embraces more than one industry, the substantiality of the resulting competitive effects may be more difficult to measure statistically but they are nonetheless significant. And the appropriate "line of commerce" in such an instance is the broad over-all market comprising all end uses common to the products of the merging companies. In the present case, therefore, the "line of commerce" within which the merger's effect on competition should be appraised is the production and sale of containers used for all purposes for which metal or glass containers may be used—*i.e.*, beer, soft drinks, food canning, toiletries and cosmetics, medicines, and other household or chemical goods.[18]

[18] This overall line of commerce includes competition for the same end uses by other containers, such as paper, plastic and foil. The further competition of such other industries prevents expression in market share percentages of the impact of this merger. In our view, as shall be shown below, the great volume of metal and glass container competition enables the government to meet its burden of proving substantial anticompetitive impact by evidence relating to the metal and glass container industries alone.

B. THE MERGER OF DOMINANT FIRMS IN COMPETING INDUSTRIES EACH OF WHICH IS HIGHLY CONCENTRATED VIOLATES SECTION 7

Any appraisal of the validity of an interindustry merger such as this one must begin with what this Court has determined to be "the dominant theme pervading congressional consideration of the 1950 amendments" to Section 7—*i.e.*, "a fear of what was considered to be a rising tide of economic concentration in the American economy." *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 362–363; *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 315. The legislative judgment "at the core of Section 7," the Federal Trade Commission recently observed, is that there is a "relationship between concentration (and related market-structure characteristics) and lessened competition." *In re Procter & Gamble Co.*, F.T.C. Docket No. 6901, p. 23 (November 26, 1963).

In industries which are fully competitive and where the degree of concentration is low, competition may be adequately preserved by the prevention of combinations within the single industry. But when, as is true of the metal and glass container industries, the competitive pattern discloses that each competing industry is dominated by a handful of firms, the primary purpose behind Section 7 requires recognition of the dangerous consequences which may flow from a merger between two firms which are dominant in the separate but competing industries.

In many concentrated industries, indeed, interindustry competition presents a real and pressing challenge to oligopolistic structure, and it is deserving of

Clayton Act protection as much as the possibility of "eventual deconcentration" by the growth of small firms within the industry to rival the few present-day leaders. High concentration not only makes collusive anticompetitive behavior more feasible, but also is likely to result in a tacit accommodation between the firms, less price competition, abandonment of other forms of rivalry and willingness to accept the leadership of the dominant firms and otherwise to conform to their competitive norms. *In re Procter & Gamble Co.*, F.T.C. Docket No. 6901, pp. 24–27 (November 26, 1963). The appearance of a substantial interindustry competitor on this scene introduces a new firm, with resources and staying power probably unavailable inside the industry, and without the history of mutual accommodation that may characterize those presently in the industry. Acquisition of such a firm by one of the industry leaders may be motivated by the latter's desire to protect itself against competition of substitute products,[19] and would have precisely such an

[19] Hale & Hale, *Market Power: Size and Shape under the Sherman Act* (1958), p. 257. A monopolist's entry into substitute products may enhance its monopoly power and forestall the development and introduction of competitive substitutes. Hale & Hale, *supra*, at 282–284; Burns, *The Decline of Competition* (1936), pp. 454–456. Absent monopoly power, interindustry expansion by internal growth may increase competition. Hale & Hale, *supra*, p. 265. Such a result does not follow from expansion by merger, whose immediate consequence is the elimination of an independent factor. This Court has pointed out that Section 7 of the Clayton Act favors growth by internal expansion and disfavors growth by mergers. *United States* v. *Philadelphia National Bank*, 374 U.S. at 370; *Brown Shoe Co.* v. *United States*, 370 U.S. at 345, fn. 72.

insulating effect. Consequently, it is of concern to the antitrust laws, because such mergers may well help to preserve and extend the unsatisfactory market structure of the concentrated industry.[20]

The importance of interindustry competition as an agency of deconcentration provides, we believe, the basis for testing mergers of the scope here involved. A merger's elimination of substantial interindustry competition can be a significant step towards increasing concentration by maintaining and extending the existing oligopoly structure. Like a merger creating undue market shares within an industry, an interindustry merger bringing together large firms, each being one of the few leaders in highly concentrated industries which are competing with one another on a broad scale, is one "whose size makes [it] inherently suspect in the light of Congress' design in § 7 to prevent undue concentration." *United States* v. *Philadelphia National Bank*, 374 U.S. at 363. As in *Philadelphia Bank*, it is appropriate and possible in this situation "to simplify the test of illegality." 374 U.S.

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[20] The proposition that when an industry structure is unsatisfactory from the point of view of competition, interindustry competition is particularly to be prized, is supported by the analogy of the Congressional policy in regulated industries. Recognizing that limitation upon entry and other controls lessen the effectiveness of competition within each industry, Congress has taken pains to assure the effective competition of related industries by restricting the possibility of interindustry acquisitions. See Edwards, *Maintaining Competition: Requisites of a Governmental Policy* (1949), pp. 266–267. E.g., Interstate Commerce Act, Sec. 5, 49 U.S.C. 5; Federal Communications Act, Sec. 314, 47 U.S.C. 314; *Schaffer Transportation Co.* v. *United States*, 355 U.S. 83.

at 362. We submit that in such a case the government can satisfy its burden of showing that the merger may have the effect of substantially lessening competition by proving (a) the existence of substantial competition between two industries; (b) a high degree of concentration in either or both of the competing industries; and (c) the dominant positions of each of the merging companies in its respective industry.

This "test of illegality" omits analysis of statistics regarding market shares simply because those traditional yardsticks are generally unavailable to measure the full consequences which an interindustry merger would have on competition. The district court correctly analogized competition between glass and metal containers to other types of interindustry competition, such as that between copper and aluminum products; cotton, wool and synthetic fibers; and iron, copper and plastic pipe (R. 1604–1605, fn. 38). In each of those instances, companies from separate industries may compete through a great number of products for the business of an equally large range of customers, with varying competition from firms in other industries.[21] It may be possible to measure some portion of the anticompetitive effect of an interindustry merger in any of those areas by isolating a submarket in which market percentages are ascertainable because the participation of other industries is negligible or readily determinable. Although proof of a substantial lessening of competition in

[21] See Robertson, *On the Changing Apparatus of Competition*, 44 Am. Econ. Rev. 51, 54–57.

any such submarket would invalidate the merger under Section 7, it is obvious that this analysis would not fully reflect the over-all effect of the merger on competition.

Statistical demonstrations would be unsatisfactory with respect to such mergers for several reasons. First, the common product lines of the merging companies usually enjoy varying degrees of competition from other industries, and the volume of this competition is not subject to precise computation. Second, the particular merging firms may not presently compete *inter sese* in all the particular submarkets which would probably be affected by their merger. Since the merger forecloses the potential interindustry competitor's entry into submarkets in which the acquiring firm is active, its anticompetitive impact cannot be evaluated simply by adding present market shares.[22] Third, the larger the merging firms are the more likely is it that they produce a diversity of products

[22] The district court found, for example, that Hazel-Atlas was not presently a significant manufacturer of beer bottles and therefore rejected the contention that the merger would substantially lessen competition in the beer container line of commerce (R. 1630–1633). Although we do not contend here that the mere possibility that Hazel-Atlas might produce beer bottles was sufficient to affect competition in that "line of commerce," we do believe that the *total* of Hazel-Atlas' competitive potential in the particular submarkets served by Continental, particularly in light of the vigorous interindustry competition for new uses for glass and metal containers, the flexibility of production within the industry, the interchangeability of uses to which the same container may be put, and technological advances, requires recognition of Hazel-Atlas' status as a potential competitor in various submarkets now served principally by Continental and by other glass container companies.

with a multiplicity of end uses. It would be most unrealistic to appraise the impact of a merger between the country's largest industrial companies (*e.g.*, the leading steel and aluminum producers) by focusing only on one or several specific product lines and attaching conclusive effect to the percentage totals in such lines (*e.g.*, aluminum and steel kitchenware). The execution of the legislative judgment incorporated in Section 7 requires a more pragmatic appraisal of the anticompetitive consequences of such a merger than is provided by the ordinary statistical market analysis. It is our position that the three-pronged test of illegality suggested above is a more satisfactory and simpler method for determining whether an interindustry merger may substantially lessen competition in any line of commerce[23] than an examination of market percentages. We submit that an interindustry merger which meets these standards, no less than an intraindustry one which satisfies conventional market share percentage requirements, does "raise an inference that the effect * * * may be substantially to lessen competition." *United States* v. *Philadelphia National Bank*, 374 U.S. at 365. Whether this showing may be rebutted by other evidence, and what evidence would be pertinent, is not now in issue because the complaint was dismissed at the conclusion of the government's case.

[23] Since competition here is nationwide, there is no issue in this case as to the appropriate "section of the country." The test suggested above assumes, of course, that the industries compete in the same "section of the country" and that the merging firms are at least capable of competing in the same geographical area.

C. THE MERGER OF CONTINENTAL AND HAZEL-ATLAS SATISFIES THIS TEST AND THEREFORE VIOLATES SECTION 7

The record in this case supports the conclusion that the merger between Continental and Hazel-Atlas violated Section 7 because it was a combination of two dominant firms in competing and highly concentrated industries.

(1) Interindustry competition

The district court effectively described the competition involved in the present case, as follows (R. 1603–1604):[24]

> Concededly there was substantial and vigorous interindustry competition between these three industries and between various of the products which they manufactured. Metal can, glass container and plastic container manufacturers were each seeking to enlarge their

[24] For the purposes of this appeal, we are focusing upon competition between metal and glass containers. There can be no doubt, as the district court found, that plastic containers are, to some extent, also competitive with metal and glass containers; competition is also provided by paper, foil and other products, as we have noted (fn. 18, *supra*, p. 18). With respect to the industry specifically cited below, plastic containers, the total volume of commerce was, at the time of this merger, small compared to the overall interindustry competition between metal and glass containers. The court below noted that total sales of plastic containers in 1959 were only about $30 or $40 million; Continental's sales of such items in 1955 amounted only to $2.4 million (R. 1595). Obviously this comparatively small amount of commerce could have little impact on the vast competition between the $1 billion, 380 million sales of metal containers and approximately $830 million in glass containers (GX 800, 900; R. 1584, 2867, 3058). We believe that the government has met its burden of showing a violation of Section 7 relying upon Continental's production of metal containers, without regard to its sale in plastics, paper and other container materials.

> sales to the thousands of packers of hundreds of varieties of food, chemical, toiletry and industrial products, ranging from ripe olives to fruit juices to tuna fish to smoked tongue; from maple syrup to pet food to coffee; from embalming fluid to floor wax to nail polish to aspirin to veterinary supplies, to take examples at random.
>
> Each industry and each of the manufacturers within it was seeking to improve their products so that they would appeal to new customers or hold old ones. Hazel-Atlas and Continental were part of this overall industrial pattern, each in a recognized separate industry producing distinct products but engaged in interindustry competition for the favor of various end users of their products.

These findings were fully supported by evidence in the record and by undisputed conclusions reached by commentators who have considered these industries. As reflected in the literature on the metal and glass container industries, the two containers are functionally interchangeable and present alternatives to packers, whose competitive choice between them has varied with the commodity to be packed, their comparative cost, and other characteristics which affect the desirability of each.[25] Metal cans may be handled and stored easily,

[25] R. 1642; Hession, *The Metal Container Industry* in Adams ed., *The Structure of American Industry* (3d ed. 1961), pp. 458–460; McKie, *Tin Cans and Tin Plate* (1959), pp. 136–141, 295–296; Whitney, *Antitrust Policies; American Experience in Twenty Industries* (1958), Vol. II, pp. 222–223; Hession, *Competition in the Metal Food Container Industry 1916–1946* (1948), pp. 296–310; "Business at War; Glass v. Tin," *Fortune*, June 1945, p. 187; "American Can Co.," *Fortune*, January 1941, p. 53; "Billions of Bottles," *Fortune*, April 1932, p. 70.

and they have generally been cheaper than any glass containers other than reusable bottles. Glass containers offer the advantages of transparency and of consumer preference based on belief as to cleanliness, effect on taste and ease of storage of contents after opening. Use of glass containers increased substantially during the Second World War because of government controls on tin plate. Since then there has been intense rivalry for markets which has produced technological advances and other competitive responses. "Competition which in the past had been merely potential became active and aggressive."[26]

This interindustry rivalry also is a factor in pricing, as is illustrated by the testimony of the chairman of the board of Owens-Illinois Glass Co. that he takes into account the price of metal containers in pricing glass containers for beer, soft drinks, household and chemical products, and to a lesser degree for toiletries and cosmetics (GX 348–348h; R. 98, 2441–2457). Conversely, the president of U.S. Steel, in the TNEC hearings, stated that in arriving at prices for tin plate "other types of containers * * * always comes into our discussions."[27] And Continental's own concern with comparative prices is illustrated by its dissemination to sales personnel of price information on glass containers for beer (GX 438–439; R. 2705–2709) and by other internal memoranda (GX 434, 441, 588, 781; R. 2693–2699, 2727–2733, 2754–2757, 2825–2828).

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[26] See Hession in Adams ed., note 7, *supra*, at pp. 458–460; "Business at War," *Fortune*, June 1945, p. 187.

[27] Hearings of the Temporary National Economic Committee, Investigation of Concentration of Economic Power, 76th Cong., 2d Sess., p. 10792 (1939).

In the district court, the government produced the most graphic evidence of the interchangeability of glass and metal containers—the fact that numerous products are packed in both types of containers. Investigators observed a great variety of goods being offered for sale competitively at retail stores throughout the country in both glass and metal containers. This was true in the food canning industry (pp. ~~51–56~~, *infra*), and in other end uses. Government investigators noted many items in toiletries and cosmetics, in medicinal and health products, and in household and chemical products, including in these categories such disparate articles as shaving cream, aspirin, and silver polish, being sold in both metal and glass containers (GX 949, 1158, 1160–1177, 1178A, 1178B, 1179–1201; R. 3069–3179).

The fact that at any given time some particular products may be packed preponderantly in one of these containers, to the almost total exclusion of the other, is of minimal significance. Consideration of only this static data (DX–N; R. 3389–3392) overlooks the dynamic nature of the competition between these two industries. Each exerts continuous pressure on its present and potential customers not only to increase its percentage share of products already packed in a particular type of container, but also to open up new commodities to the use of that type of container and to persuade the packers of these commodities to switch to such a container. The district court recognized, in considering the merger's effect on the beer container line of commerce, that Hazel-Atlas could, "at relatively little expense," convert its machinery to the production of a variety of glass

containers other than those being manufactured at the time of the merger (R. 1632). Such flexibility would enable glass container manufacturers to supply containers for a wide range of purposes since the same raw materials are used, the same production processes are followed, and the same channels of distribution are employed irrespective of the ultimate shape or function of the glass container (R. 1588). The same is true of metal containers (R. 1587).

The fact that metal and glass containers are not identical in price or in all quality characteristics merely illustrates the choice provided for packers so long as the two industries are in active competition. This choice may be guided by a packer's estimate of the relative desirability of each of these containers, and the advantages of each are fully exploited and emphasized only when the two industries compete. Beer, for example, is packed extensively in metal and glass containers, and the development of the beer can, which in turn prompted the production of cheaper and lighter weight non-returnable bottles,[28] illustrates the effect of interindustry competition on technological development. The record also shows how container manufacturers appraised the elements of relative cost, convenience and consumer preference in attempting to persuade brewers to utilize either glass or metal containers (GX 31, 114–116, 124, 127, 130, 434–436, 438, 440 440A, 445, 446, 448, 543, 588, 589; R. 1667, 2132–2139,

[28] McKie, note 25, *supra*, pp. 139–140; Hession, *Competition in the Metal Food Container Industry 1916–1946* (1948), pp. 299–304.

2196–2197, 2204–2207, 2221–2222, 2693–2705, 2709–2727, 2738–2760)."

This competitive pressure is illustrated in the record by Continental's own efforts to break into a field largely dominated by glass containers at the time of this trial—the bottling of soft drinks. Continental not only offered these packers the familiar flat-top style metal container for soft drinks but, after years of development and research, produced a specially designed cap-sealed container. It energetically extolled the virtues of utilizing metal containers by making favorable comparisons of the costs of shipping the two containers, their relative speed of filling, and the investment required to convert a packing line from glass to metal containers (GX 600, 642; R. 2761–2779, 2804–2807). Continental carefully watched the introduction of soft drinks in metal containers in a limited area by one packer, and estimated the total potential market in carbonated beverages as about 23 to 25 billion bottles per year. Although Continental was not certain to what extent it could penetrate "this tremendous market", it estimated the potential for metal containers as between 700 million

[29] While Hazel-Atlas had not become a significant factor in the production and sale of beer bottles at the time of merger, its shipments of such containers had increased to about 17,136,000 in 1957 (GX 800–801; R. 2875, 2876, 2959), and internal memoranda evidence its interest in this field (GX 777–779; unprinted). More important, Continental regarded its acquisition of Hazel-Atlas as one step towards developing "a complete line of glass jars and bottles including beverage bottles" the full consummation of which contemplated a further acquisition of a company already in the beverage bottle business (GX 900; R. 3031).

and 1,250 million, on "a conservative basis" (GX 600B; R. 2781–2785).

It also studied market surveys taken to test consumer acceptance of soft drinks in metal containers (GX 601; R. 2785–2788), considered the attitude of grocery chains toward this method of packaging (GX 612; R. 2789–2790), planned new improvements in its container designed to overcome past objections to the ability of metal containers to withstand the internal pressures generated by soft drinks (GX 613, 684; R. 2790–2796, 2818–2819), and conducted an extensive comparison of the economics of soft drinks packed in metal and glass containers (GX 617; R. 2797–2801).

That this was active, aggressive competition is confirmed by the response of the still-dominant purveyors of glass containers. Owens-Illinois took the price of metal containers into account when pricing its glass containers for the soft-drink industry (R. 98), expressed concern with the active competition in soft drinks being provided by metal containers (GX 235c; R. 2293), and urged active solicitation of bottlers to keep the competing containers as much out of the field of soft drinks as possible (GX 235d; R. 2299). The Glass Containers Manufacturers' Institute carried on extensive market research and promotion to aid its members in continuing their dominance of the bottlers' business,[30] conducted surveys of consumer attitudes concerning the competing containers,[31] and clearly

[30] GX 47–51, 62–71, 73, 85–113, 118–123; R. 321–322, 957–958, 1881–1890, 1915–1941, 1944–1946, 2049–2130, 2141–2196. In turn, United States Steel Company placed advertisements in periodicals of the bottling industry which extolled the virtues of soft drinks in metal containers (GX 170B–177; R. 2255–2267).

[31] GX 80–82, 84; R. 1970, 1978, 1979, 1982, 2008, 2009, 2011, 2012, 2016–2018, 2023, 2042–2047.

recognized "the seriousness of the competition from soft drink cans" (GX 85; R. 2051).

Similar efforts were made with respect to the packaging of instant coffee—a food product which was being packed almost exclusively in glass containers (DX N; R. 3390). Detailed studies and advertising campaigns were conducted by Continental in an attempt to capture for the metal container industry some portion of this substantial market (GX 404, 405, 405A, 406, 407, 408, 409, 411, 412, 413; R. 2553–2613). Active competition existed with respect to detergents (R. 107–134, 365; GX 429; R. 2671–2693) and pharmaceuticals (GX 695, 422, 702–703; unprinted; R. 355, 364). And Owens-Illinois conducted studies comparing the cost of metal and glass containers for detergents and polish (GX 348 h; R. 2457–2458), of metal, glass and plastic containers for liquid detergents (GX 349 A, 349B; R. 2461–2468), and of metal and glass aerosol containers (GX 348 h; R. 2457). The Glass Container Manufacturers' Institute also carried on an extensive program of market research and promotion to foster the use of glass containers for toiletries and cosmetics, chemical and household products, and medicinal and health items (GX 33, R. 1691, 1703–1707, 1715, 1717, 1761).

In summary, it has been fully demonstrated in the record that one of the characteristics of the metal and glass container industries is that of constant rivalry whereby packers are, by reason of technological advances and other efforts of each industry, continuously offered the opportunity to transfer their products from one type of container to the other. An inter-

industry merger in this context clearly terminates such flexible competition between the merging firms and not only forecloses competition insofar as the two companies are presently rivals in any submarket but also shuts off all initiative to expand into one another's realm.

(2) Concentration

The extremely high concentration of the metal and glass container industries cannot be gainsaid. The metal container industry is recognized as a "duopoly," with two companies—American Can Company and appellee Continental—leading and dominating this vast field.[32] In terms of the volume of cans, American Can Company, before the merger, accounted for about 40 percent of industry shipments, and Continental accounted for about 32.6 percent (GX 801; R. 2962). Thus, these two companies alone represented about 72.6 percent of the market; below these the market shares fell off precipitously to about 5 percent for National Can Company (GX 801; R. 2962). The remaining 23 percent of the market was divided among 75 to 90 relatively small firms (R. 1590).

The glass container industry presents a similar—though less extreme—picture of concentration, led by three large companies holding about 55.4 percent of the market. These are Owens-Illinois Company, accounting for about 34.2 percent of all shipments of glass containers, Anchor-Hocking Glass Company,

[32] See McKie, *Tin Cans and Tin Plate* (1959), pp. 83–92, Whitney, *Antitrust Policies: American Experience in Twenty Industries* (1958), Vol. II, p. 201; Hession, *Competition in the Metal Food Container Industry 1916–1946* (1948), ch. 3.

with 11.6 percent, and Hazel-Atlas with about 9.6 percent (GX 801; R. 2956). The remaining 44.6 percent were split among some 39 other companies (R. 1593).

Furthermore, the metal and glass container industries were among those specifically and repeatedly referred to in Congress during the passage of amended Section 7. These industries thus demonstrated the dangerously high level of concentration already reached in many areas of the country's economy and the necessity of preventing further concentration and the consequent adverse impact upon competition.[33]

(3) Dominance

The size and importance of the two merging companies are outstanding. Continental's 32.6 percent of the industry shipments represents 13 billion metal containers out of the nation's aggregate shipments of 39¾ billion containers in 1955 (GX 801, R. 2962). In terms of dollar volume, Continental's sales of metal containers that year were $433 million, or 31.4 percent of the industry's gross sales of $1,380,000,000 (GX 900, R. 3057–3058). Continental, like American Can, has the competitive advantage of having its metal container plants located throughout the country (R. 413–415; fn. 32, *supra*).

The over-all size of Continental is also of considerable significance in appraising its significance as a

[33] Hearings before Subcommittee of the Senate Judiciary Committee on H.R. 2734, 81st Cong., 1st and 2d Sess., pp. 5–6, 17, 28; 95 Cong. Rec. 11502; A6120; 96 Cong. Rec. 16436, A570; Hearings before Subcommittee No. 2 of House Judiciary Committee on H.R. 515, 80th Cong., 1st Sess., pp. 305, 314; Federal Trade Commission, Report, The Concentration of Productive Facilities, 1947, pp. 32–33, 80–82; Report on The Merger Movement, A Summary Report, pp. 35–36.

competitive force. Prior to the merger, Continental had assets of $382 million including 72 domestic plants, and annual gross revenues of $666 million. The acquisition of Hazel-Atlas was part of its program to develop a complete line of container and packaging products (GX 900, R. 3049–3052) and it clearly had the resources to attain this objective, either by internal expansion or acquisition.

Hazel-Atlas' 10 percent of glass container shipments amounted to one billion 857 million containers of the 19⅓ billion glass containers shipped in the continental United States in 1955 (GX 801; R. 2956). Before the merger, it had annual sales of more than $79 million and assets of more than $37 million, including 13 plants (GX 1210; R. 8, 11, 3222, 3249–3250). For two generations, it has maintained its position as an industry leader. It was an early pioneer in container manufacturing machinery and, more recently, it developed the glass container for baby food which has replaced the metal can in most of this market (R. 338–339). Up to the time of the merger, Hazel-Atlas had an uninterrupted profit record (R. 337).

That this merger is the sort contemplated by the terms of Section 7 appears from reports of the Federal Trade Commission as well as from studies made by others who have analyzed the industries. In the Federal Trade Commission's studies of industry concentration which are part of the legislative history of Section 7, Continental's acquisitions of companies in related container fields were cited as examples of "substitute product acquisitions," and these

were assertedly a common class of horizontal merger which represented the present-day threat of industrial concentration by merger. Federal Trade Commission, *The Merger Movement: A Summary Report*, pp. 35–36. See also Federal Trade Commission, *The Present Trend of Corporate Mergers and Acquisitions*, S. Doc. No. 17, 80th Cong., 1st Sess., p. 12. And commentators have pointed explicitly to the dangers to competition from mergers between producers of metal and glass containers. The "quiescent state" of price competition within the metal container industry has been thought sufficient to warrant the prevention of any merger which would reduce interindustry competition.[34] In adidtion, a warning has been issued against the long-run possibility of a series of mergers combining metal and glass container manufacturers, which would have serious anticompetitive consequences and which should be prevented in their incipiency.[35] Approval of the Continental-Hazel-Atlas merger might require approval of similar transactions by rival firms (*Brown Shoe Co.* v. *United States*, 370 U.S. at 343–344), and the result would be the extension of one oligopolistic pattern of structure and behavior over both industries.

We submit that there is ample evidence in the record to warrant a finding that the merger amounted to a violation of Section 7. The district court's contrary conclusion was apparently the result of its misapplication here of this Court's criteria for de-

[34] Hession, *Competition in the Metal Food Container Industry, 1916–1946* (1948), p. 331.

[35] McKie, *Tin Cans and Tin Plate* (1959), pp. 295–296.

termining the existence of monopoly power violative of the Sherman Act, as set out in *United States* v. *E. I. du Pont de Nemours & Co.*, 351 U.S. 377. The court (R. 1604) relied upon the passage in *du Pont* which stated (351 U.S. at 393):

> * * * one can think of building materials as in commodity competition but one can hardly say that brick competed with steel or wood or cement or stone in the meaning of Sherman Act litigation; the products are too different. This is the interindustry competition emphasized by some economists. See Lilienthal, Big Business, c. 5.

But this language must be read in its context, explaining that a monopoly position in a recognized industry such as steel would violate Section 2 of the Sherman Act, and would not be justified by the availability of brick.[36] As elucidated in the extensive literature prompted by the *du Pont* case, the problem under Section 2 is that all substitutes, however re-

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[36] Similarly, *Times-Picayune Publishing Co.* v. *United States*, 345 U.S. 594 (1953), relied upon below (R. 1605), was concerned with whether a company had a "monopolistic" or "dominant" position in the market for one product, which the Court said was required to invalidate, under the Sherman Act, the tying of another product to it, and the question was the extent to which the sole morning newspaper's dominance was diluted by afternoon papers. In view of appellees' apparent contention that the district court did not disparage interindustry competition (Motion to Dismiss or Affirm, p. 8), it is instructive that the district court's misapplication of the *du Pont* case followed the reasoning urged on it by appellees' counsel, that in *du Pont* "the Supreme Court rejects interindustry competition as a criterion in the determination of the metes and bounds of the relevant market" (Tr. 3835, unprinted).

mote, do limit a monopolist's power somewhat, and that a line must be drawn excluding some substitutes if the concept of monopoly is to retain any meaning." Neither this approach, nor the Court's opinion in *du Pont*, ignores the competition provided by substitutes or sanctions restraints upon it. Implicit in all the discussions of this case, indeed, is a recognition of the pervasiveness of interindustry competition.[32] When shifting to merger law, therefore, it is essential to recognize that, as one writer has pointed out, "both intraproduct and interproduct competition may be important and either may be substantially lessened."[33]

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[31] *E.g.*, Report of Attorney General's Committee to Study the Antitrust Laws (1955), p. 322; Dirlan & Stelzer, *The Cellophane Labyrinth*, 1 Antitr. Bull. 633; Hale & Hale, *Market Power: Size and Shape under the Sherman Act* (1958), pp. 105–113; Stocking, *Workable Competition and Antitrust Policy* (1961), pp. 274–277; Stocking & Mueller, *The Cellophane Case and the New Competition*, 45 Am. Econ. Rev. 29; Turner, *Antitrust Policy and the Cellophane Case*, 70 Harv. L. Rev. 281.

[32] The holding of *du Pont* itself refutes the view of the court below that physically dissimilar products cannot usually be in the same relevant market for antitrust purposes. For this Court rejected the government's contention that du Pont's 75 percent control over cellophane violated the Sherman Act, on the precise ground that the relevant market was "flexible packaging materials"—including such widely different products as aluminum foil, vegetable parchment and waxed paper, because competition from these products effectively limited du Pont's ability to control the price of cellophane. The Court stressed that "Illegal power must be appraised in terms of the competitive market for the product", a scrutiny in realistic terms, without limitation to "physically identical products" (351 U.S. at 393–394).

[33] Turner, *Antitrust Policy and Cellophane Case*, 70 Harv. L. Rev. 281, 315, fn. 80.

More appropriate than the dictum in *du Pont* upon which the district court relied was the actual holding in that case that the broader category of flexible packaging materials, rather than the narrower cellophane industry, was the relevant market for determining whether du Pont had violated Section 2 of the Sherman Act. The Court pointed out that "[i]ndustrial activities cannot be confined to trim categories" (351 U.S. at 395), and that "despite cellophane's advantages, it has to meet competition in every one of its uses" (351 U.S. at 399). Just as cellophane and Pliofilm were regarded in *du Pont* to be competing packaging materials for meat packers and other packaging customers (351 U.S. at 399–400), so are glass and metal containers in competition in this case for the business of all users of such containers. When, as here, the legality of an interindustry merger is at issue, it is particularly appropriate to consider the challenged conduct in light of this broader market.

II

THIS MERGER VIOLATED SECTION 7 OF THE CLAYTON ACT BECAUSE ITS PROBABLE EFFECT WAS SUBSTANTIALLY TO LESSEN COMPETITION IN THE PRODUCTION AND SALE OF CONTAINERS FOR THE FOOD CANNING INDUSTRY

Although we contend that apart from market share analysis this merger violated Section 7 because of the positions of the merging firms in competing and highly concentrated industries, we are prepared to demonstrate that the merger's anticompetitive effect on a single submarket—the production and sale of containers for the food canning industry—as disclosed by the record is sufficient to sustain the government's burden of proof. Among the end uses common to Continental's metal containers and Hazel-Atlas' glass containers, food canning was chosen by the government as one of the most significant in terms of substantiality of commerce and in terms of public and industry recognition. We submit that the manufacture and sale of containers for the food-canning industry is an area of effective, realistic competition between Continental and Hazel-Atlas and an appropriate line of commerce for Section 7 purposes, and that the district court erred in reaching a contrary conclusion. With respect to this line of commerce the government met its burden of proving anticompetitive consequences, even if statistical proof be requisite, since its evidence demonstrated that the market share of the merged company together with the resulting increase in concentration rendered the merger "inherently likely to lessen competition substantially." *United States* v. *Philadelphia National Bank*, 374 U.S. at 363.

A. THE PRODUCTION AND SALE OF CONTAINERS FOR THE FOOD CANNING INDUSTRY IS A RELEVANT PRODUCT MARKET FOR SECTION 7 PURPOSES

"Food canning," as defined by the container industry, is the process of hermetically sealing and heat-sterilizing food (R. 698–699).[40] This process bears upon competition between metal and glass containers because, as was testified by qualified experts, only these two containers have the requisite physical properties for thus "canning" food.[41] The "literally thousands of packers purchasing containers for packing hundreds of food products," to which the district court referred (R. 1642), must choose between these two types of containers if they wish to take advantage of the protection against food spoilage and deterioration afforded by the canning process. In this field metal and glass containers are functionally interchangeable, and no containers other than these compete.

There can be no doubt that this proposed line of commerce is "substantial." *United States* v. *E. I. du Pont de Nemours & Co.*, 353 U.S. 586, 595. The National Canners Association estimated that the market annually comprised 22 billion metal and glass

[40] Heat-sterilizing is a protective measure applied after the food has been sealed in glass or metal hermetic containers. It consists, basically, of heating the filled containers under pressure to a temperature which is calculated to destroy all, or essentially all, of the bacteria present in the food which would have a tendency to spoil it, and then cooling under controlled conditions (GX 317, 318, R. 2337–2440). A hermetic seal, impermeable to air and other gases, is needed to keep the contents sterile.

[41] See, *e.g.*, R. 63, 71–75, 180, 304–305.

containers in which were packed about 8½ percent of the nation's food supply.[42] A line of commerce may, of course, be defined in terms of a substantial class of customers even though the same product is also used by others; the Court in *du Pont* defined a relevant market of finishes and fabrics in terms of users by drawing the product market "coextensive with the automobile industry." *United States* v. *E. I. du Pont de Nemours & Co.*, 353 U.S. at 593–595, and dissenting opinion at 650–654.[43] Manufacturers may sell the same container for food and nonfood uses (R. 1587, 1588), but from the point of view of the users—*i.e.*, the large well-defined industry of food canning—the elimination of any container manufacturer diminishes the choices available to them. We believe that it comports with "trade realities" (*United States* v. *Philadelphia National Bank*, 374 U.S. at 357) to measure the impact of this merger in the market defined by this category of end use.

As has been previously demonstrated, there is substantial competition between the glass and metal container industries for a multitude of end uses. This competition is no less intense with regard to food

[42] GX 133, p. 3 (unprinted). The district court admitted into evidence these over-all figures for canning, with leave to the appellees to introduce their own statistics (R. 716). These figures are being used here not as proof of the precise quantity involved but merely to demonstrate that the market is a large one.

[43] See also *Crown Zellerbach Corp.* v. *Federal Trade Commission*, 296 F. 2d 800, 807, 813 (C.A. 9), certiorari denied, 370 U.S. 937; *Reynolds Metals Co.* v. *Federal Trade Commission*, 309 F. 2d 223, 228–229 (C.A. D.C.); *A. G. Spalding & Bros.* v. *Federal Trade Commission*, 301 F. 2d 585 (C.A. 3).

canning than it is elsewhere. Among the many products observed by government field investigators in retail stores for sale in both metal and glass containers were more than 100 food items, including applesauce, pears, peaches, peas, beans, tomato juice, sardines, peanut butter, and ranging even to caviar, papaya and tamales (GX 949, 1158, 1160–1177, 1178A, 1178B, 1179–1201; R. 3069–3179). Variations among these items as to quality and price merely demonstrate the competitive choice available to the food packers and ultimately to the consuming public. Manufacturers of glass containers stress the transparency of their product, its greater attractiveness, and its ease of storage and re-use (GX 669, 671; R. 957–958, 2814–2816). Metal container manufacturers, on the other hand, emphasize the facts that their products are cheaper to fill, easier and less expensive to ship, and less bulky (GX 675; R. 2817).

This competition is reflected in the activities of the respective trade associations. The records of the Glass Container Manufacturers' Institute (GCMI), of which Hazel-Atlas was a member, contain, for example, letters exchanged with glass container manufacturers complaining of the vigorous competition from firms making metal containers, specifically Continental." The aspirations of glass container manu-

" *E.g.*, Letter from Director, Market Research and Promotion, GCMI, to president of a member firm: "Both of these letters from Continental [distributed in the St. Louis area] burn me up. The first one is really very vicious in its handling of breakage and glass chips and of course the second one is greatly exaggerated as to the savings that could be effected by purchasing baby food in cans." (GX 1, 3; R. 1657–1661).

facturers to increase their share of the food market is reflected in their concern with advertising, extensive customer surveys, and store audits conducted in cities throughout the country (GX 14, 47–56, R. 1661–1662, 1881–1905). These marketing devices studied the glass container manufacturers' share of the market for baby food (GX 42–46, R. 1867–1880), and for food generally, and attempted to measure customer motivation in choosing food in a particular container (GX 84, R. 2005–2047). The Can Manufacturers Institute (CMI), of which Continental was a member, conducted comparable activities on behalf of its members' interests in promoting the use of metal containers for food at the expense of glass containers (GX 145, 147, 148, 156, 158, 166; R. 2245–2253). An example of these activities, especially in relation to containers for food, is found in the Fifth Annual Consumer Survey on Containers, prepared for CMI by Benton & Bowles, Inc. The stated purposes of the survey, and its summary of results clearly demonstrate the broad scope of the competitive efforts of the metal container manufacturers (GX 138, R. 2229–2244).

In addition, food packers themselves recognize that metal and glass container manufacturers are competing for their business. They have not hesitated to warn Hazel-Atlas and other glass container manufacturers that if glass prices rose too high, their foods would be packed in metal containers (GX 775, 776, R. 2822–2834). In at least one instance, a food packer has succeeded in obtaining a reduced price for glass containers by such a threat (GX 773, R. 2821–2822).

The fact that at any particular time certain foods are "canned" predominantly in one or the other of these competing products (DX–N, R. 3389–3392) is not significant. The nature of the interindustry competition is such that it is never static, and the container manufacturers engage in constant competition to draw new products to their particular type of container. See pp. 25–33, *supra*. A cogent illustration is the history of baby food packaging:

Baby food, once packed entirely in metal cans,[45] was estimated to have been divided 80 to 20 percent in favor of glass containers at the time of trial (DX–N, R. 3389). Hazel-Atlas played a substantial part in this shift by designing the container which "has become the typical baby food jar" (R. 338). Containers for these products had been one of Hazel-Atlas' major lines as far back as 1922 or 1923, when it sold to all of the major producers of such food—Clapp, Beechnut Company, H. J. Heinz, and Libby, McNeill & Libby (R. 333–334).[46] In response to the contemporary dominance of glass containers in this field, Continental intensively endeavored to increase its share of this business. Comparative costs were carefully studied, although customer preference for glass

[45] McKie, *Tin Cans and Tin Plate* (1959), p. 138.

[46] Hazel-Atlas produced these containers with a Miller machine, which was the best available until the advent of the more efficient Hartford-Empire IS machine. Thereafter, after 1941 or 1942, Hazel Atlas' share of the baby food container business tapered off, due primarily to its lack of the more efficient machine (R. 339–341). However, Hazel-Atlas had plans to obtain more Hartford-Empire machines and had several on order prior to the merger (GX 363, 364, R. 2470–2518).

was noted (GX 400A, R. 2532, 2535); a list of packers of baby food was compiled, as well as a chart of the size of the baby population between the ages of 3 months and 2 years—both packers and babies being potential customers in this market (GX 415, unprinted); and advertising campaigns designed to overcome mothers' prejudices against metal containers were conducted (GX 415B, 415C, R. 2614–2627). Advertising agencies studied "the relative use of brands and the attitude of women toward the use of tin cans versus glass as containers for baby food" (GX 416, R. 2630, 2628–2632). Similar in-depth studies of consumer preferences were used as bases for considering redesign of the metal container then used for baby food and for measuring the results of previous advertising campaigns (GX 415B, 417, 419A–C, 420, R. 623, 2622, 2632–2649).

The record discloses many instances other than the packing of baby food in which Continental and Hazel-Atlas competed before their merger for the business provided by food canners. Hazel-Atlas was for years the industry leader in wide mouth ware, the containers predominantly used for food canning (R. 335). A former general sales manager and member of its board of directors described Hazel-Atlas as being "always food-minded" (R. 335, 357) and declared further that food containers had been the company's "main product" (R. 333). The list of foods which, according to the record, were packed in Hazel-Atlas containers included vegetables, fruits, fruit and vegetable juices, catsup, vinegar, syrup, salad dressing, jams, preserves, pickles, mayonnaise,

maraschino cherries, olives, mustard, honey, peanut butter, and beef steak (R. 358–360, 362–363).

The record specifically demonstrates competition between Continental and Hazel-Atlas in seeking to sell containers to pack fruits and vegetables.[47] Moreover, Continental collected data on the comparative costs of metal and glass containers for packaged syrups (GX 400A, 401, R. 2536, 2541–2544) and on the market for peanut butter in cans (GX 402, R. 2544–2553). Indeed, Continental's "Savorlock" can was proposed as a substitute for glass jars in a wide variety of products (GX 404, R. 2553–2563). Consideration was also given by Continental to packing consumer sizes of tomato catsup in metal containers, although it was recognized that it had theretofore been "packed exclusively in glass in retail sizes." This was, nevertheless, considered "a potential market" for Continental (GX 421A, R. 2650–2654). Aerosol metal containers, a market which Continental believed was rapidly expanding, were also promoted for barbecue sauce, catsup, chocolate syrup, salad dressings, and whipped toppings (GX 423–427, 806, R. 185, 2654–2670, 3036–3042).

Thus, as forcefully shown by the activities of Continental and Hazel-Atlas themselves, and by their respective trade associations, there was substantial present and potential competition between the merging firms and between glass and metal container manufacturers for the business of the food canning industry

[47] Continental: GX 400; R. 2519–2528; GX 400A, R. 2534. Hazel-Atlas: R. 362.

and of the packers making up this vast market. Containers for the food canning industry, *i.e.*, those which are sold to pack hermetically sealed and heat sterilized foods, therefore constitute a line of commerce for Section 7 purposes.

B. THE MERGER MAY SUBSTANTIALLY LESSEN COMPETITION IN THIS MARKET BECAUSE IT RESULTS IN A SINGLE FIRM WITH AN UNDUE MARKET SHARE AND SIGNIFICANTLY INCREASES CONCENTRATION

Section 7 requires a determination whether, in any of the relevant lines of commerce, "the effect of [the] acquisition may be substantially to lessen competition * * *." This Court has observed that in making the statutory determination, "[t]he market share which companies may control by merging is one of the most important factors to be considered" (*Brown Shoe Co.* v. *United States*, 370 U.S. 294, 343), and that, in very large mergers, the government's case may be established on the basis of market share percentages alone: "[A] merger which produces a firm controlling an undue percentage share of the relevant market, and results in a significant increase in the concentration of firms in that market is so inherently likely to lessen competition substantially that it must be enjoined * * *" (*United States* v. *Philadelphia Bank*, 374 U.S. 321, 363). We submit that on the present record the illegality of this merger may be established on the basis of such market share data showing the impact upon the production and sale of containers for food canning.

Customarily, market shares are derived directly from statistics as to sales of the merging companies

within the relevant market, and the total of such sales by all competing companies. This provides a "meaningful base" to reflect the commercial realities prior to the merger.[48] The approach to such statistics must necessarily be a practical one, if Section 7 litigation is to remain manageable. Thus, this Court in *Brown Shoe* approved the reliance upon a market sample and stressed that "in cases of this type precision in detail is less important than the accuracy of the broad picture presented" (370 U.S. at 340–343, and fn. 69, p. 342). In *United States* v. *Philadelphia National Bank*, the Court acknowledged that it had no precise market share data dealing with all banking business derived from the particular relevant geographic market; it took the available statistics, which reflected the business of banks located only within the market and did not specify the source of their business, and made practical adjustments and allowances to arrive at a fair "conservative estimate" of the companies' market position (374 U.S. at 364, fn. 40).

This record does not contain precise statistics dealing with the production and sale of all containers used by food canners in packing hermetically sealed, heat-sterilized foods. No such statistics appear to

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[48] "Although the sum of the parties' pre-existing shares of the market will normally equal their combined share of the immediate post-merger market, we recognize that this share need not remain stable in the future. Nevertheless, such statistics provide a graphic picture of the immediate impact of a merger, and, as such, also provide a meaningful base upon which to build conclusions of the probable future effects of the merger." *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 343, fn. 70. See *Crown Zellerbach Corp.* v. *Federal Trade Commission*, 296 F. 2d 800 (C.A. 9), certiorari denied, 370 U.S. 937.

be available.[49] Consequently, there are no precise data concerning the merging firms' shares of this relevant product market. However, this gap should not prevent this Court from judging the merits of the merger by the available meaningful percentages.

Introduced into evidence at the trial was a table listing, in thousands of units and by percentages, the total shipments of glass and metal food containers within the continental United States in 1955, 1956 and 1957 (GX 801(3c), R. 2969).[50] The district court correctly observed that these statistics included glass and metal containers used for food generally "and were not limited to containers for foods which were heat sterilized and hermetically sealed" (R. 1638). However, we believe that these statistics, which are the only ones available, provide an accurate enough measure of the shares of the food "canning" market held in 1955 by each of the leading firms in the glass and metal container industries to test the legality of this merger. This is because the evidence pertaining to these industries demonstrates, as the district court

[49] The Census Bureau does not collect figures for this end-use of metal and glass containers. See the Census categories listed by the district court, R. 1587–1589.

[50] The data on glass container shipments were drawn from industry reports of shipments, by units of containers, to the Bureau of the Census and to the Glass Container Manufacturers Institute (GX 801; R. 2956). Metal container shipments are reported to the Bureau of the Census by area measurement of steel plates consumed in the manufacture. Through the use of conversion figures of the Census Bureau and the Can Manufacturers Institute, these statistics were converted to units of containers. The computations were explained at the trial (R. 1194–1315, 1320–1322, 1327–1447; See GX 1202, 1205; R. 3181–3211, 1586–1587, fn. 26).

found, that there is a sufficient flexibility of manufacture and use so that each of these firms could as readily produce containers for hermetically sealed heat-sterilized foods as for other types of packaged food products and that, indeed, the identical containers are often used for both of these purposes (R. 86, 89–90, 103, 411, 1587–1588, 1641, 1643). Consequently, there is no reason to believe that either Continental or Hazel-Atlas produced and sold any lesser percentage of "canned" food containers than of total food containers in 1955. Indeed it is noteworthy that both these firms had substantially the same percentage of the food container production in that year as they had of the *total* "food, non-food, beer, soft drink and beverage" container production during 1955 (GX 801(3b), R. 2968). This further supports the inference that leading producers in each of these industries were able to sell their products in roughly equal shares among the major possible end uses because of the flexibility of manufacture and use.[51] Moreover, as has previously been shown

[51] The total container production figures are Continental 21.9 percent, Hazel-Atlas 3.1 percent (R. 2967). It should be noted that the adaptability of all container production to the satisfaction of the needs of food canners makes these total production figures independently relevant, since they provide a meaningful estimate of the potential scope of the choices available to food canners. That such potential choices among metal and glass container manufacturers are not merely theoretical but are actually available to food canners, is shown by the further findings of the district court, that there are no specialized vendors of containers for food purposes, that such containers were not sold or shipped differently from containers for other uses and that packers ordinarily use multiple sources of supply (R. 1641, 1643).

(pp. 42–47, *supra*), the record reflects affirmatively that both Continental and Hazel-Atlas were heavily engaged in providing containers for the food "canning" industry. Hence it is fair to infer—particularly in the absence of any proof by the appellees—that a large portion of the food containers produced by these firms were used for food "canning."

If these percentages are accepted, as we think they should be, Continental has been shown to have held about 23 percent of this product market prior to the merger, and Hazel-Atlas has been shown to have held about 3 percent. The merger therefore raised Continental's share of the market to about 26 percent, an increase of more than 12 percent. Before the merger Continental was the second largest manufacturer of containers suitable for food canning; Hazel-Atlas was the sixth. The other industry leaders were American Can Company (29 percent), Owens-Illinois Glass Company (7.9 percent), Anchor-Hocking Glass Company (4 percent), and National Can Company (3 percent). Accordingly, the effect of the acquisition was to increase the total share of the three largest firms by about 5 percent of their prior total percentage share; after the merger they held 63 percent of this product market.

We submit that such an increase in market shares is sufficient to "raise an inference that the effect of the contemplated merger of appellees may be substantially to lessen competition" in the manufacture and sale of containers for food canning, since it "produces a firm controlling an undue percentage share of the relevant market and results in a significant increase in the concentration of firms in that market." *United*

States v. *Philadelphia National Bank*, 374 U.S. at 363, 365.

In *Philadelphia Bank*, the Court, dealing with the market shares before it, held that a 30 percent market share held by the merged company was an "undue" percentage, and that an increase of more than 33 percent in the concentration of business in the two largest companies was a "significant" increase (374 U.S. at 364–365). Noting that various writers had proposed more rigorous tests under Section 7,[52] the Court stressed that a less substantial increase than was present in *Philadelphia Bank* would not *ipso facto* render the merger lawful (374 U.S. at 364, fn. 41). It pointed out that "if concentration is already great, the importance of preventing even slight increases in concentration and so preserving the possibility of eventual deconcentration is correspondingly great" (374 U.S. at 365, fn. 42).

While the percentages here are smaller than in *Philadelphia Bank*, we believe they are sufficient to give rise to the inference of illegality. As has been more fully discussed at pp. 33–36, *supra*, this merger takes place in industries in which oligopolistic structures are already far advanced and well entrenched. Moreover, the impact of interindustry competition to counteract the anticompetitive effects of concentration within an industry (pp. 16–17, 19–21, *supra*) is particularly marked in the food canning industry, in which

[52] The Court noted the views of several commentators who suggest that any acquisition by a firm controlling 20 or 25 percent of a market be considered presumptively unlawful. Another economist urges that an increase in market concentration of 7 or 8 percent should require the same result. *United States* v. *Philadelphia National Bank*, 374 U.S. at 364, fn. 41.

competitive innovation and price bargaining has occurred which might not have resulted without interindustry competition. Finally, further mergers of this sort between metal and glass manufacturers would have the accelerated anticompetitive consequence of combining two competing leaders in their respective oligopolistic industries.

Preventing such results in their "incipiency" was the Congressional intent in adopting the amended Section 7. In these circumstances, we believe that the market shares in food canning resulting from this merger were sufficient to raise an inference that competition would be substantially lessened. Accordingly, we believe that the government has met its burden of showing that the merger was proscribed because of its anticompetitive impact, even if the only line of commerce in which such effects are evaluated is the production and sale of containers for the food canning industry.

CONCLUSION

For the foregoing reasons the judgment below should be reversed and the case remanded for further proceedings.

Respectfully submitted.

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MARCH 1964

APPENDIX

The exhibits cited in this brief were admitted in the record as follows:

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U.S. GOVERNMENT PRINTING OFFICE: 1964

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
APR 17 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 367

UNITED STATES OF AMERICA,

Appellant,

v.

CONTINENTAL CAN COMPANY, INC. AND HAZEL-ATLAS GLASS COMPANY.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR CONTINENTAL CAN COMPANY, INC.

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BRIEF FOR CONTINENTAL CAN COMPANY, INC.

Question Presented.

The sole question presented for decision on this appeal is this:

> Was the district court correct in dismissing a complaint charging a violation of Section 7 of the Clayton Act when, on completion of the government's case, the record was absolutely barren of evidence of actual or reasonably probable lessening of competition or tendency to create a monopoly in any line of commerce as a result of the acquisition in question?

Statement.

This is a direct appeal from the judgment of the district court holding that the acquisition of Hazel-Atlas Glass Company (Hazel-Atlas) by Continental Can Company, Inc. (Continental) did not violate Section 7 of the Clayton Act, 15 U. S. C. §18.

The government's complaint was dismissed by the district court because of a failure of proof of either actual anti-competitive effects flowing from the acquisition, or reasonable probability that the forbidden anti-competitive effects would result in the future, in any line of commerce.

The Acquisition.

Continental acquired all of the assets and assumed all of the liabilities of Hazel-Atlas on September 13, 1956. Since that date the acquired business has been operated by Continental. Hazel-Atlas was dissolved late in 1956.

Prior to the acquisition, Continental's principal business was the manufacture and sale of metal cans and other metal containers. Other products included paper cups and plates, fibre drums, kraft linerboard, flexible packaging materials, crown caps, vacuum type metal caps, plastic containers and can closing machinery (Op. R. 1583).[1] It did not manufacture or sell any glass products or other products manufactured or sold by Hazel-Atlas (Op. R. 1585).

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[1] The following abbreviations are used:

"R"—printed record
"Tr"—original transcript
"GX"—government's exhibit
"DX"—defendant's exhibit
"Gov't Brief"—brief filed for the United States
"Op."—opinion of the district court

Continental was formed in 1913. In common with many American corporations it grew over the years by both internal growth and outside acquisitions.

The district court considered the evidence relating to prior acquisitions and found:

> "Many of the acquisitions were made a number of years ago in the 1920's and the 1930's. Many were extremely small. Some were the result of liquidation sales. Some appear to have been cleared with the Department of Justice or to have had its tacit approval. Some were located in Canada. Some of the companies acquired were subsequently sold.
>
> "None of the companies acquired in the ten years prior to suit were can companies. No glass company had ever been acquired before." (Op. R. 1610).

The government does not challenge these findings, and, in any event, it is clear that these ancient transactions, made by men long since dead, under different economic and legal conditions than those now prevailing, can have no relevance to the acquisition in question.

The government does present in its brief (Gov't Brief pp. 5-6) a highly distorted statement of Continental's history, concocted from material not in the record. It is, we submit, without evidentiary value.

Hazel-Atlas was a company manufacturing and selling glass containers both for home and commercial use, glassware, including tumblers, tableware and kitchenware, some types of metal closures for glass containers and miscellaneous items (Op. R. 1584). It did not manufacture or sell metal containers or any other product made or sold by Continental (Op. R. 1585).

The Proceedings Below

When the proposed acquisition was announced in the summer of 1956, the government attempted to stop it by invoking an existing consent decree to which Continental was a party.[2] When the district court which had entered that decree held that it did not apply to the proposed acquisition,[3] the government obtained the voluntary agreement of the companies to postpone the acquisition until the government could apply for a temporary restraining order. Shortly thereafter a complaint charging violation of Section 7 of the Clayton Act was filed in the District Court for the Southern District of New York, and application was made by the government for a temporary restraining order. This application was denied on September 13, 1956, and thereupon the acquisition was completed.

The action was continued as an action for divestiture. Extensive pre-trial proceedings, involving both elaborate discovery and pretrial conferences, were conducted. The case went to trial in June, 1960, almost four years after the challenged acquisition had been consummated. The government presented its case in a trial lasting six weeks, during which it called numerous witnesses, took over 4,000 pages of testimony and introduced hundreds of exhibits, among which were elaborate statistical computations. With very few exceptions everything the government offered was admitted in evidence. The government does not complain of the exclusion of the few items offered which were not admitted.

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[2] The government erroneously identifies this decree as having been entered in *United States* v. *Hartford-Empire Co.* (Gov't Brief, p. 3 n. 2). Actually it was entered in *United States* v. *Continental Can Company*, Civil No. 26346 (N. D. Cal. 1950). Continental was not a party to the *Hartford-Empire* case.

[3] *United States* v. *Continental Can Company*, 143 F. Supp. 787 (N. D. Cal. 1956).

On the conclusion of the government's case Continental moved for a dismissal of the complaint under Rule 41(b) of the Federal Rules of Civil Procedure.

The district court, correctly applying Rule 41(b), proceeded to evaluate the evidence to determine whether on the facts presented the government was entitled to relief. Finding that it was not, the court orally announced its decision to dismiss the complaint.

This Court decided *Brown Shoe Co.* v. *United States*, 370 U. S. 294 (1962) before the district court completed the preparation of its written opinion, findings of fact and conclusions of law. Very shortly after the *Brown Shoe* decision was rendered, the government requested, and received permission to file with the district court an additional brief discussing the applicability of *Brown Shoe*. This was done and appellee responded. Judgment dismissing the complaint was entered on April 16, 1963.

The district court's opinion, reported at 217 F. Supp. 761, covers 44 printed pages. Each of the government's contentions was carefully analyzed and comprehensive findings were made with the greatest of care. Scrupulous attention was given to the teachings of *Brown Shoe* and other relevant decisions of this Court.

The district court found no fault with the legal theories advanced by the government. It based its conclusions squarely on the finding that the evidence showed no actual anti-competitive effects from the four-year old acquisition[4] and showed nothing from which it could be concluded that there was a reasonable probability that the forbidden anti-competitive effects would develop in the future. The com-

[4] By the time the complaint was dismissed, the acquisition was almost seven years old, but the trial was held four years after the event.

plaint, in short, was dismissed because the government failed to support its allegations with proof.

The Government's Brief

The government's brief attempts to plug up the gaping holes in the record that it fashioned in this case by liberal citations of alleged facts from two books (apparently graduate students' theses), neither of which was offered in evidence or subjected to the process of cross examination in the district court. The government calls these alleged facts "undisputed conclusions" reached by commentators. (Gov't Brief p. 26). The only reason they were undisputed, of course, was because the government did not see fit to expose their authors to the traditional process of cross examination.

The first of these sources relied upon by the government is a man named Hession, who wrote his doctor's thesis under the title "Competition In The Metal Food Container Industry 1916-1946". Although the government calls it the "leading work on the industry" (Gov't Brief p. 6 n. 6), it has apparently never been printed. The only copy we were able to find is in type-script.

Ironically enough, the name of Hession was on the government's witness list for the trial[5] but for reasons never explained he was not called to testify and it was therefore not possible to demonstrate in the courtroom his virulent bias against Continental. Some of it, however, shows through in his work as, for example, in his preface in which, after complaining of his difficulty in extracting information from the industry, he gives credit for cooperation to the principal competitors of Continental but

[5] Letter, dated March 8, 1960, from Robert A. Bicks, Acting Assistant Attorney General, Antitrust Division, Department of Justice, to Helmer R. Johnson (unprinted).

pointedly omits that company, the reason, obviously, being that Continental's executives had not cooperated with him as he thought they should.[6]

His statements, presented to this Court outside of the record, must be ignored if the principle of establishing facts by adversary proceeding is to continue to have meaning.

The second "witness" proffered by the government outside the record is a man named McKie who wrote his thesis under the title "Tin Cans and Tin Plate". In his work he admits to a heavy reliance on Hession, and his "facts" are no more reliable.

We are not here complaining of references to writings of recognized authorities dealing with undisputed matters of fact. We do, however, ask this Court's protection against the attempt to use unseen, palpably prejudiced writings on controversial issues as a source of "fact." (See *Reilly* v. *Pinkus*, 338 U. S. 269 (1949); *Ohio Bell Telephone Co.* v. *Public Utilities Commission*, 301 U. S. 292 (1937)).

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[6] An example of the style of this "scholar" is found in the discussion introducing the material cited in the government's brief (Gov't Brief p. 5 n. 5); where, in describing an early president of Continental, Hession says:

> "Mr. Conway, an ex-piano salesman who had married into the family which held the controlling stock interest in Continental, had the aggressive, promoter type of personality which this ambitious program of aggrandizement required. The stock market boom of the late Twenties greatly facilitated his operations by permitting him to issue new shares of stock to a security-hungry public and thus finance the purchases."

Summary of Argument.

I.

The district court properly applied the "line of commerce" tests formulated by this Court.

The tests laid down by this Court for determining lines of commerce in which to measure the effect of an acquisition for the purposes of Section 7 of the Clayton Act are these: "The outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it." There may be submarkets within an outer market, depending on such "practical indicia" as "industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors." (*Brown Shoe Co.* v. *United States*, 370 U. S. 294, 325 (1962)).

The fact that it may be technically possible to use a product for more than one purpose does not, standing alone, satisfy any of these tests.

In actual usage, for products other than beer, there is neither reasonable interchangeability nor cross-elasticity of demand between glass containers and metal containers. Products tend to move predominantly in one type of container or the other, depending on price, physical characteristics of the product, tradition, packing processes, type of market and many other factors.

Applying the market definition tests laid down by this Court, the district court found an interindustry line of commerce consisting of both glass and metal containers

for beer, and, at the same time, found no line of commerce consisting of glass and metal containers generally, or of glass and metal containers for the canning of food. The district court's findings negating the existence of these two claimed lines of commerce are supported by an overwhelming body of evidence, and are clearly correct.

II.

The district court was correct in finding that there was no evidence of reasonable probability of anti-competitive effects resulting from the acquisition.

The effect of an acquisition on competition must be measured in terms of reasonable probability, and the district court found no reasonable probability of anti-competitive effects from the acquisition of Hazel-Atlas by Continental. This finding was clearly correct. The government offered no evidence of probable anti-competitive effect and the record contains none.

III.

The government's statistics are unreliable and provide no basis for measuring shares of any market.

The statistics which the government uses in an attempt to show the market participation of companies selling containers for use in food canning are demonstrably false. They themselves demonstrate that it is impossible to combine figures for two dissimilar markets and come out with any meaningful result.

ARGUMENT.

I.

The district court properly applied the "line of commerce" tests formulated by this Court.

The threshold question in any Section 7 case is the delineation of the relevant market or line of commerce—"a necessary predicate to a finding of a violation of the Clayton Act." (*United States* v. *E. I. duPont de Nemours & Co.*, 353 U. S. 586, 593 (1957)). In the court below, the government claimed that there were ten pertinent lines of commerce.[7] In this Court, the government has abandoned nine of the ten and come up with an eleventh. The new one is what it denominates "the production and sale of containers used for all purposes for which metal or glass containers may be used"[8] (Point I of the government's brief). The only one of the original ten claimed lines of commerce which the government is seeking to defend is "containers for the food canning industry" (Point II of the government's brief).

The fact that the government never asserted its eleventh line of commerce in the district court should be enough for this Court to refuse to consider the government's principal argument on this appeal (Point I). Section 7 cases, after

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[7] 1. Containers for the canning industry. 2. Containers for the beer industry. 3. Containers for the soft drink industry. 4. Containers for the toiletries and cosmetics industry. 5. Containers for the medicine and health industry. 6. Containers for the household and chemical industry. 7. The can industry. 8. The glass container industry. 9. Metal closures. 10. The packaging industry.

[8] Gov't Brief p. 18.

all, are essentially factual inquiries, and this Court does not try them *de novo*. In any event, the government's argument is demonstrably without merit.

The government calls attention (Gov't Brief p. 15) to the statement in *United States* v. *United Shoe Machinery Corp.*, 110 F. Supp. 295, 303 (D. Mass. 1953), *aff'd per curiam*, 347 U. S. 521 (1954) that "the problem of defining a market turns on discovering patterns of trade which are followed in practice." We agree with that statement and so did the district court, for that is exactly the approach taken by it. The government's only complaint is that it doesn't like what the district court discovered.

The government seeks to create the impression that this case raises the question of whether Section 7 is applicable to "interindustry" mergers. No such issue is presented here.

It has never been contended in this case that Section 7 is not applicable to interindustry mergers if the tests laid down by this Court for determining a line of commerce are met and the effects prohibited by the statute are found.

The district court clearly recognized that. It did not dismiss the complaint on any theory that interindustry mergers are necessarily lawful. It dismissed because of failure of proof that this particular interindustry merger was unlawful.

Any contention that the district court was laboring under a misconception on this score is clearly negated by the court's treatment of the government's beer container line of commerce. The court specifically found that there was *prima facie* evidence warranting the inclusion in a single line of commerce of metal and glass containers for beer, even though the containers were products of different industries. This finding was made because, in the

judgment of the district court, the evidence as to beer containers satisfied the market definition tests laid down by this Court (see *infra*, p. 17).[9] But, applying the same tests, the district court found that the other interindustry lines of commerce advanced by the government were not sustained by proof. In short, the law was applied by the court below to the facts of record. That the findings of fact were not to the government's liking does not mean that the court misconceived the law. Nor does it mean that this Court should try factual issues *de novo*. "It ought to be unnecessary to say that Rule 52 applies to appeals by the Government as well as to those by other litigants." (*United States* v. *Yellow Cab Co.*, 338 U. S. 338, 341 (1949). See also, e.g., *United States* v. *Oregon State Medical Society*, 343 U. S. 326, 331-32, 339 (1952)). As Mr. Justice Douglas said in *United States* v. *National Association of Real Estate Boards*, 339 U. S. 485, 496 (1950): "... our mandate is not to set aside findings of fact 'unless clearly erroneous.'"

The test for determining a relevant market for Clayton Act purposes, as formulated by this Court in *duPont-General Motors*,[10] is whether products possess "sufficient peculiar characteristics and uses to constitute them sufficiently distinct" from one another to make them separate lines of commerce.

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[9] The government misstates the position of the district court when it says that it was that court's view that "physically dissimilar products cannot usually be in the same relevant market for antitrust purposes" (Gov't Brief p. 38 n. 38). That this was not the view of the district court is shown by its holding that physically dissimilar bottles for beer and metal containers for beer were in the same line of commerce.

[10] *United States* v. *E. I. duPont de Nemours & Co.*, 353 U. S. 586, 593-94 (1957).

The formulation of this rule was foreshadowed in earlier cases. In *Times-Picayune*,[11] a Sherman Act case, the Court said:

> "For every product, substitutes exist. But a relevant market cannot meaningfully encompass that infinite range. The circle must be drawn narrowly to exclude any other product to which, within reasonable variations in price, only a limited number of buyers will turn; in technical terms, products whose 'cross-elasticities of demand' are small. Useful to that determination is, among other things, the trade's own characterization of the products involved."

The same principle was applied a few years later in the *Cellophane* case:[12]

> "Determination of the competitive market for commodities depends on how different from one another are the offered commodities in character or use, how far buyers will go to substitute one commodity for another. For example, one can think of building materials as in commodity competition but one could hardly say that brick competed with steel or wood or cement or stone in the meaning of Sherman Act litigation; the products are too different. This is the interindustry competition empha-

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[11] *Times-Picayune Publishing Co.* v. *United States*, 345 U. S. 594, 612 n. 31 (1953). Cf. Hale and Hale, *Market Power: Size and Shape Under the Sherman Act* (1958), frequently cited by the government in its brief (Gov't Brief p. 16 n. 14, p. 17 n. 17, p. 20, n. 19, p. 38 n. 37), at 284:

> "In the last analysis, substitution is a question of degree, since almost every service or product competes against every other. It has often been remarked, for example, that consumers have preferred to buy new automobiles rather than improve their housing conditions."

[12] *United States* v. *E. I. duPont de Nemours & Co.*, 351 U. S. 377, 393 (1956).

> sized by some economists. See Lilienthal, Big Business, c. 3."

One year after *Cellophane* the issue of market definition reached this Court in an antimerger action under original Section 7 of the Clayton Act in *duPont-General Motors*.[13] It was there that the Court articulated as the governing criterion the "peculiar characteristics and uses" test, which is essentially a verbal variation of *Cellophane's* doctrine of reasonable interchangeability:

> "The record shows that automotive finishes and fabrics have sufficient peculiar characteristics and uses to constitute them products sufficiently distinct from all other finishes and fabrics to make them a 'line of commerce' within the meaning of the Clayton Act."[14]

The rule was next applied by this Court in *International Boxing*.[15] There the district court had held that the defendants had monopolized trade in championship boxing contests in violation of Section 2 of the Sherman Act, rejecting their defense that the appropriate market consisted of the entire entertainment field or at the very least the promotion of all boxing contests. In this connection, the district court had found that a particular and special demand existed for championship bouts in contradistinction to the non-championship variety and other sporting events, public shows, spectacles and entertainment. This Court affirmed, holding that the trier of facts was warranted in concluding that championship boxing was not reasonably interchangeable for the same purposes with non-championship contests

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[13] *United States* v. *E. I. duPont de Nemours & Co.*, 353 U. S. 586 (1957).

[14] Id. at 593-94.

[15] *International Boxing Club* v. *United States*, 358 U. S. 242 (1959).

(and, *a fortiori* with other forms of entertainment)—price, use and qualities considered. That the market would have been the same in a Section 7 case is abundantly apparent from this Court's further observation,[16] citing *duPont-General Motors*, that by analogy championship boxing "bears those sufficiently 'peculiar characteristics' found in automobile fabrics and finishes such as to bring them within the Clayton Act's 'line of commerce.'"

The standards of *Times-Picayune, Cellophane, duPont-General Motors* and *International Boxing* were synthesized in *Brown Shoe*.[17] Here this Court considered both the outer boundaries of a product market and the submarkets within the broad market. With respect to the former it said:

> "The outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it."[18]

It then went on to indicate some of the "practical indicia" for determining submarkets, listing

> "... industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities,

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[16] Id. at 252 n. 8.

[17] *Brown Shoe Co. v. United States*, 370 U. S. 294 (1962). In this case there was no discussion, for example, as to whether canvas footwear should be included in the line of commerce. Notwithstanding the fact known to everyone that canvas footwear may sometimes serve as a substitute for leather footwear, the former was without discussion excluded from the product market in which wearing apparel shoes were under consideration. Id. at 300 n. 4.

[18] Id. at 325.

distinct customers, distinct prices, sensitivity to price changes, and specialized vendors."[19]

In defining the pertinent lines of commerce in this case, the district court scrupulously applied the tests established by the decisions of this Court and made detailed findings of fact fully supporting its market definitions.

Each of the ten lines of commerce originally proposed by the government was considered in minute detail by the district court. It found that only three of them—glass containers, metal cans, and containers for beer—did, in fact, constitute separate lines of commerce.

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[19] Id. at 325. The consistent application of the rule was continued in *United States* v. *Philadelphia National Bank*, 374 U. S. 321, 356-57 (1963), which was decided after judgment was entered in the district court in this case.

It is of more than passing interest to note the government's espousal of the "characteristics and uses" test in its brief in *United States* v. *Aluminum Company of America and Rome Cable Corporation*, Docket No. 204, this Term. In its brief it argues:

> "Aluminum and copper wire and cable are made of metals having entirely different physical and electrical properties and wholly unrelated supply and price patterns * * *. These factors determine the electrical uses to which the metals can be put. By virtue of their peculiar properties, aluminum and copper conductors have developed distinctive end uses —aluminum, both bare and insulated, as an overhead conductor, and copper as an insulated conductor for underground, indoor and other enclosed wiring, applications in which aluminum's brittleness and larger size render it impractical * * *. In overhead transmission and distribution, fields in which aluminum is physically interchangeable with copper, the price differential between the two metals dictates the use of aluminum. And, as we have noted, there is no responsiveness between the price of aluminum conductor and that of copper conductor. It is only in a most restricted sense, then, that aluminum and copper compete with one another as electrical conductors. It follows that aluminum conductor, like aluminum insulated, is an appropriate 'line of commerce' in which to appraise the effect of the merger on the structure of competition." (Brief for Appellant, pp. 47-48, *United States* v. *Aluminum Company of America and Rome Cable Corporation*, Docket No. 204, this Term).

As noted above, that the district court clearly understood and properly applied the criteria specified by this Court for determining lines of commerce and appraising competition between products, whether in the same industries or in different ones, is demonstrated by its findings with respect to beer containers. Here the district court evaluated the evidence and found that a *prima facie* showing had been made that glass containers for beer and metal containers for beer constituted a single line of commerce notwithstanding the fact that they were made and sold by different industries. This finding was based on evidence which the district court considered to show "virtual interchangeability of use and cross-elasticity of demand between the two types of containers used for this purpose" [i.e., beer] (Op. R. 1629). Having found such a line of commerce, the district court proceeded to evaluate the effect of the acquisition in it and found no reasonable probability that the acquisition would adversely affect competition in that line of commerce (Op. R. 1631-33). The district court's opinion plainly shows that the same methodology was followed with respect to every other line of commerce claimed by the government, including its alleged "interindustry" lines, and, specifically, metal cans for food and glass containers for food.

The evidence on the question of whether metal cans and glass containers can be forced into the same product market can best be summarized in terms of the "practical indicia" referred to in *Brown Shoe*.[20]

Industry and public recognition

The can industry and the glass container industry are separate and well defined. Each has its own trade association and the Bureau of Census collects statistics

[20] 370 U. S. at 325.

relating to them separately (R. 419, 903; GX 800, R. 2867-84, 1490; GX 801, R. 2962-66, 1489). The business world and the public recognizes them as separate industries and markets. There are no combined statistics available (R. 1281).

The product's peculiar characteristics and uses

Cans and glass containers are made of different materials and have different physical characteristics (Op. R. 1586, 1588). While in some instances it may be physically possible to package products in either type of container, other forces, including tradition, weight, price, attractiveness and many others determine which container is customarily used (Tr. 665, unprinted, R. 452, 472, 957-58). This was graphically demonstrated by the estimates of the government's own expert (R. 900-01, 951-53, 954-55; DX-N, R. 3389-92, 935).

Unique production facilities

Can and glass container manufacturing equipment is not interchangeable (DX-K, R. 2478, 3389, 569). From the user's point of view it is not feasible to use a canning line designed for packing a product in cans to pack a product in glass containers or vice versa (R. 306, 467-68, 476-78).

Distinct customers

There was no evidence to show that purchasers of metal cans or glass containers, or both, fall into any categories of distinct classes of customers (Op. R. 1643). The purchasers do not pack the same product in different containers (DX-N, R. 3389-92, 935).

Distinct prices

Glass containers and cans are priced separately. The prices of cans are determined principally by the price of tinplate; those of glass containers principally by the cost of labor (R. 146, 167-68, 410-11). Glass

and can manufacturers do not equalize freight with containers of a type which they do not manufacture (Tr. 233, unprinted, R. 58, 146, 169, 185, 281). Glass and can manufacturers do not reduce their regularly quoted prices to meet the lower price of containers of a type which they do not manufacture (Tr. 247, unprinted, R. 146, 185, 281, 384, 394).

Sensitivity to price changes

Prices of one type of container (except, perhaps, beer containers—Op. R. 1629) are not changed in response to price movements of the other type (R. 146, 185, 281, 384, 394). Manufacturers of one type of container frequently do not even know the price at which the other type of container is being sold (R. 384, 394). Buyers do not shift their purchases from one type of container to the other because of changes in the price differential between the two. (See, *e.g.*, quotations *infra*, pp. 20-22).

Specialized vendors

Can manufacturing companies sell cans and glass container companies sell glass containers. Sales are normally made directly to users (R. 383-84). The evidence gives no hint of the existence of jobbers or wholesalers who sell both cans and glass containers, and the reason, of course, is that such persons could not be found.

Against this evidence the government still contends that cans and glass containers are somehow in the same product market. In support of this contention it says that the two types of containers are "functionally interchangeable" (Gov't Brief p. 26). By this it apparently means that it is sometimes physically possible to use the two types of containers for the same end purposes. This argument deliberately avoids consideration of all of the characteristics of

each type of container which make impractical or uneconomical their interchangeability in actual usage. The argument gives no recognition to the realities of the market place.

A test of substitutability in terms of "functional interchangeability" is not and cannot be the same as a market test based on *reasonable* interchangeability or cross-elasticity of demand. Products may be functionally interchangeable when it is unimaginable that they could be so economically or practicably interchangeable as to reflect cross-elasticity of demand. Many instances immediately come to mind. Gold, for example, will perform many of the same functions that steel will and so is functionally interchangeable, but there is no market cross-elasticity between the two. Silver can often be substituted for copper in electrical installations, and actually was so substituted in some instances during the war. Yet under normal market conditions there is no market cross-elasticity between the two. In order to evaluate market cross-elasticity, examination must be made of economic limitations; market factors, such as consumer acceptance and tradition; practical limitations; and actual usage.

The market studies on which the government relies, so far from proving that the two types of containers are interchangeable, demonstrate how separate they really are. Consider some of the conclusions of these studies:

> "It takes many varied attributes to make a good container material. Each container material excels in certain attributes. Each has certain products for which it is the best adapted container material." (GX 33, R. 1744, 950).

> "The closure cost of the jar makes the glass package more expensive for Processed Foods." (GX 400A, R. 2531, 722).

"Our Baby Food can prices as compared to glass would seem to offer sufficient attraction to the packer to use tin, but here the consumer preference for glass controls the package used and the packer is somewhat indifferent because his price in glass more than compensates for the increased cost of that package. This probably will not change until the housewife becames more price conscious." (GX 400A, R. 2532, 722).

"Vacuum Packed Coffee—While the cost to the packer of the glass container is less, apparently packer, distributor, and consumer preference for tin outweighs this price consideration." (GX 400A, R. 2532, 722).

"The price of the container to the packager is not a dominant factor in the selection of either glass or metal. In the small sizes, metal cans are competitive costwise, but currently lack consumer acceptance. In the large size market the glass jar has, up until the present, been unsuccessful in making any significant inroads at prevailing price ratios to metal. It, therefore, follows that a price reduction on metal cans in the 5 or 10 pound sizes would not result in any additional business. Likewise, price reduction alone on the smaller 1½ or 2½ pound capacity cans would probably not result in any additional business." (GX 401, R. 2543, 1542).

"Under these circumstances, it appears unlikely that the mere offering of a new metal container to the widely scattered peanut butter industry would produce rewarding results, particularly in view of the industry's present dollar and market investment in glass containers and their filling and closing equipment." (GX 402, R. 2551, 847).

"In spite of the price advantage of glass, the majority of coffee roasters are anxious to use cans to as high a percentage as possible." (GX 406, R. 2579, 1543).

"The outstanding and major reasons for consumers preferring glass jars instead of metal cans for baby food is the deep seated belief that jars are completely sanitary containers which can be used in place of dishes for feeding and are also ideal for storing unused portions of food in a refrigerator while conventional cans are not suitable for either direct feeding use or storage of partial contents." (GX 417, R. 2632, 821).

"We do know there is a decided demand for non-returnable packages and this situation may influence the industry to accept smaller profit margins in order to meet consumer preferences." (GX 435, R. 2703, 628).

The district court properly found as a fact that the material relied on by the government did not show reasonable interchangeability or cross-elasticity of demand as between metal cans and glass containers generally (Op. R. 1642-43).

But there is a further infirmity inherent in the government's effort to delineate a line of commerce comprising "containers used for all purposes for which metal or glass containers may be used." If, contrary to the findings below, metal and glass containers are deemed to be reasonably interchangeable and to possess the requisite cross-elasticity of demand, there is no rational basis for stopping there. Any "overall line of commerce"[21] must also include, besides metal and glass, such other materials as paper, plastic and foil. Indeed, *the government concedes that "this overall line of commerce includes competition for the same end uses by other containers, such as paper, plastic and foil."*[22] The

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[21] Gov't Brief p. 18 n. 18.

[22] *Ibid.* (Emphasis added).

fact that "the further competition of such other industries prevents expression in market share percentages of the impact of this merger"[23] is no excuse for arbitrarily excluding these materials from the alleged line of commerce. As the government itself acknowledges, "the touchstone" to the problem of market definition is finding "'the area of effective competition'" (Gov't Brief p. 15). If glass and metal containers can be thrown into the same general inter-industry line of commerce, there is no warrant for excluding the other materials which equally belong there.

Referring to the *Cellophane* case, the government says: "Just as cellophane and Pliofilm were regarded in *duPont* to be competing packaging materials for meat packers and other packaging customers (351 U. S. at 399-400), so are glass and metal containers in competition in this case for the business of all users of such containers." (Gov't Brief p. 39). In making this statement, the government exposes the fundamental weakness of its position. This Court in *Cellophane* did *not* confine the relevant market to cellophane and Pliofilm; it held that the market consisted of *all* reasonably interchangeable flexible packaging materials—cellophane and Pliofilm being only two.

The government never claimed in the court below that glass and metal containers alone constituted a distinct product market, but included them in a general "packaging industry" line of commerce. This was the government's overall interindustry line, and it was never seriously pressed in the district court. It was rejected by the trier of facts, who said: ". . . there was complete failure of proof" (Op. R. 1618), and the government is not appealing from that determination. Its belated effort now to slice just two segments out of this multi-segment pie is an act of

[23] *Ibid.*

sheer expediency without a semblance of support in the record. By this maneuver it would brush aside all of the huge businesses selling substitute products and escape the embarrassment of dealing with paper milk containers; cracker boxes, breakfast food containers, frozen food paper boxes, composite oil cans and anything else that does not happen to fit within its neatly gerrymandered line of commerce.

To support its arguments with respect to this newly discovered line of commerce, the government leaps clear of the record in the case and announces (Gov't Brief p. 26):

> "As reflected in the *literature* on the metal and glass container industries, the two containers are functionally interchangeable and present alternatives to packers whose competitive choice between them has varied with the commodity to be packed, their comparative cost and other characteristics which affect the desirability of each." (Emphasis added).

For this proposition, it cites a series of obscure publications and several newspaper articles (Gov't Brief p. 26 n. 25). It bolsters its argument with a pronouncement from the elusive Hession, whom it did not dare expose to cross examination, that:

> "Competition which in the past had been merely potential became active and aggressive." (Gov't Brief p. 27).[24]

It also cites a statement made a quarter of a century ago, under unknown circumstances and in an unknown context,

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[24] For what it is worth, we quote the other of the government's favorite outside-the-record "witnesses" who, in discussing cans and glass containers, says flatly:

> "There is no one 'container market'. The markets are heterogeneous." McKie, *Tin Cans and Tin Plate* (1959) p. 295.

by a supplier of tinplate to the effect that in arriving at prices for tinplate:

> "other types of containers [kind unspecified] . . . always come into our discussions." (Gov't Brief p. 27).

Squarely opposed to this argument are the findings of the district court which, after commenting on the paucity of the testimony relating to interchangeability, found (Op. R. 1642-43):

> "It can scarcely be said that this testimony shows any general interchangeability of use or cross-elasticity of demand as between glass and cans. The fact that *in some instances* similar products were packaged in two or more different types of containers, or that at times one kind of container has supplanted another in the packaging of the same product, does not show that different types of containers are *generally* commercially interchangeable.
>
> "Choice of type of container in which to pack a particular product may be dictated by a variety of factors, including traditional or changing preferences of the buying public, eye appeal, the nature of the trade to be served, the physical characteristics of the product to be packed, the type of packing process required, distance to outlets, and other diverse factors. But the record is barren as to the extent to which specific factors of this nature affect the choice of metal or glass containers in which to pack the enormous varieties and kinds of food products included within the broad range claimed for this product market."[25] (Emphasis added).

[25] Many of the exhibits which the government cites to support its interchangeability theory refer to beer, with respect to which product, of course, the district court found that metal containers and glass containers did constitute a line of commerce. The government admits (Gov't Brief p. 30 n. 29) that Hazel-Atlas was not a significant factor in beer bottle production. The government's

The government's own expert witness presented evidence which the government admits (Gov't Brief p. 28) showed that "particular products may be packed predominantly in one of these containers, to the almost total exclusion of the other." The government would dismiss this evidence as overlooking "the dynamic nature of the competition between these two industries" (Gov't Brief p. 28).

The evidence in question was a comprehensive survey of how various products are packed, of how they actually move in commerce. This evidence cannot be dismissed lightly; it is the proof of actual usage, in contradistinction to all of the government's fine theories of mere possibility of usage. Here is what the government's expert found (DX-N, R, 3389-92, 955):

Ammonia	All or substantially all in glass.
Antiseptics	All or substantially all in glass in consumer size.
Baby Foods	80% glass; 20% cans.
Beer and ale	39% cans; 6½% non-returnable glass; balance returnable glass.
Brilliantines	All or substantially all in glass in liquid form and some collapsible tubes with different formulation.
Catsup	All or substantially all in glass in consumer size—Institutional all or substantially all in cans—plastic film or containers for individual servings—very small.
Cheese spreads	90% glass; balance aluminum tumblers, plastic tubes and film, collapsible metal tubes, foil, crocks and paper; no cans.
Chili sauce	All or substantially all in glass.
Cider	All or substantially all in glass.

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statement (Gov't Brief p. 29) that the development of the beer can prompted the production of cheaper and lighter weight non-returnable bottles is not supported in the record. It is obvious that important factors in this development were the reluctance of supermarkets to handle returnable bottles and the glass container industry's desire to sell twenty or more bottles where previously only one had been sold.

Citrus segments, chilled	All or substantially all in glass.
Citrus segments, non-refrigerated	95-100% cans.
Coffee, ground	Less than 1% in glass; balance in cans and paper bags.
Coffee, soluble	99% glass; 1% cans.
Cologne	95-100% glass — some aerosols of glass, metal and plastic.
Corn	All or substantially all in cans.
Corned beef hash	95% cans.
Cosmetic creams	90% glass; 5% plastic; 5% collapsible tubes.
Crabmeat	All or substantially all in cans.
Cranberry sauce	All or substantially all in cans.
Cream, whole	50% glass; 50% paper—no cans.
Cured ham	All or substantially all in cans.
Distilled spirits	All or substantially all in glass.
Drugs, ethical in liquid form	All or substantially all in glass.
Flavoring extracts	All or substantially all in glass.
Food sauces other than tomato sauce	All or substantially all in glass.
Fruit spreads and preserves	More than 95% in glass for home consumption.
Green beans	95% cans; 5% glass.
Hair lacquer	All or substantially all in metal.
Hair tonic	More than 95% in glass.
Hominy	All or substantially all in cans.
Horse radish	All or substantially all in glass.
Juices, concentrated and frozen	All or substantially all in cans.
Lard	All or substantially all in cans; a little paper.
Lighter fluid	90% cans—10% glass.
Lima beans	All or substantially all in cans.
Liquid bleach	All or substantially all in glass.
Liquid shoe polish	All or substantially all in glass.
Lubricating grease	All or substantially all in cans.
Luncheon meat	All or substantially all in cans.
Machine oil	Substantially all in cans.
Marachino cherries	All or substantially all in glass in consumer size.
Mayonnaise	All or substantially all in glass in consumer size.
Milk, whole	55% paper—45% glass.

Mineral oil	All or substantially all in glass.
Motor oil	All or substantially all in cans.
Mouth wash	All or substantially all in glass.
Mustard, prepared (consumer size)	95% glass—5% plastics.
Nail polish	All or substantially all in glass.
Nail polish remover	All or substantially all in glass.
Olives, green	All or substantially all in glass.
Olives, ripe	90-95% cans; balance glass.
Paint, oil base (household, interior and exterior)	None in glass.
Paint, polyvinyl acetate base (household, interior and exterior)	None in glass.
Paint, rubber base (household, interior and exterior)	None in glass.
Paste shoe polish	All or substantially all in cans.
Peaches	95% cans—5% glass.
Peanut butter (consumer size)	90% glass—5% plastic and 5% cans.
Pears	95% cans—5% glass.
Peas	All or substantially all in cans.
Perfume	All or substantially all in glass.
Pickles	Over 95% glass for household use—balance between cans and plastic film.
Pineapple	All or substantially all in cans.
Proprietary medicine in liquid form	95% glass—5% plastics.
Prune juice	All or substantially all in glass.
Pumpkin	All or substantially all in cans.
Relish (consumer size)	All or substantially all in glass.
Salad and cooking oils (consumer size)	85% glass; 15% cans.
Salad dressings	100% glass for retail.
Salmon	All or substantially all in cans.
Sardines	All or substantially all in cans.
Single strength blended orange and grapefruit juice	Over 95% cans.
Single strength grape fruit juice	90-95% cans; balance glass.
Soft drinks	98½% glass; balance cans (1% is one way bottle).
Solid and semi-solid shortening	All or substantially all in cans.

Soup (Liquid form)	All or substantially all in cans.
Squash	All or substantially all in cans.
Starch (Liquid form)	All or substantially all in glass.
Sweet Potatoes	All or substantially all in cans.
Syrup, chocolate	95% cans—5% glass.
Toilet water	All or substantially all in glass.
Tomato juice	Over 95% in cans.
Tomato paste	All or substantially all in cans.
Tomato puree	All or substantially all in cans.
Tomato sauce	All or substantially all in cans.
Tomatoes, stewed	All or substantially all in cans.
Tomatoes, whole	All or substantially all in cans.
Tuna fish	All or substantially all in cans.
Vinegar	All or substantially all in glass consumer size.
Wax beans	Over 95% cans—balance glass.
Wet pack pet foods	90-95% cans; balance glass.
Wine	All or substantially all in glass.
Writing ink	All or substantially all in glass except refill cartridges.

Far from overlooking anything, this is proof of how containers are actually used in the market place with all of its dynamism.

We call to the Court's attention that the plaintiff here is the United States, represented by the Department of Justice, and that it makes diametrically opposite arguments as expediency dictates.

On December 4, 1956, about three months after the action in this case was instituted, a complaint was filed by the government in the Northern District of Ohio attacking the acquisition of National Container Corporation by Owens-Illinois Glass Company as a violation of Section 7.[26] In that action the government made strenuous efforts to limit the line of commerce to glass containers. Toward that end, it served the following requests to admit, among others, on Owens-Illinois:

[26] *United States v. Owens-Illinois Glass Company*, Civil No. 7686 (N. D. Ohio).

"(23) While certain other materials may possess one or more of the characteristics of glass for container purposes, no other material possesses all of the qualities possessed by glass for container purposes."

"(54) Glass containers are recognized in the industry as being a product having peculiar and unique physical characteristics which distinguish them from containers made from other materials."

"(55) Glass containers are recognized in the industry as being a product having peculiar and unique utilization characteristics which distinguish them from containers made from other materials."

"(58) Although there are a number of products packaged both in glass containers and in containers made from other materials, there exists no substitute for glass containers which possess all of the several physical and utilization characteristics possessed by glass containers."

In a subsequent answer to a counter request to admit, the government stated:

"... *many, if not most, container uses require particular combinations of characteristics* (e. g., impermeability—rigidity—transparency) *not found in containers made of materials other than glass.*" (Emphasis added).

The government made a motion for summary judgment in the *Owens-Illinois* case. In its briefs in support of its motion, filed only about two years ago, it recognized that glass containers could not be combined with other containers to form a line of commerce. It told the district court in that case:[27]

[27] Brief for Plaintiff, p. 33, Reply Brief for Plaintiff, p. 43, *United States* v. *Owens-Illinois Glass Company*, Civil No. 7686 (N. D. Ohio).

"A number of products are packaged both in glass and in containers made from other materials. For specific customer demands which require particular combinations of characteristics possessed by glass containers, however, there is no substitute for glass containers."

"Defendant's [i.e. Owens-Illinois'] insistence on a glass-paper-tin-plastic 'consumer container' line of commerce without permitting recognition of what business and the public at large recognize as distinct products would, if adopted, emasculate the broad purposes of Congress in enacting Section 7."

We submit that facts are facts, and that the definition of lines of commerce should be made by the tests prescribed by this Court, not varied according to the theories of the government in its various cases. The lack of substitutability to which the government referred in the *Owens-Illinois* case was found to be a fact by the district court in the instant case.

That brings us to the government's proposed "food canning" line of commerce. When the government proposed this line of commerce prior to trial, it defined it as relating to containers for heat-sterilized and hermetically sealed foods. At the trial it limited this line to hermetically sealed foods, although some of the foods it claimed fell within this line were heat-sterilized but not hermetically sealed, some were hermetically sealed but not heat-sterilized, and some were neither. (See Op. R. 1639-40).

The government's confusion as to what it means to include within its "canning" line is complete. In its Pretrial Statement of proposed "Steps of Proof" it defined it as ". . . fruits, vegetables, juices and other foods which are heat-sterilized and hermetically sealed in cans and glass containers."

In oral argument on the motion to dismiss counsel for the government said (Tr. 4101, unprinted): ". . . when we attempted to define this in our answer to interrogatories, we attempted to define it in this manner, to explain what we were talking about and what we were trying to exclude, and the key thing is we were trying to include things which are hermetically sealed. *We used the words 'heat sterilization' because we are trying to get away from frozen food.*" (Emphasis added). In response to questions from the district court, government counsel said that candy and baking powder in screw top containers (i.e., containers which are not hermetically sealed) would be included. The district court then said (Tr. 4109, unprinted):

> "The Court: In other words, your contention now—I want to make sure I get this—your contention at the present time is that your line of commerce on food includes all foods that are packaged in tin or glass."

To this government counsel replied (*ibid.*):

> "That would be correct."

In an affidavit in support of a motion for reargument made just after the trial, government counsel said:

> ". . . our definition of the canning line included products which were not heat sterilized and in essence represented all foods which were put in hermetic containers." (McManus affidavit, December 21, 1960, p. 3, unprinted).

In the same affidavit (p. 5) government counsel said:

> "By its [the government's] direct examinations and by its documentary evidence it left no doubt that the 'canning' line included non-heat sterilized foods."

The district court dealt with this confusion in its opinion. (See Op. R. 1639-40).

On this appeal the government has reversed its position again, and it now would limit the line to foods which are both hermetically sealed and heat-sterilized (Gov't Brief pp. 13-14, 41).

The government now contends that one physical fact alone—the possibility of creating a hermetic seal on a container which can be heat-sterilized—is sufficient to create a line of commerce. It would ignore all other market factors which were shown at the trial to negative completely the existence of a line of commerce consisting of containers for canning.

A line of commerce consisting of containers for hermetically sealed and heat-sterilized foods is not known in everyday use and the evidence does not permit one to be discovered. The government's two experts did not recognize such a line. The government's food expert testified that food processing for glass packing was different from that for metal can packing; that packing techniques for different types of containers were different; that packing economies were different; that the equipment required was different; and that the physical characteristics of the two types of containers produced different packing results (R. 297-300, 305-07, 308-09). The government's other expert testified that specified products tend to move in containers of one type or the other but not in both (R. 951-53, 954-55; DX-N, R. 3389-92, 955).

In its brief (Gov't Brief p. 28) the government says that in the district court it produced the "most graphic evidence of the interchangeability of glass and metal containers—the fact that numerous products are packed in both types of containers." "Investigators", it says, "observed a great variety of goods being offered for sale *competitively*

at retail stores throughout the country in both glass and metal containers." (Emphasis added).

The reference is to certain products purchased by FBI agents in retail stores. So far from showing that the products were offered for sale "competitively", it was stipulated at the trial (R. 1160-61) that no attempt had been made to determine if the products were offered competitively. They are not the same products; they are not processed in the same way; and they are not priced competitively. A copy of the stipulation is annexed as Appellee's Appendix.

An examination of the examples of food products packed in both types of containers generally shows immediately what the differences were: green olives were packed in glass —ripe olives in cans; fruit preserves packed domestically were packed in glass containers—fruit preserves packed abroad and imported were packed in cans; tomato catsup in retail sizes was packed in glass containers—tomato catsup in institutional sizes was packed in cans.

In rejecting the government's food canning line of commerce, the district court specifically found, after an exhaustive review of the evidence, that there was "no showing of reasonable interchangeability of use or cross-elasticity of demand as between metal and glass containers used for packing food" (Op. R. 1641); that there was "no showing of any public or industry recognition of such a product market or submarket" (Op. R. 1640-41); that metal cans and glass containers do not have the same physical characteristics and uses in the food field (Op. R. 1641); that "their shapes, sizes and other characteristics differ widely, depending upon the type of food to be packed in them" (*ibid.*); that "the manufacturing equipment and processes and the raw materials for each, far from being interchangeable, are entirely different" (Op. R. 1643); that "the

machinery used to pack food products in glass containers and the packing process are different from that used for packing in metal cans" (*ibid.*); that "there was no evidence to show that the thousands of packers of food products who purchase metal cans or glass containers, or both, fall into any categories of distinct classes of customers" (*ibid.*); that there was no evidence of "a distinct price structure for metal cans and glass containers used for food products, or of correlation or correspondence of prices between them" (*ibid.*); and that "there are no specialized vendors of containers used for food products" (*ibid.*).

The district court, in short, went down the line of product market indicia outlined by this Court in *Brown Shoe*, and found the government's case deficient on each and every score. The government makes no showing that these findings were incorrect, much less clearly erroneous (Fed. R. Civ. P. 52(a)). It simply wants this Court to make its own *de novo* findings on the basis of the government's *ipse dixit*.

In addition to the detailed and comprehensive findings negating the government's canning line of commerce, the record shows that although Hazel-Atlas and Continental both sold their respective containers for food, they sold them for different uses.

The principal glass containers manufactured and sold by Hazel-Atlas for use as food containers were for use in packaging catsup, chili sauce, vinegar, syrup, salad dressing, jams, preserves, pickles, mayonnaise, maraschino cherries, olives and mustard (R. 359-60).

These products do not move in metal cans, except that a small amount of certain types of syrup is in cans. Catsup, chili sauce, salad dressing and mayonnaise in retail sizes are practically unknown in containers other than glass. The same is true of the other principal foods for which

Hazel-Atlas sold glass containers—vinegar, jams, preserves, pickles, maraschino cherries and mustard (DX-N, R. 3389-92, 955). Baby food containers, to which the government refers (Gov't Brief p. 45), was a use for which Hazel-Atlas's participation was negligible (R. 339), as the government admits (Gov't Brief p. 45 n. 46).

On the other side, the principal food products for which Continental sells its metal cans do not move in glass containers. Continental's largest food container lines are for fruits and vegetables, including juices (GX 800, R. 2887-88, 1490). Much of the fruit juice is packed concentrated in frozen form for which glass containers are not suitable. With respect to fruits and vegetables generally, cooking time, weight, appearance and other market factors militate so heavily against glass containers that in practice only small amounts of premium grades are packed in glass containers (R. 298-300, 470-71, 477-78; GX 317, R. 2337-81, 69; GX 318, R. 2382-2439, 71). In total, these are negligible (DX-N, R. 3389-92, 955).

Other major food products for which Continental sells metal cans are evaporated milk, fish and seafood, coffee, meat and lard and shortening (GX 800, R. 2887-94, 1490). Here also, for a host of different reasons, some applying to one product and some to another, these products are, and continue to be, packaged in cans. Sometimes it is weight, often it is appearance and very frequently it is the very nature of the processing to which the product is subjected which determines that a metal container is the only practicable container to use.

Upon all of this evidence the district court found no reasonable interchangeability or cross-elasticity of demand as between cans and glass containers for packaging food. This finding was clearly correct.

II.

The district court was correct in finding that there was no evidence of reasonable probability of anti-competitive effects resulting from the acquisition.

The district court construed the words "may be", used in Section 7 in defining the effect on competition of mergers, as the equivalent of reasonable probability (Op. R. 1579). There is no doubt that this is correct. The Senate Report on the bill which became Section 7 says, with respect to the words "may be": "The use of these words means that the bill, if enacted, would not apply to the mere possibility but only to the reasonable probability of the prescribed effect." (S. Rep. No. 1775, 81st Cong. 2d Sess. 6; *Brown Shoe*, 370 U. S. at 323).

Although the present case was tried more than four years after the acquisition, there was no proof of actual anti-competitive effects. The government does not dispute this.[28]

The inquiry then becomes one of the reasonable probability of the future development of anti-competitive effects where no such effects have developed in four years. "[T]he

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[28] During the pre-trial proceedings, the Antitrust Division of the Department of Justice wrote to counsel for appellee:

> "Judge Bryan, at the pre-trial conference of March 4, 1960, ordered the Government to state which of its witnesses would testify that they had received a specific injury as a result of the acquisition of Hazel-Atlas Glass Company by Continental Can Company, Inc.
>
> ". . . As of this date the plaintiff has no witness who will testify as to such specific injury. . . ." (Letter, dated March 17, 1960, from Robert A. Bicks, Acting Assistant Attorney General, Antitrust Division, Department of Justice, to Helmer R. Johnson (unprinted)).

No witness did so testify.

experience reflected by this post-acquisition period must weigh heavily in appraising future probabilities" *Consolidated Foods Corp.* v. *F. T. C.*, 1964 Trade Cases (CCH) ¶71,054, p. 79,168 (7th Cir. 1964).

Although it found no single line of commerce comprising all metal cans and glass containers, and no line of commerce consisting of containers for canning, the district court proceeded to make a very careful and complete appraisal of the effect of the acquisition in every direction, interindustry and intraindustry. Each of the areas in which the government contended that anti-competitive effects might arise was considered separately. The thoroughness of this study is indicated by the areas considered:

(a) Prior acquisitions (Op. R. 1610).

(b) Intention of the parties (Op. R. 1611).

(c) Likelihood of suppression of product lines (Op. R. 1611-12).

(d) Elimination of competition (Op. R. 1611-12, 1620, 1626).

(e) Weakening of either company in their respective lines (Op. R. 1611-12).

(f) Advantages resulting from the acquisition (Op. R. 1612-13, 1619-20, 1625-26).

(g) Concentration in the respective industries (Op. R. 1613-14).

(h) Changes in market position (Op. R. 1614).

(i) Effects on competitors (Op. R. 1615).

(j) Ease of entry into industries involved (Op. R. 1620, 1623).

(k) Tendency toward monopoly (Op. R. 1622-23).

This careful inquiry yielded nothing to show a reasonable probability that the acquisition would have the pro-

hibited anti-competitive effects. There was a total failure of proof that this interindustry merger was likely to adversely affect competition in either industry or in any other line of commerce.

From the mere existence of interindustry competition in general in the sale of cans and glass containers, and the position of Continental and Hazel-Atlas in their respective industries, the government argues that an inference should be drawn that the effect of the acquisition may be substantially to lessen competition (Gov't Brief pp. 24, 52). Here the government seizes upon half a sentence in *United States v. Philadelphia National Bank*[29] and tears it out of context.

The factual situation in *Philadelphia Bank* was completely different from that in the present case. There, both parties to the merger were direct competitors in the same line of commerce (commercial banking), so the merger was plainly a horizontal one. The merger would have produced a bank controlling an undue percentage of the relevant market and would have significantly increased the high degree of concentration that already prevailed in an industry which had witnessed a decline in the number of competitive units. It was in this context that the Court made its comments with respect to the inherent likelihood of the effects of that merger. There is no parallel whatever between the *Philadelphia Bank* case and the merger at issue here, which involves diversification by one company into a new product line.

What the government is saying here in essence is that two large companies, which are important factors in their respective industries,[30] cannot merge if there is interindus-

[29] 374 U. S. 321, 365 (1963).

[30] The government loosely characterizes Continental and Hazel-Atlas as "dominant" firms in their industries. Needless to say, Continental does not dominate an industry in which American Can is the front-runner; nor does Hazel-Atlas dominate an industry in which it trails behind Owens-Illinois and Anchor Hocking.

try competition—wholly apart from either the quantity or quality of such competition, and wholly apart from the roles played by the two companies in that competition. Thus, it is enough for the government that glass and metal containers compete in a general sort of way for some common end uses, and that Hazel-Atlas made glass containers and that Continental made metal containers.

But to what extent do glass and metal containers compete? For which end uses? How important are these end uses in the overall scheme of things? What is the nature and quality of the interindustry competition? In those areas where glass and metal containers can be said to compete, was Hazel-Atlas competing with Continental, and, if so, to what extent?

These are not idle questions. They were considered and answered by the district court. They go to the heart of any meaningful determination of probable anti-competitive effects under Section 7. Yet the government sweeps all these questions under the rug and comes up with a rule of virtual automatic illegality which has no relationship to the realities of the marketplace.

The government oversimplifies. It would treat the merger of a metal container and glass container company in the same way that it would treat the merger of two metal container companies or two glass container companies. It draws no distinction between peripheral interindustry competition and direct intraindustry competition. Manifestly, an attempt by a metal container company to create a can which could be sold for peanut butter, where cans are not now being used to any appreciable degree, is not the same type of competition as that waged among glass container companies going after the same peanut butter business.

We wish to emphasize that we do not contend that evidence of precise market shares is indispensable to proof of a Section 7 violation. It was the government which chose to present a statistical case here. And now that its statistics are deficient, it wants to forget about them. That, of course, is the government's privilege. But when it throws its statistics away and has nothing left, it should not be heard to say that nothing is good enough. The tailor-made rule that it has proposed in this Court for the first time obviates not only the need for statistical proof, but for any proof whatever on the issue of competitive effects.

The government is guilty of the same oversimplification when it comes to its "food canning" line of commerce. It cavalierly assumes, contrary to the evidence, that inter-industry competition *between* metal and glass containers for packaging food products is comparable to competition *within* each of these industries for such packaging purposes. An illustration will serve to point up the fallaciousness of this assumption. Sardines and mayonnaise are both food products. But sardines traditionally move in metal cans, and the housewife traditionally buys mayonnaise in glass containers (DX-N, R. 3389-92, 955). When the metal can manufacturers vie for the custom of a canner who is packing sardines, they most certainly are competing head-on. The same holds true where two glass container manufacturers solicit the patronage of the mayonnaise packer. But would anyone say that in this instance the two metal-can manufacturers are competing with the two glass container manufacturers simply because all four are going after the business of food canners?

The fact of the matter is that to the extent that inter-industry competition exists between glass and metal containers for food canning, it is not the same either qualitatively or quantitatively as the competition that exists within

each of these industries. Hence, even if the government's statistics and statistical assumptions were to be accepted at face value (we demonstrate their utter unreliability in Point III, below), they would not rationally support an inference that the challenged acquisition is reasonably likely to produce the prohibited anti-competitive effects. In other words, if we assume with the government, *arguendo*, that Continental had about 23% and that Hazel-Atlas accounted for approximately 3% of the claimed interindustry "food canning" line of commerce, this would not constitute a *prima facie* violation. We would say that a 3% accretion would not be enough for this purpose under the *Philadelphia National Bank* formulation even if a horizontal merger of direct competitors were involved.[31] *A fortiori*, it is not enough when all that is involved is peripheral interindustry competition.

It is interesting to note that although the government originally contended that the acquisition would substantially lessen competition within both the glass container and metal container industries, it is not appealing from the district court's determination that no such probable anti-competitive effects were shown with respect to either of these lines of commerce. The government, accordingly, is in the position of accepting the finding that intraindustry competition will not be adversely affected by the acquisition, and yet at the same time arguing that interindustry competition will be.

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[31] A 3% increase would not, we submit, produce "a firm controlling an undue percentage share of the relevant market;" nor would it result in "a significant increase in the concentration of firms in that market." *United States* v. *Philadelphia National Bank*, 374 U. S. 321, 363 (1963). The incremental percentage in the *Philadelphia National Bank* case was several times as large.

III.

The government's statistics are unreliable and provide no basis for measuring shares of any market.

Although the government deprecates reliance on statistics it uses many of them in its brief in an attempt to show what Continental's and Hazel-Atlas' positions would have been if metal cans and glass containers for foods or for canning could have been combined into a single product market from which all other types of containers were excluded.

Its statistical methodology is such, however, that each figure it uses must be examined with care. The record shows that they are false. The district court found that many of the government's statistical combinations "have no sound statistical basis and are predicated on implausible hypotheses not supported by evidence." (Op. R. 1614). The government does not contest this finding; it tries to ignore it.[32]

It is never easy to demonstrate the falsity of statistics, but the record in this case is such as to permit it to be done.

In the first place, the metal can and glass container industries are so different that they do not use a common system of statistical notation. The can industry reports to the Census Bureau in terms of the amount of tinplate consumed; the glass industry in terms of units, by end use categories, shipped. At the trial the government witness presenting its statistics testified that he had never heard of combined figures (R. 1281). He had set about to make his own combinations.[33]

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[32] In its brief the government contents itself with saying that it explained its computations at the trial (Gov't Brief p. 50 n. 50). It was in response to this explanation that the district court made its finding that they were "predicated on implausible hypotheses".

[33] He was not a qualified statistician (R. 1231-32).

In an attempt to convert the tinplate use to units of metal cans, the government took a series of figures from the can industry's trade association which were clearly marked as the hypothetical number of cans which could have been made from the amount of tinplate consumed.[34] These figures were never used by the trade association without being clearly marked as hypothetical. They were admittedly made without regard to product mix, which the record shows varies greatly from company to company, and by making certain undisclosed assumptions with respect to size of cans and weight of tinplate used in making metal cans (R. 1275-79; GX 800, R. 2937-47, 1490).

From the trade association's hypothetical figure the government computed an assumed conversion factor (one never used by the trade association—R. 1307-08) which it applied to the Census Bureau figures of total tinplate consumed in the making of cans of all sizes and shapes. No attempt was made to allow for variations in sizes of cans, which obviously vary widely.

Using the method described, with its clearly erroneous assumptions, the government then had a figure which it called the total number of units of cans manufactured. To this it added the total number of units of glass containers shipped, counting each unit as one although the record shows that great numbers of the glass containers were returnable bottles used on an average of twenty-two times each (R. 1015-16). The Census Bureau has, for obvious reasons, always carefully separated returnable from non-returnable bottles (R. 1282-83). The largest category of returnable bottles is beer bottles. Since Hazel-

[34] In response to an interrogatory to the government with respect to these figures, it said: "[T]he plaintiff has no way of verifying their accuracy." (DX-X, R. 3401, 1495).

Atlas' production of beer bottles was negligible, the distortion was extremely large.

To this artificially constructed universe figure the government applied Continental's usage of tinplate, similarly converted into hypothetical units, and Hazel-Atlas' production of units of glass containers, to get a percentage of the total. This percentage was carried out beyond the decimal point to give an appearance of exactitude.

The percentage figures have no relationship to reality. They are false.

At the trial the government attempted to construct figures showing Continental's and Hazel-Atlas' share of containers used in "food canning." It now recognizes that it failed in this (Gov't Brief pp. 49-52), but it proposes a totally unfounded assumption that the proportion would be the same as the proportion of the whole. Even if the stated proportion of the whole were reliable, which it clearly is not, this assumption would be untenable for the product mix of each of the two companies was entirely different from the rest of their respective industries.[35]

The government, recognizing the weakness of its statistics, says that in any event they are "accurate enough"

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[35] The absurdity of the "inference that leading producers in each of these industries were able to sell their products in roughly equal shares among the major possible end uses because of the flexibility of manufacture and use" (Gov't Brief p. 51), can be demonstrated in another way. The same logic would support the inference that Hazel-Atlas produced beer bottles and milk bottles in the same proportion as its percentage of the glass container market. Yet the record shows that it produced a negligible number of beer bottles and no milk bottles (R. 354-55; GX 801, R. 2959, 2970, 1465, 1489; GX 800, R. 2884, 1490).

In its reply brief in the *Owens-Illinois* case, referred to above (p. 30), the government itself, citing *Crown Zellerbach Corp.* v. *F. T. C.*, 296 F. 2d 800, 812 (9th Cir. 1961) *cert. denied*, 370 U. S. 937 (1962), labelled the production flexibility theory, which it here advocates, an "absurdity."

(Gov't Brief p. 50). They are neither accurate nor accurate enough for any purpose, because they are based on inherently unsupportable assumptions. We are fully mindful of this Court's observation that "in cases of this type precision in detail is less important than the accuracy of the broad picture presented." *Brown Shoe Co.* v. *United States*, 370 U. S. 294 (1962). So was the court below. The trouble with the government's statistics is not merely that they are imprecise; the trouble is that they are meaningless.

As a last resort, the government begs to be allowed to use its statistics "if Section 7 litigation is to remain manageable" (Gov't Brief p. 49). The exigencies of litigation are, we submit, no justification for the use of made-to-order, tailored statistics which are palpably false, misleading and unreliable.

Conclusion.

In an extremely conscientious examination of the law and the facts the district court found that there had been a failure to prove any violation of Section 7. The appeal presents no questions of law for this Court's review. This is a fact case pure and simple. The government would have this Court examine *de novo* a large record compiled in a lengthy pre-trial and trial, and make new findings in place of those made by the trier of facts, who spent large amounts of time over a period of several years in their preparation. Under Rule 52(a) those findings cannot be set aside unless they are clearly erroneous. No such showing has even been attempted, much less made, here.

The situation here is comparable to that in *United States* v. *Yellow Cab Co.*, 338 U. S. 338 (1949) in which this

Court, in refusing to retry an antitrust case, concluded at 340-41:

> "The judgment below is supported by an opinion, prepared with obvious care, which analyzes the evidence and shows the reasons for the findings. To us it appears to represent the considered judgment of an able trial judge, after patient hearing, that the Government's evidence fell short of its allegations—a not uncommon form of litigation casualty, from which the Government is no more immune than others."

The judgment of the district court should be affirmed.

Respectfully submitted,

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April 17, 1964.

Appellee's Appendix.

(Stipulation—R. 1160-61).

The plaintiff stipulates that if the remaining FBI witnesses which it will call to testify were cross examined with respect to the following matters each of them would answer substantially as follows:

That he had never been employed by a can manufacturer, a glass container manufacturer, a plastic container manufacturer or a firm engaged in conducting surveys or polls of public opinions or consumer preference, and that he is not experienced in the techniques of such polls or surveys;

That he has never been employed by a packer who uses any of the kinds of containers that he observed during the course of his assignment;

That he has not been in communication with any of the packers whose products he has stated that he observed;

That he is not a chemist;

That he does not know the difference between high-density and low-density polyethylene, nor the difference between either of them and polystyrene;

That he took no note of and made no list of products in the stores which he visited which were packed in only one type of container;

That he took no note of and made no record of prices of the products which he observed;

That he took no note of and made no record of the quantities of products in the containers he observed;

That he took no note of and made no record of the quality of the products in the containers he observed;

That he took no note of and made no record of the differences in the preparation of the products in the containers he observed;

That he could not say whether the products which he observed were specially packed for special purposes, such as, for example, dietetic purposes;

That he did not know whether any of the products which he observed were processed by heat sterilization;

That he made no observation as to the amount of shelf space devoted to the different types of containers used to package what he considered to be similar products;

That he has no information as to the quantities of any of the products which he observed in inventory in any store, or as to the quantities sold in any store in any period of time, or as to the quantities sold in the metropolitan area of the community in which the observations were made, or as to the quantities sold in the United States at any time;

That he has no information with respect to the formulation of any of the products which he observed to be packaged in cans or glass or plastic;

That he did not notice whether any of the products which he observed were packaged locally or at a distance;

That he could not tell from the package of any article which he observed whether or not it was being test-marketed, or whether or not it was obsolete stock, or whether or not it had been packed as an experiment, or whether or not it was on special sale on the date of the observation;

That he couldn't tell from the package of any article which he observed whether or not the packager who packaged it is still packing in the same type of container;

That he could not tell from the package of the products that he observed or from any other source why the packer chose the particular type of package for the product;

That in the case of stores whose principal business is the sale of foods, he noticed that they carried fresh fruits and vegetables, fresh meats and fresh dairy products, that they carried frozen foods and foods in dried or dehydrated forms, but that he made no particular observations as to what the particular products were;

That he has no information as to the method of processing the various products he observed and no information as to the method of filling the containers he observed.